

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1982
First Extraordinary Session, 1982

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FOREWORD

This volume contains the Acts of the Second Regular Session and First Extraordinary Session of the 65th Legislature, 1982.

Second Regular Session, 1982

The second regular session of the 65th Legislature convened on January 13, 1982. The constitutional sixty-day limit on the duration of the session being midnight on March 13, 1982, *sine die* adjournment came on that night.

Bills totaling 1,715 were introduced in the two houses during this session (1036 House and 679 Senate). The Legislature passed 143 bills, 79 House and 64 Senate. The Governor approved 133 bills and vetoed nine. However, two bills disapproved were re-passed, notwithstanding the Governor's objections, and H. B. 1150, the Budget Bill, became law without the signature of the Governor, leaving a net total of seven bills lost through veto.

Fifty-eight concurrent resolutions were introduced during the session, 30 House and 28 Senate, of which four House and five Senate were adopted. Twenty-seven House Joint and 14 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted two House Joint Resolutions—H. J. R. 5, Sheriff's Succession Amendment, and H. J. R. 14, Fair Educational Opportunity Amendment. The House had 24 House Resolutions and the Senate had 37 Senate Resolutions, of which 14 House and 31 Senate were adopted.

The Senate failed to pass 70 House bills passed by the House and 91 Senate bills failed passage by the House. Three House bills and one Senate bill died in conference. One House Joint Resolution, H. J. R. 22, County Officers Compensation Amendment, died in conference.

First Extraordinary Session, 1982

The First Extraordinary Session of the Legislature convened on April 2, 1982, and concluded on April 3, 1982.

The Proclamation of the Governor convening the session contained six items of business for consideration.

A total of ten bills were introduced, five House bills and five Senate bills, of which the five Senate bills passed.

One concurrent resolution was offered and adopted during the session, H. C. R. 1, raising a Joint Assembly to hear an address by His Excellency, the Governor. Seven Senate resolutions and one House resolution were introduced, of which five Senate and one House resolution were adopted.

This volume will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the code of West Virginia. These acts may be purchased from the Division of Purchases, Department of Finance and Administration, State Capitol, Charleston, West Virginia.

C. A. BLANKENSHIP, Clerk
House of Delegates

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MEMBERS OF THE SENATE

REGULAR SESSION, 1982

OFFICERS

President—Warren R. McGraw, Pineville
President Pro Tem—Robert R. Nelson, Huntington
Clerk—Todd C. Willis, Logan
Sergeant at Arms—E. L. Bevins, Williamson
Doorkeeper—Aubrey R. Grizzell, St. Albans

District	Name	Address
First	x Ben R. Honecker (R) M. Patrick McCune (D)	Wheeling Wheeling
Second	* William L. Gilligan (R) Dan Tonkovich (D)	Sistersville Benwood
Third	* Frank Deem (R) Sam White (R)	Vienna St. Marys
Fourth	Orton A. Jones (R) * Michael Shaw (R)	Spencer Pt. Pleasant
Fifth	Homer Heck (D) * Robert R. Nelson (D)	Ceredo Huntington
Sixth	* Lafe P. Ward (D) Lacy Wright, Jr. (D)	Williamson Bradshaw
Seventh	* J. Robert Rogers (D) Earl Ray Tomblin (D)	Madison Chapmanville
Eighth	* John Boettner, Jr. (D) Mario J. Palumbo (D)	Charleston Charleston
Ninth	Warren R. McGraw (D) * Alan L. Susman (D)	Pineville Beckley
Tenth	Odell H. Huffman (D) * Richard P. Baylor (D)	Princeton Hinton
Eleventh	Robert K. Holliday (D) * Ralph D. Williams (D)	Oak Hill Rainelle
Twelfth	* Carl E. Gainer (D) Jae Spears (D)	Richwood Elkins
Thirteenth	Jean Scott Chace (D) * Gino R. Colombo (D)	Weston Clarksburg
Fourteenth	James L. Davis (D) * William A. Moreland (D)	Fairmont Morgantown
Fifteenth	Gerald W. Ash (D) * C. N. Harman (R)	Terra Alta Grafton
Sixteenth	Harley O. Stagers, Jr. (D) * Robert M. Stepien (D)	Keyser Martinsburg
Seventeenth	* Si Galperin, Jr. (D) Robert E. Wise (D)	Charleston Charleston

x Appointed a member of the Senate May 25, 1981, to fill the vacancy created by the death of the Honorable George W. Dober.

* Elected in 1978. All others elected in 1980.

(D) Democrats	27
(R) Republicans	7
Total	34

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1982

OFFICERS

Speaker—Clyde M. See., Jr., Moorefield*Speaker Pro Tem*—Donald L. Kopp, Clarksburg*Clerk*—C. A. Blankenship, Pineville*Sergeant at Arms*—Oce W. Smith, Jr., Fairmont*Doorkeeper*—Dannie Wingo, Yukon

District	Name	Address
First	Gust G. Brenda, Jr. (D)	Weirton
	George P. Gvoyich (D)	Weirton
Second	Roy E. Givens (D)	Wellsburg
	Pamela Sue Shuman (D)	Wellsburg
Third	Thais Blatnik (D)	Wheeling
	John M. Karras (D)	Wheeling
	David B. McKinley (R)	Wheeling
	Paul J. Otte (R)	Wheeling
Fourth	Larry Wiedebusch (D)	Glen Dale
	Albert D. Yanni (D)	Glen Dale
Fifth	Joseph M. Ballouz (D)	New Martinsville
Sixth	Larry D. Swann (R)	West Union
Seventh	Gregory K. Smith (D)	St. Marys
Eighth	Joseph P. Albright (D)	Parkersburg
	Keith Burdette (D)	Parkersburg
	George E. Farley (D)	Parkersburg
	Sandy Rogers (R)	Vienna
	Donza T. Worden (D)	Parkersburg
Ninth	Lloyd Darrell Atkinson (R)	Reedy
Tenth	Bill Carmichael (R)	Ripley
	Oshel Craigo (D)	Hurricane
	Charles H. Damron (D)	Pt. Pleasant
	Bill J. Wellman (R)	Pt. Pleasant
Eleventh	Robert C. Chambers (D)	Huntington
	Sue A. Davis (D)	Huntington
	Phyllis Given (D)	Huntington
	Patricia O. Hartman (D)	Huntington
	Dorsey Ketchum (D)	Huntington
	Charles M. Polan, Jr. (D)	Huntington
Twelfth	Lucian Fry (D)	Wayne
	Donald M. Trimboli (D)	Huntington
Thirteenth	Irvine Damron (D)	Lenore
	James Simpkins (D)	Meador
Fourteenth	Ernest C. Moore (D)	Thorpe
	Rudolph J. Murensky, II (D)	Welch
	Booker T. Stephens (D)	Keystone
Fifteenth	Frank L. Blackwell (D)	Mullens
	Troy W. Hendricks (D)	Danville
	Bruce Williams (D)	Rockview
Sixteenth	Sammy D. Dalton (D)	Harts
	Charles Gilliam (D)	Logan
	Thomas W. Mathis (D)	Logan
	Robert L. McCormick (D)	Logan
Seventeenth	June Bledsoe (D)	Charleston
	Ruth Goldsmith (R)	South Charleston
	Darrell E. Holmes (D)	Sissonville

¹ Appointed a member of the House of Delegates December 15, 1980, to fill the vacancy created by the resignation of Delegate-elect George W. Dober.

² Appointed a member of the House of Delegates May 25, 1981, to fill the vacancy created by the resignation of the Honorable Jimmy Joe Wedge.

³ Appointed a member of the House of Delegates June 21, 1981, to fill the vacancy created by the resignation of the Honorable Richard Thompson.

HOUSE OF DELEGATES

XV

District	Name	Address
	Thomas A. Knight (D)	Charleston
	Leo Kopelman (R)	East Bank
	Lyle Sattes (D)	Charleston
	Rudy Seacrist (D)	Belle
	Walton Shepherd (D)	Sissonville
	John T. Slack (D)	Charleston
	Jane H. Theiling (D)	Charleston
	Roger W. Tompkins (D)	Charleston
	Martha Wehrle (D)	Charleston
	John M. Wells (R)	Charleston
Eighteenth	Vernon Barley (D)	Bradley
	Paul R. Hutchinson (D)	Beckley
	Paul Vennari (D)	Beckley
	William R. Wooton (D)	Beckley
Nineteenth	⁴ Donald F. Anello (D)	Bramwell
	Jack E. Holt (D)	Hinton
	Rudolph Jennings (D)	Bluefield
	W. Marion Shiflet (D)	Union
	Tony E. Whitlow (D)	Kellysville
Twentieth	Betty D. Crookshanks (D)	Rupert
	Sarah L. Neal (D)	Rainelle
Twenty-first	Carroll Bumgarner (D)	Oak Hill
	John W. Hatcher, Jr. (D)	Fayetteville
	L. Thomas Pridemore, Jr. (D)	Ansted
Twenty-second	Robert E. Goff (D)	Cowen
	Larry A. Tucker (D)	Summersville
Twenty-third	Marjorie Burke (D)	Glenville
	Robert H. Kidd (D)	Sutton
Twenty-fourth	Robert J. Conley (R)	Weston
Twenty-fifth	Michael D. Greer (R)	Salem
	Donald L. Kopp (D)	Clarksburg
	John F. McCuskey (R)	Bridgeport
	Kenneth H. Riffle (D)	Bridgeport
Twenty-sixth	Paul E. Prunty (R)	Fairmont
	William E. Shingleton (D)	Fairmont
	Benjamin N. Springston (R)	Fairmont
	Cody A. Starcher (D)	Fairmont
Twenty-seventh	Stephen L. Cook (D)	Morgantown
	Clyde W. Hagedorn (D)	Morgantown
	Elizabeth Martin (D)	Morgantown
	Larry E. Schifano (D)	Morgantown
Twenty-eighth	James W. Teets (R)	Terra Alta
Twenty-ninth	Charles R. Shaffer (R)	Buckhannon
	Donald L. Stemple (R)	Philippi
Thirtieth	Charles F. Jordan, Jr. (D)	Elkins
	Joe Martin (D)	Elkins
Thirty-first	Clyde M. See, Jr. (D)	Moorefield
Thirty-second	Marc L. Harman (R)	Petersburg
Thirty-third	Robert D. Harman (R)	Keyser
Thirty-fourth	Daniel L. Shanholtz (R)	Springfield
Thirty-fifth	Larry V. Faircloth (R)	Inwood
	Terry T. Harden (D)	Berkeley Springs
	C. E. Martin, III (D)	Martinsburg
Thirty-sixth	Thomas W. Steptoe, Jr. (D)	Charles Town

⁴ Appointed a member of the House of Delegates December 14, 1981, to fill the vacancy created by the resignation of the Honorable John R. Frazier.

(D) Democrats	78
(R) Republicans	22
Total	100

STANDING COMMITTEES OF THE SENATE

1982

Agriculture

Staggers (Chairman), Spears (Vice Chairman), Baylor, Chace, Holliday, Steptoe, Susman, Jones and Shaw.

Banking, Insurance and Small Business

Nelson (Chairman), Wright (Vice Chairman), Baylor, Boettner, Heck, Palumbo, Rogers, Susman, Tomblin, Ward, Williams, Harman and White.

Confirmations

Tomblin (Chairman), Steptoe (Vice Chairman), Ash, Chace, Colombo, Davis, Galperin, McCune, Nelson, Tonkovich, Williams, Harman and Shaw.

Education

Galperin (Chairman), Ash (Vice Chairman), Boettner, Chace, Colombo, Heck, Holliday, McCune, Moreland, Nelson, Palumbo, Ward, Gilligan and Jones.

Elections

Palumbo (Chairman), Chace (Vice Chairman), Gainer, Galperin, Huffman, Moreland, Rogers, Staggers, Wise, Honecker and Shaw.

Energy, Industry and Mining

Tonkovich (Chairman), Wise (Vice Chairman), Boettner, Davis, Gainer, McCune, Nelson, Tomblin, Ward, Williams, Wright, Deem and Harman.

Finance

Williams (Chairman), Tonkovich (Vice Chairman), Ash, Colombo, Davis, Gainer, Nelson, Spears, Staggers, Susman, Tomblin, Ward, Wise, Wright, Gilligan, Harman and Shaw.

Health

Wise (Chairman), Staggers (Vice Chairman), Davis, Galperin, Holliday, Huffman, Moreland, Spears, Susman, Tomblin, Williams, Jones and Shaw.

Interstate Cooperation

Gainer (Chairman), Davis (Vice Chairman), Galperin, Huffman, Tonkovich, Wright and Harman.

Judiciary

Boettner (Chairman), Moreland (Vice Chairman), Ash, Baylor, Chace, Davis, Galperin, Heck, Holliday, Huffman, McCune, Nelson, Palumbo, Rogers, Steptoe, Deem, Jones and White.

Labor

Holliday (Chairman), Chace (Vice Chairman), Heck, Huffman, Steptoe, Wise, Wright, Deem and Jones.

Local Government

McCune (Chairman), Spears (Vice Chairman), Boettner, Huffman, Moreland, Nelson, Steptoe, Susman, Williams, Honecker and Shaw.

Military

Spears (Chairman), Baylor (Vice Chairman), Heck, McCune, Rogers, Susman, Ward, Harman and White.

Natural Resources

Colombo (Chairman), Galperin (Vice Chairman), Baylor, Boettner, Chace, Gainer, Holliday, Palumbo, Rogers, Staggers, Steptoe, Wise, Deem, Honecker and Jones.

Public Institutions

Davis (Chairman), Holliday (Vice Chairman), Ash, Chace, McCune, Spears, Staggers, Wise, Wright, Honecker and Jones.

Rules

McGraw (Chairman), Boettner, Galperin, Moreland, Nelson, Tonkovich, Williams, Wright, Deem and Jones.

Transportation

Heck (Chairman), Colombo (Vice Chairman), Gainer, Huffman, Rogers, Staggers, Tomblin, Ward, Wise, Gilligan and White.

SENATE COMMITTEES

JOINT COMMITTEES

Enrolled Bills

Baylor (Chairman), Ash (Vice Chairman), Colombo, Davis and Honecker.

Government and Finance

McGraw (Cochairman), Boettner, Moreland, Nelson, Williams, Deem and Gilligan.

Joint Rules

McGraw (Chairman ex officio), Moreland and Deem.

Legislative Rule-Making Review

Nelson (Chairman), Boettner, Galperin, Moreland, Deem and Jones.

COMMISSION ON SPECIAL INVESTIGATIONS

McGraw (Chairman), Nelson, Tonkovich, Gilligan and Jones.

SELECT COMMITTEE

Redistricting

Williams (Chairman), Moreland (Vice Chairman), Baylor, Boettner, Chace, Deem, Jones, Nelson, Stagers, Tonkovich and Wright.

**STANDING COMMITTEES OF THE
HOUSE OF DELEGATES**

1982

Agriculture and Natural Resources

Neal (Chairman of Agriculture) Harden (Vice Chairman), Ballouz (Chairman of Natural Resources), Worden (Vice Chairman), Brenda, Burke, Cook, Damron (13th Dist.), Fry, Hendricks, Hutchinson, Jennings, Jordan, Moore, Shiflet, Slack, Starcher, Steptoe, Vennari, Whitlow, Atkinson, Harman (32nd Dist.), Shaffer, Springston and Swann.

Banking and Insurance

Shepherd (Chairman of Banking), Gilliam (Vice Chairman), Martin (35th Dist.) (Chairman of Insurance), Karras (Vice Chairman), Anello, Blatnik, Damron (10th Dist.), Farley, Fry, Given, Goff, Hartman, Holmes, McCormick, Riffle, Schifano, Shiflet, Shingleton, Tucker, Williams, Faircloth, Greer, Kopelman, McCuskey and Shaffer.

Constitutional Revision

Wehrle (Chairman), Dalton (Vice Chairman), Barley, Chambers, Damron (10th Dist.), Farley, Given, Hatcher, Ketchum, Knight, Martin (27th Dist.), Martin (30th Dist.), Martin (35th Dist.), Mathis, Neal, Pridemore, Shuman, Stephens, Trimboli, Tucker, Harman (33rd Dist.), Kopelman, McCuskey, McKinley and Wells.

Education

Sattes (Chairman), Hartman (Vice Chairman), Barley, Blackwell, Blatnik, Burdette, Craigo, Dalton, Davis, Fry, Givens, Hagedorn, Jordan, Kidd, Martin (27th Dist.), McCormick, Smith, Trimboli, Yanni, Conley, Prunty, Rogers, Shanholtz, Springston and Wellman.

Finance

Polan (Chairman), Farley (Vice Chairman), Brenda, Burke, Cook, Goff, Harden, Hendricks, Holmes, Hutchinscn, Jennings, Karras, Ketchum, Mathis, Neal, Pridemore, Riffle, Simpkins, Starcher, Wehrle, Kopelman, McCuskey, Otte, Swann and Wells.

Government Organization

Shuman (Chairman), Burdette (Vice Chairman), Anello, Ballouz, Bledsoe, Bumgarner, Craigo, Fry, Given, Holt, Knight, Martin (27th Dist.), Murensky, Seacrist, Slack, Stephens, Theiling, Vennari, Williams, Worden, Faircloth, Goldsmith, Harman (32nd Dist.), McKinley and Stemple.

Health and Welfare

Schifano (Chairman), Ketchum (Vice Chairman), Ballouz, Blatnik, Craigo, Crookshanks, Davis, Givens, Goff, Hagedorn, Harden, Hartman, Knight, Steptoe, Smith, Theiling, Vennari, Wehrle, Williams, Worden, Conley, Harman (33rd Dist.), Otte, Springston and Wellman.

Industry and Labor

Wiedebusch (Chairman), Starcher (Vice Chairman), Blackwell, Bledsoe, Damron (13th Dist.), Davis, Gilliam, Gvoyich, Holmes, Holt, Jennings, Kidd, Kopp, Knight, Moore, Riffle, Simpkins, Slack, Whitlow, Yanni, Atkinson, Carmichael, Goldsmith, McKinley and Prunty.

Interstate Cooperation

Wooton (Chairman), Brenda, Gilliam, Kopp, Whitlow, Harman (33rd Dist.) and Swann. (Speaker is ex officio nonvoting member).

Judiciary

Albright (Chairman), Tucker (Vice Chairman), Chambers, Crookshanks, Damron (10th Dist.), Damron (13th Dist.), Gilliam, Gvoyich, Hatcher, Kopp, Martin (30th Dist.), Martin (35th Dist.), Moore, Schifano, Shepherd, Shingleton, Steptoe, Whitlow, Wiedebusch, Wooton, Atkinson, Carmichael, Green, Harman (33rd Dist.) and Shaffer.

Political Subdivisions

Stephens (Chairman), Yanni (Vice Chairman), Bumgarner, Burdette, Cook, Hendricks, Hutchinson, Karras, Kidd, Martin (27th Dist.), Mathis, McCormick, Murensky, Seacrist, Shepherd, Shuman, Smith, Theiling, Wiedebusch, Wooton, Carmichael, Harman (32nd Dist.), Rogers, Stemple and Wells.

Roads and Transportation

Blackwell (Chairman), Gvoyich (Vice Chairman), Barley, Bledsoe, Bumgarner, Burke, Chambers, Crookshanks, Dalton, Givens, Hagedorn, Hatcher, Jordan, Holt, Martin (30th Dist.), Murensky, Pridemore, Seacrist, Simpkins, Trimboli, Prunty, Shanholtz, Stemple, Swann and Wellman.

Rules

See (Chairman), Albright, Brenda, Mathis, Polan, Sattes, Shiflet, Tompkins, Tucker, Greer, Swann and Teets.

JOINT COMMITTEES

Enrolled Bills

Whitlow (Chairman), Holmes (Vice Chairman), Anello, Faircloth and Otte.

Government and Finance

See (Cochairman), Albright, Polan, Shiflet, Tompkins, Greer and Teets.

Joint Rules

See (Chairman ex officio), Tompkins and Teets.

Legislative Rule-Making Review Committee

Shingleton (Chairman), Schifano, Shiflet, Wiedebusch, Shaffer and Teets. (Speaker is ex officio nonvoting member).

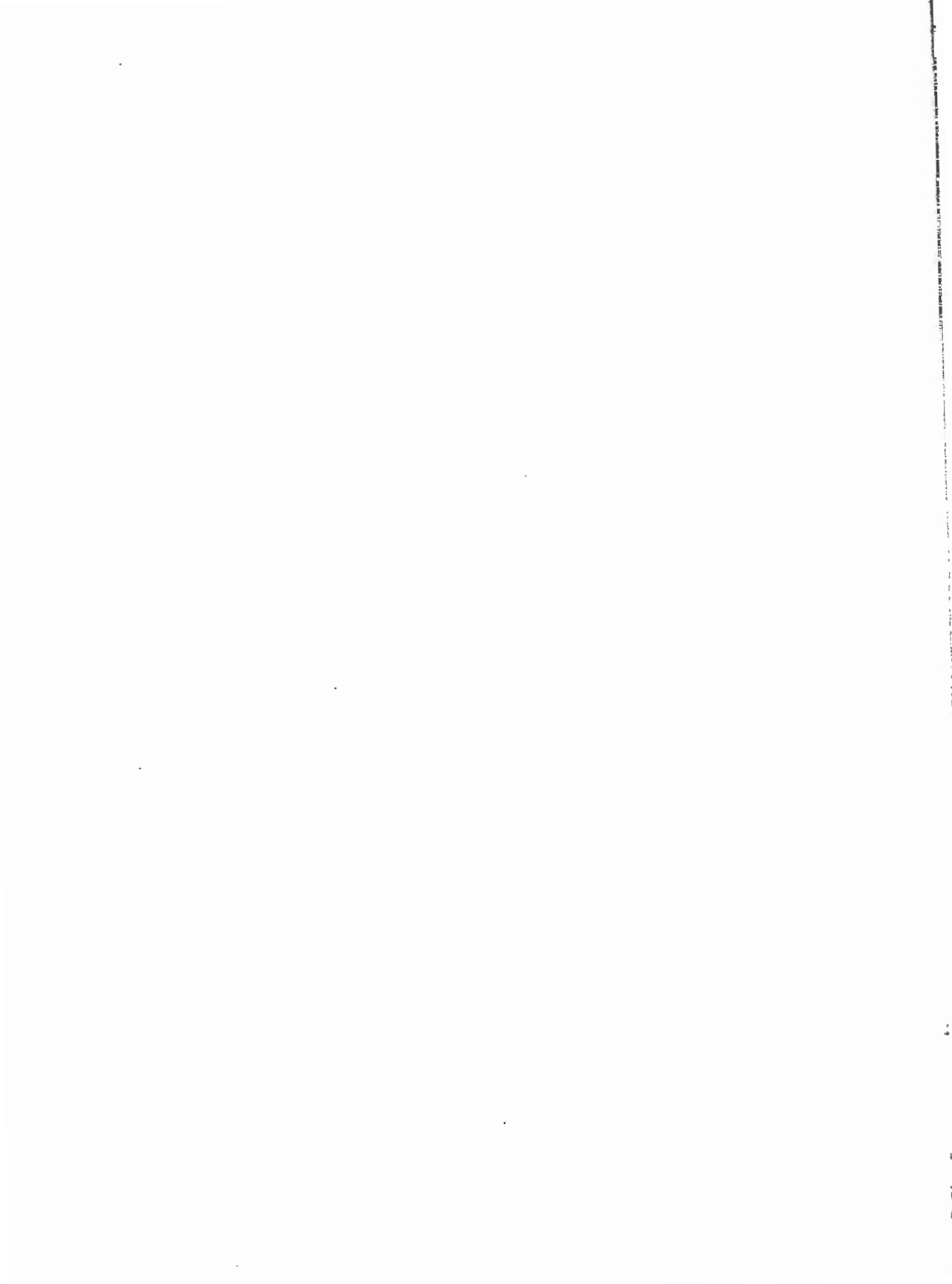
COMMISSION ON SPECIAL INVESTIGATIONS

See (Chairman), Sattes, Tucker, Harman (33rd Dist.) and Teets.

SELECT COMMITTEE

Redistricting

Damron (10th Dist.) (Chairman), Chambers (Vice Chairman), Albright, Brenda, Damron (13th Dist.), Fry, Gilliam, Harden, Hendricks, Polan, Schifano, Shepherd, Stephens, Shiflet, Shingleton, Shuman, Wiedebusch, Wooton, Worden, Tucker, Carmichael, Greer, Harman (33rd Dist.), Swann and Teets.



LEGISLATURE OF WEST VIRGINIA

ACTS

REGULAR SESSION, 1982

CHAPTER 1

(Com. Sub. for H. B. 1094—By Mr. Wooten)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six and seven, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to distribution of amounts recovered or awarded in actions for wrongful death; and providing for distribution to illegitimate persons in certain cases.

Be it enacted by the Legislature of West Virginia:

That sections six and seven, article seven, 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 7. ACTIONS FOR INJURIES.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

§55-7-7. Compromise of claim for death by wrongful act.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

- 1 (a) Every such action shall be brought by and in the
- 2 name of the personal representative of such deceased person
- 3 who has been duly appointed in this state, or in any other
- 4 state, territory or district of the United States, or in any
- 5 foreign country, and the amount recovered in every such
- 6 action shall be recovered by said personal representative
- 7 and be distributed in accordance herewith. If the personal
- 8 representative was duly appointed in another state, territory

9 or district of the United States, or in any foreign country,
10 such personal representative shall, at the time of filing of the
11 complaint, post bond with a corporate surety thereon au-
12 thorized to do business in this state, in the sum of one hundred
13 dollars, conditioned that such personal representative shall
14 pay all costs adjudged against him and that he shall comply
15 with the provisions of this section. The circuit court may
16 increase or decrease the amount of said bond, for good cause.

17 (b) In every such action for wrongful death the jury, or
18 in a case tried without a jury, the court, may award such
19 damages as to it may seem fair and just, and, after making
20 provision for those expenditures, if any, specified in sub-
21 division (2), subsection (c) of this section, may direct in
22 what proportion the remaining net damages shall be distrib-
23 uted to the surviving spouse and children, including adopted
24 children, stepchildren and grandchildren of the deceased, and
25 other persons, if any who were dependent upon the decedent
26 for support, in whole or in part, or if there be none such, then
27 to parents, brothers and sisters of the deceased, or if there
28 be none such, then to such other persons, if any, entitled to
29 inherit pursuant to the provisions of section one, article one,
30 chapter forty-two of this code, unless the jury shall by its
31 verdict allocate the remaining net amount in differing amounts
32 and proportions among any surviving spouse, children, adopted
33 children, stepchildren, grandchildren, other dependents, par-
34 ents, brothers and sisters of the deceased. Where the matter
35 was tried without a jury the court may find upon just and
36 equitable principles that such net amount recovered should
37 be distributed to such last named persons in different amounts
38 and proportions, in which event the court shall make written
39 findings of fact and then and there order such remaining net
40 damages distributed to those persons in such amounts and
41 proportions as the court finds to be fair, just and equitable.

42 (c) (1) The verdict of the jury shall include, but may
43 not be limited to, damages for the following: (A) Sorrow,
44 mental anguish, and solace which may include society, com-
45 panionship, comfort, guidance, kindly offices and advice of the
46 decedent; (B) compensation for reasonably expected loss
47 of (i) income of the decedent, and (ii) services, protection,

48 care and assistance provided by the decedent; (C) expenses
49 for the care, treatment and hospitalization of the decedent
50 incident to the injury resulting in death; and (D) reasonable
51 funeral expenses.

52 (2) In its verdict the jury shall set forth separately the
53 amount of damages, if any, awarded by it for reasonable
54 funeral, hospital, medical and said other expenses incurred
55 as a result of the wrongful act, neglect or default of the
56 defendant or defendants which resulted in death, and any
57 such amount recovered for such expenses shall be so expended
58 by the personal representative.

59 (d) Every such action shall be commenced within two
60 years after the death of such deceased person. The provisions
61 of this section shall not apply to actions brought for the death
62 of any person occurring prior to the first day of July, one
63 thousand nine hundred eighty-two.

§55-7-7. Compromise of claim for death by wrongful act.

1 The personal representative of the deceased may compro-
2 mise any claim to damages arising under section five of this
3 article before or after action brought, with the consent of
4 the person or persons who would be entitled to the damages
5 recovered in an action therefor brought by such representative
6 under section six of this article; or if any such persons are
7 incapable from any cause of giving consent, the personal
8 representative may compromise with the approval of the
9 judge of the court wherein any such action has been
10 brought, or if none has been brought, with the consent of
11 the judge of the court wherein such action may be brought.
12 Such approval may be applied for by the personal representa-
13 tive, on petition to the judge in term or vacation, stating the
14 compromise, the terms thereof, and reasons therefor, and
15 convening the parties in interest. What is received by the
16 personal representative under the compromise shall be treated
17 as if recovered by him in an action under the section last
18 mentioned. When the judge acts in vacation, he shall return
19 all the papers in the case, and orders made therein, to the
20 clerk's office of such court. The clerk shall file the papers
21 in his office as soon as received, and forthwith enter the

22 order in the order book on the law side of the court. Such
23 orders, and all the proceedings in vacation, shall have the
24 same force and effect as if made or had in term. Upon ap-
25 proval of the settlement, the court shall apportion and
26 distribute such damages, or the settlement agreed upon, after
27 making provisions for those expenditures, if any, specified
28 in subdivision (2), subsection (c), section six of this article,
29 in the same manner as in the cases tried without a jury and
30 make written findings of fact and then and there order the
31 remaining net damages distributed in such amounts and pro-
32 portions as the court deems fair, just and equitable.

CHAPTER 2

(Com. Sub. for H. B. 1228—By Mr. Tucker and Mr. Hutchinson)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-eight, relating to reports concerning veterans who may have been exposed to certain chemical defoliants or herbicides or other causative agents and assistance to those veterans; providing definitions; reports made to West Virginia state department of health; reports by department of health; confidentiality of reports; physician or hospital to be immune from civil or criminal liability; attorney general authorized to represent veterans in class action suit; institution of assistance programs authorized if funding is available; providing dates for application by veterans; and termination of programs and duties of the department of health.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 28. ASSISTANCE TO KOREAN AND VIETNAM VETERANS EXPOSED TO CERTAIN CHEMICAL DEFOLIANTS OR HERBICIDES OR OTHER CAUSATIVE AGENTS, INCLUDING AGENT ORANGE.

- §16-28-1. Definitions.
- §16-28-2. Reports to the department of health.
- §16-28-3. Reports by the department; studies on veterans; consent required.
- §16-28-4. Confidentiality.
- §16-28-5. Immunity from liability.
- §16-28-6. Class action representation by attorney general.
- §16-28-7. Assistance programs.
- §16-28-8. Application.
- §16-28-9. Termination of programs and duties.

§16-28-1. Definitions.

1 As used in this article, unless otherwise indicated by the
2 context:

3 (1) "Veteran" means a person who was a resident of this
4 state at the time of his induction into the armed forces of
5 the United States of America, or was a resident of this state
6 as of the thirty-first day of March, one thousand nine hun-
7 dred eighty-one, who served in Vietnam, Cambodia or Laos
8 during the Vietnam conflict, or who served in Korea during
9 the Korean conflict;

10 (2) "Agent orange" means the herbicide composed pri-
11 marily of trichlorophenoxyacetic acid and dichlorophenoxy-
12 acetic acid;

13 (3) "Department" means the West Virginia department of
14 health; and

15 (4) "Director" means the director of the department of
16 health.

§16-28-2. Reports to the department of health.

1 (a) A physician who has primary responsibility for treat-
2 ing a veteran who believes he may have been exposed to
3 chemical defoliants or herbicides or other causative agents,
4 including agent orange, while serving in the armed forces of
5 the United States, shall, at the request of the veteran, sub-
6 mit a report to the department on a form provided by the

7 department. If there is no physician having primary respon-
8 sibility for treating the veteran, the hospital treating the veteran
9 shall, at the request of the veteran, submit the report to the
10 department.

11 (b) The form provided by the department to the physician
12 shall request the following information:

13 (1) Symptoms of the veteran which may be related to ex-
14 posure to a chemical defoliant or herbicide or other causative
15 agent, including agent orange;

16 (2) Diagnosis of the veteran; and

17 (3) Methods of treatment prescribed.

18 (c) The department may require the veteran to provide
19 such other information as determined by the director.

§16-28-3. Reports by the department; studies on veterans; consent required.

1 (a) The department, in consultation and cooperation with
2 a board-certified medical toxicologist, shall compile and evalu-
3 ate information submitted under this article into a report to be
4 distributed annually to members of the Legislature and to the
5 veterans administration, the West Virginia department of
6 veterans affairs and other veterans' groups. The report shall
7 contain current research findings on the effects of exposure to
8 chemical defoliants or herbicides or other causative agents,
9 including agent orange, and statistical information compiled
10 from reports submitted by physicians or hospitals.

11 (b) The department, in consultation and cooperation with a
12 board-certified medical toxicologist, shall conduct epidemiolog-
13 ical studies on veterans who have cancer or other medical prob-
14 lems associated with exposure to a chemical defoliant or
15 herbicide or any other causative agent, including agent orange,
16 or who have children born with birth defects after the veter-
17 an's suspected exposure to a chemical defoliant or herbicide
18 or any other causative agent, including agent orange. The
19 department must obtain consent from each veteran to be
20 studied under this subsection. The department shall compile

21 and evaluate information obtained from these studies into
22 a report to be distributed as provided by subsection (a) of
23 this section.

§16-28-4. Confidentiality.

1 The identity of a veteran about whom a report has been
2 made under section two or three of this article may not be
3 disclosed unless the veteran consents to the disclosure. Sta-
4 tistical information collected under this article is public in-
5 formation.

§16-28-5. Immunity from liability.

1 A physician or a hospital subject to this article who com-
2 plies with this article may not be held civilly or criminally
3 liable for providing the information required.

§16-28-6. Class action representation by attorney general.

1 The attorney general may represent a class of individuals
2 composed of veterans who may have been injured because
3 of contact with chemical defoliants or herbicides or other
4 causative agents, including agent orange, in a suit for re-
5 lease of information relating to exposure to such chemicals
6 during military service and for release of individual medical
7 records.

§16-28-7. Assistance programs.

1 (a) The department of health, the West Virginia Univer-
2 sity school of medicine, the Marshall University school of
3 medicine, and the West Virginia school of osteopathic medi-
4 cine, shall institute a cooperative program to:

5 (1) Refer veterans to appropriate state and federal agencies
6 for the purpose of filing claims to remedy medical and
7 financial problems caused by the veterans' exposure to chemi-
8 cal defoliants or herbicides or other causative agents, including
9 agent orange; and

10 (2) Provide veterans with fat tissue biopsies, genetic coun-
11 seling and genetic screening to determine if the veteran has
12 suffered physical damage as a result of substantial exposure to

13 chemical defoliant or herbicides or other causative agents,
14 including agent orange.

15 (b) The director of the department of health shall adopt
16 rules necessary to the administration of the programs autho-
17 rized by this section.

§16-28-8. Application.

1 Sections two and three of this article apply to all cases
2 of veterans treated on or after the first day of January,
3 one thousand nine hundred eighty-two, for symptoms typical
4 of a person who has been exposed to a chemical defoliant
5 or herbicide or any other causative agent, including agent
6 orange. Sections six and seven of this article apply to all
7 veterans.

§16-28-9. Termination of programs and duties.

1 If the director of the department of health determines that
2 an agency of the federal government is performing the referral
3 and screening functions required by section seven of this
4 article, the director may discontinue any program required
5 by this article or any duty required of a physician or hos-
6 pital under this article.

CHAPTER 3

(H. B. 1806—By Mr. Tucker and Mr. Goff)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to giving the commissioner of agriculture the power to coordinate, establish and conduct a system of marketing agricultural products in this state.

Be it enacted by the Legislature of West Virginia:

That section two, article two, chapter nineteen of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. MARKETING AGRICULTURAL PRODUCTS.

§19-2-2. Duties and powers of commissioner.

1 In order to develop and encourage home industry and to
 2 protect and promote the interests of producers and provide
 3 consumers with food products of uniform grade and quality at
 4 fair and reasonable prices, it shall be the duty of the
 5 commissioner and he shall have authority to promote,
 6 regulate, coordinate, establish and conduct a system of mar-
 7 keting agricultural products in the state of West Virginia. He
 8 shall assist producers and handlers in the grading, classifica-
 9 tion and standardization of agricultural products at public
 10 markets, concentration points, packing, grading and processing
 11 plants and other places where agricultural products are as-
 12 sembled for distribution.

CHAPTER 4

(H. B. 1481—By Mr. Ballouz)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-e, relating to the humane slaughter of livestock; definitions; commissioner to enforce article; rules and regulations; methods of humane slaughter; penalties; and severability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2E. HUMANE SLAUGHTER OF LIVESTOCK.

§19-2E-1. Title.

§19-2E-2. Declaration of purpose.

§19-2E-3. Definitions.

§19-2E-4. Commissioner to enforce article; rules and regulations; effective date.

§19-2E-5. Methods of humane slaughter.

§19-2E-6. Penalties.

§19-2E-7. Severability.

§19-2E-1. Title.

1 This article shall be known by the short title of "The
2 Humane Slaughter Act of 1982."

§19-2E-2. Declaration of purpose.

1 The purpose of this article is to restrict the methods used
2 to slaughter cattle, sheep, swine and goats in commercial
3 slaughtering establishments in West Virginia to those ap-
4 proved as humane techniques.

§19-2E-3. Definitions.

1 As used in this article:

2 (a) "Commercial slaughtering establishments" means a
3 person engaged for profit in this state in the business of
4 slaughtering or dressing animals for human consumption
5 which are to be sold or offered for sale through a commercial
6 outlet or establishment;

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

10 (c) "License" means any person licensed under the pro-
11 visions of article two-b, chapter nineteen of the code of
12 West Virginia;

13 (d) "Person" means any individual, partnership, corpor-
14 ation, association, fiduciary or other group of persons
15 whether organized or not;

16 (e) "Livestock" means cattle, swine, sheep or goats.

**§19-2E-4. Commissioner to enforce article; rules and regulations;
effective date.**

1 The commissioner shall administer and enforce the pro-

2 visions of this article and shall have authority to issue regu-
3 lations, after a public hearing, following due notice to all
4 interested persons in conformance with the provisions of the
5 state administrative procedures as set forth in chapter twenty-
6 nine-a of this code, to carry out the provisions of the article.
7 Commercial slaughtering facilities shall be in compliance with
8 the provisions of this article within six months after the
9 effective date of the article.

§19-2E-5. Methods of humane slaughter.

1 (a) Livestock, before being shackled, hoisted, thrown, cast
2 or cut must be rendered insensible to pain by a single
3 blow, gunshot or by electrical, chemical or other means that
4 is safe, rapid and effective; or

5 (b) By slaughtering in accordance with the ritual require-
6 ments of the Jewish faith or any other religious faith that
7 prescribes a method of slaughter by the simultaneous and
8 instantaneous severance of the carotid arteries with a sharp
9 instrument as well as handling techniques in connection with
10 such slaughtering; or

11 (c) By slaughtering in accordance with any method of
12 humane slaughter approved by the United States department
13 of agriculture.

§19-2E-6. Penalties.

1 Any person violating any provision of this article or
2 regulations adopted hereunder shall be guilty of a misde-
3 meanor, and, upon conviction thereof, shall be fined not
4 less than one hundred dollars nor more than five hundred
5 dollars, and for the second offense, shall be guilty of a mis-
6 demeanor, and, upon conviction thereof, shall be fined not
7 less than five hundred dollars nor more than one thousand
8 dollars and shall have the license to do business as a slaughter-
9 ing establishment, under article two-b, chapter nineteen of
10 the code of West Virginia, suspended until the facility is in
11 compliance with the provisions of this article.

§19-2E-7. Severability.

1 If any provision of this article or the application there-

2 of to any person or circumstance is held invalid, such
 3 invalidity shall not affect other provisions or applications of
 4 the article which can be given effect without the invalid
 5 provision or application, and to this end the provisions of
 6 the article are declared to be severable.

CHAPTER 5

(H. B. 2020—By Mrs. Neal and Mr. Harden)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nineteen, relating to the declaration of public policy and legislative intent; providing for the protection and preservation of agricultural production and practices; protection of agricultural operations and temporary changes thereof; definition and qualification of adverse uses relating to agricultural land use; and duties of landowners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. PRESERVATION OF AGRICULTURAL PRODUCTION.

- §19-19-1. Purpose; public policy.
- §19-19-2. Definitions.
- §19-19-3. Temporary change of agricultural operations.
- §19-19-4. Agriculture not adverse; limitation of actions.
- §19-19-5. Duties of owner or operator maintained.

§19-19-1. Purpose; public policy.

1 WHEREAS, Agricultural production of food and fiber is a
 2 basic necessity to sustain human life, and essential to the
 3 general welfare and stability of this state and the citizens
 4 thereof, and the continued conduct of the utilization of land
 5 in the conduct of agricultural production, including woodland

6 and forestry production, is a necessity to the welfare and
7 common good of all of the citizens of this state; and,

8 WHEREAS, The infringement upon agricultural lands and
9 agricultural operations by other uses and occupancies which
10 are either adverse or incompatible with the continued agri-
11 cultural utilization may be of such nature as to endanger
12 orderly agricultural production, it is hereby declared to be
13 the public policy of this state that agricultural production
14 and the utilization of land in agricultural productive opera-
15 tions be protected and preserved.

§19-19-2. Definitions.

1 For the purposes of this article:

2 (a) "Agriculture" shall mean the production of food, fiber
3 and woodland products, by means of cultivation, tillage of
4 the soil and by the conduct of animal, livestock, dairy, apiary,
5 equine or poultry husbandry, and the practice of forestry, sylvi-
6 culture, horticulture, or any other plant or animal production
7 and all farm practices related, usual or incidental thereto,
8 including the storage, packing, shipping and marketing, but
9 not including any manufacturing, milling or processing of such
10 products by other than the producer thereof.

11 (b) "Agricultural land" shall mean not less than five acres
12 of land and the improvements thereupon, used or usable in
13 the production of food, fiber or woodland products of an
14 annual value of one thousand dollars, or more, by the conduct
15 of the business of agriculture, as defined in subsection (a) of
16 this section.

§19-19-3. Temporary change of agricultural operations.

1 The change of agricultural land use to a differing agricultural
2 use, including rotation or lying fallow from time to time, shall
3 not constitute abandonment as agricultural land or limit the
4 change to any other agricultural use.

19-19-4. Agriculture not adverse; limitation of actions.

1 The conduct of agriculture upon agricultural land shall
2 not be deemed adverse to other use or uses of adjoining or
3 neighboring land, whether such other land be used or occupied

4 for residential, commercial, business or for governmental, or
5 any uses other than agricultural. No complaint or right of
6 action shall be maintained in any court of this state against
7 the owner or operator of agricultural lands adverse to the
8 conduct of agriculture upon agricultural lands, unless:

9 (1) The complainant's use and occupancy of lands of the
10 complainant has existed upon his adjoining or neighboring
11 land before the agricultural operation complained of upon
12 the agricultural land; and

13 (2) The conduct of such agricultural operation complained
14 of has caused or will cause actual physical damage to the
15 person or property of the owner or occupant of such ad-
16 joining or neighboring lands.

§19-19-5. Duties of owner or operator maintained.

1 Nothing in this article shall be construed to excuse or re-
2 lieve the owner or operator of any agricultural lands from any
3 other right or duty as to any other person or persons, and
4 shall apply only to the right to conduct the practice of agricul-
5 ture upon his agricultural lands, and the rights and duties of
6 such owner or operator shall be in all other respects main-
7 tained as to any other person or persons or entity.

CHAPTER 6

(S. B. 459—By Mr. Staggers, Mr. Shaw and Mr. Jones)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six, relating to the establishment of the "General John McCausland Memorial Farm"; creating a revolving fund for its operation.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended

by adding thereto a new article, designated article twenty-six, to read as follows:

ARTICLE 26. GENERAL JOHN McCausland Memorial Farm.

§19-26-1. Establishment; name; management.

§19-26-2. Special fund created; payment into fund; disbursement from fund.

§19-26-1. Establishment; name; management.

1 The General John McCausland Memorial Farm is here-
2 by established. Situate on the southern side of Kanawha
3 River in Arbuckle District and on the northern side of
4 Kanawha River in Lewis and Cooper Districts, Mason
5 County, this farm shall be managed by the commissioner
6 of agriculture or his designated representative in accord-
7 ance with the provisions of this chapter. The commis-
8 sioner of agriculture may lease or assign the farm to any
9 other West Virginia governmental agency or spending
10 unit.

**§19-26-2. Special fund created; payment into fund; disburse-
ment from fund.**

1 For the operation of the General John McCausland
2 Memorial Farm, there is hereby created in the state
3 treasury a special revolving fund to be known as the
4 "General John McCausland Memorial Farm Fund." This
5 fund shall consist of appropriations made by the Legis-
6 lature, funds derived from the sale of farm and dairy
7 products and other revenues from the memorial farm,
8 and any funds or other property donated to the memorial
9 fund. These funds shall be expended for farm operations,
10 repairs, improvements or perpetuation of the memorial.
11 The special revenue revolving account shall be part of
12 the annual state budget.

CHAPTER 7

(S. B. 671—By Mr. Williams)

[Passed March 12, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact sections nine-a and nineteen-a, article three, chapter sixty of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, all relating to the transfer of funds from the alcoholic beverage control commissioner to the special fund for state building revenue bonds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-9a. Additional price increase for payment of Korean veterans bonus bonds, state building revenue bonds and Vietnam veterans bonus bonds.

§60-3-19a. Payment into veterans bonus sinking fund for retirement of Korean veterans bonus bonds; payment into special fund for retirement of state building revenue bonds; and payment into veterans bonus sinking fund for retirement of Vietnam veterans bonus bonds.

§60-3-9a. Additional price increase for payment of Korean veterans bonus bonds, state building revenue bonds and Vietnam veterans bonus bonds.

1 For the purpose of providing revenue for the payment
2 of bonds issued under and by virtue of said "Korean
3 Veterans Bonus Amendment" of one thousand nine hun-
4 dred fifty-six, the commissioner in the exercise of his
5 authority under section nine of this article is hereby
6 directed to increase the price of alcoholic liquors in addi-
7 tion to the price increase provided in said section nine
8 hereof, on or before the last day of June, one thousand
9 nine hundred fifty-seven, in an amount sufficient to
10 produce an additional revenue of one million eight hun-
11 dred thousand dollars on an annual volume of business
12 equal to the average for the last three years. Whenever
13 in any fiscal year the amount of money accumulated in
14 the veterans bonus sinking fund for the retirement of
15 Korean veterans bonus bonds shall be sufficient to pay
16 at maturity all outstanding bonus bonds issued under
17 said "Korean Veterans Bonus Amendment" of one thou-
18 sand nine hundred fifty-six, together with the interest

19 due or payable thereon, then the commissioner is hereby
20 directed to continue in effect the aforesaid price increase
21 of alcoholic liquors and further increase the same as
22 necessary for such continued increase together with such
23 further increase to equal an amount sufficient to provide
24 revenue of two hundred fifty thousand dollars on an an-
25 nual volume of business equal to the average for the last
26 three years for the purpose of providing revenue to be
27 paid into a special fund hereby created in the office of the
28 state treasurer for the purpose of the payment of princi-
29 pal and interest on bonds of the state known as the "State
30 Building Revenue Bonds," and for which payment, to the
31 extent that the state building commission of West Vir-
32 ginia has available space in buildings operated by it in
33 excess of revenue-producing uses, said commissioner shall
34 provide at its established rates and charges such available
35 excess space for use by such officers, departments or agen-
36 cies of the state as the commissioner of finance and ad-
37 ministration or such other officer, agency or department
38 as shall from time to time have the duty to arrange for
39 office space for officers, departments or agencies of the
40 state, shall specify.

41 For the purpose of providing revenue for the payment
42 of any bonds issued under and by virtue of the "Vietnam
43 Veterans Bonus Amendment" of one thousand nine hun-
44 dred seventy-three, the commissioner is hereby directed,
45 on and after the fifteenth day of April, one thousand nine
46 hundred seventy-five, to continue in effect all prior price
47 increases of alcoholic liquors with the excess revenues
48 generated from such continued price increases constitut-
49 ing additional charges or increases, such prices otherwise
50 being subject to reduction but for such continuation; and
51 further increase prices if necessary after consideration of
52 all revenue requirements and obligations as set forth in
53 this article, including the revenue requirement and obli-
54 gation herein provided, so as to equal an amount sufficient
55 to provide for full payment of all interest and principal
56 payments as the same shall accrue, on an annual volume
57 of business equal to the average for the last three years;
58 and such additional charges or price increases so col-

59 lected shall be irrevocably dedicated for the payment of
60 principal of and interest on such Vietnam veterans bonus
61 bonds until such bonds are finally paid and discharged.
62 Whenever in any fiscal year the amount of money ac-
63 cumulated in the special fund for the retirement of the
64 state building revenue bonds shall be sufficient to pay
65 at maturity all outstanding state building revenue bonds,
66 together with the interest due or payable thereon, and
67 the amount of money accumulated in the veterans bonus
68 sinking fund for the retirement of Vietnam veterans
69 bonus bonds shall be sufficient to pay at maturity all
70 outstanding bonus bonds issued under said "Vietnam
71 Veterans Bonus Amendment" of one thousand nine
72 hundred seventy-three, together with the interest due
73 or payable thereon, the provision herein made for con-
74 tinuing in effect the aforesaid price increases and the
75 provision herein for a further price increase shall be-
76 come ineffective at the end of such fiscal year.

§60-3-19a. Payment into veterans bonus sinking fund for retirement of Korean veterans bonus bonds; payment into special fund for retirement of state building revenue bonds; and payment into veterans bonus sinking fund for retirement of Vietnam veterans bonus bonds.

1 On and after the first day of July, one thousand nine
2 hundred fifty-seven, from receipts in excess of the re-
3 quirements of the operating fund of the commissioner,
4 the sum of four hundred fifty thousand dollars shall,
5 upon requisition of the governor, be paid each quarter
6 into the veterans bonus sinking fund to be used for the
7 purpose of retiring bonds issued under said "Korean
8 Veterans Bonus Amendment" of one thousand nine hun-
9 dred fifty-six. Whenever, in any fiscal year, the amount
10 of money accumulated in the veterans bonus sinking fund
11 for the retirement of said Korean veterans bonus bonds
12 shall be sufficient to pay at maturity all outstanding
13 bonus bonds issued under the "Korean Veterans Bonus
14 Amendment" of one thousand nine hundred fifty-six,
15 together with interest due or payable thereon, no further

16 transfer to such sinking fund shall be made after the
17 end of such fiscal year. Thereafter, from receipts in
18 excess of the requirements of the operating fund of the
19 commissioner, the sum of two hundred fifty thousand dol-
20 lars shall be paid by the commissioner by the end of the
21 first quarter of each fiscal year into the special fund cre-
22 ated in section nine-a of this article for the purpose of re-
23 tiring bonds of the state known as the "State Building
24 Revenue Bonds." It shall be the duty and responsibility of
25 the state treasurer to pay the principal and interest on
26 said bonds as they become due and payable. Whenever, in
27 any fiscal year, the amount of money accumulated in the
28 special fund for the retirement of said "State Building
29 Revenue Bonds" is sufficient to pay at maturity all of the
30 outstanding bonds, together with interest due or payable
31 thereon, no further transfers to such special fund shall
32 be made after the end of such fiscal year.

33 On and after the fifteenth day of April, one thousand
34 nine hundred seventy-five, from receipts in excess of
35 the requirements of the operating fund of the commis-
36 sioner, the amount sufficient to provide for full payment
37 of all interest and principal as the same shall accrue,
38 shall, upon requisition of the governor, be paid each
39 quarter into the veterans bonus sinking fund to be used
40 for the purpose of retiring bonds issued under said
41 "Vietnam Veterans Bonus Amendment" of one thousand
42 nine hundred seventy-three. Whenever, in any fiscal
43 year, the amount of money accumulated in the veterans
44 bonus sinking fund for the retirement of said Vietnam
45 veterans bonus bonds shall be sufficient to pay at maturity
46 all outstanding bonus bonds issued under the "Vietnam
47 Veterans Bonus Amendment" of one thousand nine hun-
48 dred seventy-three, together with interest due and pay-
49 able thereon, no further transfer to such sinking fund
50 shall be made after the end of such fiscal year.

51 Nothing in section nine-a of this article or in this
52 section nineteen-a contained shall be taken as limiting
53 the power and authority of the Legislature to at any time
54 appropriate the aforesaid receipts for some other purpose
55 than the special fund for the retirement of said "State

56 Building Revenue Bonds" or make other direction or
57 provision respecting receipts devoted to such purpose.

CHAPTER 8

(H. B. 1787—By Mr. Polan)

[Passed February 16, 1982; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-two, to the Department of Welfare, Account No. 4050, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 1982, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriations during the fiscal year 1981-82, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 4050, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1	TITLE 2. APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	HEALTH AND WELFARE		
4	56—Department of Welfare		
5	Acct. No. 4050		
6	10 Medical Services	\$	1,000,000

7 The purpose of this supplementary appropriation bill is to
8 supplement the aforesaid account and item therein for ex-
9 penditure in the current fiscal year of 1981-82. Such amount
10 shall be available for expenditure immediately upon the ef-
11 fective date of the bill.

CHAPTER 9

(S. B. 225—Originating in the Committee on Finance)

[Passed February 3, 1982; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-two, to the Department of Agriculture, Account No. 5100, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 1982, wherein is set forth the revenues and expenditures of the state fund, general revenue, including fiscal year 1981-82; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the General Revenue Fund available for further appropriation during fiscal year 1981-82, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 5100, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented by adding the following sum to the designated new line item:

- 1 TITLE 2. APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 AGRICULTURE
- 4 79—*Department of Agriculture*
- 5 Acct. No. 5100
- 6 6a Administration Building\$125,000
- 7 The purpose of this supplementary appropriation bill
- 8 is to supplement the aforesaid account and new item
- 9 therein for expenditure in the current fiscal year 1981-82.
- 10 Such amount shall be available for expenditure upon the
- 11 effective date of this bill.

CHAPTER 10

(H. B. 1523—By Mr. Polan)

[Passed February 17, 1982; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all funds remaining unappropriated from the Revenue Sharing Trust Fund for the fiscal year ending June thirtieth, one thousand nine hundred eighty-two, to the State Department of Highways, Account No. 9705, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an Executive Budget Document, dated January 13, 1982, which included a current financial statement of the state fund, revenue sharing trust fund; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the revenue sharing trust fund available for further appropriation during the fiscal year 1981-1982, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 9705, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented by adding thereto the following new line item, and language of appropriation:

- 1 TITLE 2. APPROPRIATIONS.
 2 Section 6. Appropriations from revenue sharing trust fund.
 3 137—*Revenue Sharing Trust Fund*
 4 *Department of Highways*
 5 Acct. No. 9705
 6 2 Federal matching funds \$1,600,000.

7 The purpose of this supplementary appropriation bill is to
 8 supplement the aforesaid account with a new line item and
 9 language of appropriation, the amount of the same being
 10 available for expenditure in fiscal year 1981-1982 upon the
 11 effective date of the bill.

CHAPTER 11

(Com. Sub. for H. B. 1651—By Mr. Harden)

[Passed March 6, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections, Account No. 3760, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-two, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 3760, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 CORRECTIONS

4 51—*Huttonsville Correctional Center*

5 Acct. No. 3760

6	1	Personal Services	\$ 2,180,977
7	2	Current Expenses	1,206,305

8 The purpose of this supplementary appropriation bill is to
 9 supplement, amend and transfer certain moneys from one item
 10 of the existing appropriation to another item of such ap-
 11 propriation for the designated spending unit, with no new
 12 moneys being appropriated hereby. The amounts as newly
 13 itemized for expenditure during the fiscal year one thousand
 14 nine hundred eighty-two, shall be available for expenditure
 15 immediately upon the effective date of the bill.

CHAPTER 12

(Com. Sub. for H. B. 1610—By Mr. Harden)

[Passed March 6, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections, Account No. 3680, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-two, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 3680, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, be supplemented, amended and transferred to read as follows:

1	TITLE 2. APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	CORRECTIONS		
4	43— <i>Department of Corrections</i>		
5	Acct. No. 3680		
6	2	Other Personal Services	\$ 452,748
7	3	Current Expenses	185,436

8 The purpose of this supplementary appropriation bill is to
 9 supplement, amend and transfer certain moneys from one
 10 item of the existing appropriation to another item of such
 11 appropriation for the designated spending unit, with no new
 12 moneys being appropriated hereby. The amounts as newly
 13 itemized for expenditure during the fiscal year one thousand
 14 nine hundred eighty-two, shall be available for expenditure
 15 immediately upon the effective date of the bill.

CHAPTER 13

(H. B. 1598—By Mrs. Neal)

[Passed February 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the State Health Department—Mental Hospitals, Account No. 4160, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-two, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4160, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 HEALTH AND WELFARE

4 59—*State Health Department—Mental Hospitals*

5 Acct. No 4160

6	1	Personal Services	\$20,020,229
7	2	Current Expenses	5,855,919
8	3	Repairs and Alterations	369,626

9 The purpose of this supplementary appropriation bill is to
 10 supplement, amend and transfer certain moneys from one
 11 item of the existing appropriation to other items of such
 12 appropriation for the designated spending unit, with no new
 13 moneys being appropriated hereby. The amounts as newly
 14 itemized for expenditure during the current fiscal year one
 15 thousand nine hundred eighty-two, shall be made available
 16 for expenditure upon the effective date of this bill.

CHAPTER 14

(H. B. 1319—By Mr. Polan)

[Passed February 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Adjutant General-State Militia, Account No. 5800, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation Account No. 5800, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 PROTECTION

4 91—*Adjutant General—State Militia*

5 Acct. No. 5800

6 7 Property Maintenance \$869,827

7 9 College Education Fund 145,733

8 The purpose of this supplementary appropriation bill is
 9 to supplement, amend and transfer certain moneys from one
 10 item of the existing appropriation to another item of such
 11 appropriation for the designated spending unit. The amounts
 12 as itemized for expenditure during the fiscal year one thou-
 13 sand nine hundred eighty-two, shall be made available for
 14 expenditure upon the effective date of this bill.

CHAPTER 15

(H. B. 1524—By Mr. Polan)

[Passed February 17, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts of the total appropriations made from the state road fund to the state Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-two, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-one, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriations made from the state road fund to the state Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-two, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-one, supplementing chapter one, acts of the Legislature, first extraordinary

session, one thousand nine hundred eighty-one, known as the budget bill, be further supplemented, amended and transferred to read as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 2. Appropriations from other funds.	
3	111— <i>State Department of Highways</i>	
4	Acct No. 6700	
5	TO BE PAID FROM STATE ROAD FUND	
6	Maintenance Expressway, Trunkline and	
7	Feeder	\$ 59,800,000
8	Maintenance, State Local Services	43,985,000
9	Inventory Revolving	1,650,000
10	Equipment Revolving	4,400,000
11	General Operations	16,000,000
12	Debt Service	87,900,000
13	Interstate Construction	157,907,000
14	Other Federal Aid Programs	77,285,000
15	Appalachian Program	39,000,000
16	Nonfederal Aid Construction	11,400,000
17	Total	\$499,327,000

18 The purpose of this bill is to supplement, amend and trans-
 19 fer certain moneys from items of existing appropriations to
 20 other items of such appropriations for the designated spending
 21 unit, and to reflect the total spending authority of the
 22 spending unit for the 1981-1982 fiscal year, with no new
 23 moneys being appropriated hereby. The amounts as newly
 24 itemized for expenditure in such fiscal year shall be available
 25 for expenditure upon the effective date of this bill.

CHAPTER 16

(S. B. 224—Originating in the Committee on Finance)

[Passed February 3, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue, of the state cer-

tain unexpended and unencumbered amounts of an item of the existing appropriation of the Legislature—Senate, Account No. 1010, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriation of Account No. 1010, including item one thereof, appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue, of the state by reducing the sum for such designated line item, formerly three hundred two thousand five hundred dollars, by one hundred twenty-five thousand dollars, with such line item to thereafter read as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	LEGISLATIVE	
4	1—Senate	
5	Acct. No. 1010	
6	1 Compensation of Members	\$177,500

7 The purpose of this supplementary appropriation bill is
 8 to supplement, amend, reduce and cause to expire into the
 9 state fund, general revenue of the state, one hundred
 10 twenty-five thousand dollars of the unexpended and un-
 11 encumbered moneys in the existing appropriation to line
 12 item one thereof of the Senate, Account No. 1010. Such
 13 amount shall be immediately expired into the state fund,
 14 general revenue and available for other appropriation
 15 upon the effective date of this bill.

CHAPTER 17

(S. B. 674—Originating in the Committee on Finance)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of an item of the existing appropriation of the Governor's office—Civil Contingent Fund—Account No. 1240, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriation of Account No. 1240, including all reappropriated balances, appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, by reducing the sum of such designated reappropriated item—1240-08, by one million dollars, with such account to thereafter read as follows:

- 1 **TITLE 2. APPROPRIATIONS.**
- 2 **Section 1. Appropriations from general revenue.**
- 3 8—*Governor's Office—Civil Contingent Fund*
- 4 Acct. No. 1240
- 5 Unclassified—Total\$ 1,000,000
- 6 Of the appropriation there may be expended, at the
- 7 discretion of the Governor, an amount not to exceed
- 8 \$1,000 as West Virginia's contribution to the Interstate
- 9 Oil Compact Commission.
- 10 Any unexpended balance remaining in this appropria-
- 11 tion at the close of the fiscal year 1980-81 is hereby re-
- 12 appropriated for expenditure during the fiscal year 1981-
- 13 82, except for item 1240-08 Southern West Virginia Flood

14 Disaster—Housing Program—Prior Year—which shall be
15 reduced by one million dollars immediately expired into
16 the state fund, general revenue.

17 The purpose of this supplementary appropriation bill is
18 to supplement, amend, reduce and cause to expire into the
19 state fund, general revenue of the state, one million dol-
20 lars of the unexpended and unencumbered moneys in the
21 existing appropriation to the Governor's Civil Contingent
22 Fund. Such amount shall be immediately expired into
23 the state fund, general revenue, and available for other
24 appropriation upon the effective date of this bill.

CHAPTER 18

(S. B. 675—Originating in the Committee on Finance)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the existing appropriation of the Treasurer's Office—School Building Sinking Fund, Account No. 1650, as appropriated by the reappropriation language under such account in chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That fifty-one thousand dollars of the unexpended and unencumbered balances, prior appropriated or transferred to Account No. 1650-06 and subsequently brought forward to the existing appropriation of Account No. 1650 by the language of reappropriation under such existing account, and as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, with

the language of reappropriation under such account to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 14—*Treasurer's Office—School Building Sinking Fund*

5 Acct. No. 1650

6 Any unexpended balance remaining in the appropri-
7 ation for "Treasurer's Office—School Building Sinking
8 Fund" at the close of the fiscal year 1980-81 is hereby
9 reappropriated for expenditure during the fiscal year
10 1981-82, except that such reappropriations shall be re-
11 duced by fifty-one thousand dollars which is hereby
12 caused to be immediately expired into the state fund,
13 general revenue of the state, and be available for other
14 appropriation upon the effective date of this bill.

15 The purpose of this supplementary appropriation bill is
16 to supplement, amend, reduce and cause to expire into the
17 state fund, general revenue of the state, fifty-one thousand
18 dollars of the unexpended and unencumbered moneys
19 formerly reappropriated by the language of reappropria-
20 tion in the existing account of the Treasurer's Office—
21 School Building Sinking Fund, Acct. No. 1650. Such
22 amount shall be immediately expired into the state fund,
23 general revenue, and available for other appropriation
24 upon the effective date of this bill.

CHAPTER 19

(S. B. 677—Originating in the Committee on Finance)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the

existing appropriation of Item V of Section four, Title II of the one thousand nine hundred seventy-three budget act, as appropriated by the reappropriation language in Section four, Title II in chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That all of the unexpended and unencumbered balances, of Item V of Section four, Title II of the one thousand nine hundred seventy-three budget act subsequently brought forward to the existing appropriation of Section four, Title II as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, with the language of reappropriation under such section to thereafter read as follows:

1 **TITLE 2. APPROPRIATIONS.**

2 **Section 4. Reappropriations**—Any unexpended balances
3 of Items V, VI and IX, in the appropriations made by and
4 under the authority of Sec. 4, Title II of the 1972 Budget
5 Act, and amended under Sec. 4, Title II of the 1977 Budget
6 Act, are hereby reappropriated for expenditure during the
7 fiscal year 1981-82, with exception of the following ac-
8 counts: Item V, Sec. 4, Title II of the 1972 Budget Act,
9 Acct. No. 1251-10.

10 Any unexpended balances of Items XII, XIII and XV
11 in the appropriations made by and under the authority
12 of Sec. 4, Title II of the 1973 Budget Act and amended
13 under Sec. 4, Title II of the 1977 Budget Act, are hereby
14 reappropriated for expenditure during the fiscal year
15 1981-82 with exception of the following accounts: Item
16 XIII, Acct. Nos. 4321-20 and 4321-21.

17 Any unexpended balances of Items I, in the appropria-
18 tion made by and under Sec. 4, Title II of the 1976 Budget
19 Act are hereby reappropriated for expenditure during
20 the fiscal year 1981-82.

21 The purpose of this supplementary appropriation bill is
 22 to supplement, amend, reduce and cause to expire into the
 23 state fund, general revenue of the state, the unexpended
 24 and unencumbered moneys formerly reappropriated by
 25 the language of reappropriation in the existing Section
 26 four, Title II of the one thousand nine hundred eighty-
 27 two budget bill. Such amount shall be immediately ex-
 28 pired into the state fund, general revenue, and available
 29 for other appropriation upon the effective date of this
 30 bill.

CHAPTER 20

(Com. Sub. for H. B. 1150—By Mr. Speaker, Mr. See)

[Passed March 3, 1982; in effect from passage.
 Became law without the approval of the Governor.]

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

Be it enacted by the Legislature of West Virginia:

Title

1. General Provisions.
2. Appropriations.
3. Administration.

TITLE 1. GENERAL PROVISIONS.

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

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

1 **Sec. 2. Definitions.**—For the purpose of this act: “Gov-
2 ernor” shall mean the Governor of the State of West Vir-
3 ginia.

4 “Spending unit” shall mean the department, agency or
5 institution to which an appropriation is made.

6 The “fiscal year one thousand nine hundred eighty-three”
7 shall mean the period from July first, one thousand nine hun-
8 dred eighty-two through June thirtieth, one thousand nine hun-
9 dred eighty-three.

10 “From collections” shall mean that part of the total
11 appropriation which must be collected by the spending unit
12 to be available for expenditure. If the authorized amount
13 of collections is not collected, the total appropriation for the
14 spending unit shall be reduced automatically by the amount
15 of the deficiency in the collection. If the amount collected
16 exceeds the amount designated “from collections,” the excess
17 shall be set aside in a special surplus fund and may be ex-
18 pended for the purpose of the spending unit as provided by
19 Chapter 5A, Article 2 of the Code of West Virginia.

1 **Sec. 3. Classification of appropriations.**—An appropriation
2 for:

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

8 From appropriations made to the spending units of state
9 government, there may be transferred upon approval of the
10 Governor to a special account an amount sufficient to match
11 federal funds under any federal act.

12 Unless otherwise specified, appropriations for personal ser-
13 vices shall include salaries of heads of spending units.

14 “Current expenses” shall mean operating costs other than
15 personal services and shall not include equipment, repairs
16 and alterations, buildings or lands.

17 “Equipment” shall mean equipment items which have an

18 appreciable and calculable period of usefulness in excess of
19 one year.

20 "Repairs and alterations" shall mean repairs to structures
21 and improvements to property which do not increase the
22 capital assets.

23 "Buildings" shall include construction and alteration of
24 structures and the improvement of lands and shall include
25 shelter, support, storage, protection or the improvement of
26 a natural condition.

27 "Lands" shall mean the purchase of real property or interest
28 in real property.

29 "Capital outlay" shall mean and include buildings, lands,
30 or buildings and lands, with such category or item of ap-
31 propriation to remain in effect as provided by Chapter 12,
32 Article 3, Section 12 of the Code of West Virginia.

33 Appropriations classified in any of the above categories
34 shall be expended only for the purposes as defined above.

35 Appropriations otherwise classified shall be expended only
36 where the distribution of expenditures for different purposes
37 cannot well be determined in advance or it is necessary or
38 desirable to permit the spending unit freedom to spend an
39 appropriation for more than one of the above classifications.

1 **Sec. 4. Method of expenditure.**—Money appropriated by
2 this act, unless otherwise specifically directed, shall be ap-
3 propriated and expended according to the provisions of
4 Chapter 12, Article 3 of the Code of West Virginia, or ac-
5 cording to any law detailing a procedure specifically limiting
6 that article.

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

TITLE 2. APPROPRIATIONS.

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Solid waste disposal—Acct. No. 4020	63
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State health department—Acct. No. 4000	62
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Board of regents (state system registration fee— special capital improvements fund—capital improvement and bond retirement fund)—Acct. No. 8835	86
Board of regents (state system tuition fee— revenue bond construction fund)—Acct. No. 8860	89
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Public service commission (gas pipeline division)—Acct. No. 8285	83
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State committee of barbers and beauticians—Acct. No. 8220	83
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§11. Specific funds and collection accounts.	
§12. Appropriations for refunding erroneous payments.	
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§14. Appropriations to pay costs of publication of delinquent corporations.	
§15. Appropriations for local governments.	
§16. Total appropriations.	
§17. General school fund.	

1 **Section 1. Appropriations from general revenue.**—From the
 2 state fund, General Revenue, there is hereby appropriated con-
 3 ditionally upon the fulfillment of the provisions set forth in
 4 Chapter 5A, Article 2 of the Code of West Virginia, the fol-
 5 lowing amounts, as itemized, for expenditure during the fiscal
 6 year one thousand nine hundred eighty-three.

LEGISLATIVE

1—Senate

Acct. No. 1010

	<i>Fiscal Year</i> 1982-1983
1 Compensation of Members	\$ 302,500
2 Compensation and per diem of officers and	
3 employees	910,000
4 Expenses of Members	275,000
5 Current Expenses and Contingent Fund	335,000
6 Printing Blue Book	175,000
7 Repairs and Alterations	100,000
8 Total	<u>\$ 2,097,500</u>

9 The distribution of the Blue Book shall be by the office of
 10 the Clerk of the Senate and shall include seventy-five copies for
 11 each member of the Legislature and two copies to each classi-
 12 fied and approved High and Junior High School and one to
 13 each Elementary School within the state.

14 The appropriations for the Senate for the fiscal year 1981-
 15 82 are to remain in full force and effect, and are hereby re-
 16 appropriated to June 30, 1983.

17 Any balances so reappropriated may be transferred and
 18 credited to the 1982-83 accounts.

19 Upon written request of the Clerk of the Senate, the State
 20 Auditor shall transfer amounts between items of the total
 21 appropriation in order to protect or increase the efficiency of
 22 the service.

23 The Clerk of the Senate, with approval of the President is
 24 authorized to draw his requisition upon the Auditor, payable
 25 out of the Current Expenses and Contingent Fund of the

26 Senate, for any bills for supplies and services that may have
 27 been incurred by the Senate and not included in the appropria-
 28 tion bill, for supplies and services incurred in preparation for
 29 the opening, the conduct of the business and after adjournment
 30 of any regular or extraordinary session, and for the necessary
 31 operation of the Senate offices; the requisition for same to be
 32 accompanied by the bills to be filed with the Auditor.

33 The Clerk of the Senate with written approval of the Presi-
 34 dent, or the President of the Senate shall have authority to
 35 employ such staff personnel during any session of the Legis-
 36 lature as shall be needed in addition to staff personnel autho-
 37 rized by the Senate resolution adopted during any such session.
 38 The Clerk of the Senate with written approval of the Presi-
 39 dent, or the President of the Senate shall have authority to
 40 employ such staff personnel between sessions of the Legisla-
 41 ture as shall be needed, the compensation of all staff personnel
 42 during and between sessions of the Legislature, notwithstanding
 43 any such Senate resolution, to be fixed by the President of the
 44 Senate. The Clerk is hereby authorized to draw his requisitions
 45 for the payment of all such staff personnel upon the State
 46 Auditor, payable out of the appropriation for Compensation
 47 and per diem of Officers and Employees or Current Expenses
 48 and Contingent Fund of the Senate for such services.

49 For duties imposed by law and the Senate, the Clerk of the
 50 Senate shall be paid a monthly salary as provided in Senate
 51 resolution adopted January 1982, and payable out of the
 52 amount appropriated for Compensation and per diem of Offi-
 53 cers and Employees.

2—*House of Delegates*

Acct. No. 1020

1	Compensation of Members	\$	750,000
2	Compensation and per diem of officers and		
3	employees		590,000
4	Expenses of Members		450,000
5	Current Expenses and Contingent Fund		750,000
6	Total	\$	2,540,000

7 The appropriations for the House of Delegates for the

8 fiscal year 1981-82 are to remain in full force and effect,
9 and are hereby reappropriated to June 30, 1983.

10 Any balances so reappropriated may be transferred and
11 credited to the 1982-83 accounts.

12 Upon the written request of the Clerk of the House of
13 Delegates, the State Auditor shall transfer amounts between
14 items of the total appropriation in order to protect or in-
15 crease the efficiency of the service.

16 The Clerk of the House of Delegates, with the approval
17 of the Speaker, is authorized to draw his requisitions up-
18 on the Auditor, payable out of the Contingent Fund of the
19 House of Delegates, for any bills for supplies and services
20 that may have been incurred by the House of Delegates,
21 and not included in the appropriation bill, for bills, for
22 services and supplies incurred in preparation for the open-
23 ing of the session and after adjournment, and for the neces-
24 sary operation of the House of Delegates offices, the re-
25 quisition for the same to be accompanied by bills to be filed
26 with the Auditor.

27 The Speaker of the House of Delegates, upon approval
28 of the House Committee on Rules, shall have authority
29 to employ such staff personnel during and between sessions
30 of the Legislature as shall be needed, in addition to per-
31 sonnel designated in the House resolution, and the com-
32 pensation of all personnel shall be as fixed in such House
33 resolution, for the session, or fixed by the Speaker, with
34 the approval of the House Committee on Rules, during
35 and between sessions of the Legislature, notwithstanding
36 such House resolution. The Clerk of the House is hereby
37 authorized to draw requisitions upon the State Auditor,
38 payable from the Compensation and per diem of officers
39 and employees fund or the Current Expenses and Contingent
40 Fund of the House of Delegates for such services.

41 For duties imposed by law and by the House of Delegates,
42 including salary allowed by law as keeper of the rolls, the
43 Clerk of the House of Delegates shall be paid a monthly salary
44 as provided in the House resolution, unless increased between
45 sessions under the authority of the Speaker, with approval of

46 the House Committee on Rules, and payable from the Com-
 47 pensation and per diem of officers and employees item or the
 48 Current Expenses and Contingent Fund item of the House of
 49 Delegates.

3—*Joint Expenses*

Acct. No. 1030

1	Joint Committee on Government and Finance ..	\$ 2,032,791
2	To pay cost of Legislative Printing	910,000
3	Other Legislative Committees	50,000
4	Commission on Interstate Cooperation	90,000
5	Total	<u>\$ 3,082,791</u>

6 The appropriation for Joint Expenses for the fiscal year
 7 1981-82 are to remain in full force and effect and are hereby
 8 reappropriated to June 30, 1983. Any balances so reappro-
 9 priated may be transferred and credited to the 1982-83 ac-
 10 counts.

11 Upon written request of the Clerk of the Senate and the
 12 Clerk of the House of Delegates, the State Auditor shall trans-
 13 fer amounts between items of the total appropriation in order
 14 to protect or increase the efficiency of the service.

JUDICIAL

4—*Supreme Court—General Judicial*

Acct. No. 1110

1	Personal Services	\$ 13,837,896
2	Other Expenses	2,536,054
3	Judges Retirement System	750,000
4	Other Court Costs	1,879,980
5	Judicial Training Program	50,000
6	Mental Hygiene Fund	225,000
7	Total	<u>\$ 19,278,930</u>

8 This appropriation shall be administered by the Administra-
 9 tive Director of the State Supreme Court of Appeals who shall
 10 draw his requisitions for warrants in payment in the form of
 11 payrolls, making deductions therefrom, as required by law, for
 12 taxes and other items.

13 The appropriation for Judges' Retirement System is to be
 14 transferred to the Judges' Retirement Fund, in accordance
 15 with the law relating thereto upon requisition of the Adminis-
 16 trative Director of the State Supreme Court of Appeals.

17 Any unexpended balance remaining in this appropriation
 18 at the close of the fiscal year 1981-82 is hereby reappropriated
 19 for expenditure during the fiscal year 1982-83.

EXECUTIVE

5—*Governor's Office*

Acct. No. 1200

1	Salary of Governor	\$	60,000
2	Other Personal Services		992,160
3	Current Expenses		361,127
4	Equipment		4,660
5	Total	\$	1,417,947

6—*Office of Economic and Community Development*

Acct. No. 1210

1	Personal Services	\$	2,281,575
2	Current Expenses		2,680,937
3	Equipment		14,898
4	The Economic Development Loan Fund		4,000,000
5	Regional Council		220,000
6	A.R.C. Assessment		320,000
7	Partnership grants		3,600,000
8	Fire Departments		1,500,000
9	Civil Air Patrol		89,000
10	Aerial Markers		5,500
11	Coal Development		775,000
12	Milton Volunteer Fire Department—		
13	Capital Outlay		100,000
14	Total	\$	15,586,910

15 Any unexpended balance remaining in accounts "Federal
 16 State Coordination," "Office of Criminal Justice and Highway
 17 Safety" and "Regional Council to match Federal Funds" at
 18 the close of the fiscal year 1981-82 is hereby reappropriated
 19 for expenditure during the fiscal year 1982-83.

20 Any unexpended balance remaining in the account "Com-
 21 munity Water Development Grants and Partnership Grants" at
 22 the close of the fiscal year 1981-82 is hereby reappropriated
 23 for expenditure during the fiscal year 1982-83.

24 Any unexpended balance remaining in accounts "Fire De-
 25 partments", "Emergency Assistance to Small Municipal and
 26 Public Service Districts Water and Sewage Systems" and
 27 "Flood" at the close of the fiscal year 1981-82 is hereby re-
 28 appropriated for expenditure during the fiscal year 1982-83.

7—Governor's Office—Custodial Fund

Acct. No. 1230

1 Unclassified—Total \$ 327,363

2 To be used for current general expenses, including compen-
 3 sation of employees, household maintenance, cost of official
 4 functions, and any additional household expenses occasioned by
 5 such official functions.

8—Governor's Office—Civil Contingent Fund

Acct. No. 1240

1 Unclassified—Total \$ 1,050,000

2 Of the appropriation there may be expended, at the dis-
 3 cretion of the Governor, an amount not to exceed \$1,000
 4 as West Virginia's contribution to the Interstate Oil Com-
 5 pact Commission.

6 Any unexpended balance remaining in this appropria-
 7 tion at the close of the fiscal year 1981-82 is hereby re-
 8 appropriated for expenditure during the fiscal year 1982-
 9 83.

9—Governor's Office—Disaster Relief-Matching

Acct. No. 1260

1 Unclassified—Total \$ —0—

2 To match and aid Federal Programs, and any part of this
 3 appropriation may be transferred to any department for such
 4 purposes.

10—*Office of Emergency Services*

Acct. No. 1300

1	Personal Services	\$	195,970
2	Current Expenses		41,437
3	Repairs and Alterations		5,000
4	Total	\$	242,407

FISCAL

11—*Auditor's Office—General Administration*

Acct. No. 1500

1	Salary of State Auditor	\$	39,000
2	Other Personal Services		1,369,378
3	Current Expenses		605,354
4	Equipment		39,699
5	Microfilm		20,000
6	Total	\$	2,073,431

12—*Auditor's Office—Social Security*

Acct. No. 1510

1	To match contributions of state employees for		
2	Social Security—Total	\$	18,705,000

3 The above appropriation is intended to cover the state's
 4 share of social security costs for those spending units op-
 5 perating from General Revenue Fund. The State Depart-
 6 ment of Highways, Department of Motor Vehicles, Workmen's
 7 Compensation Commission, Public Service Commission, and
 8 other departments operating from Special Revenue Funds and/
 9 or Federal Funds shall pay their proportionate share of the
 10 social security cost for their respective divisions.

11 Any unexpended balance remaining in the appropriation
 12 for "Auditor's Office—Social Security" at the close of the
 13 fiscal year 1981-82 is hereby reappropriated for expenditure
 14 during the fiscal year 1982-83.

13—*Auditor's Office—Unemployment Compensation*

Acct. No. 1520

1	Total—Unclassified	\$	1,000,000
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2 The above appropriation is intended to cover the states
 3 share of unemployment compensation costs for those spending
 4 units operating from General Revenue Fund. The State De-
 5 partment of Highways, Department of Motor Vehicles, Work-
 6 men's Compensation Commission, and other departments oper-
 7 ating from Special Revenue Funds and/or Federal Funds shall
 8 pay their proportionate share of the Unemployment Compens-
 9 ation cost for their respective divisions.

10 Should this appropriation be insufficient to meet the require-
 11 ments of state spending units, from the General Revenue Fund,
 12 any excess costs shall be a proper charge against the units
 13 and each spending unit shall reimburse to the "Auditor's
 14 Office—Unemployment Compensation" any amounts required
 15 for that department for costs in excess of this appropriation.

14—*Treasurer's Office*

Acct. No. 1600

1	Salary of State Treasurer	\$	42,000
2	Other Personal Services		677,422
3	Current Expenses		282,843
4	Equipment		30,000
5	Microfilm Program		8,894
6	Total	\$	1,041,159

15—*Treasurer's Office—School Building Sinking Fund*

Acct. No. 1650

1	Total	\$	16,826,500
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2 Any unexpended balance remaining in the appropriation
 3 for "Treasurer's Office—School Building Sinking Fund" at
 4 the close of the fiscal year 1981-82 is hereby reappropriated
 5 for expenditure during the fiscal year 1982-83.

16—*Municipal Bond Commission*

Acct. No. 1700

1	Personal Services	\$	74,687
2	Current Expenses		15,705
3	Equipment		200
4	Total	\$	90,592

17—*State Tax Department*

Acct. No. 1800

1	Personal Services	\$ 7,977,080
2	Current Expenses	2,460,479
3	Repairs and Alterations	14,520
4	Equipment	121,488
5	Circuit Breaker Reimbursement	15,000
6	Other Expenses	795,276
7	Multi-State Tax Compact	57,500
		<hr/>
8	Total	\$ 11,441,343
9	Any unexpended balance remaining in the appropriation	
10	for "Other Expenses" at the close of the fiscal year 1981-82 is	
11	hereby reappropriated for expenditure during the fiscal year	
12	1982-83.	

18—*State Tax Department—
Homestead Property Tax Exemption*

Acct. No. 1810

1	Total—Unclassified	\$ 3,633,783
2	Funds to be disbursed in accordance with Chapter 11-6B-	
3	8 of the Code of West Virginia.	

19—*Department of Finance and Administration*

Acct. No. 2100

1	Personal Services	\$ 1,990,845
2	Current Expenses	1,180,445
3	Repairs and Alterations	154,774
4	Equipment	6,299
5	Postage	1,247,500
6	Utilities	600,000
7	Public Transportation	315,000
8	Fire Service Fee	227,675
9	Building Equipment and Supplies	12,200
10	So. Regional Ed. Board	80,000
11	Council of State Governments	37,300

12	National Governors Association	38,480
13	Total	\$ 5,890,518

14 The Workmen's Compensation Commission, Department of
 15 Welfare, Public Service Commission, Department of Natural
 16 Resources, Department of Motor Vehicles, State Department
 17 of Highways, State Health Department and State Tax De-
 18 partment—Income Tax Division shall reimburse the Postage
 19 appropriation of the Department of Finance and Administra-
 20 tion monthly for all meter service. Any spending unit operating
 21 from Special Revenue or receiving reimbursement for postage
 22 costs from the federal government shall refund to the Postage
 23 account of the Department of Finance and Administration such
 24 amounts. Should this appropriation for postage be insufficient
 25 to meet the mailing requirements of the State spending units
 26 as set out above, any excess postage meter service require-
 27 ments shall be a proper charge against the units, and each
 28 spending unit shall refund to the Postage appropriation of the
 29 Department of Finance and Administration any amounts re-
 30 quired for the department for postage in excess of this appro-
 31 priation.

32 Any unexpended balance remaining in the "Postage Account"
 33 at the close of the fiscal year 1981-82 is hereby reappropriated
 34 for expenditure during the fiscal year 1982-83.

35 State Department of Highways shall reimburse the appropria-
 36 tion of the Department of Finance and Administration month-
 37 ly for all actual expenses incurred pursuant to the provisions of
 38 Chapter 17, Article 2A, Section 13 of the Code of West Vir-
 39 ginia.

20—*State Board of Insurance*

Acct. No. 2250

1	Personal Services	\$ 77,335
2	Current Expenses	25,477
3	Equipment	1,270
4	Premiums, Claims and Other Expenses	4,101,590
5	Total	\$ 4,205,672

6 The above appropriation on line 4 is for the purpose of
 7 paying premiums, self-insurance losses, loss adjustment ex-
 8 penses and loss prevention engineering fees for property,
 9 casualty and fidelity insurance for the various state agencies.
 10 Should this appropriation be insufficient to meet the require-
 11 ments of the state spending units, any excess costs shall be
 12 a proper charge against the units and each spending unit
 13 shall reimburse to the Board of Insurance any amounts re-
 14 quired for that department for costs in excess of this appro-
 15 priation.

16 Any and all of the funds appropriated for "Premiums,
 17 Claims and Other Expenses" may be transferred to a special
 18 account for the payment of premiums, self-insurance losses,
 19 loss adjustment expenses and loss prevention engineering
 20 fees.

21 Any or all of the funds appropriated for "Premiums, Claims
 22 and Other Expenses" may be transferred to a special account
 23 for disbursement for payment of premiums and insurance
 24 losses.

LEGAL

21—Attorney General

Acct. No. 2400

1	Salary of Attorney General	\$	42,000
2	Other Personal Services		1,637,453
3	Current Expenses		369,177
4	Equipment		60,771
5	Publication of Reports and Opinions		20,000
6	To Protect the resources or tax structure of		
7	the state in controversies or legal		
8	proceedings affecting same		3,250
9	Consumer Protection		262,955
	Personal Services	205,036	
	Current Expenses	51,619	
	Equipment	6,300	
10	Total	\$	2,395,606

11 When legal counsel or secretarial help is appointed by the
 12 Attorney General, for any state spending unit, this account
 13 shall be reimbursed from such unit's appropriated account in
 14 an amount agreed upon by the Attorney General and the
 15 proper authority of said spending unit.

16 Any unexpended balance remaining in the appropriation for
 17 "Publication of Reports and Opinions" at the close of the fiscal
 18 year 1981-82 is hereby reappropriated for expenditure during
 19 the fiscal year 1982-83.

22—*Commission on Uniform State Laws*

Acct. No. 2450

1	Unclassified—Total	\$	12,000
2	To pay expenses of members of the Commission on Uni-		
3	form State Laws.		

INCORPORATING AND RECORDING

23—*Secretary of State*

Acct. No. 2500

1	Salary of Secretary of State	\$	36,000
2	Other Personal Services		428,590
3	Current Expenses		142,889
4	Equipment		25,505
5	Certification of Primary and General Elections..		4,950
			<hr/>
6	Total	\$	637,934

7 Any unexpended balance remaining in the account "Special
 8 Election" at the close of the fiscal year 1981-82 is hereby
 9 reappropriated for expenditure during the fiscal year 1982-83.

EDUCATIONAL

24—*State Department of Education*

Acct. No. 2770

1	Teacher Education Centers—Total	\$	—0—
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25—*West Virginia Board of Regents (Control)*

Acct. No. 2790

1	Personal Services	\$108,499,728
2	Current Expenses	21,000,000
3	Repairs and Alterations	1,000,000
4	Equipment	800,000
5	Bureau of Coal Research	1,000,000
6	National Research Center for Coal and Energy	1,500,000
7	Transportation Services—W.V.U.	1,200,000
		<hr/>
8	Total	\$134,999,728

26—*West Virginia Board of Regents*

Acct. No. 2800

1	Personal Services	\$ 738,770
2	Current Expenses	274,000
3	Equipment	7,000
4	Scholarship Program	2,800,000
5	Tuition Contract Programs	725,000
		<hr/>
6	Total	\$ 4,544,770

27—*West Virginia College of Osteopathic Medicine*

Acct. No. 2810

1	Personal Services	\$ 2,874,984
2	Current Expenses	625,000
3	Repairs and Alterations	41,000
4	Equipment	70,000
		<hr/>
5	Total	\$ 3,610,984

6 Any unexpended balance remaining in the appropriation
 7 at the close of the fiscal year 1981-82 is hereby reappropri-
 8 ated for expenditure during the fiscal year 1982-83.

28—*Marshall University—Medical School*

Acct. No. 2840

1	Personal Services	\$ 2,742,449
2	Current Expenses	1,108,000

3	Repairs and Alterations	42,000
4	Equipment	116,000
5	Total	\$ 4,008,449
6	Any unexpended balance remaining in the appropriation	
7	for "Equipment" at the close of the fiscal year 1981-82 is	
8	hereby reappropriated for expenditure during the fiscal year	
9	1982-83.	

29—*West Virginia University—Medical School*

Acct. No. 2850

1	Personal Services	\$ 11,781,395
2	Current Expenses	6,000,000
3	Repairs and Alterations	400,000
4	Equipment	250,000
5	Family Practice Residency Support Program ...	442,894
6	Intern and Residency Support Programs for	
7	Community Hospitals	700,000
8	Total	\$ 19,574,289
9	To be transferred to the West Virginia University—Medical	
10	School Fund upon the requisition of the Governor.	

30—*State Department of Education*

Acct. No. 2860

1	Personal Services	\$ 1,926,760
2	Current Expenses	967,920
3	Repairs and Alterations	1,100
4	Equipment	12,400
5	Statewide Testing Program	169,116
	Personal Services	66,124
	Other Expenses	102,992
6	Driver Education	—0—
7	Aid to Children's Home	50,000
8	Regional Education Service Agencies	421,982
9	Child Development Programs	487,175
10	Total	\$ 4,036,453

- 11 The above appropriation includes the State Board of Educa-
 12 tion and their executive office.

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

Acct. No. 2870

1	Personal Services	\$	167,467
2	Current Expenses		14,879
3	Aid to Counties—Includes hot lunches and		
4	canning for hot lunches		1,950,000
			<hr/>
5	Total	\$	2,132,346

32—*State Board of Education—Vocational Division*

Acct. No. 2890

1	Personal Services	\$	404,217
2	Current Expenses		156,083
3	Equipment		6,780
4	Vocational Aid		8,864,584
5	Adult Basic Education		632,500
6	Start Up Funds and Equipment for New and		
7	Existing Vocational Facilities		1,250,000
8	New and Expanding Industries		150,000
			<hr/>
9	Total	\$	11,464,164

33—*Educational Broadcasting Authority*

Acct. No. 2910

1	Personal Services	\$	81,297
2	Current Expenses		36,934
3	Equipment		15,000
4	Regional ETV		2,247,433
5	WWVU—TV		970,529
			<hr/>
6	Total	\$	3,351,193

- 7 "Regional ETV" is for participation in the construction and
 8 operation of Regional ETV stations by Marshall University,
 9 Concord College, Bluefield State College, West Virginia Insti-
 10 tute of Technology and West Virginia State College, and the

- 11 acquisition of a new FM radio station to serve northern pan-
 12 handle, and such funds may be transferred to Special Revenue
 13 Accounts for matching County and/or Federal Funds.

34—*State Board of Education—Vocational Division*

Acct. No. 2940

- 1 Other Expenses—Total \$ 10—
 2 Any unexpended balance remaining in this appropria-
 3 tion at the close of the fiscal year 1981-82 is hereby re-
 4 appropriated for expenditure during the fiscal year 1982-
 5 83.

35—*State Department of Education—State Aid to Schools*

Acct. No. 2950

1	Professional Educators	\$373,837,354
2	Service Personnel	131,841,811
3	Fixed Charges	56,332,659
4	Transportation	24,213,552
5	Administration	2,616,845
6	Other Current Expenses	32,869,146
7	Improve Instructional Programs	15,634,172
		<hr/>
8	Basic Foundation Allowances	637,345,539
9	Less Local Share	92,162,346
		<hr/>
10	Total Basic State Aid	545,183,193
11	Loss Reduction	2,699,443
12	Staffing Improvement	2,583,248
	Professional Educators	1,707,280
	Service Personnel	875,968
13	Increased Enrollment	225,000
		<hr/>
14	Total	\$550,690,884

36—*State Department of Education—
 Aid for Exceptional Children*

Acct. No. 2960

- 1 Personal Services \$ 260,790

2	Current Expenses	136,298
3	Equipment	7,000
4	Out-of-State Instruction	428,000
5	Aid to Counties	6,475,670
	County Grant Awards	6,054,303
	Regional Ed. Service Agency	
	Grants	212,000
	Special State Projects	209,367
6	Total	<u>\$ 7,307,758</u>

7 The appropriation for "Out-of-State Instruction" may be
 8 expended to provide instruction, care and maintenance for
 9 educable persons who have multiple handicaps and for whom
 10 the state provides no facilities.

11 The appropriation for "Aid to Counties" may be expended
 12 for the initiation, maintenance and/or improvements of special
 13 education programs including employment of new professional
 14 education personnel solely serving exceptional children; train-
 15 ing of educational personnel to work with exceptional children;
 16 and supportive costs such as materials, transportation, contract-
 17 ed services, minor renovation and other costs directly related
 18 to the special education delivery process prescribed by the
 19 State Board of Education.

37—*Teachers' Retirement Board*

Acct. No. 2980

1	Teachers' Retirement Fund	\$ 39,400,000
2	Supplemental Benefits for Annuitants	4,600,000
3	Total	<u>\$ 44,000,000</u>

4 The line item "Supplemental Benefits for Annuitants" may
 5 be transferred as required and shall be expended in accordance
 6 with the provisions of Enrolled Senate Bill No. 456, 1981
 7 Regular Session of the Legislature.

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

Acct. No. 3330

1	Personal Services	\$ 2,919,762
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APPROPRIATIONS

[Ch. 20

2	Current Expenses	724,102
3	Repairs and Alterations	109,327
4	Equipment	109,335
		<hr/>
5	Total	\$ 3,862,526

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

Acct. No. 3360

1	Personal Services	\$ 118,900
2	Current Expenses	61,981
3	Repairs and Alterations	19,000
4	Equipment	15,000
		<hr/>
5	Total	\$ 214,881

40—*West Virginia Library Commission*

Acct. No. 3500

1	Personal Services	\$ 924,742
2	Current Expenses	190,861
3	Repairs and Alterations	3,500
4	Equipment	9,200
5	Per-Capita Grants	5,115,707
6	Books and Periodicals	195,120
7	Library Matching Fund (Construction)	100,000
		<hr/>
8	Total	\$ 6,539,130

9 Any unexpended balances remaining in the appropriation
 10 for "Library Matching Fund (Construction)" at the close of
 11 the fiscal year 1981-82 is hereby reappropriated for expendi-
 12 ture during the fiscal year 1982-83.

41—*Department of Culture and History*

Acct. No. 3510

1	Personal Services	\$ 993,595
2	Current Expenses	264,047
3	Repairs and Alterations	25,000
4	Equipment	35,000

5	Arts and Humanities Fund		680,163
	Personal Services	165,147	
	Current Expenses	1,359	
	Grants and Contractual Services	513,657	
6	Department Programming Funds		850,000
	Outreach and Education	315,250	
	Technical Assistance	129,750	
	Cultural Center Programs	405,000	
7	Washington Carver		
8	Camp		140,000
9	Grants, Fairs and Festivals		668,500
10	Independence Hall		—0—
11	Historical Highway Markers		—0—
12	Historical Preservation		—0—
			<hr/>
13	Total		\$ 3,656,305

14 The above appropriation for "Arts and Humanities Fund,"
 15 "Department Programming Funds," "Grants, Fairs and Festi-
 16 vals" and "Washington Carver Camp" shall be expended only
 17 upon authorization of the Department of Culture and History
 18 and in accordance with the provisions of Chapter 5A and
 19 Chapter 12, Article 3 of the Code of West Virginia.

20 All Federal moneys received as reimbursements to the Dept.
 21 of Culture and History for moneys expended from the General
 22 Revenue Fund for Arts and Humanities are hereby reappro-
 23 priated for the purposes as originally made, including Personal
 24 Services, Current Expenses and Equipment.

25 Any unexpended balance remaining in the appropriation for
 26 "Independence Hall, Wheeling, West Virginia" at the close of
 27 the fiscal year 1981-82 is hereby reappropriated for expendi-
 28 ture during the fiscal year 1982-83.

29 Any unexpended balance remaining in the appropriation
 30 "Washington Carver Camp" at the close of the fiscal year
 31 1981-82 is hereby reappropriated for expenditure during the
 32 fiscal year 1982-83.

CORRECTIONS

42—*Department of Corrections
Probation and Parole*

Acct. No. 3650

1	Salaries of Members of Board of		
2	Probation and Parole	\$	75,000
3	Other Personal Services		45,902
4	Current Expenses		23,132
			<hr/>
5	Total	\$	144,034

43—*Department of Corrections
Parole Services*

Acct. No. 3660

1	Personal Services	\$	625,564
2	Current Expenses		129,515
3	Repairs and Alterations		500
4	Equipment		500
			<hr/>
5	Total	\$	756,079

44—*Department of Corrections
Work Release Centers*

Acct. No. 3670

1	Personal Services	\$	462,980
2	Current Expenses		160,680
3	Repairs and Alterations		1,900
4	Equipment		4,580
			<hr/>
5	Total	\$	630,140

45—*Department of Corrections*

Acct. No. 3680

1	Salary of Commissioner	\$	33,750
2	Other Personal Services		405,156
3	Current Expenses		133,584
4	Repairs and Alterations		750
			<hr/>
5	Total	\$	573,240

46—Anthony Center

Acct. No. 3690

1	Personal Services	\$	684,036
2	Current Expenses		278,420
3	Repairs and Alterations		14,878
4	Equipment		1,000
5	Total	\$	978,334

47—West Virginia Industrial School for Boys

Acct. No. 3700

1	Personal Services	\$	1,223,866
2	Current Expenses		490,279
3	Repairs and Alterations		90,000
4	Equipment		2,000
5	Total	\$	1,806,145

48—Davis Center

Acct. No. 3710

1	Personal Services	\$	527,165
2	Current Expenses		178,195
3	Repairs and Alterations		22,600
4	Equipment		800
5	Total	\$	728,760

49—West Virginia Industrial Home for Youth

Acct. No. 3720

1	Personal Services	\$	583,467
2	Current Expenses		181,173
3	Repairs and Alterations		3,700
4	Equipment		500
5	Total	\$	768,840

50—West Virginia State Prison for Women

Acct. No. 3740

1	Unclassified—Total	\$	666,157
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51—*West Virginia Penitentiary*

Acct. No. 3750

1	Personal Services	\$ 3,491,600
2	Current Expenses	1,775,328
3	Repairs and Alterations	62,000
4	Equipment	7,000
		<hr/>
5	Total	\$ 5,335,928

52—*Huttonsville Correctional Center*

Acct. No. 3760

1	Personal Services	\$ 2,210,977
2	Current Expenses	1,426,054
3	Repairs and Alterations	90,300
4	Equipment	7,000
		<hr/>
5	Total	\$ 3,734,331

HEALTH AND WELFARE

53—*State Health Department*

Acct. No. 4000

1	Personal Services	\$ 6,371,952
2	Current Expenses	4,415,272
3	Equipment	126,896
4	Reimbursement to Community Mental Health	
5	and Mental Retardation Centers	17,012,796
6	Reimbursement to Community Behavioral	
7	Health Programs for Social Services	1,613,632
8	Special Olympics	28,000
9	State Aid to Local Agencies	4,000,000
10	Grants to Counties and EMS	
11	Entities	1,679,090
12	Maternal and Child Health Clinics, Clinicians	
13	and Medical Contracts and Fees	1,430,000
14	Foster Grandparents Stipends/Travel	62,370
15	Office of Chief Medical Examiner	905,600
	Personal Services	398,555
	Current Expenses	488,045
	Repairs and Alterations	4,000
	Equipment	15,000

16	Hemophiliac Assistance Program	141,805
17	Placement Program for the	
18	Developmentally Disabled	1,651,000
19	Grants to local Health Entities/Community	
20	Health	—0—
21	Primary Care Contracts to Community	
22	Health Centers	1,103,090
23	Corporate Non-Profit Community Health	
24	Center F.M.H.A. Mortgage Finance	75,000
25	Total	<u>\$ 40,616,503</u>

26 Any unexpended balance remaining in the appropriation
 27 for "Placement Program for the Developmentally Disabled"
 28 at the close of the fiscal year 1981-82 is hereby reappropriated
 29 for expenditure during the fiscal year 1982-83.

54—*Department of Veterans Affairs*
Veterans Home

Acct. No. 4010

1	Personal Services	\$ 966,300
2	Current Expenses	320,310
3	Repairs and Alterations	200,000
4	Equipment	225,000
5	Total	<u>\$ 1,711,610</u>

6 Any unexpended balance remaining in the appropriation
 7 for "Repairs and Alterations" and "Equipment" at the close
 8 of the fiscal year 1981-82 is hereby reappropriated for ex-
 9 penditure during the fiscal year 1982-83.

55—*Solid Waste Disposal*

Acct. No. 4020

1	Personal Services	\$ 86,570
2	Current Expenses	37,325
3	Equipment	500
4	Total	<u>\$ 124,395</u>

56—*Department of Veterans Affairs*

Acct. No. 4040

1	Personal Services	\$	624,410
2	Current Expenses		107,177
3	Equipment		5,000
4	Educational opportunities for children		
5	of War Veterans		18,000
6	In aid of Veterans Day Patriotic Exercises		7,000
7	National Cemetery—Study and Legal Fees		5,000
			<hr/>
8	Total	\$	766,587
9	Moneys in item 6 above are to be expended subject to the		
10	approval of the Department of Veterans Affairs upon pre-		
11	sentation of satisfactory plans by the Grafton G. A. R. Post,		
12	American Legion, Veterans of Foreign Wars and Sons of		
13	Veterans.		

57—*Department of Welfare*

Acct. No. 4050

1	Personal Services	\$	10,168,467
2	Current Expenses		4,767,193
3	Repairs and Alterations		17,000
4	Equipment		41,757
5	Assistance Payments		18,462,372
6	Social Security Matching Fund		664,633
7	Social Services		19,605,000
8	Indigent Burials		620,000
9	Emergency Assistance		1,000,000
10	Medical Services		50,840,000
11	T.R.I.P.		642,000
			<hr/>
12	Total	\$	106,828,422

58—*State Commission on Aging*

Acct. No. 4060

1	Personal Services	\$	95,985
2	Current Expenses		49,733
3	Programs for Elderly		2,684,915

4	Senior Citizens Centers	200,000
5	Golden Mountaineer Program	35,000
	Personal Services	—0—
	Other Expenses	—0—
6	Total	<u>\$ 3,065,633</u>

7 Any unexpended balance remaining in the appropriation
 8 for "Senior Citizens Centers" at the close of the fiscal year
 9 1981-82 is hereby reappropriated for expenditure during the
 10 fiscal year 1982-83, with the purpose of such items to be
 11 redesignated: "Senior Citizens Centers—land acquisition, con-
 12 struction, repairs or alterations."

59—*Greenbrier School for Mentally Retarded Children*

Acct. No. 4140

1	Personal Services	\$ 1,020,000
2	Current Expenses	260,361
3	Repairs and Alterations	35,000
4	Equipment	13,200
5	Total	<u>\$ 1,328,561</u>

60—*State Health Department—Mental Hospitals*

Acct. No. 4160

1	Personal Services	\$ 18,747,810
2	Current Expenses	5,667,276
3	Repairs and Alterations	286,220
4	Equipment	227,240
5	Student Nurse Affiliation Program	
6	(Huntington)	70,894
7	Psychiatric Training Center—Student Nurses	
8	(Weston)	219,971
9	Total	<u>\$ 25,219,411</u>

10 The director of health, prior to the beginning of the fiscal
 11 year, shall file with the legislative auditor an expenditure
 12 schedule for each formerly separate spending unit which has
 13 been consolidated into the above account and which re-

14 ceives a portion of the above appropriation. He shall also,
 15 within fifteen days after the close of each six month period
 16 of said fiscal year, file with the legislative auditor an itemized
 17 report of expenditures made during the preceding six-month
 18 period. Such report shall include the total of expenditures
 19 made under each of line items 1, 2, 3 and 4 above.

20 Any unexpended balance remaining in the accounts "Re-
 21 novation for Certification" and "Renovation Unit 4—Hunting-
 22 ton" at the close of the fiscal year 1981-82 is hereby reap-
 23 propriated for expenditure during the fiscal year 1982-83.

61—*Colin Anderson Center*

Acct. No. 4190

1	Personal Services	\$ 7,302,996
2	Current Expenses	1,229,760
3	Repairs and Alterations	160,000
4	Equipment	56,500
		<hr/>
5	Total	\$ 8,749,256

62—*Fairmont Emergency Hospital*

Acct. No. 4250

1	Personal Services	\$ 798,329
2	Current Expenses	362,056
3	Repairs and Alterations	32,300
4	Equipment	26,000
		<hr/>
5	Total	\$ 1,218,685

63—*Welch Emergency Hospital*

Acct. No. 4260

1	Personal Services	\$ 1,371,430
2	Current Expenses	337,603
3	Repairs and Alterations	15,300
4	Equipment	9,000
		<hr/>
5	Total	\$ 1,733,333

64—*Andrew S. Rowan Memorial Home*

Acct. No. 4270

1	Personal Services	\$ 983,200
2	Current Expenses	476,000
3	Repairs and Alterations	10,000
4	Equipment	4,590
		<hr/>
5	Total	\$ 1,473,790

65—*Hopemont Hospital*

Acct. No. 4300

1	Personal Services	\$ 3,468,964
2	Current Expenses	1,020,614
3	Repairs and Alterations	75,000
4	Equipment	15,000
		<hr/>
5	Total	\$ 4,579,578

66—*Pincrest Hospital*

Acct. No. 4310

1	Personal Services	\$ 3,348,227
2	Current Expenses	1,194,238
3	Repairs and Alterations	79,650
4	Equipment	21,870
		<hr/>
5	Total	\$ 4,643,985

67—*Denmar Hospital*

Acct. No. 4320

1	Personal Services	\$ 2,420,786
2	Current Expenses	715,000
3	Repairs and Alterations	20,000
4	Equipment	10,000
		<hr/>
5	Total	\$ 3,165,786

- 6 Any unexpended balance remaining in the appropriation
7 "Renovation for Certification" at the close of the fiscal year

8 1981-82 is hereby reappropriated for expenditure during the
9 fiscal year 1982-83.

68—*State Board of Education—Rehabilitation Division*

Acct. No. 4400

1	Personal Services	\$ 4,101,072
2	Current Expenses	1,035,262
3	Repairs and Alterations	1,423
4	Equipment	51,616
5	Case Services	2,302,479
6	Social Security Matching Fund	273,542
7	WVU—Reimbursement	50,872
8	Workshop Development	1,181,361
9	Blind Services Coordinating Unit	37,000
		<hr/>
10	Total	\$ 9,034,627

11 Any unexpended balance remaining in the appropriation for
12 “Workshop Development” at the close of the fiscal year 1981-
13 82 is hereby reappropriated for expenditure during the fiscal
14 year 1982-83.

69—*Commission for the Blind*

Acct. No. 4450

1	Total—Unclassified	\$ —0—
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BUSINESS AND INDUSTRIAL RELATIONS

70—*Bureau of Labor and Department of
Weights and Measures*

Acct. No. 4500

1	Personal Services	\$ 1,048,590
2	Current Expenses	287,989
3	Repairs and Alterations	18,400
4	Equipment	8,635
5	Labor Management Advisory Council	28,474
6	Enforcement Contractors Bond	—0—
7	Enforce Minimum Wage Law	—0—

8	Enforce Hazardous Chemical Act	—0—
9	Total	\$ 1,392,088

71—*Department of Mines*

Acct. No. 4600

1	Personal Services	\$ 3,273,255
2	Current Expenses	1,097,458
3	Equipment	95,657
4	Miner Training Education and Certification ...	130,000
5	Board of Coal Mine Health and Safety	45,000
6	Gas Well Certification	200,000
7	Development of Mine Safety Program	202,516
8	Total	\$ 5,043,886

72—*Interstate Commission on Potomac River Basin*

Acct. No. 4730

1	West Virginia's contribution to Potomac River	
2	Basin Interstate Commission	\$ 30,350

73—*Ohio River Valley Water Sanitation Commission*

Acct. No. 4740

1	West Virginia's contribution to the Ohio River	
2	Valley Water Sanitation Commission	\$ 64,920

74—*West Virginia Air Pollution Control Commission*

Acct. No. 4760

1	Personal Services	\$ 565,310
2	Current Expenses	164,836
3	Equipment	1,000
4	Total	\$ 731,146

75—*State Boxing Commission*

Acct. No. 4790

1	Total	\$ 5,500
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76—*Department of Banking*

Acct. No. 4800

1	Personal Services	\$	571,754
2	Current Expenses		350,000
3	Equipment		15,000
4	Total	\$	936,754

77—*West Virginia State Aeronautics Commission*

Acct. No. 4850

- 1 Any unexpended balance remaining in the appropriation
 2 "Airport Matching" at the close of the fiscal year 1981-82
 3 is hereby reappropriated for expenditure during fiscal year
 4 1982-83.

78—*West Virginia Nonintoxicating
Beer Commissioner*

Acct. No. 4900

1	Personal Services	\$	305,777
2	Current Expenses		86,217
3	Equipment		300
4	Total	\$	392,294

79—*West Virginia Racing Commission*

Acct. No. 4950

1	Personal Services	\$	853,609
2	Current Expenses		89,612
3	Equipment		10,000
4	Total	\$	953,221

AGRICULTURE

80—*Department of Agriculture*

Acct. No. 5100

1	Salary of Commissioner	\$	39,000
2	Other Personal Services		1,882,367

3	Current Expenses	936,408
4	Equipment	32,250
5	Multiflora Rose Eradication Program	165,000
6	Total	\$ 3,055,025

7 Out of the above funds a sum may be used to match Federal
8 Funds for the eradication and control of pest and plant disease.

81—*Farm Management Commission*

Acct. No. 5110

1	Personal Services	\$ 1,008,331
2	Current Expenses	888,577
3	Repairs and Alterations	262,000
4	Equipment	167,323
5	Livestock Purchase	139,837
6	Total	\$ 2,466,068

82—*Department of Agriculture—
Soil Conservation Committee*

Acct. No. 5120

1	Personal Services	\$ 319,083
2	Current Expenses	108,712
3	Watershed Program	150,000
4	Stream Channelization	—0—
5	Total	\$ 577,795

6 Any unexpended balance remaining in the appropriation
7 for "Watershed Program," "Mud River Flood Control Pro-
8 ject" and "Channelization of Kelley's Creek," hereinafter
9 redesignated as "Stream Channelization," at the close of the
10 fiscal year 1981-82 is hereby reappropriated for expenditure
11 during the fiscal year 1982-83.

83—*Department of Agriculture—Division of Rural Resources
(Matching Fund)*

Acct. No. 5130

1	Personal Services	\$ 733,980
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2	Current Expenses	169,728
3	Equipment	41,200
		<hr/>
4	Total	\$ 944,908

5 Any part or all of this appropriation may be transferred
6 to Special Revenue Fund for the purpose of matching Federal
7 Funds for the above-named program.

84—*Department of Agriculture—Meat Inspection*

Acct. No. 5140

1	Personal Services	\$ 367,000
2	Current Expenses	152,494
		<hr/>
3	Total	\$ 519,494

4 Any part or all of this appropriation may be transferred to
5 Special Revenue Fund for the purpose of matching Federal
6 Funds for the above-named program.

85—*Department of Agriculture—Agricultural Awards*

Acct. No. 5150

1	Agriculture Awards	\$ 70,000
2	Fairs and Festivals	148,450
		<hr/>
3	Total	\$ 218,450

CONSERVATION AND DEVELOPMENT

86—*Geological and Economic Survey*

Acct. No. 5200

1	Personal Services	\$ 1,247,699
2	Current Expenses	302,464
3	Repairs and Alterations	33,488
4	Equipment	37,658
5	Special Studies	60,000
		<hr/>
6	Total	\$ 1,681,309

87—*Department of Natural Resources*

Acct. No. 5650

1	Personal Services	\$ 9,872,496
2	Current Expenses	3,030,574
3	Repairs and Alterations	490,951
4	Equipment	304,276
5	Fire Prevention Control	706,237
	Personal Services	643,847
	Other Expenses	62,390
6	Water Resources Board and Reclamation	
7	Board of Review	55,000
8	Debt Service	1,160,000
9	Committee on Black Fly	40,000
10	Total	<u>\$ 15,659,534</u>

11 Any unexpended balance remaining in the appropriation
 12 for "Little Beaver State Park," "Pleasants Creek Public Hunt-
 13 ing and Fishing Area," "Panther State Forest (75)," "Panther
 14 State Forest (77)," "Improvement and land acquisition—
 15 Berwind Lake Public Hunting and Fishing Area," "Park Im-
 16 provement Program," "Reeds Creek Hatchery" and "Castle-
 17 man's Run Lake" at the close of the fiscal year 1981-82 is
 18 hereby reappropriated for expenditure during the fiscal year
 19 1982-83.

20 Any or all funds appropriated for "Fire Prevention Control"
 21 may be transferred to Special Revenue Fund to match and aid
 22 Federal Funds.

88—*Public Land Corporation*

Acct. No. 5660

1 Any unexpended balance remaining in the appropriations
 2 for "Public Land Corporation" and "Blennerhasset Island"
 3 at the close of the fiscal year 1981-82 is hereby reappropriated
 4 for expenditure during the fiscal year 1982-83.

89—*Water Development Authority*

Acct. No. 5670

1	Personal Services	\$ 153,230
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2	Current Expenses	60,177
3	Lubeck Public Service District	107,000
4	Bolair Public Service District	175,000
5	McMechen Water Project	115,000
		<hr/>
6	Total	\$ 610,407
7	Any unexpended balance remaining in the appropriation	
8	for "Capital Outlay" and "Phase III Hardship Grants" at the	
9	close of the fiscal year 1981-82 is hereby reappropriated for	
10	expenditure during the fiscal year 1982-83.	

90—*West Virginia Railroad Maintenance Authority*

Acct. No. 5690

1	Personal Services	\$ 673,131
2	Current Expenses	33,277
3	Baltimore and Ohio—Passenger Service	—0—
		<hr/>
4	Total	\$ 706,408

PROTECTION

91—*Department of Public Safety*

Acct. No. 5700

1	Personal Services	\$ 13,926,004
2	Current Expenses	6,283,514
3	Repairs and Alterations	268,400
4	Equipment	1,882,440
5	Emergency Fund	10,000
		<hr/>
6	Total	\$ 22,370,358

92—*Adjutant General—State Militia*

Acct. No. 5800

1	Personal Services	\$ 236,382
2	Current Expenses	532,980
3	Repairs and Alterations	59,000
4	Equipment	16,500
5	Compensation of Commanding Officers, Clerical	
6	Allowances and Uniform Allowances	105,035

7	Property Maintenance	905,950
8	State Armory Board	2,250,000
9	College Education Fund	160,000
		<hr/>
10	Total	\$ 4,265,847

MISCELLANEOUS BOARDS AND COMMISSIONS

93—*West Virginia Civil Service System*

Acct. No. 5840

1	Personal Services	\$ 808,177
2	Current Expenses	223,273
3	Equipment	4,000
		<hr/>
4	Total	\$ 1,035,450

5 The director shall maintain accurate records reflecting
6 the cost of administering the provisions of this appropriation.
7 At the close of each quarter-year period, he shall
8 summarize the cost and shall bill each department, com-
9 mission, board or agency which receives support from any
10 funds other than General Revenue Fund for a pro rata share
11 of the administrative cost based on the relationship between
12 the quarterly-average number of employees in the service
13 of such department, commission, board, or agency and the
14 quarterly-average number of employees in the service of all
15 the departments, commissions, boards and agencies of the
16 state for the appropriate calendar quarter.

17 This reimbursement is to be deposited in the General
18 Revenue Fund.

94—*West Virginia Public Legal Services Council*

Acct. No. 5900

1	Council and central office	\$ 175,000
2	Appointed counsel or panel attorneys	
3	in circuits where public defender	
4	corporations not activated	1,350,000
5	Loans and grants, activated public	
6	defender corporations or panel	
7	attorneys or appointed counsel	1,350,000

8	Appointed counsel fees, closing	
9	cases after public defender cor-	
10	porations are activated	250,000
11	Unclassified	275,000
		<hr/>
12	Total	\$ 3,400,000

13 The "Unclassified" item appropriation shall be expended for
 14 the appellate advocacy division and criminal research bureau
 15 or other proper expenditure. Any of the above line items, re-
 16 gardless of other designation, may be expended to provide
 17 pay approved panel attorney fees.

95—*Human Rights Commission*

Acct. No. 5980

1	Personal Services	\$ 325,951
2	Current Expenses	125,214
3	Equipment	2,885
		<hr/>
4	Total	\$ 454,050

96—*Women's Commission*

Acct. No. 6000

1	Personal Services	\$ 32,846
2	Current Expenses	13,346
		<hr/>
3	Total	\$ 46,192

97—*West Virginia Public Employees Retirement Board*

Acct. No. 6140

1	Employers Accumulation Fund	\$ 11,500,000
2	Expense Fund	151,176
3	Supplemental Benefits for Annuitants	1,700,000
		<hr/>
4	Total	\$ 13,351,176

5 The above appropriation is intended to cover the state's
 6 share of West Virginia Public Employees Retirement cover-
 7 age for those departments operating from General Revenue

8 Fund. The State Department of Highways, Department of
 9 Motor Vehicles, Workmen's Compensation Commission, Pub-
 10 lic Service Commission and other departments operating from
 11 Special Revenue Funds and/or Federal Funds shall pay
 12 their proportionate share of the retirement costs for their
 13 respective divisions. When specific appropriations are not
 14 made, such payments may be made from the balance in the
 15 various Special Revenue funds in excess of specific appro-
 16 priations.

17 The line item "Supplemental Benefits for Annuitants"
 18 may be transferred as required and shall be expended in
 19 accordance with the provisions of Enrolled Senate Bill No.
 20 456, 1981 Regular Session of the Legislature.

98—*West Virginia Public Employees Insurance Board*

Acct. No. 6150

1	Expense Fund	\$	237,500
2	Public Employees Health Insurance—		
3	State Contributions		55,832,007
			<hr/>
4	Total	\$	56,069,507

5 The above appropriation is intended to cover the state's
 6 share of Public Employees Health Insurance costs for those
 7 spending units operating from General Revenue Fund. The
 8 State Department of Highways, Department of Motor Vehicles,
 9 Workmen's Compensation Commission, Public Service Com-
 10 mission and other departments operating from Special Reve-
 11 nue Funds and/or Federal Funds shall pay their proportionate
 12 share of the Public Employees Health Insurance cost for
 13 their respective divisions. When specific appropriations are
 14 not made, such payments may be made from the balances
 15 in the various Special Revenue Fund in excess of specific
 16 appropriations.

99—*Insurance Commissioner*

Acct. No. 6160

1	Personal Services	\$	611,155
2	Current Expenses		201,678

3	Equipment	25,000
4	Total	\$ 837,833

100—*State Fire Commission*

Acct. No. 6170

1	Personal Services	\$ 555,500
2	Current Expenses	213,091
3	Repairs and Alterations	3,048
4	Equipment	19,470
5	Total	\$ 791,109

101—*State Department of Highways*

Acct. No. 6410

1	Unclassified—Total	\$ 57,400,000
2	Any or all of the above appropriations may be trans-	
3	ferred to the State Road Fund for distribution.	

1 **Sec. 2. Appropriations from other funds.**—From the funds
 2 designated there is hereby appropriated conditionally upon the
 3 fulfillment of the provisions set forth in Chapter 5A, Article 2
 4 of the Code of West Virginia, the following amounts as itemiz-
 5 ed for expenditure during the fiscal year one thousand nine
 6 hundred eighty-three.

102—*State Department of Highways*

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

1	Maintenance Expressway, Trunkline and	
2	Feeder	\$ 51,400,000
3	Maintenance, State Local Services	64,436,000
4	Maintenance, Contract Paving	
5	and Secondary Road Maintenance	11,500,000
6	Inventory Revolving	1,682,000
7	Equipment Revolving	4,000,000
8	General Operations	16,696,000

9	Debt Service	85,200,000
10	Interstate Construction	108,807,000
11	Other Federal Aid Programs	93,784,000
12	Appalachian Program	27,841,000
13	Nonfederal Aid Construction	4,716,000
14	Total	<u>\$470,062,000</u>

15 The above appropriation line items are to be expended
 16 in accordance with the provisions of Chapter 17 and 17C,
 17 Code of West Virginia, one thousand nine hundred thirty-
 18 one, as amended.

19 The State Commissioner of Highways shall have the author-
 20 ity to operate revolving funds within the state road fund for
 21 the operation and purchase of various types of equipment
 22 used directly and indirectly in the construction and main-
 23 tenance of roads and for the purchase of inventories and
 24 materials and supplies.

25 There is hereby appropriated within the above items suf-
 26 ficient money for the payment of claims, accrued or arising
 27 during this budgetary period, to be paid in accordance with
 28 Chapter 14, Article 2, Section 17 and 18, Code of West Vir-
 29 ginia, one thousand nine hundred thirty-one, as amended.

103—*Department of Motor Vehicles*

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 2,150,838
2	Current Expenses	3,392,185
3	Equipment	41,000
4	Purchase of License Plates	490,650
5	Social Security Matching	154,914
6	Public Employees Retirement Matching	219,655
7	Public Employees Health Insurance	159,010
8	Total	<u>\$ 6,608,252</u>

104—*Department of Education—Veterans Education*

Acct. No. 7020

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	60,430
2	Other Expenses		26,072
3	Total	\$	86,502

4 Expenditures from this appropriation shall not exceed the
5 amount to be reimbursed by the federal government.

6 Federal Funds in excess of the amounts hereby appro-
7 priated may be made available by budget amendment upon
8 request of the State Superintendent of Schools and approval
9 of the Governor for any emergency which might arise in
10 the operation of this division during the fiscal year.

105—*Treasurer's Office—Abandoned and Unclaimed Property*

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	52,112
2	Other Expenses		39,672
3	Total	\$	91,784

106—*Real Estate Commission*

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	113,592
2	Current Expenses		92,846
3	Equipment		7,000
4	Total	\$	213,438

5 The total amount of this appropriation shall be paid out of
6 collections of license fees as provided by law.

107—*West Virginia Racing Commission*

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses	\$	5,000
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2 The total amount of this appropriation shall be paid from
 3 Special Revenue Fund out of collections of license fees and
 4 fines as provided by law.

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

108—*Auditor's Office—Land Department Operating Fund*

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total	\$	12,000
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2 The total amount of this appropriation shall be paid from
 3 Special Revenue Fund out of fees and collections as provided
 4 by law.

109—*Department of Finance and Administration—
Division of Purchasing—Revolving Fund*

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	741,588
2	Current Expenses		441,458
3	Equipment		42,000
4	Social Security Matching		53,415
5	Public Employees Retirement Matching		75,735
6	Public Employees Health Insurance		67,830
			<hr/>
7	Total	\$	1,422,026

8 The total amount of this appropriation shall be paid
 9 from Special Revenue Fund as provided by Chapter 5A,
 10 Article 2 of the Code of West Virginia.

11 The above appropriation includes salaries and operating
12 expenses.

13 There is hereby appropriated from this fund, in addition
14 to the above appropriation, the necessary amount for the
15 purchase of supplies for resale.

110—*Department of Finance and Administration—
Information Systems Service Division Fund*

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 2,609,691
2	Current Expenses	5,456,804
3	Equipment	189,184
4	Social Security Matching	187,616
5	Public Employees Retirement Matching	268,026
6	Public Employees Health Insurance	150,980
		<hr/>
7	Total	\$ 8,862,301

8 The total amount of this appropriation shall be paid from
9 Special Revenue Fund out of collections made by the Depart-
10 ment of Finance and Administration as provided by law.

111—*Department of Agriculture*

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 383,724
2	Current Expenses	18,638
3	Social Security Matching	28,280
4	Public Employees Retirement Matching	40,098
5	Public Employees Health Insurance	13,465
		<hr/>
6	Total	\$ 484,205

7 The total amount of this appropriation shall be paid from
8 Special Revenue Fund out of collections made by the Depart-
9 ment of Agriculture as provided by law.

112—*State Committee of Barbers and Beauticians*

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	116,854
2	Current Expenses		91,462
3	Equipment		1,000
			<hr/>
4	Total	\$	209,316

5 The total amount of this appropriation shall be paid from
 6 Special Revenue Fund out of collections made by the State
 7 Committee of Barbers and Beauticians as provided by law.

113—*Public Service Commission*

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$	87,800
2	Other Personal Services		2,953,150
3	Current Expenses		1,088,438
4	Equipment		148,000
5	Social Security Matching		218,314
6	Public Employees Retirement Matching		309,546
7	Public Employees Health Insurance		215,760
8	Consumer Advocate		410,932
			<hr/>
9	Total	\$	5,431,940

10 The total amount of this appropriation shall be paid from
 11 Special Revenue Fund out of collections for special license
 12 fees from public service corporations as provided by law.

114—*Public Service Commission—Gas Pipeline Division*

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	169,297
2	Current Expenses		80,385
3	Equipment		3,500

4	Social Security Matching	12,194
5	Public Employees Retirement Matching	17,289
6	Public Employees Health Insurance	8,928
7	Total	\$ 291,593

8 The total amount of this appropriation shall be paid from
 9 Special Revenue Fund out of receipts collected for or by the
 10 Public Service Commission pursuant to and in the exercise of
 11 regulatory authority over pipeline companies.

115—*Public Service Commission—Motor Carrier Division*

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 943,874
2	Current Expenses	383,360
3	Equipment	8,250
4	Social Security Matching	67,983
5	Public Employees Retirement Matching	96,393
6	Public Employees Health Insurance	65,472
7	Total	\$ 1,565,332

8 The total amount of this appropriation shall be paid from
 9 Special Revenue Fund out of receipts collected for or by the
 10 Public Service Commission pursuant to and in the exercise
 11 of regulatory authority over motor carriers as authorized
 12 by law.

116—*Department of Natural Resources*

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 3,194,226
2	Current Expenses	2,325,402
3	Repairs and Alterations	218,992
4	Equipment	485,069
5	Land Purchase and Building	840,848
6	Bowden Hatchery Operations	250,000
7	Total	\$ 7,314,537

8 The total amount of this appropriation shall be paid from
 9 Special Revenue Fund out of fees collected by the Depart-
 10 ment of Natural Resources. Expenditures shall be limited
 11 to the amounts appropriated except for Federal Funds re-
 12 ceived and Special Funds collected at state parks. Any un-
 13 expended balances remaining in the prior appropriation item
 14 "Land Purchase and Buildings" at the close of fiscal year
 15 1981-82 and available for capital improvement and land
 16 purchase purposes are hereby appropriated for expenditure
 17 in fiscal year 1982-83 all in accordance with Chapter 20,
 18 Article 2, Section 34, Code of West Virginia.

19 The above appropriation "Bowden Hatchery Operations"
 20 shall be spent only if the Federal Government closes and
 21 leases or transfers the operation of said hatchery to the West
 22 Virginia Department of Natural Resources.

117—*Department of Public Safety—Inspection Fees*

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	415,304
2	Current Expenses		220,550
3	Repairs and Alterations		8,700
4	Equipment		21,000
			<hr/>
5	Total	\$	665,554

6 The total amount of this appropriation shall be paid from
 7 Special Revenue Fund out of fees collected for inspection
 8 stickers as provided by law.

118—*State Health Department—Hospital Services
 Revenue Account (Special Fund)
 (Capital Improvement, Renovation and Operation)*

Acct. No. 8491-12

TO BE PAID FROM SPECIAL REVENUE FUND

1	Various Capital Improvement Projects for		
2	Institutions	\$	1,250,000

3	Welch Emergency Hospital, Capital	
4	Outlay and Renovation	6,200,000
5	Weston Hospital, Capital Outlay	
6	and Renovation	420,000
7	Pinecrest Hospital, Capital Outlay	
8	and Renovation	1,300,000
9	Greenbrier Center, Capital Outlay	
10	and Renovation	265,000
11	Miscellaneous Capital Improvement Projects	
12	for Institutions	500,000
13	Huntington Hospital, Capital Outlay	
14	and Renovation	750,000
15	Pinecrest Hospital, Capital Outlay and	
16	Renovation for Certification	535,000
17	Huntington Hospital, Capital Outlay	
18	and Renovation	1,800,000
19	The total amount of this appropriation shall be paid from	
20	the Hospital Services Revenue Account special fund created	
21	by the 1981 Legislature, chapter one hundred twenty, acts,	
22	regular session. Projects are to be paid on a cash basis	
23	and made available from the date of passage. Items and	
24	projects of this appropriation are to be begun as funds	
25	become available in the special fund, but only in the listed	
26	order of priority herein.	

119—*Board of Regents—West Virginia University
Special Capital Improvement Fund*

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service \$ 452,000

2 The total amount of this appropriation shall be paid from
3 the nonrevolving Capital Improvement Fund created by the
4 1959 Legislature, as amended.

120—*Board of Regents—State System Registration Fee
Special Capital Improvements Fund
(Capital Improvement and Bond Retirement Fund)*

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service and Reserve \$ 2,669,000

2	Capital Building Repairs and Alterations	3,000,000
3	(supplements operating budget at colleges	
4	and universities)	
5	Miscellaneous Campus Development Projects	1,000,000
6	West Virginia University Campus Development	1,700,000
7	(upgrade and correct fire and life safety	
8	systems in various buildings)	
9	Kearneysville Experimental Station	
10	Research and Equipment Building	
11	and Equipment	300,000
12	Marshall University Campus Development ...	300,000
13	(land acquisition-continuing)	
14	Fairmont State College Campus Development.	830,000
15	(renovation of Colebank gymnasium, demo-	
16	lition of old maintenance building, and Fine	
17	Arts Building roof replacement)	
18	West Virginia Northern Community College	
19	Campus Development	90,000
20	(major items of equipment for Weirton	
21	building)	
22	Parkersburg Community College	
23	Campus Development	575,000
24	(upgrade safety systems, roof repair, site	
25	work, major items of equipment,	
26	maintenance and shop facilities)	
27	West Virginia Network for Educational	
28	Telecomputing	503,000
29	(purchase additional computer controllers,	
30	disk controllers, and terminal access equip-	
31	ment)	
32	West Liberty State College Campus	
33	Development	100,000
34	(College Hall—auditorium improvements)	
35	Jackson's Mill—Restoration of Old Mill . . .	186,000

36 The total amount of this appropriation shall be paid from
 37 the Special Capital Improvement Fund created by the 1971
 38 Legislature. Projects are to be paid on a cash basis and made
 39 available from the date of passage. Items and projects in this
 40 appropriation are to be started as funds become available and
 41 then only in the listed order of priority.

42 Any unexpended balances remaining in prior years and
 43 1981-82 appropriations are hereby reappropriated for ex-
 44 penditure during fiscal year 1982-83.

121—*Board of Regents—Special Capital Improvement Fund*

Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service \$ 1,672,000

2 The total amount of this appropriation shall be paid from
 3 the nonrevolving Capital Improvement Fund created by the
 4 1959 Legislature, as amended.

122—*Board of Regents—State System Registration Fee
 Revenue Bond Construction Fund*

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years and
 2 1981-82 appropriations are hereby reappropriated for ex-
 3 penditure during fiscal year 1982-83.

123—*Board of Regents—State System Tuition Fee
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)*

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service and Reserve	\$ 4,378,000
2	Marshall University Campus Development . . .	4,000,000
3	(Science Building Renovation—Phase II)	
4	West Virginia University Campus	
5	Development	2,884,000
6	(Clark Hall Renovation—Phase III)	
7	Glenville State College Campus Development . .	445,000
8	(Library foundation repairs, running track	
9	surface replacement, Science Hall roof and	
10	boiler replacement)	
11	Bluefield State College Campus Development ..	180,000

12	(Correct fire-safety violations, upgrade west	
13	campus parking lot, minor renovations to	
14	Physical Education Building)	
15	West Virginia Institute of Technology Campus	
16	Development	480,000
17	(Old Main window replacement, Science Hall	
18	laboratory renovation, Engineering Building	
19	waterproofing and roof replacement)	
20	Potomac State College Campus Development ..	200,000
21	(upgrade and collect fire and life safety	
22	systems)	
23	Shepherd College Campus Development	120,000

24 The total amount of this appropriation shall be paid from
 25 the Special Capital Improvement Fund created by the 1977
 26 Legislature. Projects are to be paid on a cash basis and made
 27 available from the date of passage.

28 Any unexpended balances remaining in prior years and in
 29 the 1981-82 appropriations are hereby reappropriated for ex-
 30 penditure in fiscal year 1982-83.

124—*Board of Regents—State System Tuition Fee
 Revenue Bond Construction Fund*

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years and
 2 1981-82 appropriations are hereby reappropriated for ex-
 3 penditure during fiscal year 1982-83.

125—*Workmen's Compensation Commission*

Acct. No. 9000

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services	\$ 4,698,041
2	Current Expenses	3,562,388
3	Equipment	241,478
4	Social Security Matching	338,377
5	Public Employees Retirement Matching	467,566
6	Public Employees Health Insurance	396,036
7	Total	<u>\$ 9,703,886</u>

8 There is hereby authorized to be paid out of the above ap-
 9 propriation for "Current Expenses" the amount necessary for
 10 the premiums on bonds given by the State Treasurer as Bond
 11 Custodian for the protection of the Workmen's Compensation
 12 Fund. This sum shall be transferred to the Board of Insurance.

126—*West Virginia Alcohol Beverage Control Commissioner*

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salary of Commissioner	\$ 33,750
2	Other Personal Services	8,430,342
3	Current Expenses	5,564,468
4	Repairs and Alterations	61,435
5	Equipment	403,600
6	Social Security Matching	609,457
7	Public Employees Retirement Matching	864,155
8	Public Employees Health Insurance	718,613
9	Wine License—Unclassified	193,910
		<hr/>
10	Total	\$ 16,879,730

11 The total amounts of this appropriation shall be paid from
 12 Special Revenue Fund out of liquor revenues.

13 The above appropriations include the salaries of store per-
 14 sonnel, store inspectors, store operating expenses and equip-
 15 ment; and salaries, expenses and equipment of administration
 16 offices.

17 There is hereby appropriated from liquor revenues, in addi-
 18 tion to the appropriation, the necessary amount for the pur-
 19 chase of liquor as provided by law.

127—*West Virginia University—Medical School*

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Personal Services	\$ 46,467,000
2	Current Expenses	29,368,000
3	Repairs and Alterations	1,645,000

4	Equipment	2,767,000
5	Intern and Residency Support Program for	
6	Community Hospitals	945,000
7	Family Practice Residency Support Program ...	828,000
8	Capital Outlay	500,000
9	Total	\$ 82,520,000

10 Any unexpended balance remaining in the appropriation
 11 for "Capital Outlay" at the close of the fiscal year 1981-82
 12 is hereby reappropriated for expenditure during the fiscal
 13 year 1982-83.

1 **Sec. 3. Supplemental and deficiency appropriations.**—From
 2 the state fund, general revenue and other designated fund,
 3 except as otherwise provided, there are hereby appropriated
 4 conditionally upon the fulfillment of the provisions set forth
 5 in Chapter 5A, Article 2 of the Code of West Virginia,
 6 the following amounts, as itemized, for expenditure during
 7 the fiscal year one thousand nine hundred eighty-two, to
 8 supplement the 1981-82 appropriations and to be available
 9 for expenditure upon date of passage.

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

Acct. No. 1240

TO BE PAID FROM GENERAL REVENUE FUND

1 Unclassified \$ 438,756

2 Any unexpended balance remaining in this appropriation
 3 at the close of the fiscal year 1981-82 is hereby reappro-
 4 priated for expenditure during the fiscal year 1982-83.

129—*West Virginia Board of Regents (Control)*

Acct. No. 2790

TO BE PAID FROM GENERAL REVENUE FUND

1 Personal Services \$ 250,000

2 The above item is to be expended for the first semester
 3 of summer school.

130—*State Health Department—Hospital Services
Revenue Account (Special Fund)
(Capital Improvement, Renovation and Operation)*

Acct. No. 8491-12

TO BE PAID FROM SPECIAL REVENUE FUND

1	Hopemont Hospital, Capital Outlay		
2	(Renovation and Equipment)	\$	450,000
3	Spencer Hospital, Capital Outlay		
4	(Renovation and Equipment)		250,000

1 **Sec. 4. Appropriations of surplus for fiscal year 1981-82.—**
2 The item set forth below in this section is appropriated from
3 the state fund, general revenue, for fiscal year 1981-82,
4 subject to the terms and conditions set forth in this section.
5 By the Executive Budget, dated January thirteen, one thou-
6 sand nine hundred eighty-two, the Governor transmitted to
7 the Legislature a statement of the state fund, general revenue,
8 for fiscal year 1981-82, in which it is stated that the esti-
9 mated revenue in the state fund, general revenue, for fiscal
10 year 1981-82 will be \$1,278,450,000. Therefore, the Gov-
11 ernor shall continue to review the revenue in the state fund,
12 general revenue, from the first day of July, one thousand
13 nine hundred eighty-one to the date appropriation under this
14 section may be made available for expenditure and deter-
15 mine whether, in his opinion, the revenue in the state fund,
16 general revenue, then in prospect or on hand will be suf-
17 ficient to meet all appropriations from the state fund, gen-
18 eral revenue, under the budget bill for fiscal year 1981-82
19 and make a finding with respect thereto. In the event that
20 such finding shall show sufficient revenue in prospect or on
21 hand to meet all other appropriations made from the state
22 fund, general revenue, under the budget bill for fiscal year
23 1981-82, the Governor may, from any excess of more than
24 five million dollars above the amount required to meet all
25 such appropriations and not to exceed fifteen million dollars
26 above such amount, release the following item, if the deter-
27 mined available funds permit:

28 Item I. Department of Highways—Secondary Road
29 Maintenance,

30 surplus funds more than \$5,000,000 in excess of \$1,278,-
 31 450,000 and less than \$15,000,000 in excess of such
 32 \$1,278,450,000.

1 **Sec. 5. Reappropriations.**—Any unexpended balances of
 2 Items V, VI, and IX, in the appropriations made by and
 3 under the authority of Sec. 4, Title II of the 1972 Budget
 4 Act, and amended under Sec. 4, Title II of the 1977 Bud-
 5 get Act, are hereby reappropriated for expenditure during the
 6 fiscal year 1982-83 with the exception of the following
 7 accounts: Item IX, Account Nos. 5651-25, 5651—33
 8 and 5651-48.

9 Any unexpended balances of Items XIII and XV in the
 10 appropriations made by and under the authority of Sec.
 11 4, Title II of the 1973 Budget Act and amended under
 12 Sec. 4, Title II of the 1977 Budget Act, are hereby reap-
 13 propriated for expenditure during the fiscal year 1982-83
 14 with exception of the following accounts: Item XV,
 15 Account Nos. 5651-58, 5651-59, 5661-08, 5661-09, 5661-
 16 10, and 4301-20.

17 Any unexpended balances of Item I, in the appropria-
 18 tion made by and under Sec. 4, Title II of the 1976 Budget
 19 Act are hereby reappropriated for expenditure during the
 20 fiscal year 1982-83 with the exception of Account No. 5651-
 21 11.

1 **Sec. 6. Appropriations from revenue sharing trust fund.**—
 2 The following items are hereby appropriated from the Reve-
 3 nue Sharing Trust Fund to be available for expenditure during
 4 the fiscal year 1982-83.

131—*Revenue Sharing Trust Fund*
Department of Corrections

Acct. No. 9719

1 Capital Outlay (Renovation) \$ 1,400,000

132—*Revenue Sharing Trust Fund*
Office of Economic and Community Development

Acct. No. 9721

1 Emergency Water and Sewerage Assistance \$ 805,000

133—*Revenue Sharing Trust Fund*
Department of Natural Resources

Acct. No. 9725

1	Repairs to Structure and Equipment and		
2	replacement of Equipment	\$	1,000,000

134—*Revenue Sharing Trust Fund*
Water Development Authority

Acct. No. 9743

1	Capital Outlay—Grants for Water and		
2	Sewerage Systems	\$	1,750,000
3	Mt. Zion Public Service District—		
4	Arnoldsburg Water Project		179,500
5	Kessler-Cross Lanes Public		
6	Service District		50,000
7	Pax Public Service District		125,000
8	Wilderness Public Service District		50,000

135—*Revenue Sharing Trust Fund*
Department of Welfare

Acct. No. 9777

1	Juvenile Detention Center,		
2	Eastern Panhandle	\$	375,000

136—*Revenue Sharing Trust Fund*
State Board of Education—Vocational Division

Acct. No. 9780

1	Vocational Education Equipment	\$	1,000,000
2	Roof Repair—Tucker County		
3	Vocational School		215,000

137—*Revenue Sharing Trust Fund*
West Virginia State Aeronautics Commission

Acct. No. 9785

1	Airport Matching	\$	500,000
1	Sec. 7. Reappropriations—Revenue sharing trust fund.—		
2	Any unexpended balances to the appropriations made by and		

3 under Sec. 8, of the 1973 Budget Act and Supplementary
4 Acts to Chapter 10, acts of the Legislature, Regular Session
5 1973, under Sec. 5 of the 1974 Budget Act, and Supplementary
6 Acts to Chapter Two, acts of the Legislature, Regular Session
7 1975, under Sec. 7, acts of the Legislature, Regular Session
8 1976 and Supplementary acts of Chapter 7, acts of the Legis-
9 lature, Regular Session 1976, and as amended in Sec. 7 of
10 the 1977 Budget Act, 1978 Budget Act, 1979 Budget Act,
11 1980 Budget Act and the 1981 Budget Act, at the close of the
12 fiscal year 1981-82 are hereby reappropriated for expenditure
13 during the fiscal year 1982-83 with exception of the following
14 accounts: Acct. Nos. 9721-13, 9725-05, 9725-07, 9725-18,
15 9725-36, 9725-38, 9725-51, 9725-52, 9725-53, 9725-55,
16 9725-56, 9710-07 and 9710-08.

1 **Sec. 8. Appropriations from countercyclical fiscal assist-**
2 **ance trust fund.**—Moneys received by the State of West
3 Virginia pursuant to the provisions of the "Public Works Em-
4 ployment Act of 1976; Title II of Public Law 94-369," as
5 amended by the "Intergovernmental Antirecession Assistance
6 Act of 1977; Public Law 95-30," enacted by the Congress
7 of the United States, shall be deposited in the state treasury
8 and kept in a separate account entitled "Countercyclical Fiscal
9 Assistance Trust Fund."

10 Any part of or all such amounts as deposited, including
11 deposits through fiscal year one thousand nine hundred eighty-
12 three, are hereby appropriated and may be transferred to any
13 other accounts in the Governor's Office or to any other de-
14 partments of state government for disbursement or expendi-
15 ture.

1 **Sec. 9. Special revenue appropriations.**—There is hereby
2 appropriated for expenditure during the fiscal year one
3 thousand nine hundred eighty-three, appropriations made
4 by general law from special revenue which are not paid
5 into the state fund as general revenue under the provisions
6 of Chapter 12, Article 2, Section 2 of the Code of West
7 Virginia, one thousand nine hundred thirty-one: *Provided,*
8 *however,* That none of the moneys so appropriated by this
9 section shall be available for expenditure except in com-

10 pliance with and in conformity to the provisions of Chap-
11 ter 12, Articles 2 and 3, and Chapter 5A, Article 2 of the
12 Code of West Virginia, unless the spending unit has filed
13 with the state director of the budget, the state auditor and
14 the legislative auditor prior to the beginning of each fiscal
15 year:

16 (a) An estimate of the amount and sources of all revenues
17 accruing to such fund.

18 (b) A detailed expenditure schedule showing for what
19 purposes the fund is to be expended.

1 **Sec. 10. State improvement fund appropriations.**—Bequests
2 or donations of nonpublic funds, received by the Governor
3 on behalf of the State during the fiscal year one thousand
4 nine hundred eighty-three, for the purpose of making studies
5 and recommendations relative to improvements of the ad-
6 ministration and management of spending units in the execu-
7 tive branch of state government, shall be deposited in the
8 state treasury in a separate account therein designated "State
9 Improvement Fund."

10 There is hereby appropriated all moneys so deposited dur-
11 ing the fiscal year one thousand nine hundred eighty-three, to
12 be expended as authorized by the Governor, for such studies
13 and recommendations which may encompass any problems of
14 organization, procedures, systems, functions, powers or duties
15 of a state spending unit in the executive branch, or the
16 betterment of the economic, social, educational, health and
17 general welfare of the State or its citizens.

1 **Sec. 11. Specific funds and collection accounts.**—A fund
2 or collection account, which by law is dedicated to a
3 specific use, is hereby appropriated in sufficient amount to
4 meet all lawful demands upon the fund or collection ac-
5 count, and shall be expended according to the provisions
6 of Chapter 12, Article 3 of the Code of West Virginia.

1 **Sec. 12. Appropriations for refunding erroneous payment.**—
2 Money that has been erroneously paid into the state treasury is
3 hereby appropriated out of the fund into which it was paid,
4 for refund to the proper person.

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he
7 shall issue his requisition upon the Auditor for the refund-
8 ing of the proper amount. The Auditor shall issue his warrant
9 to the Treasurer and the Treasurer shall pay the warrant out
10 of the fund into which the amount was originally paid.

1 **Sec. 13. Sinking fund deficiencies.**—There is hereby ap-
2 propriated to the Governor a sufficient amount to meet any
3 deficiencies that may arise in the mortgage finance bond
4 insurance fund of the West Virginia Housing Development
5 Fund which is under the supervision and control of the state
6 sinking fund commission as provided by Chapter 31, Article
7 18, Section 20b of the Code of West Virginia, one thousand
8 nine hundred thirty-one, as amended, or in the funds of the
9 state sinking fund commission because of the failure of any
10 state agency for either general obligations or revenue bonds
11 or any local taxing district for general obligations bonds
12 to remit funds necessary for the payment of interest and
13 sinking fund requirements. The Governor is authorized to
14 transfer from time to time such amounts to the state sinking
15 fund commission as may be necessary for these purposes.

16 The state sinking fund commission shall reimburse the
17 State of West Virginia through the Governor from the first
18 remittance collected from the West Virginia Housing De-
19 velopment Fund or from any state agency or local taxing dis-
20 trict for which the Governor advanced funds, with interest at
21 the rate carried by the bonds for the security or payment
22 of which the advance was made.

1 **Sec. 14. Appropriations to pay costs of publication of**
2 **delinquent corporations.**—There is hereby appropriated out
3 of the state fund, General Revenue, out of funds not otherwise
4 appropriated, to be paid upon requisition of the Auditor
5 and/or the Governor, as the case may be, a sum sufficient to
6 pay the cost of publication of delinquent corporations as
7 provided by Chapter 11, Article 12, Sections 84 and 86 of the
8 Code of West Virginia.

1 **Sec. 15. Appropriations for local governments.**—There
2 is hereby appropriated for payment to counties, districts,

3 and municipal corporations such amounts as will be neces-
4 sary to pay taxes due counties, districts, and municipal corpor-
5 ations and which have been paid into the treasury:

- 6 (a) For redemption of lands;
- 7 (b) By public service corporations;
- 8 (c) For tax forfeitures.

1 **Sec. 16. Total appropriations.**—Where only a total sum
2 is appropriated to a spending unit, that total sum shall
3 include personal services, current expenses and capital out-
4 lay, except as otherwise provided in Title 1, Sec. 3.

1 **Sec. 17. General school fund.**—The balance of the pro-
2 ceeds of the general school fund remaining after the payment
3 of the appropriations made by this act is appropriated for
4 expenditure in accordance with Chapter 18, Article 9A,
5 Section 16 of the Code of West Virginia.

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations conditional.**—The expenditure
2 of the appropriations made by this act, except those appro-
3 priations made to the legislative and judicial branches of the
4 state government are conditioned upon the compliance by
5 the spending unit with the requirements of Chapter 5A, Article
6 2 of the Code of West Virginia.

7 Where former spending units have been absorbed by or
8 combined with other spending units by acts of this Legis-
9 lature, it is the intent of this act that reappropriation shall
10 be to the succeeding or later spending unit created unless
11 otherwise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is de-
2 clared unconstitutional by a court of competent jurisdiction,
3 its decision shall not affect any portion of this act which
4 remains, but the remaining portion shall be in full force
5 and effect as if the portion declared unconstitutional had
6 never been a part of the act.

CHAPTER 21

(H. B. 1522—By Mr. Polan)

[Passed February 17, 1982; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury for payment of claims against the state and the designated agencies thereof and from the balances of the state fund, general revenue, the state road fund and the special revenue funds of the Alcohol Beverage Control Commissioner and the Board of Regents remaining unappropriated for the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-two, and to remain in effect through the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-three, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature, at its regular session, one thousand nine hundred eighty-two, the Executive Budget Document wherein is set forth cash balances and estimated expirations of the state fund, general revenue, the state road fund and the special revenue fund of the Alcohol Beverage Control Commissioner and the Board of Regents, available for appropriation in the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-two; and

WHEREAS, It appears from such budget that there remains unappropriated sufficient balances in such respective funds available for further appropriation during the current fiscal year one thousand nine hundred eighty-two, a part of which balances are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill be supplemented by adding thereto the following section:

TITLE 2. APPROPRIATIONS.

1 **Section 3a. Awards of claims against the state.**—There are

2 hereby appropriated, for the remainder of fiscal year 1981-
3 82 and to remain in effect through June 30, 1983, from the
4 funds as designated, in the amounts as specified, and for the
5 claimants as named in Enrolled House Bill Nos. 1208 and
6 1209, acts of the Legislature, regular session, 1982, total
7 general revenue funds of \$605,124.01; state road funds of
8 \$240,569.58; and special revenue funds of \$5,298.29 for
9 payment of claims against the state.

10 The purpose of this supplementary appropriation bill is
11 to supplement the budget bill, enacted at the first extra-
12 ordinary session of the Legislature, 1981, by adding thereto
13 a new section funding payment of claims against the state
14 and its designated agencies, such appropriation being available
15 for expenditure upon the effective date of the bill and in the
16 current fiscal year of 1981-82, and to remain in effect through
17 fiscal year ending June 30, 1983.

CHAPTER 22

H. B. 2029—By Mr. Polan)

[Passed March 11, 1982; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury for payment of claims against the state and the designated agencies thereof and from the balances of the state fund, general revenue, the state road fund, and the workmen's compensation fund remaining unappropriated for the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-two, and to remain in effect through the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-three, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature, at its regular

session, one thousand nine hundred eighty-two, the Executive Budget Document wherein is set forth cash balances and estimated expirations of the state fund, general revenue, the state road fund and the workmen's compensation fund, available for appropriation in the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-two; and

WHEREAS, It appears from such budget that there remains unappropriated sufficient balances in such respective funds available for further appropriation during the current fiscal year one thousand nine hundred eighty-two, a part of which balances are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented by adding thereto the following section:

1 **TITLE 2. APPROPRIATIONS.**

2 **Section 3b. Awards of claims against the state.**—There are
3 hereby appropriated, for the remainder of fiscal year 1981-82
4 and to remain in effect through June 30, 1983, from the
5 funds as designated, in the amounts as specified, and for
6 the claimants as named in Enrolled House Bill Nos. 1905
7 and 1906, acts of the Legislature, regular session, 1982, total
8 general revenue funds of \$61,674.54; state road funds of
9 \$2,016.94; and workmen's compensation funds of \$9,264.00
10 for payment of claims against the state.

11 The purpose of this supplementary appropriation bill is to
12 supplement the budget bill, enacted at the first extraordinary
13 session of the Legislature, 1981, by adding thereto a new
14 section funding payment of claims against the state and
15 its designated agencies, such appropriation being available
16 for expenditure upon the effective date of the bill and in the
17 current fiscal year of 1981-82, and to remain in effect through
18 the fiscal year ending June 30, 1983.

CHAPTER 23

(Com. Sub. for S. B. 331—By Mr. McGraw, Mr. President)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article two of said chapter; to amend and reenact sections two and three, article three of said chapter; to amend and reenact section seven, article seven of said chapter; to amend and reenact sections twelve and twelve-a, article eight of said chapter; to further amend said article by adding thereto a new section, designated section twelve-b; and to amend said chapter by adding thereto two new articles, designated articles eight-a and eight-b, all relating to general definitions; defining "branch bank"; relating to general powers and duties of the commissioner of banking of West Virginia; authorizing said commissioner to adopt rules and regulations applicable to consumer loans and credit sales; authorizing said commissioner to approve or disapprove applications to change the location of the principal office of state banking institutions; general powers and duties of the West Virginia board of banking and financial institutions; authorizing said board to approve the reorganization, purchase, merger or consolidation of like financial institutions; authorizing said board to approve or disapprove applications for branch banks; providing that branch banks may be established by the purchase of assets of or merger or consolidation with another banking institution, or by the construction, lease or acquisition of branch bank facilities in an unbanked area; defining "unbanked area"; relating to hearings and orders; permitting banks to establish and maintain branch banks subject to certain limitations and restrictions; setting forth procedures for authorization of branch banks by said board; prescribing fees for examination and investigation of applications for branch banks; authorizing limited off-premises banking facilities; messenger services, armored car service or other courier or delivery service permitted with certain limitations; granting to banking institutions having their principal offices in the state, individually or jointly with one or more other banking institutions or federally insured financial institutions having

their principal offices in this state, or any combination thereof, the right to install, operate and engage in banking transactions by means of one or more customer bank communication terminals; providing that such terminals shall not be considered to be branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities; defining "customer bank communication terminal" and "point of sale terminal"; requiring that a bank which installs a customer bank communication terminal make the same available for use by customers of other banking institutions with certain exceptions; prohibiting installation and operation of a customer bank communication terminal by any financial institution which does not have its principal office in this state; exempting the operation of customer-bank communication terminals involved in a nonexclusive access interchange system from the definition of branching; allowing acquisition of the capital stock of one or more banks by a bank holding company if said board does not disapprove such acquisition within ninety days following submission of reports respecting such action with certain exceptions; prescribing fees for examination and investigation of such proposed action; defining "company", "subsidiary", "successor" and "bank holding company"; providing exceptions for the prior notification of said board; providing for the registration and reporting of bank holding companies; prescribing annual registration fees for bank holding companies; providing criminal penalties for violation of certain provisions; community reinvestment; requiring the commissioner and the board to encourage financial institutions to meet the credit needs of their local communities; defining "application for a deposit facility"; requiring the commissioner or board to assess reinvestment in the community in considering applications for a deposit facility; and commissioner to promulgate rules and regulations.

Be it enacted by the Legislature of West Virginia:

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

chapter be amended and reenacted; that said article eight be further amended by adding thereto a new section, designated section twelve-b; and that said chapter be amended by adding thereto two new articles, designated articles eight-a and eight-b, all to read as follows:

Article

1. **General Provisions and Definitions.**
2. **Department of Banking.**
3. **Board of Banking and Financial Institutions.**
7. **Regulation of Failing Financial Institutions.**
8. **Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.**
- 8A. **Acquisitions of Bank Shares.**
- 8B. **Community Reinvestment Act.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§31A-1-2. Definitions.

- 1 As used in this chapter, unless the context in which used
- 2 plainly requires a different meaning:
- 3 (a) The word "action," in the sense of a judicial
- 4 proceeding, means any proceeding in a court of competent
- 5 jurisdiction in which rights are adjudicated and determined
- 6 and shall embrace and include recoupment, counterclaim,
- 7 setoff and other related, similar and summary proceedings;
- 8 (b) The words "bank" and "banking institution" mean a
- 9 corporation heretofore or hereafter chartered to conduct a
- 10 banking business under the laws of West Virginia or an
- 11 association heretofore or hereafter authorized to conduct a
- 12 banking business in West Virginia under the laws of the
- 13 United States and having its principal office in this state and
- 14 shall embrace and include a trust company or an institution
- 15 combining banking and trust company facilities, functions
- 16 and services so chartered or authorized to conduct such
- 17 business in this state, and shall include industrial banks
- 18 authorized by article seven, chapter thirty-one of this code,
- 19 subject to the limitations therein imposed on such industrial
- 20 banks and further subject to the limitations imposed thereon
- 21 in this article;
- 22 (c) The term "banking business" means the functions,
- 23 services and activities contained, detailed and embraced in
- 24 sections thirteen and fourteen, article four of this chapter
- 25 and as elsewhere defined by law;
- 26 (d) The word "board" means the West Virginia board of

27 banking and financial institutions;

28 (e) The words "branch bank" mean an office or other place
29 at which a bank performs any or all banking business. For
30 purposes of this chapter, a branch bank does not include:

31 (1) A bank's principal place of business;

32 (2) Any limited off-premises walk-in or drive-in banking
33 facility authorized by subdivision (2), subsection (a), section
34 twelve, article eight of this chapter; and

35 (3) Any customer bank communication terminals
36 installed and operated pursuant to section twelve-b, article
37 eight of this chapter;

38 (f) The words "commissioner" or "commissioner of
39 banking" mean the commissioner of banking of West
40 Virginia;

41 (g) The word "community" means a city, town or other
42 incorporated area, or, where not so incorporated, a trading
43 area;

44 (h) The word "department" means the department of
45 banking of West Virginia;

46 (i) The words "deputy commissioner" or "deputy
47 commissioner of banking" mean the deputy commissioner of
48 banking of West Virginia;

49 (j) The word "fiduciary" means any trustee, agent,
50 executor, administrator, curator, committee, guardian or
51 conservator, special commissioner, receiver, trustee in
52 bankruptcy, assignee for creditors, or any holder of a similar
53 position of trust or responsibility;

54 (k) The words "financial institutions" mean banks,
55 building and loan associations, industrial banks, industrial
56 loan companies, supervised lenders, credit unions and all
57 other similar institutions, whether persons, firms or
58 corporations, which are by law under the jurisdiction and
59 supervision of the commissioner of banking;

60 (l) The word "officer" when referring to any financial
61 institution, means any person designated as such in the
62 bylaws and includes, whether or not so designated, any
63 executive officer, the chairman of the board of directors, the
64 chairman of the executive committee, and any trust officer,
65 assistant vice president, assistant treasurer, assistant
66 secretary, assistant trust officer, assistant cashier, assistant
67 comptroller, or any other person who performs the duties
68 appropriate to those offices, and the terms "executive officer"
69 as herein used, when referring to banking institutions, means

70 an officer of a bank whose duties involve regular, active and
71 substantial participation in the daily operations of such
72 institution and who, by virtue of his position, has both a voice
73 in the formulation of the policy of the bank and responsibility
74 for implementation of the policy, such responsibility of and
75 functions performed by the individual, and not his title or
76 office, being determinative of whether he is an "executive
77 officer";

78 (m) The words "person" or "persons" mean any
79 individual, partnership, society, association, firm, institution,
80 company, public or private corporation, state, governmental
81 agency, bureau, department, division or instrumentality,
82 political subdivision, county commission, municipality, trust,
83 syndicate, estate or any other legal entity whatsoever, formed,
84 created or existing under the laws of this state or any other
85 jurisdiction;

86 (n) The words "safe-deposit box" mean a safe-deposit box,
87 vault or other safe-deposit receptacle maintained by a lessor
88 bank, and the rules relating thereto apply to property or
89 documents kept therein in the bank's vault under the joint
90 control of lessor and lessee;

91 (o) The words "state bank" or "state banking institution"
92 mean a bank chartered under the laws of West Virginia, as
93 distinguished from a national banking association; and

94 (p) The words "trust business" mean the functions,
95 services and activities contained, detailed and embraced in
96 section fourteen, article four of this chapter and as
97 elsewhere defined by law and as may be included within the
98 meaning of the term "banking business."

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.

1 (a) Subject to the powers vested in the board by article
2 three of this chapter, the commissioner shall have
3 supervision and jurisdiction over state banks (other than
4 those banks excepted by the provisions of section eleven of
5 this article), industrial loan companies, building and loan
6 associations, supervised lenders, credit unions, and all other
7 persons now or hereafter made subject to his supervision or
8 jurisdiction. All powers, duties, rights and privileges vested
9 in the department are hereby vested in the commissioner. He

10 shall be the chief executive officer of the department of
11 banking and shall be responsible for the department's
12 organization, services and personnel, and for the orderly and
13 efficient administration, enforcement and execution of the
14 provisions of this chapter and all laws vesting authority or
15 powers in or prescribing duties or functions for the
16 department or the commissioner.

17 (b) The commissioner shall:

18 (1) Maintain the office for the department at the state
19 capitol, and there keep a complete record of all the
20 department's transactions, of the financial conditions of all
21 financial institutions and such records of the activities of
22 other persons as the commissioner may deem important.
23 Notwithstanding any other provision of the code of West
24 Virginia, heretofore or hereafter enacted, the records relating
25 to the financial condition of any financial institution and any
26 information contained therein shall be confidential for the
27 use of the commissioner and authorized personnel of the
28 department of banking. No person shall divulge any
29 information contained in any such records except in response
30 to a valid subpoena or subpoena duces tecum issued
31 pursuant to law. The commissioner shall have and may
32 exercise reasonable discretion as to the time, manner and
33 extent the other records in his office and the information
34 contained therein shall be available for public examination.

35 (2) Require all financial institutions to comply with all the
36 provisions of this chapter and other applicable laws, or any
37 rule and regulation promulgated or order issued thereunder.

38 (3) Investigate all alleged violations of this chapter and all
39 other laws which he is required to enforce and of any rule and
40 regulation promulgated or order issued thereunder.

41 (c) In addition to all other authority and powers vested in
42 the commissioner by provisions of this chapter and other
43 applicable laws, the commissioner is authorized and
44 empowered:

45 (1) To provide for the organization of the department and
46 the procedures and practices thereof and implement the same
47 by the promulgation of rules and regulations and forms as
48 appropriate, which rules and regulations shall be
49 promulgated in accordance with article three, chapter
50 twenty-nine-a of this code;

51 (2) Employ, direct, discipline, discharge and establish
52 qualifications and duties for all personnel for the department,

53 including, but not limited to, examiners, assistant examiners,
54 conservators and receivers, to establish the amount and
55 condition of bonds for such thereof as he deems appropriate
56 and to pay the premiums thereon, and if he so elects, to have
57 all such personnel subject to and under the classified service
58 of the state personnel department;

59 (3) To cooperate with organizations, agencies, committees
60 and other representatives of financial institutions of the state
61 in connection with schools, seminars, conferences and other
62 meetings to improve the responsibilities, services and
63 stability of the financial institutions;

64 (4) In addition to the examinations required by section six
65 of this article, to inspect, examine and audit the books,
66 records, accounts and papers of all financial institutions at
67 such times as circumstances in his opinion may warrant;

68 (5) To call for and require all such data, reports and
69 information from financial institutions under his jurisdiction,
70 at such times and in such form, content and detail, deemed
71 necessary by him in the faithful discharge of his duties and
72 responsibilities in the supervision of the financial
73 institutions;

74 (6) Subject to the powers vested in the board by article
75 three of this chapter, to supervise the location, organization,
76 practices and procedures of financial institutions and,
77 without limitation on the general powers of supervision
78 thereof, to require financial institutions to:

79 (A) Maintain their accounts consistent with such
80 regulations as he may prescribe and in accordance with
81 generally accepted accounting practices;

82 (B) Observe methods and standards which he may
83 prescribe for determining the value of various types of assets;

84 (C) Charge off the whole or any part of an asset which at
85 the time of his action could not lawfully be acquired;

86 (D) Write down an asset to its market value;

87 (E) Record or file writings creating or evidencing liens or
88 other interests in property;

89 (F) Obtain financial statements from prospective and
90 existing borrowers;

91 (G) Obtain insurance against damage and loss to real
92 estate and personal property taken as security;

93 (H) Maintain adequate insurance against such other risks
94 as he may deem and determine to be necessary and
95 appropriate for the protection of depositors and the public;

96 (I) Maintain an adequate fidelity bond or bonds on its
97 officers and employees;

98 (J) Take such other action as may in his judgment be
99 required of the institution in order to maintain its stability,
100 integrity and security as required by law and all rules and
101 regulations promulgated by him; and

102 (K) Verify any or all asset or liability accounts.

103 (7) Subject to the powers vested in the board by article
104 three of this chapter, to receive from any person or persons
105 and to consider any request, petition or application relating to
106 the organization, location, conduct, services, policies and
107 procedures of any financial institution and to act thereupon
108 in accordance with any provisions of law applicable thereto;

109 (8) In connection with the investigations required by
110 subdivision (3), subsection (b) of this section, to issue
111 subpoenas and subpoenas duces tecum, administer oaths,
112 examine persons under oath, and hold and conduct hearings,
113 any such subpoenas or subpoenas duces tecum to be issued,
114 served and enforced in the manner provided in section one,
115 article five, chapter twenty-nine-a of this code. Any person
116 appearing and testifying at such a hearing may be
117 accompanied by an attorney employed by him;

118 (9) To issue declaratory rulings in accordance with the
119 provisions of section one, article four, chapter twenty-nine-a
120 of this code;

121 (10) To study and survey the location, size and services of
122 financial institutions, the geographic, industrial, economic
123 and population factors affecting the agricultural, commercial
124 and social life of the state, and the needs for reducing,
125 expanding or otherwise modifying the services and facilities
126 of financial institutions in the various parts of the state, and to
127 compile and keep current data thereon to aid and guide him
128 in the administration of the duties of his office;

129 (11) To implement all of the provisions of this chapter
130 (except the provisions of article three) and all other laws
131 which he is empowered to administer and enforce by the
132 promulgation of rules and regulations in accordance with the
133 provisions of article three, chapter twenty-nine-a of this code;

134 (12) To implement the provisions of chapter forty-six-a of
135 this code applicable to consumer loans and consumer credit
136 sales by the promulgation of rules and regulations in
137 accordance with the provisions of article three, chapter
138 twenty-nine-a of this code so long as said rules and

139 regulations do not conflict with any rules and regulations
140 promulgated by the state's attorney general;

141 (13) To foster and encourage a working relationship
142 between the department of banking and financial
143 institutions, credit, consumer, mercantile and other
144 commercial and finance groups and interests in the state in
145 order to make current appraisals of the quality, stability and
146 availability of the services and facilities of financial
147 institutions;

148 (14) To provide to financial institutions and the public
149 copies of the West Virginia statutes relating to financial
150 institutions, suggested drafts of bylaws commonly used by
151 financial institutions, and such other forms and printed
152 materials as may be found by him to be helpful to financial
153 institutions, their shareholders, depositors and patrons, and
154 to make reasonable charges therefor;

155 (15) To delegate the powers and duties of his office, other
156 than the powers and duties in this subsection hereinafter
157 excepted, to qualified department personnel, who shall act
158 under the direction and supervision of the commissioner and
159 for whose acts he shall be responsible, but the commissioner
160 may delegate to the deputy commissioner of banking and to
161 no other department personnel the following powers, duties
162 and responsibilities, all of which are hereby granted to and
163 vested in the commissioner and for all of which the
164 commissioner shall likewise be responsible:

165 (A) To order any person to cease violating any provision or
166 provisions of this chapter or other applicable law or any rule
167 and regulation promulgated or order issued thereunder;

168 (B) To order any person to cease engaging in any unsound
169 practice or procedure which may detrimentally affect any
170 financial institution or depositor thereof; and

171 (C) To revoke the certificate of authority, permit or license
172 of any financial institution except a banking institution in
173 accordance with the provisions of section thirteen of this
174 article;

175 (16) To receive from state banking institutions
176 applications to change the locations of their principal offices
177 and to approve or disapprove such applications; and

178 (17) To take such other action as he may deem necessary
179 to enforce and administer the provisions of this chapter
180 (except the provisions of article three) and all other laws
181 which he is empowered to administer and enforce, and to

182 apply to any court of competent jurisdiction for appropriate
183 orders, writs, processes and remedies.

**ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTI-
TUTIONS.**

§31A-3-2. General powers and duties.

§31A-3-3. Hearings and orders; entry of order without notice and hearing.

§31A-3-2. General powers and duties.

- 1 (a) In addition to other powers conferred by this chapter,
2 the board shall have the power to:
 - 3 (1) Regulate its own procedure and practice;
 - 4 (2) Promulgate reasonable rules and regulations to
5 implement any provision of this article, such rules and
6 regulations to be promulgated in accordance with the
7 provisions of article three, chapter twenty-nine-a of this code;
 - 8 (3) Advise the commissioner in all matters within his
9 jurisdiction;
 - 10 (4) Study the organization, programs and services of
11 financial institutions and the laws relating thereto in this state
12 and in other jurisdictions, and to report and recommend to
13 the governor and the Legislature all such changes and
14 amendments in laws, policies and procedures relating thereto
15 as may be by it deemed proper; and
 - 16 (5) Grant permission and authority to a financial
17 institution:
 - 18 (A) To participate in a public agency hereafter created
19 under the laws of this state or of the United States, the
20 purpose of which is to afford advantages or safeguards to
21 financial institutions or to depositors therein, and to comply
22 with all lawful requirements and conditions imposed upon
23 such participants;
 - 24 (B) To engage in any financial institution activity,
25 services, procedures and practices in which financial
26 institutions of the same type subject to the jurisdiction of the
27 federal government may hereafter be authorized by federal
28 laws, rules or regulations to engage, notwithstanding any
29 contrary provision of this code;
 - 30 (C) To pay interest on demand deposits of the United
31 States or any agency thereof, if the payment of such interest

32 shall be permitted under any applicable federal law, rule or
33 regulation.

34 Any permission and authority granted by the board
35 pursuant to this subdivision (5) shall cease and terminate
36 upon the adjournment of the next regular session of the
37 Legislature, unless the Legislature shall at such session enact
38 legislation authorizing the financial institution participation,
39 activity, services and procedures or payment of interest with
40 respect to which such permission and authority were granted,
41 in which event such permission and authority shall continue
42 in effect until the effective date of such legislation.

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

45 (1) Restrict the withdrawal of deposits from any financial
46 institution when in the judgment of the board extraordinary
47 circumstances make such restrictions necessary for the
48 protection of creditors of and depositors in the affected
49 institution;

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

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

65 (4) Revoke the certificate of authority, permit, certificate
66 or license of any state banking institution to engage in
67 business in this state if such institution shall fail or refuse to
68 comply with any order of the commissioner entered pursuant
69 to the provisions of paragraph (A) or (B), subdivision (14),
70 subsection (c), section four, article two of this chapter, or at
71 the board's election to direct the commissioner to apply to
72 any court having jurisdiction for a prohibitory or mandatory
73 injunction or other appropriate remedy to compel obedience
74 to such order;

75 (5) Suspend or remove a director, officer or employee of
76 any financial institution who is or becomes ineligible to hold
77 such position under any provision of law or rule and
78 regulation or order, or who willfully disregards or fails to
79 comply with any order of the board or commissioner made
80 and entered in accordance with the provisions of this chapter
81 or who is dishonest or grossly incompetent in the conduct of
82 financial institution business;

83 (6) To receive from state banking institutions applications
84 to establish branch banks by the purchase of the business and
85 assets and assumption of the liabilities of, or merger or
86 consolidation with, another banking institution, or by the
87 construction, lease or acquisition of branch bank facilities in
88 an unbanked area; examine and investigate such
89 applications, to hold hearings thereon, and to approve or
90 disapprove such applications, all in accordance with section
91 twelve, article eight of this chapter;

92 (7) Approve or disapprove the application of any state
93 bank to purchase the business and assets and assume the
94 liabilities of, or merge or consolidate with, another state
95 banking institution in accordance with the provisions of
96 section seven, article seven of this chapter: *Provided*, That
97 nothing contained in this subdivision shall be construed as
98 permitting any banking institution to engage in any other
99 practice prohibited by section twelve, article eight of this
100 chapter, except as permitted by subdivision (9) of this
101 subsection (b);

102 (8) Approve or disapprove the application of any state
103 bank to purchase the business and assets and assume the
104 liabilities of a national banking association, or merge or
105 consolidate with a national banking association to form a
106 resulting state bank in accordance with the provisions of
107 section seven, article seven of this chapter: *Provided*, That
108 nothing contained in this subdivision shall be construed as
109 permitting any banking institution to engage in any other
110 practice prohibited by section twelve, article eight of this
111 chapter, except as permitted by subdivision (9) of this
112 subsection (b); and

113 (9) In addition to any authority granted pursuant to
114 section twelve, article eight of this chapter, incident to the
115 approval of an application pursuant to subdivision (7) or
116 subdivision (8) of this subsection (b), permit the bank the
117 application of which is so approved to operate its banking

118 business under its name from the premises of the bank the
119 business and assets of which have been purchased and the
120 liabilities of which have been assumed by such applicant
121 bank or with which such applicant bank has merged or
122 consolidated: *Provided*, That such permission may be
123 granted only if the board has made the findings required by
124 subsection (f), section three of this article and such applicant
125 bank has no common directors or officers nor common
126 ownership of stock exceeding ten percent of total
127 outstanding voting stock with the bank whose business and
128 assets are being purchased and liabilities assumed or with
129 whom such applicant bank is being merged.

130 (10) No provision of this section shall be construed to
131 alter, reduce or modify the rights of shareholders, or
132 obligations of a banking institution in regard to its
133 shareholders, as set forth in section one hundred seventeen,
134 article one, chapter thirty-one of this code and section seven,
135 article seven of this chapter and other applicable provisions
136 of this code.

**§31A-3-3. Hearings and orders; entry of order without notice
and hearing.**

1 (a) Subject to the provisions of subsections (e), (f) and (g)
2 of this section, notice and hearing shall be provided in
3 advance of the entry of any order by the board.

4 (1) Such notice shall be given to the financial institution or
5 person with respect to whom the hearing is to be conducted
6 in accordance with the provisions of section two, article
7 seven, chapter twenty-nine-a of this code, and such hearing
8 and the administrative procedures in connection therewith
9 shall be governed by all of the provisions of article five,
10 chapter twenty-nine-a of this code, and shall be held at a time
11 and place set by the board, but shall not be held less than ten
12 nor more than thirty days after such notice is given. A hearing
13 may be continued by the board on its own motion or for good
14 cause shown.

15 (2) At any such hearing a party may represent himself or
16 be represented by an attorney-at-law admitted to practice
17 before any circuit court of this state.

18 (b) After any such hearing and consideration of all of the
19 testimony and evidence, the board shall make and enter an
20 order deciding the matters with respect to which such
21 hearing was conducted, which order shall be accompanied by

22 findings of fact and conclusions of law as specified in section
23 three, article five, chapter twenty-nine-a of this code, and a
24 copy of such order and accompanying findings and
25 conclusions shall be served upon all parties to such hearing,
26 and their attorneys of record, if any.

27 (c) In the case of an application for the board's approval to
28 incorporate and organize a banking institution in this state, as
29 provided in subdivision (3), subsection (b), section two of this
30 article, the board shall, upon receipt of any such application,
31 provide notice to all banking institutions, which in the
32 manner hereinafter provided, have requested notice of any
33 such action. The request by any such banking institution to
34 receive such notice shall be in writing and shall request the
35 board to notify it of the receipt by the board of any
36 application to incorporate and organize a banking institution
37 in this state. A banking institution may, within ten days after
38 receipt of such notice, file a petition to intervene and shall, if
39 it so files such petition, thereupon become a party to any
40 hearing relating thereto before the board.

41 (d) The board shall have the power and authority to issue
42 subpoenas and subpoenas duces tecum, administer oaths and
43 examine any person under oath in connection with any
44 subject relating to duties imposed upon or powers vested in
45 the board.

46 (e) Whenever the board shall find that extraordinary
47 circumstances exist which require immediate action, it may
48 forthwith without notice or hearing enter an order taking any
49 action permitted by subdivisions (1), (2), (4) and (5),
50 subsection (b), section two of this article. Immediately upon
51 the entry of such order, certified copies thereof shall be
52 served upon all persons affected thereby and upon demand
53 such persons shall be entitled to a hearing thereon at the
54 earliest practicable time.

55 (f) Whenever the board shall find that the financial
56 condition of a state banking institution or a national banking
57 association constitutes an imminent peril to its depositors,
58 savings account holders, other customers or creditors, it may
59 forthwith without notice or hearing enter an order taking any
60 action permitted by subdivisions (7) and (8), subsection (b),
61 section two of this article. Immediately upon entry of such
62 order, certified copies thereof shall be served upon all
63 persons affected thereby and upon demand such persons

64 shall be entitled to a hearing thereon at the earliest
65 practicable time.

66 (g) Whenever the board shall find that the financial
67 condition of a state banking institution or national banking
68 association constitutes an imminent peril to its depositors,
69 savings account holders, other customers or creditors, it may
70 forthwith without compliance with the provisions of section
71 six or seven, article four of this chapter and without notice or
72 hearing enter an order approving or disapproving an
73 application to incorporate a state banking institution which is
74 being formed to purchase the business and assets or assume
75 the liabilities of, or both, or merge or consolidate with, such
76 state banking institution or national banking institution the
77 financial condition of which constitutes an imminent peril to
78 its depositors, savings account holders, other customers or
79 creditors. Immediately upon the entry of such order, certified
80 copies thereof shall be served upon all persons affected
81 thereby and upon demand such persons shall be entitled to a
82 hearing thereon at the earliest practicable time.

83 (h) Definitions:

84 (1) The term "imminent peril" means that, because the
85 banking institution is insolvent or about to be insolvent, or
86 there is a probability that the banking institution will not be
87 able to pay its debts when they become due.

88 (2) A banking institution is "about to be insolvent" when it
89 would be unable to meet the demands of its depositors or is
90 clearly unable, without impairment of capital, by sale of
91 assets or lawful borrowings or otherwise, to realize sufficient
92 liquid assets to pay such debts for which payment is likely, in
93 the immediate future, to be due and demanded in the
94 ordinary course of business.

95 (3) A banking institution is "insolvent" when it is unable
96 to pay its debts to its depositors and other creditors in the
97 ordinary and usual course of business.

ARTICLE 7. REGULATION OF FAILING FINANCIAL INSTI- TUTIONS.

§31A-7-7. Reorganization, purchase, merger or consolidation of and by financial institutions; conversion of national bank to state bank; obligations remain effective.

1 Subject to the other provisions of this section, in any
2 voluntary or involuntary proceeding to liquidate a financial

3 institution for which a receiver has been appointed under this
4 article, such institution, with the written consent of the
5 commissioner, may reorganize, reclaim possession of its
6 assets and continue in business.

7 Any financial institution may at any time, but only with the
8 approval of the West Virginia board of banking and financial
9 institutions in the case of a state banking institution and with
10 the approval of the commissioner in the case of all other
11 financial institutions, purchase the business and assets and
12 assume the liabilities of or merge or consolidate with another
13 like financial institution. With the approval of the West
14 Virginia board of banking and financial institutions and in
15 compliance with all applicable laws of this state and the
16 United States, any state banking institution may purchase the
17 business and assets and assume the liabilities of a national
18 banking association or merge or consolidate with a national
19 banking association to form a resulting state bank, the terms
20 and conditions of any such assumption, purchase, merger or
21 consolidation to be first approved by the board. With the
22 approval of the West Virginia board of banking and financial
23 institutions and in compliance with all applicable laws of this
24 state and the United States, a national banking association
25 may convert into a state bank. After any such purchase,
26 merger or consolidation, no other association or corporation
27 may take or use the name of any financial institution
28 participating in such purchase, merger or consolidation.

29 Unless in conflict with a law of the United States of
30 America, at the completion of any purchase, merger or
31 consolidation permitted by this section and whether such
32 financial institution is organized under the laws of this state
33 or of the United States, the purchasing, merged or
34 consolidated institution is substituted by operation of law in
35 the place and stead of each of the participating financial
36 institutions in all fiduciary relationships, titles, properties,
37 offices, appointments, rights, powers, duties, obligations and
38 liabilities of each participating financial institution as trustee,
39 agent, executor, administrator, guardian, depository,
40 registrar, transfer agent or other fiduciary and every other
41 capacity, office or position of each of the participating
42 financial institutions is by operation of law vested in and
43 devolved upon the purchasing, merged or consolidated
44 institution. Such purchasing, merged or consolidated
45 institution shall take, receive, accept, hold, administer and
46 discharge all grants, gifts, bequests, devises, conveyances,

47 trusts, powers and appointments made by deed, deed of trust,
 48 will, agreement, order of court or otherwise to, in favor of or
 49 in the name of any such participating institution, whether
 50 made, executed or entered before or after such purchase,
 51 merger or consolidation and whether to vest or become
 52 effective before or after such purchase, merger or
 53 consolidation, as fully and to the same effect as if the
 54 purchasing, merged or consolidated institution had been
 55 named in such deed, deed of trust, will, agreement, order or
 56 other instrument instead of such participating institution. All
 57 acts taken or performed in its own name or in the name of or
 58 in behalf of any financial institution participating in any such
 59 purchase, merger or consolidation by any purchasing,
 60 merged or consolidated institution as trustee, agent,
 61 executor, administrator, guardian, depository, registrar,
 62 transfer agent or other fiduciary are as good, valid and
 63 effective as if this section had been applicable thereto at the
 64 time of such taking or performance.

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12. Certain limitations and restrictions imposed on branch banks; procedure for authorization of branch banks; authorization of limited off-premises banking facilities; penalties for violation of section.

§31A-8-12a. Banking from mobile units prohibited; prohibition not to include messenger services; limitation of messenger services.

§31A-8-12b. Installation and operations of customer bank communication terminals permitted.

§31A-8-12. Certain limitations and restrictions imposed on branch banks; procedure for authorization of branch banks; authorization of limited off-premises banking facilities; penalties for violation of section.

1 (a) No banking institution shall:

2 (1) Establish or maintain any branch bank, except as
 3 otherwise permitted by this section; or

4 (2) Engage in business at any place other than at its
 5 principal office in this state, at a branch bank in this state
 6 permitted by this section or at a customer bank
 7 communication terminal permitted by section twelve-b of
 8 this article: *Provided*, That at any time any such banking
 9 institution and any branch bank established by the purchase
 10 of the business and assets and assumption of the liabilities of,

11 or merger or consolidation with, another banking institution,
12 may operate one and only one off-premises walk-in or
13 drive-in banking facility, on or in conjunction with or entirely
14 separate from a parking lot for the customers of such banking
15 institution, for the purpose of receiving bank deposits of all
16 kinds, cashing checks, making change, selling and issuing
17 money orders and travelers checks and receiving payments
18 on loans, savings and rental accounts, and for no other
19 purposes, provided such off-premises banking facility is
20 located within two thousand feet of the banking house
21 premises or branch bank premises of the banking institution
22 operating such off-premises facility measured between the
23 nearest points of the banking house premises and the
24 premises on which such off-premises banking facility is
25 located. Such off-premises banking facility shall be in
26 addition to any branch bank permitted by this section.

27 (b) Except for a bank holding company, it shall be
28 unlawful for any individual, partnership, society, association,
29 firm, institution, trust, syndicate, public or private
30 corporation, or any other legal entity, or combination of
31 entities acting in concert, to directly or indirectly own,
32 control or hold with power to vote, twenty-five percent or
33 more of the voting shares of each of two or more banks, or to
34 control in any manner the election of a majority of the
35 directors of two or more banks.

36 (c) A branch bank may be established in accordance with
37 subsection (d) of this section either by:

38 (1) The construction, lease or acquisition of branch bank
39 facilities in an unbanked area; or

40 (2) The purchase of the business and assets and
41 assumption of the liabilities of, or merger or consolidation
42 with, another banking institution.

43 Notwithstanding any other provision of this chapter to the
44 contrary, subject to and in furtherance of the board's
45 authority under the provisions of subdivision (6), subsection
46 (b), section two, article three of this chapter, and subsection
47 (k) of this section, the board may approve or disapprove the
48 application of any state banking institution to establish a
49 branch bank.

50 (d) During the five-year period beginning ninety days
51 from the effective date of this act, a banking institution may
52 establish:

53 (1) Not more than three branch banks by the purchase of

54 the business and assets and assumption of the liabilities of, or
55 merger or consolidation with, another banking institution;
56 and

57 (2) In addition to the forgoing, a banking institution may
58 establish one branch by the construction, lease or acquisition
59 of a facility in an unbanked area within the county in which is
60 situate its principal office. Not more than two branches may
61 be established in this manner in each unbanked area. For
62 purposes of this section an area is an "unbanked area" if no
63 banking institution or branch bank created by merger and
64 consolidation exists within the limits of an incorporated
65 municipality.

66 (e) The principal office of a banking institution on the
67 effective date of this act shall continue to be the principal
68 office of such banking institution for purposes of establishing
69 branch banks under this section, notwithstanding any
70 subsequent change in the location of such banking
71 institution's principal office.

72 (f) It shall be unlawful for any banking institution to
73 establish any branch bank by the purchase of the business
74 and assets and assumption of the liabilities of, or merger or
75 consolidation with, another banking institution if such
76 establishment would cause the combined deposits of the
77 resulting banking institution to exceed ten percent of the
78 total deposits of all banking institutions in this state as
79 determined by the latest available reports of condition as
80 compiled by the Federal Deposit Insurance Corporation.

81 (g) Any banking institution which is authorized to
82 establish branch banks pursuant to this section may provide
83 the same banking services and exercise the same powers at
84 each such branch bank as may be provided and exercised at
85 its principal banking house.

86 (h) The board shall, upon receipt of any application to
87 establish a branch bank, provide notice of such application to
88 all banking institutions. A banking institution may, within
89 ten days after receipt of such notice, file a petition to
90 intervene and shall, if it so files such petition, thereupon
91 become a party to any hearing relating thereto before the
92 board.

93 (i) The commissioner shall prescribe the form of the
94 application for a branch bank and shall collect an
95 examination and investigation fee of one thousand dollars for
96 each filed application for a branch bank that is to be

97 established by the construction, lease or acquisition of a
98 branch bank facility in an unbanked area and two thousand
99 five hundred dollars for a branch bank that is to be
100 established by the purchase of the business and assets and
101 assumption of the liabilities of, or merger or consolidation
102 with another banking institution. The board shall complete
103 the examination and investigation within ninety days from
104 the date on which such application and fee are received,
105 unless the board requests in writing additional information
106 and disclosures concerning the proposed branch bank from
107 the applicant banking institution, in which event such
108 ninety-day period shall be extended for an additional period
109 of thirty days plus the number of days between the date of
110 such request and the date such additional information and
111 disclosures are received.

112 (j) Upon completion of the examination and investigation
113 with respect to such application, the board shall, if a hearing
114 be required pursuant to subsection (k) of this section,
115 forthwith give notice and hold a hearing pursuant to the
116 following provisions:

117 (1) Notice of such hearing shall be given to the banking
118 institution with respect to which the hearing is to be
119 conducted in accordance with the provisions of section two,
120 article seven, chapter twenty-nine-a of this code, and such
121 hearing and the administrative procedures in connection
122 therewith shall be governed by all of the provisions of article
123 five, chapter twenty-nine-a of this code, and shall be held at a
124 time and place set by the board but shall not be less than ten
125 nor more than thirty days after such notice is given.

126 (2) At any such hearing a party may represent himself or
127 be represented by an attorney-at-law admitted to practice
128 before any circuit court of this state.

129 (3) After such hearing and consideration of all the
130 testimony and evidence, the board shall make and enter an
131 order approving or disapproving the application, which order
132 shall be accompanied by findings of fact and conclusions of
133 law as specified in section three, article five, chapter
134 twenty-nine-a of this code, and a copy of such order and
135 accompanying findings and conclusions shall be served upon
136 all parties to such hearing, and their attorneys of record, if
137 any.

138 (k) No state banking institution may establish a branch
139 bank until the board, following an examination,

140 investigation, notice and hearing, enters an order approving
141 an application for that branch bank: *Provided*, That no such
142 hearing shall be required with respect to any application to
143 establish a branch bank which is approved by the board
144 unless a banking institution has timely filed a petition to
145 intervene pursuant to subsection (h) of this section. The order
146 shall be accompanied by findings of fact that:

147 (1) Public convenience and advantage will be promoted
148 by the establishment of the proposed branch bank;

149 (2) Local conditions assure reasonable promise of
150 successful operation of the proposed branch bank and of
151 those banks and branches thereof already established in the
152 community;

153 (3) Suitable physical facilities will be provided for the
154 branch bank; and

155 (4) The applicant state banking institution satisfies such
156 reasonable and appropriate requirements as to sound
157 financial condition as the commissioner or board may from
158 time to time establish by regulation.

159 (l) Any party who is adversely affected by the order of the
160 board shall be entitled to judicial review thereof in the
161 manner provided in section four, article five, chapter
162 twenty-nine-a of this code. Any such party adversely affected
163 by a final judgment of a circuit court following judicial review
164 as provided in the foregoing sentence may seek review
165 thereof by appeal to the supreme court of appeals in the
166 manner provided in article six, chapter twenty-nine-a of this
167 code.

168 (m) Pursuant to the resolution of its board of directors and
169 with the prior approval of the commissioner, a state banking
170 institution may discontinue the operation of a branch bank
171 upon at least thirty days' prior public notice given in such
172 form and manner as the commissioner prescribes.

173 (n) Any violation of any provision of this section shall
174 constitute a misdemeanor offense punishable by applicable
175 penalties as provided in section fifteen, article eight of this
176 chapter.

**§31A-8-12a. Banking from mobile units prohibited; prohibition
not to include messenger services; limitation of
messenger services.**

1 It is illegal for any banking institution, building and loan
2 association, industrial loan company or supervised lender to

3 conduct its business in a facility that is a mobile unit not
4 permanently attached to the real estate upon which it is
5 located, except that such mobile units may be used as
6 temporary banking quarters pending construction of a
7 permanent bank building on the same or adjacent property
8 thereto if a charter for said bank has previously been
9 approved. This section shall not be construed or interpreted
10 to prohibit a financial institution from providing messenger
11 services to its customers by which items are received by mail,
12 armored car service or other courier or delivery service for
13 subsequent deposit: *Provided*, That all such messenger
14 services are confined to the territorial boundaries of the
15 county in which the principal office of such financial
16 institution is located or within twenty-five miles of the
17 principal office of such financial institution.

**§31A-8-12b. Installation and operation of customer bank
communication terminals permitted.**

1 (a) Any banking institution as defined in section two,
2 article one of this chapter, individually or jointly with one or
3 more other banking institutions or other federally insured
4 financial institutions having their principal offices in this
5 state, or any combination thereof, may upon thirty days prior
6 written notice filed with the commissioner, install, operate
7 and engage in banking business by means of one or more
8 customer bank communication terminals. Any banking
9 institution which installs and operates a customer bank
10 communication terminal:

11 (1) Shall make such customer bank communication
12 terminal available for use by other banking institutions; and

13 (2) May make such customer bank communication
14 terminal available for use by other federally insured financial
15 institutions, all in accordance with regulations promulgated
16 by the commissioner. Such customer bank communication
17 terminals shall not be considered to be branch banks or
18 branch offices, agencies or places of business or off-premises
19 walk-in or drive-in banking facilities; nor shall the operation
20 of such customer bank communication terminals to
21 communicate with and permit financial transactions to be
22 carried out through a nonexclusive access interchange
23 system be considered to make any banking institution which
24 is part of such a nonexclusive access interchange system to
25 have illegal branch banks or branch offices, agencies or
26 places of business or off-premises walk-in or drive-in banking

27 facilities.

28 (b) Notwithstanding the provisions of subdivision (1),
29 subsection (a) of this section, a customer bank
30 communication terminal located on the premises of the
31 principal office or branch bank of a banking institution or on
32 the premises of an authorized off-premises facility need not
33 be made available for use by any other banking institution or
34 its customers.

35 (c) For the purposes of this section "customer bank
36 communication terminal" means any electronic device or
37 machine, together with all associated equipment, structures
38 and systems, including, without limitation, point of sale
39 terminals, through or by means of which a customer and a
40 banking institution may engage in any banking transactions,
41 whether transmitted to the banking institution
42 instantaneously or otherwise, including, without limitation,
43 the receipt of deposits of every kind, the receipt and
44 dispensing of cash, requests to withdraw money from an
45 account or pursuant to a previously authorized line of credit,
46 receiving payments payable at the bank or otherwise
47 transmitting instructions to receive, transfer or pay funds for
48 a customer's benefit. All transactions initiated through a
49 customer bank communication terminal shall be subject to
50 verification by the banking institution.

51 (d) For the purposes of this section "point of sale
52 terminal" means a customer bank communication terminal
53 used for the primary purpose of either transferring funds to or
54 from one or more deposit accounts in a banking institution or
55 segregating funds in one or more deposit accounts in a
56 banking institution for future transfer, or both, in order to
57 execute transactions between a person and his customers
58 incident to sales, including, without limitation, devices and
59 machines which may be used to implement and facilitate
60 check guaranty and check authorization programs.

61 (e) Except for customer bank communication terminals
62 located on the premises of the principal office or a branch
63 bank of the banking institution or on the premises of an
64 authorized off-premises walk-in or drive-in banking facility, a
65 customer bank communication terminal shall be unattended
66 or attended by persons not employed by any banking
67 institution utilizing the terminal: *Provided*, That

68 (1) Employees of the banking institution may be present

69 at such terminal not located on the premises of an authorized
70 off-premises facility solely for the purposes of installing,
71 maintaining, repairing and servicing same; and

72 (2) For a period of time not to exceed two months after the
73 opening of any such terminal, a banking institution may
74 provide an employee to instruct and assist customers in the
75 operation thereof.

76 (f) The commissioner shall prescribe by regulation the
77 procedures and standards regarding the installation and
78 operation of customer bank communication terminals,
79 including, without limitation, the procedure for the sharing
80 thereof.

ARTICLE 8A. ACQUISITIONS OF BANK SHARES.

§31A-8A-1. Legislative findings and purposes.

§31A-8A-2. Definitions.

§31A-8A-3. Bank holding company; definitions.

§31A-8A-4. Acquisition of bank shares; when prior notification of board
necessary; exemptions.

§31A-8A-5. Registration and reporting of bank holding companies; annual
fee.

§31A-8A-6. Violations.

§31A-8A-1. Legislative findings and purpose.

1 After a review of the structure of banking organizations in
2 the state of West Virginia, and after full consideration of the
3 complex issues involved, the Legislature hereby finds and
4 determines that:

5 (a) Well managed and financially sound banking
6 institutions are essential to the financial well being of the
7 citizens, and the promotion of the future economic and
8 industrial growth and development, of this state;

9 (b) The formation of bank holding companies will
10 strengthen and supplement traditional banking services and
11 facilitate the development of the type of banking institutions
12 that are necessary for the economic and industrial growth and
13 development of this state;

14 (c) It is in the best interests of this state and its citizens for
15 the board to have the power and authority to disapprove the
16 acquisition of a bank by a bank holding company when the
17 board determines that such acquisition would result in a
18 monopoly, substantially lessen competition, or be contrary to
19 the best interests of the shareholders or customers of the
20 bank involved;

21 (d) The deposits of the citizens of this state are a
22 substantial and valuable resource which should serve the
23 economic and industrial growth and development needs, and
24 the consumer needs of the citizens of this state; and since the
25 board could not effectively make a determination that the
26 control of deposits of the citizens of this state by bank holding
27 companies with any banking subsidiaries located outside this
28 state would be used for the above enumerated local needs of
29 this state's citizenry, a bank holding company with any bank
30 subsidiary located outside this state shall be prohibited from
31 acquiring, directly or indirectly, five percent or more of the
32 interest in or assets of, any bank or bank holding company
33 located in this state; and

34 (e) It is in the best interests of this state and its citizens to
35 prevent excessive concentration or control of the deposit
36 resources of this state by prohibiting acquisitions of banks by
37 bank holding companies which would thus control more than
38 ten percent of this state's total banking deposits.

§31A-8A-2. Definitions.

1 As used in this article, unless the context in which used
2 plainly requires a different meaning:

3 (a) "Company" means any corporation, partnership,
4 business trust, association or similar organization, or any
5 other trust unless by its terms it must terminate within
6 twenty-five years or not later than twenty-one years and ten
7 months after the death of individuals living on the effective
8 date of the trust, but shall not include any corporation the
9 majority of the shares of which are owned by the United
10 States or by any state;

11 (b) "Subsidiary", with respect to a specific bank holding
12 company, means:

13 (1) Any company twenty-five percent or more of whose
14 voting shares (excluding shares owned by the United States
15 or by any company wholly owned by the United States) is
16 directly or indirectly owned or controlled by such bank
17 holding company, or is held by it with power to vote,

18 (2) Any company the election of a majority of whose
19 directors is controlled in any manner by such bank holding
20 company, or

21 (3) Any company with respect to the management or
22 policies of which such bank holding company has the power,
23 directly or indirectly, to exercise a controlling influence, as

24 determined by the board, after notice and opportunity for
25 hearing;

26 (c) The term "successor" shall include any company
27 which acquires directly or indirectly from a bank holding
28 company shares of any bank, when and if the relationship
29 between such company and the bank holding company is
30 such that the transaction effects no substantial change in the
31 control of the bank or beneficial ownership of such shares of
32 such bank. The commissioner may, by regulation, further
33 define the term "successor" to the extent necessary to
34 prevent evasion of the purposes of this article.

§31A-8A-3. Bank holding company; definition.

1 (a) (1) Except as provided in subdivision (5) of this
2 subsection, "bank holding company" means any company
3 which has control over any bank or over any company that is
4 or becomes a bank holding company pursuant to this article.

5 (2) Any company has control over a bank or over any
6 company if:

7 (A) The company directly or indirectly or acting through
8 one or more other persons owns, controls, or has power to
9 vote twenty-five percent or more of any class of voting
10 securities of the bank or company;

11 (B) The company controls in any manner the election of a
12 majority of the directors or trustees of the bank or company;
13 or

14 (C) The board determines, after notice and a hearing
15 pursuant to the provisions of section three, article three of
16 this chapter, that the company directly or indirectly exercises
17 a controlling influence over the management or policies of
18 the bank or company.

19 (3) For the purposes of any proceeding under subdivision
20 (2) (C) of this subsection, there is a presumption that any
21 company which directly or indirectly owns, controls, or has
22 power to vote less than five percent of any class of voting
23 securities of a given bank or company does not have control
24 over that bank or company.

25 (4) In any administrative or judicial proceeding under this
26 article, other than a proceeding under subdivision (2) (C) of
27 this subsection, a company may not be held to have had
28 control over any given bank or company at any given time
29 unless that company, at the time in question, directly or
30 indirectly owned, controlled, or had power to vote five
31 percent or more of any class of voting securities of the bank or

32 company, or had already been found to have control in a
33 proceeding under subdivision (2) (C).

34 (5) Notwithstanding any other provision of this
35 subsection:

36 (A) No bank and no company owning or controlling
37 voting shares of a bank is a bank holding company by virtue
38 of its ownership or control of shares in a fiduciary capacity,
39 except as provided in subdivisions (2) and (3), subsection (b)
40 of this section. For the purpose of the preceding sentence,
41 bank shares shall not be deemed to have been acquired in a
42 fiduciary capacity if the acquiring bank or company has sole
43 discretionary authority to exercise voting rights with respect
44 thereto; and

45 (B) No company is a bank holding company by virtue of
46 its ownership or control of shares acquired in securing or
47 collecting a debt previously contracted in good faith, until
48 five years after the date of acquisition.

49 (6) For the purposes of this article, any successor to a bank
50 holding company shall be deemed to be a bank holding
51 company from the date on which the predecessor company
52 became a bank holding company.

53 (b) For the purposes of this article:

54 (1) Shares owned or controlled by any subsidiary of a
55 bank holding company shall be deemed to be indirectly
56 owned or controlled by such bank holding company;

57 (2) Shares held or controlled directly or indirectly by
58 trustees for the benefit of:

59 (A) A company,

60 (B) The shareholders or members of a company, or

61 (C) The employees (whether exclusively or not) of a
62 company, shall be deemed to be controlled by such company;
63 and

64 (3) Shares transferred by any bank holding company (or
65 by the company, which, but for such transfer, would be a
66 bank holding company) directly or indirectly to any
67 transferee that is indebted to the transferor, or has one or
68 more officers, directors, trustees or beneficiaries in common
69 with or subject to control by the transferor, shall be deemed
70 to be indirectly owned or controlled by the transferor unless
71 the board, after notice and a hearing pursuant to the
72 provisions of section three, article three of this chapter,
73 determines that the transferor is not in fact capable of
74 controlling the transferee.

§31A-8A-4. Acquisition of bank shares; when prior notification of board necessary; exemptions.

1 (a) It shall be unlawful, prior to ninety days following the
2 date of the submission to the board of complete, true and
3 accurate copies of the reports required under federal laws or
4 regulations pursuant to Title 12, United States Code,
5 §§1841-1850 (being the act of Congress entitled the Bank
6 Holding Company Act of 1956, as amended), and the payment
7 of an examination and investigation fee to the board of two
8 thousand five hundred dollars:

9 (1) For any action to be taken that causes any company to
10 become a bank holding company;

11 (2) For any action to be taken that causes any bank to
12 become a subsidiary of a bank holding company;

13 (3) For any bank holding company to acquire direct or
14 indirect ownership or control of any shares of any bank if,
15 after such acquisition, such company will directly or
16 indirectly own or control more than five percent of the voting
17 shares of such bank;

18 (4) For any bank holding company or subsidiary thereof,
19 other than a bank, to acquire all or substantially all of the
20 assets of a bank;

21 (5) For any bank holding company to merge or consolidate
22 with any other bank holding company; or

23 (6) For any bank holding company to take any action
24 which would violate the Federal Bank Holding Company Act.

25 (b) The provisions of subsection (a) of this section shall
26 not apply to:

27 (1) Shares acquired by a bank

28 (A) In good faith in a fiduciary capacity, except where
29 shares are held under a trust that constitutes a company as
30 defined in section two of this article and except as provided in
31 subdivisions (2) and (3), subsection (b), section three of this
32 article; or

33 (B) In the regular course of securing or collecting a debt
34 previously contracted in good faith, but any shares acquired
35 after the effective date of this act in securing or collecting any
36 such previously contracted debt shall be disposed of within a
37 period of five years from the date on which they were
38 acquired; or

39 (2) Additional shares acquired by a bank holding
40 company in a bank in which such bank holding company
41 owned or controlled a majority of the voting shares prior to

42 such acquisition. For the purpose of the preceding sentence,
43 bank shares acquired after the effective date of this act shall
44 not be deemed to have been acquired in good faith in a
45 fiduciary capacity if the acquiring bank or company has sole
46 discretionary authority to exercise voting rights with respect
47 thereto, but in such instances acquisitions may be made
48 without prior notice to the board if the board, upon notice and
49 submission of information in form and content as it shall
50 approve, filed within ninety days after the shares are
51 acquired, approved retention or, if retention is disapproved,
52 the acquiring bank disposes of the shares or its sole
53 discretionary voting rights within five years after issuance of
54 the order of disapproval.

55 (c) If, within ninety days from the date of submission
56 pursuant to subsection (a) of this section, after notice and a
57 hearing pursuant to the provisions of section three, article
58 three of this chapter, the board enters an order disapproving
59 the proposed action described in subdivision (1), (2), (3), (4),
60 (5) or (6), subsection (a) of this section, it shall be unlawful
61 to take such action. The board shall disapprove the proposed
62 action described in subdivision (1), (2), (3), (4), (5) or (6), sub-
63 section (a) of this section on the following grounds:

64 (1) The action would result in a monopoly, or would be in
65 furtherance of any combination or conspiracy to monopolize
66 or to attempt to monopolize the business of banking in any
67 section of this state;

68 (2) The action would have the effect in any section of the
69 state of substantially lessening competition, or would tend to
70 create a monopoly or in any other manner would be in
71 restraint of trade, unless the anticompetitive effects of the
72 proposed action are clearly outweighed in the public interest
73 by the probable effect of the action in meeting the
74 convenience and needs of the community to be served; or

75 (3) Taking into consideration the financial and managerial
76 resources and further prospects of the company or companies
77 and the banks concerned, the action would be contrary to the
78 best interests of the shareholders or customers of the bank
79 whose shares are affected by such action.

80 (d) It shall be unlawful for any bank holding company to
81 acquire shares of a bank if such acquisition would cause the
82 combined deposits of all banks in this state with respect to
83 which it is a bank holding company to exceed ten percent of
84 total bank deposits in this state as determined by the latest

85 available reports of condition as compiled by the Federal
86 Deposit Insurance Corporation.

87 (e) Notwithstanding any other provisions of this section,
88 no proposed action described in subdivision (1), (2), (3), (4),
89 (5) or (6), subsection (a) of this section shall be approved if
90 such approval will permit any bank holding company or any
91 subsidiary thereof to acquire, directly or indirectly, five
92 percent or more of the interest in or assets of a bank or bank
93 holding company located in this state if the operations of any
94 banking subsidiary of such bank holding company are
95 located outside this state.

96 (f) It shall be unlawful for any bank holding company to
97 acquire any interest in a nonbank subsidiary which engages
98 in the business of receiving deposits subject to check or to
99 repayment upon presentation of a passbook, certificate of
100 deposit, or other evidence of debt, or upon request of the
101 depositor.

102 (g) Nothing contained in this section shall affect the
103 obligation of any person or company to comply with the
104 provisions of any order of any court or the commissioner
105 entered prior to the effective date of this act.

**§31A-8A-5. Registration and reporting of bank holding
companies; annual fee.**

1 (a) For the purposes of this section, other than subsection
2 (f), a "bank holding company" shall include, in addition to a
3 bank holding company defined in subdivision (1), sub-
4 section (a), section three of this article, any other bank
5 holding company subject to regulation under Title 12
6 United States Code, §§1841-1850 (being the act of Congress
7 entitled the Bank Holding Company Act of 1956, as amended), which
8 has acquired or established a place of business in this state or a
9 subsidiary which has a place of business in this state.

10 (b) On the first day of July, one thousand nine hundred
11 eighty-two, and annually thereafter on dates established by
12 the commissioner, each bank holding company shall register
13 with the commissioner on forms provided or prescribed by
14 him, which shall include such information with respect to the
15 financial condition, operation, management and
16 inter-company relationships of the bank holding company
17 and its subsidiaries and related matters as the commissioner
18 may deem necessary or appropriate to carry out the purposes
19 of this article.

20 (c) The commissioner is authorized to issue such
21 regulations and orders as may be necessary to enable him or
22 the board to administer and carry out the purposes of this
23 article and prevent evasions thereof.

24 (d) The commissioner from time to time may require
25 reports under oath to keep him informed as to whether the
26 provisions of this article and such regulations and orders
27 thereunder issued by him have been complied with, may
28 make examinations of each bank holding company and each
29 subsidiary thereof, and shall, as far as possible, use the
30 reports of examination made by the comptroller of the
31 currency, federal deposit insurance corporation, or the
32 board of governors of the federal reserve system for the
33 purposes of this section.

34 (e) Bank holding companies and subsidiaries or affiliates
35 thereof shall be regulated, controlled and examined by the
36 commissioner to the same extent that he regulates, controls
37 and examines state banks and other financial institutions
38 under his jurisdiction. The commissioner is hereby
39 authorized to promulgate rules and regulations and
40 registration procedures for the regulation, examination and
41 control of bank holding companies doing business in this
42 state.

43 (f) On the first day of January, one thousand nine hundred
44 eighty-three, and thereafter annually on the same date, each
45 bank holding company shall pay an annual registration fee to
46 the commissioner based upon the total amount of bank
47 deposits in banks with respect to which such company is a
48 bank holding company. The commissioner shall prescribe by
49 regulations the annual registration fee, but such fee shall not
50 exceed ten dollars per million dollars in deposits rounded off
51 to the nearest million dollars. The payment of such
52 registration fee shall be accompanied by a report on forms
53 prescribed by the commissioner. The commissioner is
54 authorized to issue such regulations as may be necessary to
55 enable him to administer the collection of the registration fee.

§31A-8A-6. Violations.

1 Any violation of any provision of this article shall constitute
2 a misdemeanor offense, which, upon conviction thereof, shall
3 be punishable by applicable penalties as provided in section
4 fifteen, article eight of this chapter.

ARTICLE 8B. COMMUNITY REINVESTMENT ACT.

§31A-8B-1. Short title.

§31A-8B-2. Legislative findings and purpose.

§31A-8B-3. Application for a deposit facility; definitions.

§31A-8B-4. Assessment of the institution's reinvestment in the community.

§31A-8B-1. Short title.

- 1 This article may be cited as the "West Virginia Community
- 2 Reinvestment Act."

§31A-8B-2. Legislative findings and purpose.

- 1 (a) The Legislature finds that:

- 2 (1) Banking institutions are required by law to
- 3 demonstrate that their deposit facilities serve the
- 4 convenience and needs of the communities in which they are
- 5 chartered to do business;

- 6 (2) The convenience and needs of communities include
- 7 the need for credit services as well as deposit services; and

- 8 (3) Banking institutions have a continuing and affirmative
- 9 obligation to help meet the credit needs of the local
- 10 communities in which they are chartered.

- 11 (b) It is the purpose of this article to require the
- 12 commissioner and the board to use their authority when
- 13 examining or investigating banking institutions or their bank
- 14 holding companies, to encourage such institutions to help
- 15 meet the credit needs of the local communities in which they
- 16 are chartered consistent with the safe and sound operation of
- 17 such institutions.

§31A-8B-3. Application for a deposit facility; definition.

- 1 The term "application for a deposit facility" means an
- 2 application to the commissioner or board for:

- 3 (a) A charter for a state bank;

- 4 (b) The relocation of the principal office or a branch of a
- 5 state bank;

- 6 (c) The establishment of a branch bank in an unbanked
- 7 area requiring approval under section twelve, article eight of
- 8 this chapter;

- 9 (d) The merger or consolidation with, or the acquisition of
- 10 the assets, or the assumption of the liabilities of a banking
- 11 institution requiring approval under section seven, article
- 12 seven of this chapter; or, the merger or consolidation with, or
- 13 the acquisition of the assets, or the assumption of the
- 14 liabilities of a banking institution requiring approval under
- 15 section twelve, article eight of this chapter.

16 (e) The acquisition of shares in, or the assets of, a state
17 banking institution requiring approval under article eight-a
18 of this chapter.

§31A-8B-4. Assessment of the institution's reinvestment in the community.

1 In connection with its examination or investigation of a
2 banking institution or bank holding company, the
3 commissioner or board shall:

4 (a) Assess the institution's record of meeting the credit
5 needs of its entire community, including low-and
6 moderate-income neighborhoods, consistent with the safe
7 and sound operation of such institution; and

8 (b) Take such record into account in its evaluation of an
9 application for a deposit facility by such institution.

§31A-8B-5. Rules and regulations.

1 Regulations to carry out the purposes of this article shall be
2 promulgated by the commissioner.

CHAPTER 24

(Com. Sub. for H. B. 1724—By Mr. Greer and Mr. Cook)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve, thirteen and fourteen, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eleven, article one, chapter seven; and section seven, article thirteen-a, chapter sixteen of said code, all relating to level of expenditure needing bids by the state, counties and public service districts; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; purchasing in open market on competitive bids; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; exception by the state; purchasing in open market or competitive bids by the counties; and acquisition and operation of district properties by public service districts.

Be it enacted by the Legislature of West Virginia:

That sections twelve, thirteen and fourteen, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section eleven, article one, chapter seven of said code, be amended and reenacted; and that section seven, article thirteen-a, chapter sixteen of said code, be amended and reenacted, all to read as follows:

Chapter

- 5. Department of Finance and Administration.**
- 7. County Commissions and Officers.**
- 16. Public Health.**

CHAPTER 5. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

- §5A-3-12. Publication of solicitations for sealed bids; purchase of products of nonprofit workshops.
- §5A-3-13. Purchasing in open market on competitive bids.
- §5A-3-14. Bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; and exception.

§5A-3-12. Publication of solicitations for sealed bids; purchase of products of nonprofit workshops.

1 The director shall solicit sealed bids for the purchase of
2 commodities and printing which is estimated to exceed five
3 thousand dollars. No spending unit shall issue a series of
4 requisitions which would circumvent this five thousand dollar
5 maximum. Bids shall be obtained by public notice published
6 as a Class II legal advertisement in compliance with the
7 provisions of article three, chapter fifty-nine of this code,
8 and the publication area for such publication shall be the
9 county where the department or agency making the requisition
10 is located. Such notice shall be so published within the
11 fourteen days next preceding the final date of submitting bids.
12 The notice may also be published by any other advertising
13 medium the director may deem advisable. The director may
14 also solicit sealed bids by sending request by mail to pros-
15 pective suppliers and by posting notice on a bulletin board

16 in his office: *Provided*, That the director shall, without com-
17 petitive bidding, purchase commodities and printing produced
18 and offered for sale by nonprofit workshops, as defined in
19 section one, article one of this chapter, which are located in
20 this state: *Provided, however*, That such commodities and
21 printing shall be of a price and quality comparable to other
22 commodities and printing otherwise available.

§5A-3-13. Purchasing in open market on competitive bids.

1 The director may make a purchase of commodities and
2 printing of five thousand dollars or less in amount in the
3 open market, but such purchase shall, wherever possible,
4 be based on at least three competitive bids.

5 The director may authorize spending units to purchase com-
6 modities and printing in the amount of one thousand dollars in
7 the open market without competitive bids.

§5A-3-14. Bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; and exception.

1 Bids shall be based on the standard specifications promul-
2 gated and adopted in accordance with the provisions of section
3 five of this article, and shall not be altered or withdrawn after
4 the appointed hour for the opening of such bids. All open
5 market orders, purchases based on advertised bid requests or
6 contracts made by the director or by a state department shall
7 be awarded to the lowest responsible bidder, taking into con-
8 sideration the qualities of the articles to be supplied, their con-
9 formity with specifications, their suitability to the requirements
10 of the government and the delivery terms. Any or all bids may
11 be rejected. If all bids received on a pending contract are for
12 the same unit price or total amount, the director shall have
13 authority to reject all bids, and to purchase the required com-
14 modities and printing in the open market, if the price paid in
15 the open market does not exceed the bid prices.

16 All bidders submitting bid proposals to the purchasing di-
17 vision are required to submit an extra or duplicate copy to
18 the state auditor. Both copies must be received at the respec-
19 tive offices prior to the specified date and time of the bid

20 openings. The failure to deliver or the nonreceipt of these bid
21 forms at either of these offices prior to the appointed date
22 and hour are grounds for rejection of the bids. In the event
23 of any deviation between the copies submitted to the pur-
24 chasing division and the state auditor, such bids as to which
25 there is such deviation shall be rejected, if the deviation relates
26 to the quantity, quality or specifications of the commodities
27 or printing to be furnished or to the price therefor or to the
28 date of delivery or performance. After the award of the order
29 or contract, the director, or someone appointed by him for
30 that purpose, shall indicate upon the successful bid and its
31 copy in the office of the state auditor that it was the success-
32 ful bid. Thereafter, the copy of each bid in the possession of
33 the director and the state auditor shall be maintained as a
34 public record by both of them, shall be open to public inspec-
35 tion in the office of both the director and the state auditor and
36 shall not be destroyed by either of them without the written
37 consent of the legislative auditor: *Provided*, That the board of
38 regents may certify in writing to the director the need for a
39 specific item essential to a particular usage either for instruc-
40 tional or research purposes at an institution of higher educa-
41 tion and the director upon review of such certification may
42 provide for the purchase of said specific items in the open
43 market without competitive bids.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-11. Purchasing in open market or competitive bids.

1 County commissions may make a purchase of commodities
2 and printing of five thousand dollars or less in amount in the
3 open market, but a purchase of and contract for commodities
4 and printing over five thousand dollars shall be based on
5 competitive bids, except in case of emergency.

6 The county commission of any county is hereby authorized
7 and empowered to promulgate rules and regulations govern-
8 ing the procedure of competitive bids.

9 As used in this section, the terms "commodities" and "print-

10 ing" shall have the same meaning as those terms are de-
11 fined in section one, article one, chapter five-a of this code.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 16. PUBLIC SERVICE DISTRICTS FOR WATER AND SEWERAGE SERVICES.

§16-13A-7. Acquisition and operation of district properties.

1 The board of such districts shall have the supervision and
2 control of all public service properties acquired or constructed
3 by the district and shall have power, and it shall be its duty,
4 to maintain, operate, extend and improve the same. All con-
5 tracts involving the expenditure by the district of more than five
6 thousand dollars for construction work or for the purchase of
7 equipment and improvements, extensions or replacements, shall
8 be entered into only after notice inviting bids shall have been
9 published as a Class I legal advertisement in compliance with
10 the provisions of article three, chapter fifty-nine of this code,
11 and the publication area for such publication shall be the
12 district. The publication shall not be less than ten days prior to
13 the making of any such contract. Any obligations incurred of
14 any kind or character shall not in any event constitute or be
15 deemed an indebtedness within the meaning of any of the
16 provisions or limitations of the constitution but all such ob-
17 ligations shall be payable solely and only out of revenues
18 derived from the operation of the public service properties of
19 the district or from proceeds of bonds issued as hereinafter
20 provided. No continuing contract for the purchase of materials
21 or supplies or for furnishing the district with electrical energy
22 or power shall be entered into for a longer period than fifteen
23 years.

CHAPTER 25

(Com. Sub. for H. B. 1322—By Mr. Smith and Mr. Burdette)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article nine, chapter six of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to requiring the state tax commissioner, as chief inspector of public offices, to take certain bids on municipal audits from private accountants and to contract with said accountants for said audits in certain situations where less costly.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. SUPERVISION OF PUBLIC OFFICES.

§6-9-7. Examinations into affairs of local public officers.

1 (a) The chief inspector shall have power by himself, or
2 by any person appointed by him to perform the service, to
3 examine into all financial affairs of every local governmental
4 office or political subdivision and all boards, commissions,
5 authorities, agencies or other offices created under authority
6 thereof and shall make such an examination at least once a
7 year, if practicable. On every such examination, inquiry
8 shall be made as to the financial conditions and resources of
9 the agency having jurisdiction over the appropriations and
10 levies disbursed by the office and whether the requirements
11 of the constitution and statutory laws of the state and the
12 ordinances and orders of the agency have been properly
13 complied with and also inquire into the methods and ac-
14 curacy of the accounts and such other matters of audit and
15 accounting as the chief inspector may prescribe. He or
16 any authorized assistant may issue subpoenas and compulsory
17 process, direct the service thereof by any sheriff, compel the
18 attendance of witnesses and the production of books and
19 papers at any designated time and place, selected in their
20 respective county, and administer oaths. If any person re-
21 fuses to appear before the chief inspector or his authorized
22 assistant when required so to do, refuses to testify on any
23 matter or refuses to produce any books or papers in his
24 possession or under his control, he is guilty of a misdemeanor,

25 and, upon conviction thereof, shall be fined not more than
26 one hundred dollars and imprisoned in the county jail not
27 more than six months. Willful false swearing in such examina-
28 tions is punishable as such. A report of each examination
29 shall be made in duplicate, one copy to be filed in the office
30 of the state tax commissioner and one in the auditing depart-
31 ment of the agency. If any such examination discloses mis-
32 feasance, malfeasance or nonfeasance in office on the part
33 of any public officer or employee, a certified copy of the
34 report shall be filed with the proper legal authority of the
35 agency, the prosecuting attorney of the county wherein the
36 agency is located and with the attorney general for such legal
37 action as is proper. At the time of the filing of such certified
38 audit, the chief inspector shall notify the proper legal au-
39 thority, the prosecuting attorney and the attorney general in
40 writing of his recommendation as to the legal action that
41 the chief inspector considers proper, whether criminal prose-
42 cution or civil action to effect restitution, or both. If the
43 proper legal authority or prosecuting attorney, within nine
44 months of the receipt of such certified audit and recommen-
45 dations, refuses, neglects or fails to take efficient legal action
46 by a civil suit to effect restitution or by prosecuting criminal
47 proceedings to a final conclusion, in accordance with such
48 recommendations, the chief inspector may institute the neces-
49 sary proceedings or participate therein and prosecute the pro-
50 ceedings in any court of the state to a final conclusion.

51 (b) When requested by the governing body of a municipi-
52 pality, the chief inspector shall take bids on the audit of that
53 municipality, and if he finds that a reputable certified public
54 accountant or registered public accountant outside the state
55 tax department can conduct the audit at a cost lower than
56 if the department did it, and if said accountant meets all
57 criteria set forth by the chief inspector, he shall contract with
58 such accountant for such audit: *Provided*, That the chief
59 inspector may elect to conduct the audit of a municipality
60 with one or more members of his audit staff where, in the
61 opinion of the chief inspector, a special or unusual situation
62 exists.

CHAPTER 26

(Com. Sub. for S. B. 208—By Ash and Mr. Honecker)

[Passed March 10, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five, six, ten, fifteen, twenty-one and twenty-two, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the conduct of bingo for charitable or public service activity or endeavor; defining terms; revising limits on prizes which licensees may award; eliminating age restrictions for persons who play bingo; revising licensing procedures for the state fair bingo license; and reducing license fee for state fair bingo license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. CHARITABLE BINGO.

- §47-20-2. Definitions.
- §47-20-4. Annual license; conditions on holding of games.
- §47-20-5. Limited occasion license; conditions on holding of games.
- §47-20-6. License fee and exemption from taxes.
- §47-20-10. Limits on prizes awarded—general provisions.
- §47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.
- §47-20-21. Proceeds of state fair.
- §47-20-22. State fair bingo license; rules and regulations.

§47-20-2. Definitions.

- 1 For purposes of this article, unless specified otherwise:
- 2 (a) "Bingo" means the game wherein participants pay
- 3 consideration for the use of one or more cards bearing several
- 4 rows of numbers no two of which cards played in any one
- 5 game contain the same sequence or pattern. When the game
- 6 commences, numbers are selected by chance, one by one, and
- 7 announced. The players cover or mark those numbers
- 8 announced as they appear on the card or cards which they are

9 using. The player who first announces that he has covered a
10 predetermined sequence or pattern which had been
11 preannounced for that game is, upon verification of such,
12 declared the winner of that game.

13 (b) "Bingo occasion" or "occasion" means a single
14 gathering or session at which a series of one or more
15 successive bingo games is conducted by a single licensee.

16 (c) "Charitable or public service activity or endeavor"
17 means any bona fide activity or endeavor which directly
18 benefits a number of people by:

19 (1) Assisting them to establish themselves in life as
20 contributing members of society through education or
21 religion; or

22 (2) Relieving them from disease, distress, suffering,
23 constraint, or the effects of poverty; or

24 (3) Increasing their comprehension of and devotion to the
25 principles upon which this nation was founded and to the
26 principles of good citizenship; or

27 (4) Making them aware of or educating them about issues
28 of public concern so long as the activity or endeavor is not
29 aimed at influencing legislation or supporting or
30 participating in the campaign of any candidate for public
31 office; or

32 (5) By lessening the burdens borne by government or
33 voluntarily supporting, augmenting or supplementing
34 services which government would normally render to the
35 people; or

36 (6) Providing or supporting nonprofit community
37 activities for youth, senior citizens or the disabled; or

38 (7) Providing or supporting nonprofit cultural or artistic
39 activities.

40 (d) "Charitable or public service organization" means a
41 bona fide, not for profit, tax-exempt, benevolent, educational,
42 philanthropic, humane, patriotic, civic, religious, fraternal or
43 eleemosynary incorporated or unincorporated association or
44 organization; or a volunteer fire department, rescue unit or
45 other similar volunteer community service organization or
46 association; but does not include any nonprofit association or
47 organization, whether incorporated or not, which is organized
48 primarily for the purposes of influencing legislation or
49 supporting or promoting the campaign of any candidate for
50 public office.

51 An organization or association is tax-exempt if it is, and has
52 received from the Internal Revenue Service a determination
53 letter that is currently in effect stating that the organization is,
54 exempt from federal income taxation under subsection 501(a)
55 and described in subsection 501(c) (3), 501(c) (4), 501(c) (8),
56 501(c) (10), 501(c) (19) or 501(d) of the Internal Revenue Code.

57 (e) "Commissioner" means the state tax commissioner.

58 (f) "Concession" means any stand, booth, cart, counter or
59 other facility, whether stationary or movable, where
60 beverages, both alcoholic and nonalcoholic, food, snacks,
61 cigarettes or other tobacco products, newspapers, souvenirs
62 or any other items are sold to patrons by an individual
63 operating the facility. Notwithstanding anything contained
64 in subdivision (2), subsection (a), section twelve, article
65 seven, chapter sixty of this code to the contrary, "concession"
66 includes beverages which are regulated by and shall be
67 subject to the provisions of chapter sixty of this code:
68 *Provided*, That in no case may the sale or the consumption of
69 alcoholic beverages or nonintoxicating beer be permitted in
70 any area where bingo is conducted.

71 (g) "Conduct" means to direct the actual playing of a
72 bingo game by activities including, but not limited to,
73 handing out bingo cards, collecting fees, drawing the
74 numbers, announcing the numbers, posting the numbers,
75 verifying winners and awarding prizes.

76 (h) "Expend net proceeds for charitable or public service
77 purposes" means to devote the net proceeds of a bingo
78 occasion or occasions to a qualified recipient organization or
79 as otherwise provided by this article and approved by the
80 commissioner pursuant to section fifteen of this article.

81 (i) "Gross proceeds" means all moneys collected or
82 received from the conduct of bingo at all bingo occasions held
83 by a licensee during a license period; this term shall not be
84 deemed to include any moneys collected or received from the
85 sale of concessions at bingo occasions.

86 (j) "Joint bingo occasion" means a single gathering or
87 session at which a series of one or more successive bingo
88 games is conducted by two or more licensees.

89 (k) "Licensee" means any organization or association
90 granted an annual, limited occasion or state fair bingo license
91 pursuant to the provisions of this article.

92 (l) "Net proceeds" means all moneys collected or received
93 from all the conduct of bingo at bingo occasions held by a

94 licensee during a license period after payment of expenses
95 authorized by sections ten, thirteen, fifteen and twenty-two of
96 this article; this term shall not be deemed to include moneys
97 collected or received from the sale of concessions at bingo
98 occasions.

99 (m) "Person" means any individual, association, society,
100 incorporated or unincorporated organization, firm,
101 partnership or other nongovernmental entity or institution.

102 (n) "Patron" means any individual who attends a bingo
103 occasion other than an individual who is participating in the
104 conduct of the occasion or in the operation of any concession,
105 whether or not the individual is charged an entrance fee or
106 plays any bingo games.

107 (o) "Qualified recipient organization" means any bona
108 fide, not for profit, tax-exempt, as defined in subdivision (d)
109 of this section, incorporated or unincorporated association or
110 organization which is organized and functions exclusively to
111 directly benefit a number of people as provided in
112 subparagraphs (1) through (7), subdivision (c) of this section.
113 "Qualified recipient organization" includes without
114 limitation any licensee which is organized and functions
115 exclusively as provided in this subdivision.

§47-20-4. Annual license; conditions on holding of games.

1 A charitable or public service organization or any of its
2 auxiliaries or other organizations otherwise affiliated with it
3 may apply for an annual license. Only one license per year in
4 the aggregate may be granted to a charitable or public service
5 organization and all of its auxiliaries or other associations or
6 organizations otherwise affiliated with it: *Provided*, That for
7 purposes of this section the various branches, chapters or
8 lodges of any national association or organization or local
9 churches of a nationally organized church are not considered
10 affiliates or auxiliaries of each other. The commissioner shall
11 by regulation provide for the manner for determining to
12 which organization, whether the parent organization, an
13 affiliate or an auxiliary, the one license allowed under this
14 section is granted. An annual license is valid for one year from
15 the date of issuance and entitles only the licensee to hold no
16 more than two bingo occasions per week. No two or more
17 organizations may hold a joint bingo occasion under any
18 annual licenses. No bingo occasion held pursuant to an
19 annual license may exceed six hours' duration.

20. A licensee shall display its annual bingo license
21 conspicuously at the location where the bingo occasion is
22 held.

23 All bingo occasions shall be open to the general public.

§47-20-5. Limited occasion license; conditions on holding of games.

1 A limited occasion license is valid only for the time period
2 specified in the application and entitles only the licensee to
3 hold a bingo occasion once every twenty-four hours for a time
4 period not to exceed two weeks. Two or more organizations
5 may hold a joint bingo occasion provided each participating
6 organization has been granted a limited occasion bingo
7 license for such jointly held occasion. No bingo occasion held
8 pursuant to a limited occasion license may exceed twelve
9 hours in duration. Each charitable or public service
10 organization which desires to hold bingo occasions pursuant
11 to this section, or any of its auxiliaries or other organizations
12 otherwise affiliated with it shall obtain a limited occasion
13 license notwithstanding the fact that it holds a valid annual
14 license: *Provided*, That no licensee which holds an annual
15 license may obtain more than one limited occasion license.

16 Only three limited occasion licenses per year in the
17 aggregate may be granted to a charitable or public service
18 organization and all of its auxiliaries or other associations or
19 organizations otherwise affiliated with it, none of which hold
20 an annual license. For purposes of this section the various
21 branches, chapters or lodges of any national association or
22 organization or local churches of a nationally organized
23 church are not considered affiliates or auxiliaries of each
24 other. The commissioner shall by regulation provide the
25 manner for determining to which organization, whether the
26 parent organization, an affiliate or an auxiliary, the three
27 licenses allowed under this section are granted.

28 A licensee shall display its limited occasion license
29 conspicuously at the location where the bingo occasion is
30 held.

31 All bingo occasions shall be open to the general public.

§47-20-6. License fee and exemption from taxes.

1 (a) A license fee shall be paid to the tax commissioner for
2 annual licenses in the amount of one hundred dollars, except
3 that for bona fide senior citizen organizations the fee is fifty
4 dollars. A license fee shall be paid to the tax commissioner for

5 a limited occasion license in the amount of twenty-five
6 dollars. A license fee of five hundred dollars shall be paid to
7 the tax commissioner for a state fair license as provided in
8 section twenty-two of this article. The license fee imposed by
9 this section is in lieu of all other license or franchise taxes or
10 fees of this state, and no county or municipality or other
11 political subdivision of this state is empowered to impose a
12 license or franchise tax or fee.

13 (b) The gross proceeds derived from the conduct of bingo
14 occasions are exempt from state and local business and
15 occupation taxes, income taxes, excise taxes and all special
16 taxes. The licensee is exempt from payment of consumers
17 sales and service taxes and use taxes on all purchases for use
18 or consumption in the conduct of a bingo occasion and is
19 exempt from collecting consumers sales taxes on any
20 admission fees and sales of bingo cards: *Provided*, That the
21 exemption provided in this subsection does not apply to state
22 fair bingo proceeds.

§47-20-10. Limits on prizes awarded—General provisions.

1 Except as provided otherwise in section twenty-two of this
2 article, the total prizes awarded by a licensee during the
3 period of a license may not exceed in value fifty percent of the
4 gross proceeds collected during said period or one hundred
5 thousand dollars, whichever amount shall be less: *Provided*,
6 That notwithstanding the foregoing limitation, the total
7 prizes awarded by a licensee during the period of a license
8 may be equal to or less than five dollars times the number of
9 games played. The total prizes awarded by a licensee, or in the
10 aggregate by two or more limited occasion licensees holding a
11 joint bingo occasion, for any bingo occasion held pursuant to
12 an annual or limited occasion license may not exceed in value
13 two thousand dollars.

14 Prizes may be money or merchandise other than beer,
15 nonintoxicating beer, wine, spirits or alcoholic liquor as
16 defined in section five, article one, chapter sixty of this code.
17 If the prizes are merchandise, the value assigned to them is
18 their fair market value at the time they are won.

§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

1 (a) The reasonable, necessary and actual expenses
2 incurred in connection with the conduct of bingo occasions,

3 not to exceed ten percent of the gross proceeds collected
4 during a license period, may be paid out of the gross proceeds
5 of the conduct of bingo, including, but not limited to:

6 (1) Rent paid for the use of the premises: *Provided*, That a
7 copy of the rental agreement was filed with the bingo license
8 application and any changes thereto were filed within ten
9 days of being made;

10 (2) The cost of custodial services;

11 (3) The cost to the licensee organization for equipment
12 and supplies used to conduct the bingo occasion;

13 (4) The cost to the licensee organization for advertising the
14 bingo occasion; and

15 (5) The cost of hiring security personnel.

16 (b) The actual cost to the licensee for prizes, not to exceed
17 the amounts as specified in section ten of this article, may be
18 paid out of the gross proceeds of the conduct of bingo.

19 (c) The cost of any refreshments, souvenirs, or any other
20 item sold or otherwise provided through any concession to
21 the patrons may not be paid for out of the gross proceeds
22 from the bingo occasion. The licensee shall expend all net
23 bingo proceeds and any interest earned thereon for the
24 charitable or public service purposes stated in the application
25 within one year after the expiration of the license under
26 which the bingo occasions were conducted. A licensee which
27 does not qualify as a qualified recipient organization may
28 apply to the commissioner at the time it applies for a bingo
29 license or as provided in subsection (e) of this section for
30 permission to apply any or all of its net proceeds to directly
31 support a charitable or public service activity or endeavor
32 which it sponsors.

33 (d) No gross proceeds from any bingo operation may be
34 devoted or in any manner used by any licensee or qualified
35 recipient organization for the construction, acquisition,
36 improvement, maintenance or repair of real or personal
37 property except that which is used exclusively for one or
38 more charitable or public service purposes or as provided in
39 subdivision (3), subsection (a) of this section.

40 (e) Any licensee which, in good faith, finds itself unable to
41 comply with the requirements of this provision shall apply to
42 the commissioner for permission to expend its net proceeds
43 for one or more charitable or public service purposes other
44 than that stated in its license application or for permission to

45 expend its net proceeds later than the one-year time period
46 specified in this section. The application shall be on a form
47 furnished by the commissioner and shall include the
48 particulars of the requested changes and the reasons for the
49 changes. The application shall be filed no later than sixty
50 days before the end of the one-year period specified in this
51 section. In the case of an application to extend the time in
52 which the net proceeds are to be expended for a charitable or
53 public service purpose, the licensee shall file such periodic
54 reports with the commissioner as the commissioner directs
55 until the proceeds are so expended.

§47-20-21. Proceeds of state fair.

1 The Legislature declares that the net proceeds of any bingo
2 game which accrue to the West Virginia state fair are
3 considered used for charitable or public service purposes as
4 defined in section two of this article. Any proceeds allowed
5 by the state fair board to be paid to or retained by persons
6 who conduct bingo occasions at the state fair are deemed to
7 be expenses incurred by the state fair board.

§47-20-22. State fair bingo license; rules and regulations.

1 The West Virginia state fair board may apply annually to
2 the tax commissioner for a state fair bingo license to provide
3 for the conduct of bingo occasions at the state fair. The
4 license shall permit the state fair board to have one or more
5 persons conduct bingo occasions at the state fair who have
6 conducted bingo occasions on a regular basis for at least two
7 years prior to the date of the state fair board's application. A
8 license fee of five hundred dollars shall be paid to the tax
9 commissioner for the state fair bingo license. The provisions
10 of sections ten, eleven, twelve, fourteen, fifteen and
11 twenty-eight of this article do not apply to a state fair bingo
12 license. No state fair bingo license may be issued unless the
13 application includes a copy of any lease or agreement entered
14 into between the state fair board and the persons who are to
15 conduct bingo occasions at the state fair. The state fair board
16 may adopt reasonable rules and regulations, not inconsistent
17 with or in violation of the provisions of this article, to govern
18 the holding of bingo occasions at the state fair.

CHAPTER 27

(Com. Sub. for H. B. 1784—By Mr. Wooton)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections six, nine and twenty-one, article two-a of said chapter, relating to reparation awards to victims of crimes generally; providing an exception to the limitation on judges of the court of claims as to the number of days served per fiscal year; providing for appropriations for the expenses of the attorney general; providing for an annual report by the court of claims; and removing code language which enabled the attorney general to withdraw amounts from the crime victims reparation fund.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Claims Against the State.

2A. Reparation Awards to Victims of Crimes.

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-8 Compensation of judges; expenses.

1 Each judge of the court shall receive one hundred fifteen
2 dollars for each day actually served, and actual expenses
3 incurred in the performance of his duties. The number of days
4 served by each judge shall not exceed one hundred in any
5 fiscal year, except by authority of the joint committee on
6 government and finance: *Provided*, That in computing the
7 number of days served, days utilized solely for the exercise
8 of duties assigned to judges and commissioners by the pro-
9 visions of article two-a of this chapter shall be disregarded.
10 Requisitions for compensation and expenses shall be accom-

11 panied by sworn and itemized statements, which shall be filed
12 with the auditor and preserved as public records. For the
13 purpose of this section, time served shall include time spent
14 in the hearing of claims, in the consideration of the record, in
15 the preparation of opinions, and in necessary travel.

ARTICLE 2A. REPARATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-6. Appointment and compensation of commissioners and judges serving under this article.

§14-2A-9. Attorney general to represent state.

§14-2A-21. Annual report of court of claims.

§14-2A-6. Appointment and compensation of commissioners and judges serving under this article.

1 (a) The court of claims, with the approval of the presi-
2 dent of the Senate and the speaker of the House of Delegates,
3 shall appoint at least three court of claims commissioners to
4 hear claims for an award of reparations and to approve awards
5 of reparations pursuant to the provisions of this article. Each
6 commissioner shall serve at the pleasure of the court of claims
7 and under the administrative supervision of the clerk of the
8 court of claims.

9 (b) The court of claims shall fix the compensation of the
10 court of claims commissioners in an amount not exceeding
11 the compensation for judges of the court of claims. Com-
12 pensation of judges and commissioners for services performed
13 under this article, and actual expenses incurred in the per-
14 formance of duties as judges and commissioners under this
15 article shall be paid out of the crime victims reparation fund.

16 (c) The limitation period of one hundred days in section
17 eight, article two of this chapter pertaining to time served by
18 the judges of the court of claims shall not apply to the pro-
19 visions of this article.

§14-2A-9. Attorney general to represent state.

1 The attorney general shall represent the interests of the
2 state in all claims coming before the court of claims or a
3 commissioner. Expenses of the attorney general relating to
4 carrying out his duties under this article shall be payable from

5 the crime victims reparation fund as appropriated for such
6 purpose by the Legislature.

§14-2A-21. Annual report of court of claims.

1 The court of claims shall prepare and transmit annually to
2 the governor and the Legislature a report of the activities of
3 the court of claims under this article. The report shall in-
4 clude the number of claims filed, the number of awards made
5 and the amount of each award, and a statistical summary of
6 claims and awards made and denied including the average
7 size of claims and awards; the balance in the crime victims
8 reparation fund with a listing by source and amount of the
9 moneys that have been deposited in the fund; the amount
10 that has been withdrawn from the fund, including separate
11 listings of the administrative costs incurred by the court of
12 claims, compensation of judges, commissioners and court per-
13 sonnel and the amount awarded as attorneys' fees.

CHAPTER 28

(Com. Sub. for H. B. 1208—By Mr. Holmes and Mr. Otte)

[Passed February 8, 1982; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the board of regents; the department of corrections; and the farm management commission, to be moral obligations of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact that
2 the state has received the benefit of the commodities and
3 services rendered by certain claimants herein and has con-
4 sidered claims against the state, the board of regents, the de-

5 partment of corrections, and the farm management commission,
 6 agencies thereof, which have arisen due to overexpenditures of
 7 the departmental appropriations by officers of such state spend-
 8 ing unit, such claims having been previously considered by the
 9 court of claims which also found that the state has received the
 10 benefit of the commodities and services rendered by each
 11 claimant, but were denied by the court of claims on the purely
 12 statutory grounds that to allow such claims would be condoning
 13 illegal acts contrary to the laws of the state. The Legislature
 14 pursuant to its findings of fact and also by the adoption of the
 15 findings of fact by the court of claims as its own, and, while
 16 not condoning such illegal acts, hereby declares it to be the
 17 moral obligation of the state to pay each such claim in the
 18 amount specified below, and directs the auditor to issue war-
 19 rants upon receipt of a properly executed requisition supported
 20 by an itemized invoice, statement or other satisfactory docu-
 21 ment as required by section ten, article three, chapter twelve
 22 of the code of West Virginia, one thousand nine hundred
 23 thirty-one, as amended, for the payment thereof out of any
 24 fund appropriated and available for the purpose.

25 (a) *Claim against the Board of Regents:*

26 TO BE PAID FROM GENERAL REVENUE FUND

27 (1) Walter J. Klein Company, Ltd. \$ 350.00

28 (b) *Claims against the Department of Corrections:*

29 TO BE PAID FROM GENERAL REVENUE FUND

30 (1) C. K. Agarwal \$ 70.00
 31 (2) Hassan Amjad \$ 295.00
 32 (3) Appalachian Mental Health Center \$ 4,400.00
 33 (4) Appalachian Regional Hospital \$ 1,690.00
 34 (5) Ayerst Laboratories \$ 411.57
 35 (6) Beckley Radiology Associates \$ 323.50
 36 (7) Bernhardt's Clothing, Inc. \$ 3,215.38
 37 (8) Boury, Inc. \$ 1,984.28
 38 (9) C. H. James & Co. \$ 1,149.18
 39 (10) Craig Motor Service Co., Inc. \$ 256.35
 40 (11) Saryu P. Dani \$ 40.00
 41 (12) Dentists Fee Office \$ 300.00
 42 (13) Department of Employment Security .. \$ 24,996.90

43	(14) Dorsey Laboratories	\$ 156.90
44	(15) Elkins Dental Lab	\$ 67.00
45	(16) Equitable Gas, Inc.	\$ 45,831.75
46	(17) Firestone Tire and Rubber	
47	Company (The)	\$ 574.34
48	(18) Gall's, Inc.	\$ 2,296.94
49	(19) Grafton City Hospital	\$ 3,777.94
50	(20) Greenbrier Physicians, Inc.	\$ 50.00
51	(21) Greenbrier Valley Hospital	\$ 5,542.70
52	(22) Henry Schein, Inc.	\$ 397.25
53	(23) Eugene E. Hutton, Jr.	\$ 5,038.00
54	(24) Independent Dressed Beef	
55	Company, Inc.	\$ 3,738.90
56	(25) J. D. Woodrum, M.D., Inc.	\$ 95.00
57	(26) E. L. Jimenez	\$ 860.00
58	(27) Johnson's Boiler Sales & Service, Inc.	\$ 13,883.22
59	(28) Marlinton Electric Co., Inc.	\$ 80,609.40
60	(29) McNeil Pharmaceutical	\$ 131.87
61	(30) Memorial General Hospital	
62	Association	\$133,500.35
63	(31) Mercer Radiology, Inc.	\$ 130.00
64	(32) Monongahela Power Company	\$ 17,192.85
65	(33) Norwich-Eaton Pharmaceuticals	\$ 412.06
66	(34) Nova Rubber Company, Inc.	\$ 540.00
67	(35) Ohio Valley Medical Center	\$ 125.80
68	(36) Orthopedic Clinic, Inc.	\$ 350.00
69	(37) B. Payman	\$ 110.00
70	(38) Perrmont Chemical Company	\$ 3,400.00
71	(39) Pfizer, Inc.	\$ 558.97
72	(40) Physicians Associates, Inc.	\$ 245.00
73	(41) Physicians Fee Office	\$ 5,529.39
74	(42) Picker Corporation	\$ 1,043.51
75	(43) Princeton Community Hospital	\$ 90.00
76	(44) Princeton Internists	\$ 87.00
77	(45) Raleigh General Hospital, Inc.	\$ 1,692.20
78	(46) Raleigh Orthopaedic Assoc., Inc.	\$ 2,410.00
79	(47) Reed & Carnrick	\$ 970.08
80	(48) Reynolds Memorial Hospital, Inc.	\$ 45,492.57
81	(49) Seneca Mental Health-Mental	
82	Retardation Council, Inc.	\$ 3,000.00

83	(50) Adnan N. Silk-Beckley	
84	Neurosurgical Clinic	\$ 80.00
85	(51) Rajendra P. Singh	\$ 215.00
86	(52) SK&F Co.	\$ 20.82
87	(53) SK&F Lab Co.	\$ 399.60
88	(54) Southern Chemical Co.	\$ 1,688.50
89	(55) Summers Community Clinic	\$ 103.02
90	(56) Summers County Hospital	\$ 13,341.30
91	(57) Tri-State Ambulance and Rentals	\$ 569.00
92	(58) Union Oil Company of California	\$ 12,156.20
93	(59) Upjohn Company (The)	\$ 791.07
94	(60) Wechsler Coffee Corporation	\$ 3,669.12
95	(61) West Virginia Paper, Inc.	\$ 3,478.25
96	(62) White Sulphur Pharmacy, Inc.	\$ 399.30
97	(63) Xerox Corporation	\$ 2,801.94

98 (c) *Claims against the Farm Management Commission:*

99

TO BE PAID FROM GENERAL REVENUE FUND

100	(1) Agway, Inc.	\$ 412.07
101	(2) Beckley Veterinary Hospital, Inc.	\$ 188.00
102	(3) Bessire & Company, Inc.	\$ 540.70
103	(4) Blue Grass Equipment, Inc.	\$ 117.40
104	(5) Boso Agri-Center, Inc.	\$ 8,406.83
105	(6) Buckeye Gas Products Company	\$ 95.39
106	(7) Frank J. Cary—Mountainland	
107	Animal Hospital	\$ 3,344.55
108	(8) Cecil E. Jackson Equipment, Inc.	\$ 65.06
109	(9) Corder Tractor & Equipment Company ..	\$ 210.52
110	(10) G. Jay Crissman	\$ 265.00
111	(11) Darwin O. Fike, d/b/a Surge	
112	Sales & Service	\$ 208.30
113	(12) James L. Davison	\$ 122.25
114	(13) Dearing Brothers, Inc.	\$ 591.34
115	(14) Eglon Farm Service	\$ 16,709.35
116	(15) Elkins Machine & Electric Co.	\$ 556.00
117	(16) Elkins Tire Company	\$ 140.76
118	(17) Firestone Stores	\$ 119.50
119	(18) Firestone Tire and Rubber	
120	Company (The)	\$ 51.60

121	(19) Robert M. Flesher—Upshur Veterinary		
122	Hospital	\$	55.00
123	(20) Frank's Service Center	\$	110.43
124	(21) Fullen Fertilizer Company, Inc.	\$	453.65
125	(22) Fulton-Thompson Tractor Sales, Inc.	\$	675.00
126	(23) Gibson's Scale Service	\$	677.40
127	(24) Greenbrier Tractor Sales, Inc.	\$	4,717.67
128	(25) Greenbrier Valley Farm Center, Inc.	\$	3,212.90
129	(26) Hedlund Manufacturing Co., Inc.	\$	1,622.07
130	(27) Henderson Implement Company	\$	618.14
131	(28) Heritage Equipment Company	\$	268.12
132	(29) Humberson Farm Equipment	\$	595.67
133	(30) J. H. Holt Plumbing and Heating, Inc. .	\$	1,000.40
134	(31) Jefferds Corporation	\$	747.24
135	(32) Jenkins Concrete Products Co.	\$	940.50
136	(33) Joalde Sales & Service	\$	35.87
137	(34) Johnston Alternator &		
138	Trailer Sales, Inc.	\$	425.54
139	(35) Keefer's Service Center	\$	3,219.64
140	(36) Lawson Products, Inc.	\$	922.28
141	(37) Lewis & Burge, Inc.	\$	170.96
142	(38) Liggett's Supply	\$	638.48
143	(39) Marshall County Cooperative, Inc.	\$	78.00
144	(40) Mason County D.H.I.A., Inc.	\$	527.46
145	(41) McGhee & Company	\$	13.25
146	(42) Mountain Mobile Milling	\$	200.75
147	(43) Nasco	\$	48.65
148	(44) North Central Dairy Herd Improvement		
149	Association	\$	270.07
150	(45) Overnite Transportation Co.	\$	28.20
151	(46) Pickens Hardware Co., Inc.	\$	239.49
152	(47) Pioneer Harvestore Systems, Inc.	\$	205.34
153	(48) Skyland Hospital Supply	\$	77.00
154	(49) Southern States Elkins Coop., Inc.	\$	24,591.24
155	(50) Southern States Marlinton,		
156	Cooperative	\$	29.85
157	(51) Swisher's Feed and Supply	\$	2,068.40
158	(52) John R. Tomlinson—Fairlea		
159	Animal Hospital	\$	249.00
160	(53) Town & Country Veterinary Clinic	\$	1,588.50

161	(54) Tygarts Valley D.H.I.A.	\$ 85.30
162	(55) Tygarts Valley Sanitation, Inc.	\$ 60.00
163	(56) Union Oil Company of California	\$ 8,002.98
164	(57) Virginia Harvestore, Inc.	\$ 1,146.72
165	(58) G. W. Wandling	\$ 150.00
166	(59) Ward Auto Parts Co.	\$ 667.16
167	(60) West Virginia Artificial	
168	Breeder's Cooperative, Inc.	\$ 2,748.00
169	(61) West Virginia Turnpike Commission ...	\$ 28.00
170	(62) Weston Veterinary Clinic	\$ 273.00
171	(63) Whitman Exterminating Company	\$ 68.00
172	(64) Winchester Equipment Co.	\$ 155.34
173	(65) Young's, Inc.	\$ 211.00

CHAPTER 29

(Com. Sub. for H. B. 1209—By Mr. Holmes and Mr. Otte)

[Passed February 8, 1982; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payments thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the adjutant general; alcohol beverage control commissioner; board of regents; department of education; department of finance and administration; department of health; department of highways; department of motor vehicles; department of natural resources; department of public safety; nonintoxicating beer commission; office of the state auditor-representation of needy persons fund; office of the supreme court of appeals; and the state tax department, to be moral obligations of the state and directing payment thereof.

- 1 The Legislature has considered the findings of fact and
- 2 recommendations reported to it by the court of claims con-

cerning various claims against the state and agencies thereof,
 and in respect to each of the following claims the Legislature
 adopts those findings of fact as its own, and hereby declares
 it to be the moral obligation of the state to pay each such
 claim in the amount specified below, and directs the auditor
 to issue warrants for the payment thereof out of any fund
 appropriated and available for the purpose.

(a) *Claim against the Adjutant General:*

TO BE PAID FROM GENERAL REVENUE FUND

(1) Southern Chemical Co. \$ 98.76

(b) *Claim against the Alcohol Beverage Control Commis-
 sioner:*

TO BE PAID FROM SPECIAL REVENUE FUND

(1) Leonard A. Cerullo \$ 4,559.24

(c) *Claims against the Board of Regents:*

TO BE PAID FROM SPECIAL REVENUE FUND, AS DESIGNATED

(1) General Communications Company
 from Acct. No. 8720-05 \$ 400.00

(2) Charles W. Jones
 from Acct. No. 8600-20 \$ 213.75

(3) Lundia, Myers Industries, Inc.
 from Acct. No. 8835-39 \$ 125.30

(d) *Claims against the Department of Education:*

TO BE PAID FROM GENERAL REVENUE FUND

(1) Rabert Lee Fulks, Jr. \$ 684.95

(2) Ernest E. Lowe \$ 195.00

(3) McDonnell Douglas Corporation \$ 28,132.00

(e) *Claim against the Department of Finance and Adminis-
 tration:*

TO BE PAID FROM GENERAL REVENUE FUND

(1) Carter's Safety Systems, Inc. \$ 974.92

34 (f) *Claim against the Department of Health:*

35 TO BE PAID FROM GENERAL REVENUE FUND

36 (1) Clifford Cupp\$ 137.25

37 (g) *Claims against the Department of Highways:*

38 TO BE PAID FROM STATE ROAD FUND

39	(1)	Mitchell F. Adkins	\$	82.47
40	(2)	Larry Allen Bayer	\$	104.81
41	(3)	Katherine H. Boyd	\$	57.64
42	(4)	Matta L. Brady, Admin. of the Estate of		
43		Shell C. Brady, deceased	\$203,347.94	
44	(5)	Jacqueline E. Delazio	\$	169.72
45	(6)	James W. Dixon and Doris A. Dixon ..	\$14,500.00	
46	(7)	Arley Don Dodd	\$	427.09
47	(8)	Hobert Friel	\$	3,500.00
48	(9)	Alonzo Gibson	\$	480.00
49	(10)	H & A Coal & Hauling, Inc.	\$	1,000.00
50	(11)	L. D. Hall	\$	800.00
51	(12)	Christine E. Henderson and Rodgers		
52		Paul Henderson	\$	1,305.00
53	(13)	Patricia Ann Jarboe	\$	1,040.00
54	(14)	Robert N. Jarboe	\$	3,676.00
55	(15)	Robert N. Jarboe, as next friend of		
56		Stephanie Jarboe	\$	50.00
57	(16)	Kanawha Valley Regional Transporta-		
58		tion Authority	\$	3,744.80
59	(17)	Bert Kessler	\$	262.98
60	(18)	Donald C. Master	\$	1,000.00
61	(19)	Thomas E. McNamee	\$	423.21
62	(20)	Franklin D. Mullins	\$	1,500.00
63	(21)	Jimmy Polk	\$	392.67
64	(22)	James Scott Sadler ..	\$	595.44
65	(23)	Daniel Serge, Jr.	\$	139.05
66	(24)	Charles R. Shaffer	\$	255.33
67	(25)	Ronald P. Stewart	\$	259.76
68	(26)	Charles E. Tedrow	\$	220.00
69	(27)	United States Post Office	\$	61.30

70	(h)	<i>Claim against the Department of Motor Vehicles:</i>	
71		TO BE PAID FROM STATE ROAD FUND	
72	(1)	West Virginia Automobile & Truck	
73		Dealers Association	\$ 1,174.37
74	(i)	<i>Claims against the Department of Natural Resources:</i>	
75		TO BE PAID FROM GENERAL REVENUE FUND	
76	(1)	W. H. Ballard, II and	
77		G. David Brumfield	\$ 3,593.00
78	(2)	Zummach-Peerless Chemical	
79		Coatings Corp.	\$ 918.29
80	(j)	<i>Claims against the Department of Public Safety:</i>	
81		TO BE PAID FROM GENERAL REVENUE FUND	
82	(1)	Howard Uniform Company	\$ 244.30
83	(2)	Thomas G. Kimble	\$ 230.03
84	(k)	<i>Claim against the Nonintoxicating Beer Commission:</i>	
85		TO BE PAID FROM GENERAL REVENUE FUND	
86	(1)	Crosby Beverage Co., Inc.	\$ 688.42
87	(l)	<i>Claims against the Office of the State Auditor-Needy</i>	
88		<i>Persons Fund:</i>	
89		TO BE PAID FROM GENERAL REVENUE FUND	
90	(1)	Richard H. Brumbaugh	\$ 124.00
91	(2)	Richard D. Frum	\$ 38.32
92	(3)	Charles E. McCarty	\$ 240.00
93	(4)	Daniel A. Oliver	\$ 1,098.50
94	(5)	Eugene J. Sellaro, Jr.	\$ 433.95
95	(6)	Sterl F. Shinaberry	\$ 1,500.00
96	(7)	Robert J. Smith	\$ 125.00
97	(8)	Gerard R. Stowers	\$ 198.50
98	(9)	James D. Terry	\$ 1,177.50
99	(10)	Gerald M. Titus, Jr.	\$ 940.85
100	(11)	Raymond H. Yackel	\$ 1,317.50
101	(m)	<i>Claim against the Supreme Court of Appeals:</i>	
102		TO BE PAID FROM GENERAL REVENUE FUND	
103	(1)	County Commission of Webster County	\$ 3,020.00

104 (n) *Claim against the State Tax Department:*

105 TO BE PAID FROM GENERAL REVENUE FUND

106 (1) L. Robert Kimball & Associates\$ 2,824.42

107 The Legislature finds that the above moral obligations and
 108 the appropriations made in satisfaction thereof shall be the
 109 full compensation for all claimants, and that prior to the
 110 payments to any claimant provided for in this bill, the court
 111 of claims shall receive a release from said claimant releasing
 112 any and all claims for moral obligations arising from the
 113 matters considered by the Legislature in the finding of the
 114 moral obligations and the making of the appropriations for
 115 said claimant. The court of claims shall deliver all releases
 116 obtained from claimants to the department against which
 117 the claim was allowed.

CHAPTER 30

(H. B. 1905—By Mr. Holmes and Mr. Otte)

[Passed March 11, 1982; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payments thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the board of regents; department of employment security; department of finance and administration; department of health; department of highways; department of natural resources; division of vocational rehabilitation; human rights commission; nonin-toxicating beer commission; supreme court; state auditor—West Virginia public legal services counsel; state treasurer; and the workmen's compensation fund, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and

2 recommendations reported to it by the court of claims con-
 3 cerning various claims against the state and agencies thereof,
 4 and in respect to each of the following claims the Legisla-
 5 ture adopts those findings of fact as its own, and hereby
 6 declares it to be the moral obligation of the state to pay each
 7 such claim in the amount specified below, and directs the
 8 auditor to issue warrants for the payment thereof out of any
 9 fund appropriated and available for the purpose.

10 (a) *Claim against the Board of Regents:*

11 TO BE PAID FROM GENERAL REVENUE FUND

12 (1) Energy Technology Consultants, Inc.
 13 D & M Weather Service \$ 350.00

14 (b) *Claim against the Department of Employment Security:*

15 TO BE PAID FROM EMPLOYMENT SECURITY FUND

16 (1) Region V—Regional Education
 17 Service Agency \$ 2,145.25

18 (c) *Claims against the Department of Finance
 19 and Administration:*

20 TO BE PAID FROM GENERAL REVENUE FUND

21 (1) Eastman Kodak Company \$ 4,391.50
 22 (2) Johnson Controls, Inc. \$ 6,536.75

23 (d) *Claim against the Department of Health:*

24 TO BE PAID FROM GENERAL REVENUE FUND

25 (1) Hawes Electric Co. \$ 1,126.00

26 (e) *Claims against the Department of Highways:*

27 TO BE PAID FROM STATE ROAD FUND

28 (1) Oncie E. Archer, Missouri Thompson,
 29 William Thompson, Truman Thompson,
 30 Grover Thompson, Chloe Batten,
 31 Nellie Summerville, Etta Ingram,
 32 Dora Life, and Helen Lockhart \$ 787.41
 33 (2) Auto Tech, Inc. \$ 325.50
 34 (3) Mason M. Clay \$ 150.00

35	(4) Barbara B. Krantz	\$	104.39
36	(5) John F. Tomblyn	\$	649.64
37	(f) <i>Claim against the Department of</i>		
38	<i>Natural Resources:</i>		
39	TO BE PAID FROM GENERAL REVENUE FUND		
40	(1) Firestone Tire & Rubber Company	\$	852.72
41	(g) <i>Claim against the Division of</i>		
42	<i>Vocational Rehabilitation:</i>		
43	TO BE PAID FROM GENERAL REVENUE FUND		
44	(1) Wheeling Multi-Service Center, Inc.	\$	5,220.00
45	(h) <i>Claim against the Human Rights Commission:</i>		
46	TO BE PAID FROM GENERAL REVENUE FUND		
47	(1) Jeffrey O. McGeary	\$	110.64
48	(i) <i>Claims against the Nonintoxicating Beer Commission:</i>		
49	TO BE PAID FROM GENERAL REVENUE FUND		
50	(1) Henry F. Ortlieb Brewing Co.	\$	3,004.87
51	(2) State Distributing Company	\$	11,068.92
52	(j) <i>Claims against the Supreme Court—</i>		
53	<i>General Judicial:</i>		
54	TO BE PAID FROM GENERAL REVENUE FUND		
55	(1) Charles E. McCarty	\$	55.00
56	(2) The Michie Company	\$	56.13
57	(k) <i>Claim against the Office of the State Auditor—</i>		
58	<i>West Virginia Public Legal Services Council:</i>		
59	TO BE PAID FROM GENERAL REVENUE FUND		
60	(1) Larry N. Sullivan	\$	170.00
61	(l) <i>Claim against the Office of the State Treasurer:</i>		
62	TO BE PAID FROM GENERAL REVENUE FUND		
63	(1) William P. Knight	\$	152.94
64	(m) <i>Claim against the Workmen's Compensation Fund:</i>		
65	TO BE PAID FROM WORKMEN'S COMPENSATION FUND		
66	(1) A. B. Dick Company	\$	9,264.00

67 The Legislature finds that the above moral obligations and
68 the appropriations made in satisfaction thereof shall be the full
69 compensation for all claimants, and that prior to the payments
70 to any claimant provided for in this bill, the court of claims
71 shall receive a release from said claimant releasing any and
72 all claims for moral obligations arising from the matters con-
73 sidered by the Legislature in the finding of the moral ob-
74 ligations and the making of the appropriations for said claimant.
75 The court of claims shall deliver all releases obtained from
76 claimants to the department against which the claim was
77 allowed.

CHAPTER 31

(H. B. 1906—By Mr. Holmes and Mr. Otte)

[Passed March 11, 1982; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

- §1. **Finding and declaring certain claims against the department of corrections; the farm management commission; and the insurance department, to be moral obligations of the state and directing payment thereof.**

1 The Legislature has heretofore made findings of fact that
2 the state has received the benefit of the commodities and
3 services rendered by certain claimants herein and has consid-
4 ered claims against the state, the department of corrections,
5 the farm management commission, and the insurance depart-
6 ment, agencies thereof, which have arisen due to overexpendi-
7 tures of the departmental appropriations by officers of such
8 state spending unit, such claims having been previously con-
9 sidered by the court of claims which also found that the state
10 has received the benefit of the commodities and services ren-

11 dered by each claimant, but were denied by the court of claims
 12 on the purely statutory grounds that to allow such claims
 13 would be condoning illegal acts contrary to the laws of the
 14 state. The Legislature pursuant to its findings of fact and also
 15 by the adoption of the findings of fact by the court of claims
 16 as its own, and, while not condoning such illegal acts, hereby
 17 declares it to be the moral obligation of the state to pay each
 18 such claim in the amount specified below, and directs the
 19 auditor to issue warrants upon receipt of a properly executed
 20 requisition supported by an itemized invoice, statement or
 21 other satisfactory document as required by section ten, article
 22 three, chapter twelve of the code of West Virginia, one thou-
 23 sand nine hundred thirty-one, as amended, for the payment
 24 thereof out of any fund appropriated and available for the
 25 purpose.

26 (a) *Claims against the Department of Corrections:*

27

TO BE PAID FROM GENERAL REVENUE FUND

28	(1) Bennett Publishing Company	\$	100.91
29	(2) Charleston Area Medical Center		299.50
30	(3) Clarksburg Drug Company		714.83
31	(4) E. R. Squibb & Sons, Inc.		214.60
32	(5) Exxon Company, USA		229.74
33	(6) Greenbrier Physicians, Inc.		1,348.50
34	(7) Greenbrier Valley Hospital		700.17
35	(8) Matthew Bender & Company		1,538.50
36	(9) Physicians Fee Office		823.00
37	(10) Chandra P. Sharma		815.00
38	(11) T. H. Mirza, M.D., Inc.		115.00
39	(12) Taylor County Commission		248.00
40	(13) West Virginia School of Osteopathic		
41	Medicine Clinic, Inc.		20,305.17

42 (b) *Claims against the Farm Management Commission:*

43

TO BE PAID FROM GENERAL REVENUE FUND

44	(1) Bill Henning, Inc.	\$	25.00
45	(2) Motor Car Supply Company		67.46
46	(3) Southern States Cooperative		455.31
47	(4) Superior Parts Service, Inc.		56.25

48 (c) *Claims against the Insurance Department:*

49 TO BE PAID FROM GENERAL REVENUE FUND

50 (1) Copy Graphics, Inc. \$ 522.13

CHAPTER 32

(H. B. 1160—By Mr. Damron, 10th Dist., and Mr. Tucker)

[Passed January 28, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the number of members to which the state is entitled in the House of Representatives of the United States Congress and arranging the counties of the state into districts for the election thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-3. Congressional districts.

1 The number of members to which the state is entitled in the
2 House of Representatives of the Congress of the United States
3 shall be apportioned among the several counties of the state,
4 arranged into four congressional districts, numbered as fol-
5 lows:

6 First District: Brooke, Doddridge, Hancock, Harrison,
7 Marion, Marshall, Ohio, Pleasants, Ritchie, Taylor, Tyler,
8 Wetzel and Wood.

9 Second District: Barbour, Berkeley, Fayette, Grant, Green-
10 brier, Hampshire, Hardy, Jefferson, Mineral, Monongalia,
11 Monroe, Morgan, Pendleton, Pocahontas, Preston, Randolph,
12 Summers, Tucker, Upshur and Webster.

13 Third District: Boone, Braxton, Calhoun, Clay, Gilmer,

Be it enacted by the Legislature of West Virginia:

That sections two hundred four and two hundred ten, article two, chapter sixty-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. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

§60A-2-210. Schedule IV.

§60A-2-204. Schedule I.

- 1 (a) The controlled substances listed in this section are
- 2 included in Schedule I.
- 3 (b) Unless specifically excepted or unless listed in
- 4 another schedule, any of the following opiates, including
- 5 its isomers, esters, ethers, salts and salts of isomers,
- 6 esters, and ethers whenever the existence of such
- 7 isomers, esters, ethers, and salts is possible within the
- 8 specific chemical designation:
 - 9 (1) Acetylmethadol;
 - 10 (2) Allylprodine;
 - 11 (3) Alphacetylmethadol;
 - 12 (4) Alphameprodine;
 - 13 (5) Alphamethadol;
 - 14 (6) Alpha-methylfentanyl;
 - 15 (7) Benzethidine;
 - 16 (8) Betacetylmethadol;
 - 17 (9) Betameprodine;
 - 18 (10) Betamethadol;
 - 19 (11) Betaprodine;
 - 20 (12) Clonitazene;
 - 21 (13) Dextromoramide;
 - 22 (14) Diampromide;
 - 23 (15) Diethylthiambutene;
 - 24 (16) Difenoxin;
 - 25 (17) Dimenoxadol;
 - 26 (18) Dimepheptanol;
 - 27 (19) Dimethylthiambutene;
 - 28 (20) Dioxaphetyl butyrate;
 - 29 (21) Dipipanone;
 - 30 (22) Ethylmethylthiambutene;
 - 31 (23) Etonitazene;

- 32 (24) Etoxidine;
- 33 (25) Fenethylline;
- 34 (26) Furethidine;
- 35 (27) Hydroxypethidine;
- 36 (28) Ketobemidone;
- 37 (29) Levomoramide;
- 38 (30) Levophenacymorphan;
- 39 (31) Morpheridine;
- 40 (32) Noracymethadol;
- 41 (33) Norlevorphanol;
- 42 (34) Normethadone;
- 43 (35) Norpipanone;
- 44 (36) Phenadoxone;
- 45 (37) Phenampromide;
- 46 (38) Phenomorphan;
- 47 (39) Phenoperidine;
- 48 (40) Piritramide;
- 49 (41) Proheptazine;
- 50 (42) Properidine;
- 51 (43) Propiram;
- 52 (44) Racemoramide;
- 53 (45) Sufentanil;
- 54 (46) Tilidine;
- 55 (47) Trimeperidine.

56 (c) Unless specifically excepted or unless listed in
57 another schedule, any of the following opium derivatives,
58 its salts, isomers and salts of isomers whenever the
59 existence of such salts, isomers and salts of isomers is
60 possible within the specific chemical designation:

- 61 (1) Acetorphine;
- 62 (2) Acetyldihydrocodeine;
- 63 (3) Benzylmorphine;
- 64 (4) Codeine methylbromide;
- 65 (5) Codeine-N-Oxide;
- 66 (6) Cyprenorphine;
- 67 (7) Desomorphine;
- 68 (8) Dihydromorphine;
- 69 (9) Drotebanol;
- 70 (10) Etorphine (except HCL Salt);
- 71 (11) Heroin;
- 72 (12) Hydromorphinol;

- 73 (13) Methyldesorphine;
74 (14) Methyldihydromorphine;
75 (15) Morphine methylbromide;
76 (16) Morphine methylsulfonate;
77 (17) Morphine-N-Oxide;
78 (18) Myrophine;
79 (19) Nicocodeine;
80 (20) Nicomorphine;
81 (21) Normorphine;
82 (22) Phoclodine;
83 (23) Thebacon.
- 84 (d) Unless specifically excepted or unless listed in
85 another schedule, any material, compound, mixture or
86 preparation, which contains any quantity of the follow-
87 ing hallucinogenic substances, or which contains any of
88 the salts, isomers and salts of isomers of any thereof
89 whenever the existence of such salts, isomers and salts
90 of isomers is possible within the specific chemical designa-
91 tion and for the purposes of this subsection only, "isomer"
92 includes the optical position and geometric iso-
93 mers:
- 94 (1) 2,5-dimethoxyamphetamine; also known by these
95 trade or other names: 2,5-dimethoxy-a-methylphenethy-
96 lamine; 2,5-DMA;
- 97 (2) 3,4-methylenedioxy amphetamine;
- 98 (3) 4-bromo-2,5-dimethoxyamphetamine or 4-bromo-
99 2,5-dimethoxy-a-methylphenethylamine, or 4-bromo-2,
100 5-DMA;
- 101 (4) 5-methoxy-3, 4-methylenedioxy amphetamine;
- 102 (5) 4-methoxyamphetamine; also known by these trade
103 or other names: 4-methoxy-a-methylphenethylamine;
104 paramethoxyamphetamine; PMA;
- 105 (6) 3,4,5-trimethoxy amphetamine;
- 106 (7) Bufotenine; known also by these trade and other
107 names; 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-
108 dimethylamino-ethyl)-5 indolol; N-N-dimethylserotonin;
109 5-hydroxy-N-dimethyltryptamine; mappine;
- 110 (8) Diethyltryptamine; known also by these trade and
111 other names: N-N-Diethyltryptamine; "DET";
- 112 (9) Dimethyltryptamine; known also by the name
113 "DMT";

- 114 (10) 4-methyl-2,5-dimethoxy amphetamine; known
115 also by these trade and other names: 4-methyl-2,5-di-
116 methoxy- α -methylphenethylamine; "DOM"; "STP";
- 117 (11) Iboqaine; known also by these trade and other
118 names: 7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-meth-
119 oxy-6, 9-methano-5H-pyrido (1', 2': 1, 2 azepino 4,5b)
120 indole; tabernanthe iboga;
- 121 (12) Lysergic acid diethylamide;
- 122 (13) Marihuana;
- 123 (14) Mescaline;
- 124 (15) Peyote; meaning all parts of the plant presently
125 classified botanically as *Lophophora Williamsii* Lematre,
126 whether growing or not; the seeds thereof; any extract
127 from any part of such plant; and every compound,
128 manufacture, salt, derivative, mixture or preparation of
129 such plant, its seeds or extracts;
- 130 (16) N-ethyl-3-piperidyl benzilate;
- 131 (17) N-methyl-3-piperidyl benzilate;
- 132 (18) Psilocybin;
- 133 (19) Psilocyn;
- 134 (20) Tetrahydrocannabinols; including synthetic equiv-
135 alents of the substances contained in the plant or in the
136 resinous extractives of *Cannabis* or synthetic substances,
137 derivatives and their isomers with similar chemical
138 structure and pharmacological activity such as the fol-
139 lowing:
- 140 Delta 1
- 141 Cis or trans tetrahydrocannabinol, and their optical
142 isomers;
- 143 Delta 6
- 144 Cis or trans tetrahydrocannabinol, and their optical
145 isomers;
- 146 Delta 3, 4
- 147 Cis or trans tetrahydrocannabinil tetrahydrocannabi-
148 nol, and their optical isomers;
- 149 (21) Thiophene analog of phencyclidine; also known
150 by these trade or other names: (A) (1-(2-thienyl) cyclo-
151 hexyl) piperidine; (B) Thienyl analog of phencyclidine;
152 TPCP;

153 (22) Ethylamine analog of phencyclidine . . . Some
154 trade or other names: N-ethyl-1-phenylcyclohexylamine,
155 (1-phenylcyclohexyl)ethylamine, N - (1 - phenylcyclo-
156 hexyl) ethylamine, cyclohexamine, PCE;

157 (23) Pyrrolidine analog of phencyclidine . . . Some
158 trade or other names: 1-(1-phenylcyclohexyl)-pyrroli-
159 dine, PCPy, PHP.

160 (e) Unless specifically excepted or unless listed in
161 another schedule, any of the following depressants, its
162 salts, isomers and salts of isomers whenever the existence
163 of such salts, isomers and salts of isomers is possible
164 within the specific chemical designation:

165 (1) Mecloqualone.

§60A-2-210. Schedule IV.

1 (a) The controlled substances listed in this section are
2 included in Schedule IV.

3 (b) Unless specifically excepted or unless listed in
4 another schedule, any material, compound, mixture or
5 preparation which contains any quantity of the following
6 substances, including its salts, isomers and salts of iso-
7 mers whenever the existence of such salts, isomers and
8 salts of isomers is possible within the specific chemical
9 designation:

10 (1) Alprazolam;

11 (2) Barbital;

12 (3) Chloral betaine;

13 (4) Chloral hydrate;

14 (5) Ethchlorvynol;

15 (6) Ethinamate;

16 (7) Halazepam;

17 (8) Methohexital;

18 (9) Meprobamate;

19 (10) Methylphenobarbital, as methobarbital;

20 (11) Paraldehyde;

21 (12) Petrichloral;

22 (13) Phenobarbital;

23 (14) Lorazepam;

24 (15) Mebutamate;

25 (16) Clorazepate;

26 (17) Chlordiazepoxide;

- 27 (18) Clonazepam;
28 (19) Diazepam;
29 (20) Flurazepam;
30 (21) Oxazepam;
31 (22) Prazepam;
32 (23) Pentazocine;
33 (24) Temazepam.

34 (c) Any material, compound, mixture or preparation
35 which contains any quantity of the following substance,
36 including its salts, isomers (whether optical, position or
37 geometric) and salts of such isomers whenever the exist-
38 tence of such salts, isomers and salts of isomers is pos-
39 sible: Fenfluramine.

40 (d) Unless specifically excepted or unless listed in
41 another schedule, any material, compound, mixture or
42 preparation which contains any quantity of the following
43 substances having a stimulant effect on the central ner-
44 vous system, including its salts, isomers (whether optical,
45 position or geometric) and salts of such isomers whenever
46 the existence of such salts, isomers and salts of isomers is
47 possible within the specific chemical designation:

- 48 (1) Diethylpropion;
49 (2) Mazindol;
50 (3) Phentermine;
51 (4) Pemoline (including organometallic complexes and
52 chelates thereof);
53 (5) Pipradrol;

54 (6) SPA ((-1)-1-dimethylamino-1, 2-diphenylethane).

55 (e) Other substances. Unless specifically excepted or
56 unless listed in another schedule, any material, com-
57 pound, mixture or preparation which contains any quan-
58 tity of the following substances, including its salts:

- 59 (1) Dextropropoxyphene (alpha - (+) - 4 -
60 dimethylamino-1, 2 - diphenyl - 3 - methyl - 2 -
61 propionoxybutane).

62 (f) Not more than 1 milligram of difenoxin and not
63 less than 25 micrograms of atropine sulfate per dosage
64 unit.

CHAPTER 34

(S. B. 106—By Mr. Ash and Mr. Gilligan)

[Passed March 13, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two, relating to continuing and reestablishing the department of corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-2. Reestablishment of department; findings.

1 After having conducted a performance and fiscal audit
2 through its joint committee on government operations,
3 pursuant to section nine, article ten, chapter four of this
4 code, the Legislature hereby finds and declares that the
5 department of corrections should be continued and re-
6 established. Accordingly, notwithstanding the provisions
7 of section four, article ten, chapter four of this code, the
8 department of corrections shall continue to exist until the
9 first day of July, one thousand nine hundred eighty-eight.

CHAPTER 35

(Com. Sub. for H. B. 1223—By Mr. Albright)

[Passed February 25, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the reporter of the West Virginia supreme court of appeals or the West Virginia supreme court of appeals to direct the number of

copies of the reports of the decisions of the supreme court of appeals to be published; providing for the greater number of copies directed to be published if the reporter and the supreme court of appeals do not agree as to the number of copies to be specified in the publication contract; and providing that in no case shall the number of copies published exceed one thousand five hundred.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-27. Publication of reports of supreme court of appeals.

1 Notwithstanding any of the provisions of this article, the
2 official reporter of the supreme court of appeals shall have
3 charge and supervision of the printing and binding of the
4 reports of the decisions of the supreme court of appeals of
5 the state, and shall contract for their publication in the same
6 manner that the director of the purchasing division contracts
7 under sections eleven through twenty-one of this article. Such
8 contract shall provide for the publication of such number of
9 copies as the reporter and the supreme court of appeals may
10 jointly direct. If the reporter and the supreme court of appeals
11 do not agree on the number of copies for which the publica-
12 tion contract shall provide, the contract shall provide for the
13 publication of the greater number of copies directed by either
14 the reporter or the supreme court of appeals. In no event shall
15 the number of copies published exceed one thousand five
16 hundred. Copies of the reports of the decisions of the supreme
17 court of appeals shall be on such paper and be bound in ac-
18 cordance with directions and specifications specified by the
19 reporter by and with the concurrence of the court. The size of
20 type and page shall be prescribed by the reporter with the
21 concurrence of the court. A volume shall be published accord-
22 ing to the terms of the contract whenever ordered by the
23 court. The reporter shall secure the copyright of each volume
24 for the benefit of the state. The reports shall be styled "West
25 Virginia Reports."

26 The printing and binding of the reports shall be done under

27 the direction of and in the manner prescribed by the reporter,
28 subject to the control of the court. The reporter shall prefix
29 to the printed report of each case the dates when the same
30 was submitted and decided. Each volume shall, if practicable,
31 contain the reports of at least eighty cases decided by the court,
32 and shall contain approximately one thousand pages unless
33 otherwise ordered by the court, exclusive of the index and table
34 of cases reported and cited. Proof sheets shall be furnished by
35 the printer to the reporter and to each judge of the court, and
36 such corrections and modifications shall be made by the print-
37 er as the reporter or any of the judges shall direct. If the work
38 is not done in the manner required by law, the reporter shall
39 not approve the volume and shall not accept it.

40 The reports of the decisions of the supreme court of appeals
41 may be published in pamphlet form in advance of the pub-
42 lication of the bound volumes of the "West Virginia Reports,"
43 periodically, or at such times as may be directed by the report-
44 er and the supreme court of appeals. The reporter shall secure
45 the copyright of each pamphlet of opinions so published in
46 advance. Each pamphlet shall contain the report of such numb-
47 er of cases as the supreme court of appeals and the reporter
48 shall deem advisable.

49 The contract for the publication of such advance sheets
50 shall be made in the manner provided for the publication of
51 bound volumes of the "West Virginia Reports."

52 A charge of not less than the actual cost of printing and
53 distribution shall be made for such advance sheets.

CHAPTER 36

(H. B. 1025—By Mr. Steptoe)

[Passed February 5, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to supervisory rules for magistrate courts prepared by judges of the circuit courts; rules promulgated by the supreme court of appeals.

Be it enacted by the Legislature of West Virginia:

That section sixteen, 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.

§50-1-16. Supervisory rules.

1 The supreme court of appeals is hereby authorized to
2 promulgate rules to carry out the intent of this chapter and
3 to exercise rule-making authority granted by Article VIII of
4 the constitution of West Virginia. Rules promulgated by the
5 judge of a circuit court, or the chief judge thereof, pursuant
6 to the provisions of this chapter shall be subordinate and
7 subject to the rules of the supreme court of appeals or the
8 orders of the chief justice thereof. Rules promulgated by
9 the judge of a circuit court, or the chief judge thereof, shall
10 be made by order entered upon the order book of the circuit
11 court, as hereinafter provided, and shall be effective when
12 filed with the clerk of the supreme court of appeals and the
13 magistrate court clerk for the magistrate court in which such
14 rules apply. All rules promulgated under this section by the
15 supreme court of appeals, or by the judge of a circuit court,
16 or the chief judge thereof, shall be entered upon an order
17 book designated for the purpose of magistrate court rules by
18 the clerk of the circuit court.

CHAPTER 37

(H. B. 1404—By Mr. Martin, 35th Dist.)

[Passed March 9, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to magistrate courts; costs, fines and records; providing that the costs be assessed against the losing party.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. COSTS, FINES AND RECORDS.**§50-3-1a. Costs assessed against losing party.**

- 1 Except as otherwise provided by law, costs shall be assessed
- 2 against the losing party or parties.

CHAPTER 38

(Com. Sub. for H. B. 1218—By Mr. Albright)

[Passed February 22, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen, relating to allowing magistrates to compel attendance of a defendant at a criminal trial or other criminal hearing by issuance of a *capias*.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.**§50-5-15. Failure of defendant to appear at criminal trial or other criminal hearing; compulsion of appearance.**

- 1 Whenever any defendant, properly notified, fails to appear
- 2 for a criminal trial or other criminal hearing before a magis-
- 3 trate, the magistrate may issue a *capias* to compel that person
- 4 to appear.

CHAPTER 39

(Com. Sub. for H. B. 1220—By Mr. Albright)

[Passed February 25, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring post judgment

process, in a case before a magistrate in which a suggestion of salary and wages is instituted and such suggestion is more appropriately conducted in another county, to be delivered to the sheriff of that county with return to the issuing clerk.

Be it enacted by the Legislature of West Virginia:

That section one, article six, 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 6. ENFORCEMENT OF CIVIL JUDGMENTS.

§50-6-1. Enforcement of judgments.

1 (a) The provisions of articles three, four, five, five-a,
2 five-b and six, chapter thirty-eight of this code, except as
3 the same are in conflict with the provisions of this chapter
4 or are clearly applicable only to courts of record, shall apply
5 to the enforcement of judgments rendered in magistrate court
6 and process therefor shall issue from magistrate court. Process
7 issued in violation of such provisions shall be void. The form
8 of such process shall be in accord with the rules of the
9 supreme court of appeals. No such process shall issue until
10 after ten days after the judgment is rendered or, if a motion
11 to set aside such judgment is then pending, until after ten
12 days after the determination of such motion.

13 (b) A magistrate court clerk, deputy clerk or magistrate
14 assistant before whom a suggestion of salary and wages is
15 instituted pursuant to the provisions of articles five-a and
16 five-b, chapter thirty-eight of this code shall forward all post
17 judgment process directly to the sheriff of any county in
18 the same manner and with the same authority as has been
19 given to circuit clerks, pursuant to section five, article three,
20 chapter fifty-six.

CHAPTER 40

(H. B. 1373—By Mr. Harman, 32nd Dist.)

[Passed February 15, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact section one-u, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to circuit courts;

circuit judges; and changing the terms of the twenty-first circuit, for the county of Grant.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1u. Twenty-first circuit.

- 1 For the county of Grant, on the first Tuesday in March,
- 2 the second Tuesday in July and the first Tuesday in November.
- 3 For the county of Mineral, on the second Tuesday in
- 4 January, the first Tuesday in May and the first Tuesday in
- 5 September.
- 6 For the county of Tucker, on the second Tuesday in
- 7 February, the first Tuesday in June and the first Tuesday in
- 8 October.

CHAPTER 41

(Com. Sub. for S. B. 221—By Mr. Galperin)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to preliminary procedure; providing that a law-enforcement officer may issue a citation instead of making an arrest for any misdemeanor, not involving injury to the person, committed in the law-enforcement officer's presence; providing that an arrest may be made upon the belief that the person is likely to harm himself or others, and when a person is being detained for shoplifting pursuant to law; time for appearance to be stated on citation; and providing for arrest for failure to appear in response to citation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PRELIMINARY PROCEDURE.

§62-1-5a. Citation in lieu of arrest; failure to appear.

1 A law-enforcement officer may issue a citation instead of
2 making an arrest for the following offenses, if there are
3 reasonable grounds to believe that the person being cited will
4 appear to answer the charge:

5 (1) Any misdemeanor, not involving injury to the person,
6 committed in a law-enforcement officer's presence: *Provided*,
7 That the officer may arrest the person if he has reasonable
8 grounds to believe that the person is likely to cause serious
9 harm to himself or others; and

10 (2) When any person is being detained for the purpose of
11 investigating whether such person has committed or
12 attempted to commit shoplifting, pursuant to section four,
13 article three-a, chapter sixty-one of this code.

14 The citation shall provide that the defendant shall appear
15 within a designated time.

16 If the defendant fails to appear in response to the citation or
17 if there are reasonable grounds to believe that he will not
18 appear, a complaint may be made and a warrant shall issue.
19 When a physical arrest is made and a citation is issued in
20 relation to the same offense the officer shall mark on the
21 citation, in the place specified for court appearance date, the
22 word "arrested" in lieu of the date of court appearance.

CHAPTER 42

(Com. Sub. for H. B. 1015—By Mr. Brenda and Mr. Harman, 33rd Dist.)

[Passed February 4, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section three, article four, chapter forty-two of the code of West Virginia, one thousand nine hundred

thirty-one, as amended; and to amend said chapter forty-two by adding thereto a new article, designated article six, relating to the uniform disclaimer of property interests act; the right to disclaim interest in property; the time period and procedure for disclaiming; the form of disclaimer; the effect of a disclaimer; certain prohibitions to disclaimer; and application of the article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT.

- §42-6-1. Title.
- §42-6-2. Right to disclaim interest in property.
- §42-6-3. Time of disclaimer; delivery.
- §42-6-4. Form of disclaimer.
- §42-6-5. Effect of disclaimer.
- §42-6-6. Waiver and bar.
- §42-6-7. Remedy not exclusive.
- §42-6-8. Application.

§42-6-1. Title.

- 1 This article may be cited as the "Uniform Disclaimer of
- 2 Property Interests Act."

§42-6-2. Right to disclaim interest in property.

- 1 A person, or the representative of a deceased, incapacitated
- 2 or protected person, to whom any property or interest therein
- 3 devolves, by whatever means, may disclaim it in whole or in
- 4 part by delivering a written disclaimer under this article. The
- 5 right to disclaim exists notwithstanding any limitation on the
- 6 interest of the disclaimant in the nature of a spendthrift pro-
- 7 vision or similar restriction.

§42-6-3. Time of disclaimer; delivery.

- 1 (a) Except as provided in subsection (c) of this section
- 2 if the property or interest has devolved to the disclaimant
- 3 under a testamentary instrument or by the laws of intestacy,
- 4 the disclaimer shall be delivered, as to a present interest, not

5 later than six months after the death of the deceased owner or
6 deceased donee of a power of appointment and, as to a future
7 interest, not later than six months after the event determining
8 that the taker of the property or interest has become finally
9 ascertained and his interest is indefeasibly vested. The dis-
10 claimer shall be delivered in person or mailed by registered or
11 certified mail to any personal representative, or other fidu-
12 ciary, of the decedent or the donee of the power, to the holder
13 of the legal title to which the interest relates or to the person
14 entitled to the property or interest in the event of disclaimer. A
15 fully executed and acknowledged copy of the disclaimer shall
16 be filed and recorded with the probate documents in the office
17 of the clerk of the county commission of the county in which
18 proceedings for the administration of the estate of the deceased
19 owner or deceased donee of the power have been commenced.

20 (b) Except as provided in subsection (c), if the property or
21 interest has devolved to the disclaimant under a nontesta-
22 mentary instrument or contract, the disclaimer shall be deliver-
23 ed as to a present interest, not later than six months after the
24 effective date of the nontestamentary instrument or contract
25 and, as to a future interest, not later than six months after the
26 event determining that the taker of the property or interest
27 has become finally ascertained and his interest indefeasibly
28 vested. If the person entitled to disclaim does not have actual
29 knowledge of the existence of the interest, the disclaimer shall
30 be delivered not later than six months after he has actual
31 knowledge of the existence of the interest. The effective date of
32 a revocable instrument or contract is the date on which the
33 maker no longer has power to revoke it or to transfer to him-
34 self or another the entire legal and equitable ownership of the
35 interest. The disclaimer shall be delivered in person or mailed
36 by registered or certified mail to the person who has legal title
37 to or possession of the interest disclaimed.

38 (c) In any case, as to a transfer creating an interest in the
39 disclaimant made after the thirty-first day of December, one
40 thousand nine hundred seventy-six, and subject to tax under
41 chapters eleven, twelve or thirteen of the Internal Revenue
42 Code of 1954, as amended, a disclaimer intended as a qualified
43 disclaimer thereunder must specifically so state and must be

44 delivered not later than nine months after the later of the
45 date the transfer is made or the day on which the person dis-
46 claiming attains age twenty-one.

47 (d) A surviving joint tenant may disclaim as a separate in-
48 terest any property or interest therein devolving to him by
49 right of survivorship. A surviving joint tenant may disclaim the
50 entire interest in any property or interest therein that is the
51 subject of a joint tenancy devolving to him, if the joint ten-
52 ancy was created by act of a deceased joint tenant and the
53 survivor did not join in creating the joint tenancy.

54 (e) If real property or an interest therein is disclaimed, in
55 addition to recording the disclaimer in the county wherein
56 administration is had or commenced, a fully executed and ac-
57 knowledged copy of the disclaimer shall be recorded in the
58 deed books in the office of the clerk of the county commission
59 of the county in which the property or interest disclaimed is
60 located.

§42-6-4. Form of disclaimer.

1 The disclaimer shall (a) describe the property or interest
2 disclaimed, (b) declare the disclaimer and extent thereof, (c)
3 be signed by the disclaimant and (d) be acknowledged in
4 such a manner as would authorize a deed to be admitted to
5 record.

§42-6-5. Effect of disclaimer.

1 (a) If the property or interest devolved to a disclaimant
2 under a testamentary instrument or under the laws of intestacy
3 and the deceased owner or donee of a power of appointment
4 has not provided for another disposition, it devolves as if
5 the disclaimant had predeceased the decedent or, if the
6 disclaimant was designated to take under a power of ap-
7 pointment exercised by a testamentary instrument, as if the
8 disclaimant had predeceased the donee of the power. Any
9 future interest that takes effect in possession or enjoyment
10 after the termination of the estate or interest disclaimed
11 takes effect as if the disclaimant had died before the event
12 determining that the taker of the property or interest had
13 become finally ascertained and his interest is indefeasibly

14 vested. A disclaimer relates back for all purposes to the
15 date of death of the decedent, or of the donee of the power,
16 or the determinative event, as the case may be.

17 (b) If the property or interest devolved to a disclaimant
18 under a nontestamentary instrument or contract and the
19 instrument or contract does not provide for another disposition,
20 (1) it devolves as if the disclaimant had died before the
21 effective date of the instrument or contract; and (2) a future
22 interest that takes effect in possession or enjoyment at or
23 after the termination of the disclaimed interest takes effect
24 as if the disclaimant had died before the event determining
25 that the taker of the property or interest had become finally
26 ascertained and his interest indefeasibly vested. A dis-
27 claimer relates back for all purposes to the effective date
28 of the instrument or contract or the date of the determinative
29 event, as the case may be.

30 (c) The disclaimer or the written waiver of the right to
31 disclaim is binding upon the disclaimant or person waiving
32 and all persons claiming through or under him.

§42-6-6. Waiver and bar.

1 The right to disclaim property or an interest therein is
2 barred by (a) an assignment, conveyance, encumbrance,
3 pledge or transfer of the property or interest, or a contract
4 therefor, (b) a written waiver of the right to disclaim, (c)
5 an acceptance of the property or interest or a benefit there-
6 under or (d) a sale of the property or interest under judicial
7 sale made before the disclaimer is effected.

§42-6-7. Remedy not exclusive.

1 This article does not abridge the right of person to waive,
2 release, disclaim or renounce property or an interest therein
3 under any other statute.

§42-6-8. Application.

1 An interest in property that exists on the effective date
2 of this article as to which, if a present interest, the time for
3 delivering a disclaimer under this article has not expired or,
4 if a future interest, the interest has not become indefeasibly

5 vested or the taker finally ascertained, may be disclaimed
6 within six months after the effective date of this article.

CHAPTER 43

(Com. Sub. for H. B. 1687—By Mr. Givens and Mr. Harman, 33rd Dist.)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for the prosecution of persons violating the provisions of ordinances adopted for the control and registration of dogs; allowing county commissions to provide that any such violation is a misdemeanor; providing that magistrate courts and circuit courts have concurrent jurisdiction with respect to such misdemeanors; and providing for penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS.

§19-20-6. County dog warden; rules and regulations for dog control; prosecution and penalties for violation of ordinances.

1 (a) The county commission of each county may appoint and
2 employ a county dog warden, and such number of deputies, for
3 such time, and at such compensation, as such county com-
4 mission shall deem reasonable and necessary to enforce the
5 provisions of this code with respect to the control and registra-
6 tion of dogs, the impounding, care and destruction of unlicensed
7 dogs. Such county dog warden may be appointed a deputy
8 assessor for the purpose of collecting the dog tax and registra-
9 tion fees, taking the dog registration and providing the tags
10 authorized by this article. The county dog warden or any

11 deputies may, in the discretion of the county commission, be
12 regularly employed officers or agents of any humane society
13 or society for the prevention of cruelty to animals, organized
14 and operating under the laws of this state and owning, controll-
15 ing and operating a suitable place within the county for im-
16 pounding and destroying dogs. In addition to the compensa-
17 tion provided for above, a bounty of fifty cents per dog shall
18 be paid to the county dog warden or deputy who captures an
19 unregistered dog. Such county dog warden and deputy wardens
20 shall each give bond in a sum of not less than one thousand
21 dollars and not more than two thousand dollars conditioned on
22 the faithful performance of their duties. Such bonds shall be
23 filed with the county commission by which such persons are
24 appointed.

25 The county dog warden and his deputies shall patrol the
26 county in which they are appointed and shall seize on sight
27 and impound any dog more than six months of age found not
28 wearing a valid registration tag, except dogs kept constantly
29 confined in a registered dog kennel. They shall be responsible
30 for the proper care and final disposition of all impounded dogs.
31 The county dog warden shall make a monthly report, in writ-
32 ing, to the county commission of his county. When any dog
33 shall have been seized and impounded, the county dog warden
34 shall forthwith give notice to the owner of such dog, if such
35 owner be known to the warden, that such dog has been im-
36 pound and that it will be sold or destroyed if not redeemed
37 within five days. If the owner of such dog be not known to
38 the dog warden, he shall post a notice in the county courthouse.
39 The notice shall describe the dog and the place where seized
40 and shall advise the unknown owner that such dog will be sold
41 or destroyed if not redeemed within five days.

42 (b) Any county commission may promulgate and enforce
43 such ordinances, rules and regulations, not inconsistent with
44 the provisions of this article, as it considers necessary or con-
45 venient for the control and management of all dogs in the
46 county, or any portion thereof, regardless of the age of any
47 such dog: *Provided*, That the county commissions may prom-
48 ulgate and enforce such ordinances, rules and regulations to

49 the extent necessary for the implementation of the provisions
50 contained in this article.

51 (c) The county commission of each county may provide in
52 such ordinance for the arrest, conviction and punishment of any
53 person who violates the provisions thereof. The county com-
54 mission of each county may provide in any such ordinance
55 that any person who violates the provisions of the ordinance is
56 guilty of a misdemeanor, and, upon conviction thereof, that
57 such person is subject to a fine or fines. The amount of such
58 fine for a single violation of any such ordinance may not ex-
59 ceed one hundred dollars. Magistrate courts and circuit courts
60 shall have concurrent jurisdiction with respect to such misde-
61 meanors.

CHAPTER 44

(S. B. 258—By Mr. Heck and Mr. Tonkovich)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article nineteen, chapter five 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 four, relating to domestic aluminum, glass and steel in public works projects.

Be it enacted by the Legislature of West Virginia:

That section two, article nineteen, chapter five 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 four, all to read as follows:

ARTICLE 19. DOMESTIC ALUMINUM, GLASS AND STEEL IN PUBLIC WORKS PROJECTS.

§5-19-2. Preference for domestic aluminum, glass and steel products; mandatory contract provision; exceptions.

§5-19-4. Bid or offered price of steel products of foreign origin.

§5-19-2. Preference for domestic aluminum, glass and steel products; mandatory contract provision; exceptions.

1 (a) Every state spending unit, as defined in chapter five-a,
2 shall require that every contract and subcontract for the
3 construction, reconstruction, alteration, repair, improvement
4 or maintenance of public works or for the purchase of any
5 item of machinery or equipment to be used at sites of public
6 works contain a provision that, if any aluminum, glass or steel
7 products are to be supplied in the performance of the
8 contract, or subcontract, only domestic aluminum, glass or
9 steel products shall be supplied unless the spending officer,
10 as defined in chapter five-a, determines, in writing, after the
11 receipt of offers or bids, that the cost of domestic aluminum,
12 glass or steel products is unreasonable or inconsistent with
13 the public interest or that domestic aluminum, glass or steel
14 products are not produced in sufficient quantities to meet the
15 contract requirements: *Provided*, That this article applies to
16 any public works contract awarded in an amount more than
17 fifty thousand dollars, and with regard to steel only, this
18 article applies to any public works contract awarded in an
19 amount more than fifty thousand dollars or requiring more
20 than ten thousand pounds of steel products.

21 (b) The commissioner of finance and administration shall
22 issue rules which provide that, for purposes of this article, the
23 bid or offered price of any aluminum, glass or steel products
24 of domestic origin, as defined in section one of this article
25 (including any applicable duty), is not unreasonable if it does
26 not exceed the sum of a differential of twenty percent of the
27 bid or offered price of the aluminum, glass or steel products
28 of foreign origin: *Provided*, That if such products are
29 produced in a "substantial labor surplus area" as defined by
30 the United States department of labor, the differential
31 applied under this article shall be thirty percent.

§5-19-4. Bid or offered price of steel products of foreign origin.

1 If prior to the award of a contract under this article, the
2 spending officer, as defined in chapter five-a, determines that
3 there exists a bid or offered price of like aluminum, glass or
4 steel products of foreign origin that is reasonable and lower
5 than the lowest bid or offered price of aluminum, glass or
6 steel products of domestic origin, the spending officer, as
7 defined in chapter five-a, may request in writing a

- 8 reevaluation and reduction in the lowest bid offered price of
9 such products of domestic origin.

CHAPTER 45

(S. B. 222—By Mr. Palumbo)

[Passed March 9, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections one and eight, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to enact in lieu thereof a new section one, article one, chapter forty-eight, all relating to the age of consent to marry for males and females; procedure for giving consent by parent or legal guardian; and allowing a judge of the circuit court of the circuit in which the application is made for a marriage license to order issuance in certain cases.

Be it enacted by the Legislature of West Virginia:

That sections one and eight, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that a new section one, article one, chapter forty-eight be enacted in lieu thereof, all to read as follows:

ARTICLE 1. MARRIAGE.

§48-1-1. Age of consent for marriage; exception.

- 1 The age of consent for marriage for both the male and
- 2 the female shall be eighteen years of age. Any person
- 3 under the age of eighteen must obtain the consent of the
- 4 parent or legal guardian in whose custody that person is
- 5 at the time of application for a marriage license. That
- 6 consent shall be given to the clerk of the county commis-
- 7 sion by a writing duly acknowledged before an officer au-
- 8 thorized to acknowledge a deed. No person under the age
- 9 of sixteen may be issued a license except upon order of
- 10 the circuit judge and with the consent of the parent

11 or guardian: *Provided*, That a circuit judge of the circuit
12 in which the application for a marriage license is filed
13 may order the clerk to issue a license to any person
14 under the age of sixteen if, in his discretion, the issuance
15 of a license is in the best interest of the applicant and
16 consent of the parent or guardian has been given in the
17 manner required by this section.

CHAPTER 46

(Com. Sub. for S. B. 465—By Mr. Jones)

[Passed March 3, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to what relatives a man may not marry and what relatives a woman may not marry; providing exceptions thereto where relationships exist by virtue of adoption proceedings; and providing that the court may conduct an investigation into the natural parents of the adoptive person.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. MARRIAGE.

§48-1-2. What relatives a man may not marry.

§48-1-3. What relatives a woman may not marry.

§48-1-2. What relatives a man may not marry.

1 No man shall marry his mother, grandmother, sister,
2 daughter, granddaughter, half sister, aunt, brother's
3 daughter, sister's daughter, first cousin or double cousin:
4 *Provided*, That for the purpose of this section cousin or
5 double cousin shall not include persons whose relationship is
6 created solely by adoption: *Provided, however*, That if it be
7 necessary to open and examine the record of any adoption
8 proceeding in the state to ascertain that a relationship of
9 cousin or double cousin is created solely by adoption, then an

10 application may be made to the circuit court wherein such
11 proceeding was had, by the clerk of the county commission
12 seeking to issue the marriage license, or either party applying
13 for such license, to open such record and cause examination
14 thereof. Upon such application, the judge shall examine the
15 record confidentially and report to the clerk whether the
16 record discloses any consanguinity prohibited by this section
17 and may grant such other relief prayed for which may be
18 proper under section four, article four of this chapter.

§48-1-3. What relatives a woman may not marry.

1 No woman shall marry her father, grandfather, brother, son,
2 grandson, half brother, uncle, brother's son, sister's son, first
3 cousin or double cousin: *Provided*, That for the purpose of
4 this section cousin or double cousin shall not include persons
5 whose relationship is created solely by adoption: *Provided*,
6 *however*, That if it be necessary to open and examine the
7 record of any adoption proceeding in the state to ascertain
8 that a relationship of cousin or double cousin is created solely
9 by adoption, then an application may be made to the circuit
10 court wherein such proceeding was had, by the clerk of the
11 county commission seeking to issue the marriage license, or
12 either party applying for such license, to open such record
13 and cause examination thereof. Upon such application, the
14 judge shall examine the record confidentially and report to
15 the clerk whether the record discloses any consanguinity
16 prohibited by this section and may grant such other relief
17 prayed for which may be proper under section four, article
18 four of this chapter.

CHAPTER 47

(S. B. 48—By Mr. Gilligan and Mr. Wright)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nineteen, relating to regulation of trade; license required for the sale of items designed for or marketed for use with controlled substances; application for license, contents; drug paraphernalia defined; factors to be considered in determining whether an object is

marketed or designed for use as drug paraphernalia; records to be kept by licensee, contents; promulgation of regulations by state tax commissioner; sale to minors prohibited; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. DRUG PARAPHERNALIA.

§47-19-1. Items designed or marketed for use with controlled substances; license required.

§47-19-2. Application.

§47-19-3. Drug paraphernalia defined.

§47-19-4. Records.

§47-19-5. Regulations.

§47-19-6. Sale to minors prohibited; penalty.

§47-19-7. Penalty.

§47-19-8. Severability.

§47-19-1. Items designed or marketed for use with controlled substances; license required.

1 It shall be unlawful for any person or persons as principal,
2 clerk, agent or servant to sell any items, effect, paraphernalia,
3 accessory or thing which is designed or marketed for use with
4 controlled substances, as defined in chapter sixty-a of this
5 code, without obtaining a license therefor from the state tax
6 commissioner. Such licenses shall be in addition to any or all
7 other licenses held by applicant. The fee for such license shall
8 be one hundred fifty dollars.

§47-19-2. Application.

1 Application to sell any item, effect, paraphernalia,
2 accessory or thing which is designed or marketed for use with
3 controlled substances shall be accompanied by affidavits by
4 applicant and each and every employee authorized to sell
5 such items that such person has never been convicted of a
6 drug-related offense.

§47-19-3. Drug paraphernalia defined.

1 (a) The following items, if marketed for use or designed
2 for use with controlled substances, are considered drug
3 paraphernalia for the purpose stated in section one of this
4 article:

- 5 (1) Kits marketed for use, or designed for use in planting,
6 propagating, cultivating, growing or harvesting of any
7 species of plant which is a controlled substance or from
8 which a controlled substance can be derived;
- 9 (2) Kits marketed for use, or designed for use in
10 manufacturing, compounding, converting, producing,
11 processing or preparing controlled substances;
- 12 (3) Isomerization devices marketed for use, or designed
13 for use in increasing the potency of any species of plant which
14 is a controlled substance;
- 15 (4) Testing equipment marketed for use, or designed for
16 use in identifying, or in analyzing the strength, effective-
17 ness or purity of controlled substances;
- 18 (5) Scales and balances used, intended for use, or designed
19 for use in weighing or measuring controlled substances;
- 20 (6) Diluents and adulterants, such as quinine
21 hydrochloride, mannitol, mannite, dextrose and lactose,
22 marketed for use, or designed for use in cutting controlled
23 substances;
- 24 (7) Separation gins and sifters marketed for use, or
25 designed for use in removing twigs and seeds from, or in
26 otherwise cleaning or refining, marijuana;
- 27 (8) Blenders, bowls, containers, spoons and mixing
28 devices used, intended for use, or designed for use in
29 compounding controlled substances;
- 30 (9) Capsules, balloons, envelopes and other containers
31 marketed for use, or designed for use in packaging small
32 quantities of controlled substances;
- 33 (10) Hypodermic syringes, needles and other objects
34 marketed for use, or designed for use in parenterally injecting
35 controlled substances into the human body;
- 36 (11) Paper of colorful design, with names oriented for use
37 with controlled dangerous substances and displayed:
38 *Provided*, That white paper or tobacco oriented paper not
39 necessarily designed for use with controlled substances is not
40 covered;
- 41 (12) Pipes displayed in the proximity of roach clips, or
42 literature encouraging illegal use of controlled substances,
43 are covered by this article: *Provided*, That pipes otherwise
44 displayed are not covered by this article;
- 45 (13) Roach clips: meaning objects used to hold burning
46 material, such as a marijuana cigarette, that has become too
47 small or too short to be held in the hand;

48 (14) Miniature cocaine spoons, and cocaine vials; or

49 (15) Chillums or bongs.

50 (b) In determining whether an object is marketed for use
51 or designed for use as drug paraphernalia, the state tax
52 commissioner or other authority should consider the
53 following:

54 (1) The proximity of the object, in time and space, to a
55 controlled substance;

56 (2) The existence of any residue of controlled substances
57 on the object;

58 (3) Instructions, oral or written, provided with the object
59 concerning its use;

60 (4) Descriptive materials accompanying the object which
61 explain or depict its use;

62 (5) National and local advertising concerning its use;

63 (6) The manner in which the object is displayed for sale;

64 (7) Whether the owner, or anyone in control of the object,
65 is a legitimate supplier of like or related items to the
66 community, such as a licensed distributor or dealer of
67 tobacco products;

68 (8) Direct or circumstantial evidence of the ratio of sales of
69 the object or objects to the total sales of the business
70 enterprise;

71 (9) The existence and scope of legitimate uses for the
72 object in the community.

§47-19-4. Records.

1 Every licensee must keep a record of every item, effect,
2 paraphernalia, accessory or thing which is designed or
3 marketed for use with controlled substances which is sold,
4 and this record shall be open to the inspection of any police
5 officer at any time during the hours of business. Such record
6 shall contain the name and address of the purchaser, the
7 name and quantity of the product, the date and time of the
8 sale, and the licensee or agent of the licensee's signature.
9 Such records shall be retained for not less than two years.

§47-19-5. Regulations.

1 The applicant shall comply with all applicable rules of the
2 state tax commissioner, promulgated pursuant to the
3 provisions of chapter twenty-nine-a of this code.

§47-19-6. Sale to minors prohibited; penalty.

1 It shall be unlawful to sell items as described in section

2 three of this article in any form to any male or female child
3 under eighteen years of age. Any person eighteen years of age
4 or older who violates this section is guilty of a felony, and,
5 upon conviction thereof, may be imprisoned in the
6 penitentiary for not less than one nor more than five years, or
7 in the discretion of the court, be confined in the county jail
8 not more than one year and shall be fined not more than
9 fifteen thousand dollars, or both.

§47-19-7. Penalty.

1 Any person violating any provision of this article shall, if
2 convicted, be guilty of a misdemeanor and be fined not less
3 than ten dollars nor more than five hundred dollars for the
4 first offense and succeeding offenses, and each day that such
5 violation shall continue shall be deemed a separate and
6 distinct offense.

§47-19-8. Severability.

1 If any provision of this article or the application thereof to
2 any person or circumstance is held invalid, such invalidity
3 shall not affect other provisions or applications of this article,
4 and to this end the provisions of this article are hereby
5 declared to be severable.

CHAPTER 48

(H. B. 2026—By Mr. Blackwell and Mr. Givens)

[Passed March 12, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county boards of education; deleting the requirement that the instructional term shall be confined to two hundred seventy-eight calendar days; providing that each county board may schedule a maximum of four days to be used by the employee outside the school environment.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article five, chapter eighteen of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15. School term; levies; ages of persons to whom schools are open.

1 The board shall provide a school term for its schools which
2 shall be comprised of (a) an employment term for teachers,
3 and (b) an instructional term for pupils.

4 The employment term for teachers shall be no less than
5 ten months, a month to be defined as twenty employment days
6 exclusive of Saturdays and Sundays: *Provided*, That the board
7 may contract with all or part of the personnel for a longer
8 term. The employment term shall be fixed within such begin-
9 ning and closing dates as established by the state board:
10 *Provided, however*, That the time between the beginning and
11 closing dates does not exceed forty-three weeks.

12 Within the employment term there shall be an instructional
13 term for pupils of not less than one hundred eighty nor more
14 than one hundred eighty-five instructional days. Instructional
15 and noninstructional activities may be scheduled during the
16 same employment day. The instructional term shall commence
17 no earlier than the first day of September and shall terminate
18 no later than the eighth day of June.

19 Noninstructional days in the employment term may be used
20 for making up canceled instructional days, curriculum develop-
21 ment, preparation for opening and closing of the instructional
22 term, in-service and professional training of teachers, teacher-
23 pupil-parent conferences, professional meetings and other re-
24 lated activities. In addition, each board may designate and
25 schedule for teachers and service personnel a maximum of four
26 days to be used by the employee outside the school environ-
27 ment. However, no more than seven noninstructional days, ex-
28 cept holidays, may be scheduled prior to the first day of Jan-
29 uary in a school term.

30 Notwithstanding any other provisions of the law to the con-
31 trary, if the board has canceled instructional days equal to the
32 difference between the total instructional days scheduled and

33 one hundred seventy-eight, each succeeding instructional day
34 canceled shall be rescheduled, utilizing only the remaining non-
35 instructional days, except holidays, following such cancellation,
36 which are available prior to the second day before the end of
37 the employment term established by such county board.

38 Where the employment term overlaps a teacher's participa-
39 tion in a summer institute or institution of higher learning for
40 the purpose of professional growth, the teacher may substitute,
41 with the approval of the county superintendent, such partici-
42 pation for not more than four of the noninstructional days of
43 the employment term.

44 The board may extend the instructional term beyond one
45 hundred eighty-five instructional days provided the employment
46 term is extended an equal number of days. If the state revenues
47 and regular levies, as provided by law, are insufficient to en-
48 able the board of education to provide for the school term,
49 the board may at any general or special election, if petitioned
50 by at least five percent of the qualified voters in the district,
51 submit the question of additional levies to the voters. If at the
52 election sixty percent of the qualified voters cast their ballots
53 in favor of the additional levy, the board shall fix the term and
54 lay a levy necessary to pay the cost of the additional term. The
55 additional levy fixed by the election shall not continue longer
56 than five years without submission to the voters. The additional
57 rate shall not exceed by more than one hundred percent the
58 maximum school rate prescribed by article eight, chapter eleven
59 of the code, as amended.

60 The public schools shall be open for the full instructional
61 term to all persons who have attained the entrance age as
62 stated in section five, article two and section eighteen, article
63 five, chapter eighteen of this code: *Provided*, That persons
64 over the age of twenty-one may enter only those programs or
65 classes authorized by the state board of education and deemed
66 appropriate by the county board of education conducting any
67 such program or class: *Provided, however*, That authorization
68 for such programs or classes shall in no way serve to affect or
69 eliminate programs or classes offered by county boards of
70 education at the adult level for which fees are charged to sup-
71 port such programs or classes.

CHAPTER 49

(Com. Sub. for H. B. 1731—By Mr. Givens and Mrs. Hartman)

[Passed March 11, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact sections two and ten, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section ten-a, relating to definitions and foundation allowance to improve instructional programs; providing that eighty percent of the increase in local share be allocated on the basis of basic resources per pupil commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-three; and providing for a transition allocation based on an average of basic resources per pupil and average expenditure per pupil, for the school year beginning on the first day of July, one thousand nine hundred eighty-two only.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

§18-9A-10. Foundation allowance to improve instructional programs.

§18-9A-10a. Distribution of foundation allowance to improve instructional programs; transition to basic resources per pupil allocation.

§18-9A-2. Definitions.

- 1 For the purpose of this article:
- 2 "State board" means the West Virginia board of education.
- 3 "County board" or "board" means a county board of educa-
- 4 tion.
- 5 "Professional salaries" means the state legally mandated sal-

6 aries of the professional educators as provided in article four,
7 chapter eighteen-a of this code.

8 "Professional educator" shall be synonymous with and
9 shall have the same meaning as "teacher" as defined in
10 section one, article one, chapter eighteen of this code.

11 "Professional instructional personnel" means a professional
12 educator whose regular duty is as that of a classroom teacher,
13 librarian or counselor. A professional educator having both
14 instructional and administrative or other duties shall be in-
15 cluded as professional instructional personnel for that ratio
16 of the school day for which he is assigned and serves on a
17 regular full-time basis in appropriate instruction, library or
18 counseling duties.

19 "Service personnel salaries" shall mean the state legally
20 mandated salaries for service personnel as provided in section
21 eight-a, article four, chapter eighteen-a of the code.

22 "Service personnel" shall mean all personnel as provided
23 for in section eight, article four, chapter eighteen-a of this
24 code. For the purpose of computations under this article of
25 ratios of service personnel to adjusted enrollment, a service
26 employee shall be counted as that number found by dividing
27 his number of employment days in a fiscal year by two
28 hundred: *Provided, however,* That the computation for any
29 such person employed for three and one-half hours or less
30 per day as provided in section eight-a, article four, chapter
31 eighteen-a of this code, shall be calculated as one half an em-
32 ployment day.

33 "Net enrollment" means the number of pupils enrolled in
34 special education programs, early childhood programs and
35 grades one to twelve, inclusive, of the public schools of the
36 county.

37 "Adjusted enrollment" means the net enrollment plus twice
38 the number of pupils enrolled for special education, all ad-
39 justed to the equivalent of the instructional term and in
40 accordance with such eligibility requirements and regulations
41 as established by the state board, but no pupil shall be
42 counted more than once by reason of transfer within the
43 county or from another county within the state, and no

44 pupil shall be counted who attends school in this state from
45 another state.

46 "Levies for general current expense purposes" means on
47 each hundred dollars of valuation, twenty-two and five-tenths
48 cents on Class I property, forty-five cents on Class II property,
49 and ninety cents on Classes III and IV property.

50 "Average expenditure per pupil" for the state and the
51 several counties means the total of (a) expenditures from,
52 (b) transfers from and (c) current year outstanding obligations
53 of a county's current expense fund budget; plus (d) current
54 year's property tax revenues collected for the permanent im-
55 provement fund; minus (a) any expenditure, transfer or cur-
56 rent year's outstanding obligation of federal funds and (b)
57 revenues from increased levies approved by voters as provided
58 in section ten, article X of the constitution of West Virginia
59 in the current expense fund which net expenditure found is
60 divided by the number of students in adjusted enrollment.
61 The data used for such computation shall be that of the
62 second preceding school year.

63 "Basic resources per pupil" for the state and the several
64 counties means the total of (a) property tax revenues com-
65 puted at the maximum regular levy rates as provided by
66 section six-c, article eight, chapter eleven of this code, at a
67 uniform rate of ninety-five percent, but excluding revenues
68 from increased levies as provided in section ten, article X
69 of the constitution of West Virginia, and (b) basic state
70 aid as provided in sections twelve and thirteen of this article,
71 but excluding the foundation allowance to improve instruc-
72 tional programs as provided in section ten of this article,
73 this total divided by the number of students in adjusted en-
74 rollment: *Provided*, That any year's allocations to the coun-
75 ties of the eighty percent portion of the foundation allowance
76 to improve instructional programs, as provided in section
77 ten of this article, shall be determined on the basis of the
78 immediately preceding school year's basic resources per pupil.

**§18-9A-10. Foundation allowance to improve instructional pro-
grams.**

1 Commencing with the school year beginning on the first

2 day of July, one thousand nine hundred eighty-three, and
3 thereafter, funds which accrue from allocations due to in-
4 crease in total local share above that computed for the school
5 year beginning on the first day of July, one thousand nine
6 hundred eighty-one, from balances in the general school fund,
7 or from appropriations for such purpose shall be allocated to
8 increase state support of counties as follows:

9 Twenty percent of the accrued funds shall be allocated
10 to the counties proportional to adjusted enrollment and eighty
11 percent of the accrued funds shall be allocated according
12 to the following plan for progress toward and to basic re-
13 sources per pupil equity.

14 Beginning with the county which has the lowest basic
15 resources per pupil and progressing through the counties
16 successively to and beyond the county with the highest basic re-
17 sources per pupil, the funds available shall be allocated in
18 amounts necessary to increase moneys available to the county
19 or counties to the basic resources per pupil level, as nearly as is
20 possible, of the county having the next higher basic resources
21 per pupil: *Provided*, That to be eligible for its allocation under
22 this section, a county board shall lay the maximum regular tax
23 rates set out in section six-c, article eight, chapter eleven of this
24 code: *Provided, however*, That moneys allocated by provision
25 of this section shall be used to improve instructional programs
26 according to a plan for instructional improvement which the af-
27 fected county board shall file with the state board by the first
28 day of August of each year, to be approved by the state board
29 by the first day of September of that year if such plan sub-
30 stantially complies with standards to be adopted by the
31 state board: *Provided further*, That no part of this allocation
32 may be used to employ professional educators in counties
33 until and unless all applicable provisions of sections four
34 and fourteen of this article have been fully utilized. Such
35 instructional improvement plan shall be made available for
36 distribution to the public at the office of each affected county
37 board.

38 For the school year beginning on the first day of July,
39 one thousand nine hundred eighty-two only, allocations of

40 the accrued funds shall be made in accordance with section ten-
41 a of this article.

§18-9A-10a. Distribution of foundation allowance to improve instructional programs; transition to basic resources per pupil allocation.

1 For the school year beginning on the first day of July, one
2 thousand nine hundred eighty-two only, distribution of
3 funds which have accrued from increases in total local share
4 since the first day of July, one thousand nine hundred eighty-
5 one, shall be allocated according to the following plan:

6 The state board shall determine (a) the amount that each
7 county would receive based on adjusted enrollment and
8 basic resources per pupil as defined in section two and
9 provided for in section ten of this article, and (b) the amount
10 each county would receive based on adjusted enrollment of
11 the second preceding year as to the twenty percent allocation
12 and average expenditure per pupil as to the eighty percent
13 allocation, computed in the following manner:

14 Beginning with the county which has the lowest average
15 expenditure per pupil and progressing through the counties
16 successively to and beyond the county with the highest aver-
17 age expenditure per pupil, the funds available shall be allo-
18 cated in amounts necessary to increase moneys available to
19 the county or counties to the expenditure per pupil level,
20 as nearly as is possible, of the county having the next higher
21 expenditure per pupil.

22 For progress toward and to basic expenditure and resource
23 per pupil equity, each county shall receive an amount equal
24 to one half the total of (a) the total moneys to be allocated
25 to a county based on adjusted enrollment and basic resources
26 per pupil pursuant to section ten of this article and (b) the
27 total moneys to be allocated to the same county based on
28 adjusted enrollment and average expenditure per pupil as
29 computed pursuant to this section: *Provided*, That to be
30 eligible for its allocation under this section, a county board
31 shall lay the maximum regular tax rates set out in section
32 six-c, article eight, chapter eleven of this code: *Provided*,
33 *however*, That moneys allocated by provision of this section

34 shall be used to improve instructional programs according
35 to a plan for instructional improvement which the affected
36 county boards shall file with the state board by the first
37 day of August of each year, to be approved by the state
38 board by the first day of September of that year if such plan
39 substantially complies with standards to be adopted by the
40 state board: *Provided further*, That no part of this allocation
41 may be used to employ professional educators in counties
42 until and unless all applicable provisions of sections four and
43 fourteen of this article have been fully utilized. Such instruc-
44 tional improvement plan shall be made available for distribu-
45 tion to the public at the office of each affected county board.

CHAPTER 50

(S. B. 46—By Mr. Galperin)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the allocation of state public school support based on an increase in a county's net enrollment; and correcting a clerical error by deleting the word "fund".

Be it enacted by the Legislature of West Virginia:

That section fifteen, article nine-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 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-15. Allowance for increased enrollment.

1 To provide for the support of increased net enrollments
2 in the counties in a school year over the net enrollments
3 used in the computation of total state aid for that year,
4 there shall be appropriated for that purpose from the
5 general revenue fund an amount equal to the average
6 total state aid per net pupil multiplied by the total of all

7 of the increases in the net enrollments of the counties
8 made by comparing the most recent reports of net enroll-
9 ment for the second school month to the immediately
10 previous year's reports for the same school month.

11 Upon determination of the several increases in the
12 respective counties' net enrollments, as of the close of the
13 second school month, each county showing such increase
14 shall be allocated an amount equal to that county's aver-
15 age per net pupil total state aid multiplied by the increase
16 in that county's net enrollment determined as provided
17 heretofore. Such allocations shall be distributed not later
18 than December thirty-one of each year to the counties
19 having increases in net enrollment as heretofore provided.
20 If the amount appropriated for this purpose shall not be
21 sufficient to provide payment in full for the total of these
22 several allocations, each county allocation shall be re-
23 duced to an amount which is proportionate to the appro-
24 priation compared to the total of the several allocations,
25 and the allocations as thus adjusted shall be distributed to
26 the counties as provided in this section.

27 No provision of this section shall be construed to in-
28 any way affect the allocation of moneys for educational
29 purposes to a county under other provisions of law.

CHAPTER 51

(S. B. 148—By Mr. Ash)

[Passed March 12, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend article ten-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three, relating to continuing West Virginia's membership in the southern regional education compact.

Be it enacted by the Legislature of West Virginia:

That article ten-c, chapter eighteen of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three, to read as follows:

ARTICLE 10C. THE SOUTHERN REGIONAL EDUCATION COMPACT.

§18-10C-3. Membership in compact continued; findings.

1 After having conducted a performance and fiscal audit
2 through its joint committee on government operations,
3 pursuant to section nine, article ten, chapter four of this
4 code, the Legislature hereby finds and declares that West
5 Virginia should remain a member of the compact. Accord-
6 ingly, notwithstanding the provisions of section four,
7 article ten, chapter four of this code, West Virginia shall
8 continue to be a member of this compact until the first
9 day of July, one thousand nine hundred eighty-eight.

CHAPTER 52

(H. B. 2025—By Mrs. Martin)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and thirteen-a, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia board of regents; defining higher education institution to include private proprietary educational institutions within the state operated for profit; and providing that rights granted previous to the adoption of section thirteen-a shall not be infringed.

Be it enacted by the Legislature of West Virginia:

That sections two and thirteen-a, article twenty-six, 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 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-2. Definitions.

§18-26-13a. Accreditation of institutions of higher education; standards for degrees.

§18-26-2. Definitions.

1 Notwithstanding the provisions of section one, article one
2 of this chapter, the following words when used in this article
3 shall have the meaning hereafter ascribed to them unless
4 the context clearly indicates a different meaning:

5 (a) The term "board" shall mean the West Virginia board
6 of regents.

7 (b) The term "state colleges" shall mean Bluefield State
8 College, Concord College, Fairmont State College, Glenville
9 State College, Shepherd College, West Liberty State College,
10 West Virginia Institute of Technology, West Virginia State
11 College, West Virginia School of Osteopathic Medicine and
12 any state community college or other state institution of
13 higher education which may hereafter be established and not
14 designated as a "university."

15 (c) The term "state college" shall mean one of the state
16 colleges.

17 (d) The terms "state universities" and "universities" shall
18 mean Marshall University and West Virginia University and
19 any other state institution of higher education which may
20 hereafter be established and designated as a "university."

21 (e) The terms "state university" and "university" shall
22 mean one of the state universities.

23 (f) The term "community college" shall mean any in-
24 stitution of higher education which has been designated as a
25 community college by the West Virginia board of regents
26 under the provisions of section thirteen-b, article twenty-
27 six, chapter eighteen of this code.

28 (g) The term "higher educational institution" shall mean
29 any institution as defined by sections 401(f), (g), (h) of the
30 Federal Higher Education Facilities Act of 1963, as amended,
31 and shall also mean any private proprietary educational in-

32 stitution in this state operated for profit which offers one or
33 more programs leading to a degree.

**§18-26-13a. Accreditation of institutions of higher education;
standards for degrees.**

1 The West Virginia board of regents shall make rules and
2 regulations for the accreditation of all colleges, universities
3 and other institutions of higher education in the state, and
4 shall determine the minimum standards for the conferring of
5 degrees. No institution of higher educational status may
6 confer any degree on any basis of work or merit below
7 the minimum standards prescribed by the West Virginia board
8 of regents. Nothing contained herein shall infringe upon the
9 rights, including rights to award degrees, granted to any in-
10 stitution by charter given according to law, or by actions of the
11 West Virginia board of regents, previous to the adoption of this
12 section.

13 No charter or other instrument containing the right to
14 confer degrees of higher educational status shall be granted
15 by the state of West Virginia to any institution, association
16 or organization within the state, nor shall any such degree
17 be awarded until the condition of conferring such degree has
18 first been approved in writing by the West Virginia board
19 of regents.

CHAPTER 53

(Com. Sub. for H. B. 1887—By Mr. Albright and Mr. Tompkins)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-seven, relating to the West Virginia education loan bond; short title; declaration of purpose; definitions; functions and powers of board of regents; expenses of board; acquisition of assets; conveyance of loan funding deposit; issuance of bonds; trust argement

to secure bonds; credit of state not pledged; collection of revenues; application of funds from sale of bonds; rights of bondholders; refunding of bonds; investment of board funds; bonds as legal investments; annual report of board; competitive bidding waived; powers of board unrestricted; article to be construed liberally; and exemption from taxation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. WEST VIRGINIA EDUCATION LOAN BOND PROGRAM.

- §18-27-1. Short title.
- §18-27-2. Declaration of purpose.
- §18-27-3. Definitions.
- §18-27-4. Powers of board; determination of qualified financing and establishment of financing programs; establishing criteria for and guidelines encompassing the types of and qualifications for education loan financing programs.
- §18-27-5. Expenses; limitation of liability.
- §18-27-6. Acquisition of certain moneys, endowments and properties and guarantees thereto.
- §18-27-7. Conveyance of loan funding deposit after payment of principal and interest.
- §18-27-8. Bonds.
- §18-27-9. Trust agreement to secure bonds.
- §18-27-10. Bonds as obligation of board only.
- §18-27-11. Pledge of revenues.
- §18-27-12. Funds from sale of bonds as trust funds; application of funds.
- §18-27-13. Rights of bondholders.
- §18-27-14. Refunding bonds; purpose; proceeds; investment of proceeds.
- §18-27-15. Investment of funds of board.
- §18-27-16. Bonds as legal investments.
- §18-27-17. Account of activities; receipts and expenditures; annual report; audit.
- §18-27-18. Waiver of competitive bidding.
- §18-27-19. Institution powers; interest rates.
- §18-27-20. Article as alternative method; application of bond law; powers not subject to supervision or regulation by other element or government.
- §18-27-21. Liberal construction of article.
- §18-27-22. Exercise of powers as essential public function; exemption from taxation.

§18-27-1. Short title.

1 This article may be referred to and cited as the “West Vir-
2 ginia Independent Higher Education Loan Bond Program.”

§18-27-2. Declaration of purpose.

1 It is declared that for the benefit of the people of the
2 state of West Virginia, the conduct and increase of their
3 commerce, the protection and enhancement of their welfare,
4 the development of continued prosperity and the improvement
5 of their health and living conditions, it is essential that this
6 and future generations of youth be given the fullest op-
7 portunity to learn and to develop their intellectual and mental
8 capacities and skills; that to achieve these ends it is of the
9 utmost importance that the students attending institutions of
10 higher education located in West Virginia have reasonable
11 alternative to enhance their financial access to such institu-
12 tions; that reasonable financial access to institutions of higher
13 education will assist such youth in achieving the required
14 levels of learning and development of their intellectual and
15 mental capacities and skills; that it is the purpose of this
16 article to provide a measure of assistance and an alternative
17 method to enable students and the families of students at-
18 tending institutions of higher education located in West Vir-
19 ginia to appropriately and prudently finance the cost or a
20 portion of the cost of such higher education; and that it is
21 the intent of this article to supplement federal guaranteed
22 higher education loan programs, other student loan programs
23 and grant or scholarship programs to provide the needed
24 additional options for the financing of a student’s higher edu-
25 cation in execution of the public policy set forth above.

§18-27-3. Definitions.

1 The following words used in this article shall, unless the
2 context clearly indicates a different meaning, be construed
3 as follows:

4 (a) “Board” means the West Virginia board of regents.

5 (b) “Bonds” means revenue bonds, notes or other evi-
6 dences of indebtedness of the board issued under this article.

7 (c) “Bond resolution” means the resolution or resolutions

8 of the board and the trust agreement, if any, authorizing
9 the issuance of and providing for the terms and conditions
10 applicable to bonds.

11 (d) "Borrower" means a student who has received an
12 education loan or any parent who has received or agreed to
13 pay an education loan.

14 (e) "Default insurance" means insurance insuring educa-
15 tion loans, authority loans or bonds against default.

16 (f) "Default reserve fund" means a fund established pur-
17 suant to a bond ordinance for the purpose of securing educa-
18 tion loans, authority loans or bonds.

19 (g) Cost of attendance is the amount defined by the
20 institution for the purpose of the guaranteed student loan
21 program as defined under Title IV, part B, of the "Higher
22 Education Act of 1965" as now or hereafter amended.

23 (h) "Education loan" means a loan which is made by an
24 institution of higher education to a student or parents of a
25 student, or both, in amounts not in excess of the maximum
26 amounts specified in this section, to finance the student's
27 attendance at the instiution. The maximum loan amount may
28 not exceed:

29 (1) In the case of a borrower who is a student, the stu-
30 dent's cost of attendance for the period of time for which
31 the loan is made minus the following amounts applicable to
32 such period of time:

33 (i) The amount of grant which the student receives or
34 could receive under the federal Pell Grant program autho-
35 rized under Title IV, part A, of the "Higher Education Act
36 of 1965," as now or hereafter amended, whether or not the
37 student has made application for such grant;

38 (ii) The maximum net guaranteed student loan proceeds
39 which the student receives or could receive pursuant to Title
40 IV, part B, of the "Higher Education Act of 1965," as now
41 or hereafter amended, whether or not the student has made
42 application for such loan;

43 (iii) The amount of scholarships, grants or other nonre-

44 payable assistance received from government agencies, educa-
45 tional institutions or private institutions or organizations;

46 (2) (A) In the case of a borrower who is a parent of an
47 eligible student, the student's cost of attendance minus:

48 (i) The amounts determined pursuant to subparagraphs (i),
49 (ii) and (iii) of paragraph (1) of this subdivision; and

50 (ii) The amount of loan which the student receives pur-
51 suant to paragraph (1) of this subdivision.

52 (B) The combined maximum loan amount of both parents
53 may not exceed the maximum amount as determined under
54 paragraph (2) of this subdivision:

55 (i) "Loan funding deposit" means moneys, guarantees or
56 other property deposited by an institution of higher education
57 with the board or a trustee for the purpose of (1) providing
58 security for bonds, (2) funding a default reserve fund, (3)
59 acquiring default insurance or (4) defraying costs of the
60 board, such moneys or properties to be in such amounts as
61 deemed necessary by the board as a condition for such
62 institution's participation in the board's programs.

63 (j) "Institution" means a not for profit educational institu-
64 tion which is not owned or controlled by the state or any
65 political subdivision, agency, instrumentality, district or mu-
66 nicipality thereof, which is authorized by law to provide a
67 program of education beyond the high school level and which:

68 (1) Admits as regular students only individuals having a
69 certificate of graduation from a high school or the recognized
70 equivalent of such certificate;

71 (2) Provides an educational program for which it awards
72 a bachelor's degree or provides an educational program, ad-
73 mission into which is conditioned upon the prior attainment
74 of a bachelor's degree or its equivalent, for which it awards
75 a postgraduate degree, or provides not less than a two-
76 year program which is acceptable for full credit toward an
77 associate degree, or offers not less than a two-year program
78 in engineering, mathematics or the physical or biological
79 sciences which is designed to prepare the student to work as
80 a technician and at a semiprofessional level in engineering,
81 scientific or other technological fields which require the

82 understanding and application of basic engineering, scientific
83 or mathematical principles or knowledge;

84 (3) Is accredited by a nationally recognized accrediting
85 agency or association such as the north central association
86 of colleges and high schools;

87 (4) Does not discriminate in the admission of students on
88 the basis of race, color or creed;

89 (5) Has a governing board which possesses its own
90 sovereignty; and

91 (6) Has a governing board, or its delegated institutional
92 officials, which possess final authority in all matters of local
93 control, including educational policy, choice of personnel,
94 determination of program and financial management.

95 (k) "Parent" means any parent or guardian of a student
96 at an institution of higher education.

**§18-27-4. Powers of board; determination of qualified financings
and establishment of financing programs; establishing
criteria for and guidelines encompassing the types of
and qualifications for education loan financing pro-
grams.**

1 The board may:

2 (a) Issue bonds for the purpose of making board loans to
3 institutions of higher education participating in a program of
4 the board for the express purpose of providing education
5 loans. The criteria and guidelines established by the board for
6 its education loan financing programs shall include such eligi-
7 bility standards for borrowers as the board determines are
8 necessary or desirable in order to effectuate the purposes of
9 this article, including the following: (i) Each student shall have
10 a certificate of admission or enrollment at a specific partici-
11 pating institution of higher education, (ii) each student or his
12 or her parents shall satisfy such financial qualifications as the
13 board shall establish to effectuate the purposes of this article,
14 (iii) each student and his or her parents shall submit such in-
15 formation as may be required by the board to his or her
16 institution of higher education.

17 The board is authorized to contract with financial institu-

18 tions and other qualified loan origination and servicing organi-
19 zations, which shall assist in prequalifying borrowers for edu-
20 cation loans and which shall service and administer each edu-
21 cation loan. Each education loan's fees shall include a portion,
22 if necessary, to cover the applicable pro rata cost of such a
23 servicing organization.

24 The board is authorized to establish specific criteria govern-
25 ing the eligibility of institutions of higher education to partici-
26 pate in its programs, the making of board and education loans
27 and provisions for default.

28 (b) Receive and accept from any source, loans, contribu-
29 tions or grants for or in aid of a board education loan financ-
30 ing program or any portion thereof and, when required, to use
31 such funds, property or labor only for the purposes for which
32 it was loaned, contributed or granted.

33 (c) Make board loans to institutions of higher education
34 and require that the proceeds thereof be used for making
35 education loans and paying costs and fees in connection there-
36 with.

37 (d) Charge to and apportion among participating institu-
38 tions of higher education its administrative and operating costs
39 and expenses incurred in the exercise of the powers and duties
40 conferred by this article.

41 (e) Borrow working capital funds and other funds as may
42 be necessary for start-up and continuing operations, as long as
43 such funds are borrowed in the name of the board only. Such
44 borrowings shall be limited obligations of the character de-
45 scribed in section ten of this article and shall be payable solely
46 from revenues of the board or the proceeds of bonds pledged
47 for that purpose.

48 (f) Examine records and financial reports of participating
49 institutions of higher education, and to examine records and
50 financial reports of any contractor organization or institution
51 retained under this section.

52 (g) Authorize its officers, agents and employees to take such
53 action and do such things as are necessary or desirable in order
54 to carry out and effectuate the purposes of this article.

55 (h) The board shall require that board loans be used solely
56 to make education loans. The board shall require that insti-
57 tutions of higher education require that each borrower under
58 an education loan use the proceeds solely for the cost of at-
59 tendance and that each such borrower shall so certify.

§18-27-5. Expenses; limitation of liability.

1 All expenses incurred in carrying out the provisions of this
2 article shall be payable solely from funds provided under the
3 authority of this article and, except as authorized under sub-
4 division (e) of section four, no liability may be incurred by
5 the board beyond the extent to which moneys have been pro-
6 vided under this article.

**§18-27-6. Acquisition of certain moneys, endowments and prop-
erties and guarantees thereto.**

1 The board may establish specific guidelines relating to the
2 deposits of certain moneys, guarantees, endowments or prop-
3 erties by institutions of higher education which would provide
4 prudent security for education loans funding programs, author-
5 ity loans, education loans or for bonds and establish guidelines
6 relating to guarantees of or contracts to purchase education
7 loans or bonds by such institutions or by financial institutions
8 or others. A default reserve fund may be established for each
9 series or issue of bonds. In this regard, the board may receive
10 such moneys, endowments, properties and guarantees as it
11 considers appropriate and, if necessary, to take title in the
12 name of the board or in the name of a participating institution
13 of higher education or a trustee. A guarantee for one hundred
14 percent of principal and interest by the higher education assis-
15 tance foundation or by a letter of credit from a financial insti-
16 tution chartered in West Virginia or a nationally chartered
17 financial institution with stockholders reserve of at least twenty-
18 five million dollars may constitute an alternate security option.

**§18-27-7. Conveyance of loan funding deposit after payment of
principal and interest.**

1 When the principal of and interest on bonds of the board
2 issued to finance the cost of an education loan financing pro-
3 gram or programs, including any refunding bonds issued to

4 refund and refinance such bonds, have been fully paid and re-
5 tired or when adequate provision has been made to fully pay
6 and retire the same, and all other conditions of the bond reso-
7 lution authorizing the same have been satisfied and the lien
8 created by such bond resolution has been released in accor-
9 dance with the provisions thereof, the board shall promptly do
10 such things and execute such deeds and conveyances as are
11 necessary and required to convey any remaining moneys, prop-
12 erties and other assets comprising loan funding deposits to the
13 institutions of higher education which furnished the same in
14 proportion to the amounts furnished by the respective insti-
15 tutions of higher education.

§18-27-8. Bonds.

1 (a) The board may from time to time issue bonds for any
2 purpose authorized under this article and all such bonds or
3 other obligations of the board issued pursuant to this article
4 shall be and are hereby declared to be negotiable for all pur-
5 poses notwithstanding their payment from limited source and
6 without regard to any other law or laws.

7 (b) The board may not have outstanding at any one time
8 bonds in an aggregate principal amount exceeding thirty mil-
9 lion dollars, excluding bonds issued to refund the bonds of the
10 board.

11 (c) The bonds of each issue shall be payable solely out of
12 revenues of the board pertaining to the program relating to
13 such bond issue, including principal and interest on board
14 loans and education loans, payments by institutions of higher
15 education, banks, insurance companies or others pursuant to
16 letters of credit or purchase agreements, investment earnings
17 from funds or accounts maintained pursuant to the bond reso-
18 lution, insurance proceeds, loan funding deposits, proceeds of
19 sales of education loans, proceeds of refunding bonds and fees,
20 charges and other revenues of the board from such program.

21 (d) The bonds may be issued as serial bonds or as term
22 bonds, or both. The bonds shall be authorized by a bond
23 resolution of the board and shall bear such date or dates, ma-
24 ture at such time or times not exceeding the year following the

25 last year in which the final payments in an education loan
26 series portfolio are due, or thirty years, whichever is sooner,
27 from their respective dates of issue, bear interest at such rate
28 or rates, be payable at such time or times, be in such denomi-
29 nations, be in such form, either coupon or fully registered,
30 carry such registration and conversion privileges, be payable
31 in lawful money of the United States of America at such places,
32 and be subject to such terms of redemption as such bond reso-
33 lution may provide. The bonds shall be executed by the manual
34 or facsimile signatures of such officers of the board as are
35 designated by the board. The bonds shall be sold in such
36 manner and at such prices as the board determines. Pending
37 preparation of the definitive bonds, the board may issue in-
38 terim receipts or certificates which shall be exchanged for such
39 definitive bonds.

40 (e) Any bond resolution may contain provisions, which
41 shall be a part of the contract with the holders of the bonds to
42 be authorized, as to:

43 (i) Pledging or assigning the revenues derived from the
44 authority loans and education loans with respect to which such
45 bonds are to be issued; (ii) the fees and other amounts to be
46 charged, and the sums to be raised in each year thereby, and
47 the use, investment and disposition of such sums; (iii) the set-
48 ting aside of loan funding deposits, debt service reserves, capi-
49 talized interest accounts, cost of issuance accounts and sink-
50 ing funds, and the regulation, investment and disposition there-
51 of; (iv) limitations on the use of the education loans; (v) limi-
52 tations on the purpose to which or the investments in which the
53 proceeds of sale of any issue of bonds then or thereafter to be
54 issued may be applied; (vi) limitations on the issuance of addi-
55 tional bonds, the terms upon which additional bonds may be
56 issued and secured, the terms upon which additional bonds
57 may rank on a parity with, or be subordinate or superior to,
58 other bonds; (vii) the refunding of outstanding bonds; (viii) the
59 procedure, if any, by which the terms of any contract with
60 bondholders may be amended, or abrogated, the amount of
61 bonds the holders of which must consent thereto, and the
62 manner in which such consent may be given; (ix) defining the
63 acts or omissions to act which shall constitute a default in

64 the duties of the board to holders of its obligations and pro-
65 viding the rights or remedies of such holders in the event of a
66 default; (x) providing for guarantees, pledges of endowments,
67 letters of credit, property or other security for the benefit of
68 the holders of such bonds; and (xi) any other matters relating
69 to the bonds which the board considers desirable.

70 (f) Neither the members of the board nor any person exe-
71 cuting the bonds shall be liable personally on the bonds or be
72 subject to any personal liability or accountability by reason of
73 the issuance thereof.

74 (g) The board may purchase its bonds out of any funds
75 available therefor. The board may hold, pledge, cancel or re-
76 sell such bonds subject to and in accordance with agree-
77 ments with bondholders.

78 (h) The board may refund any of its bonds. Such refund-
79 ing bonds shall be issued in the same manner as other bonds
80 of the board.

§18-27-9. Trust agreement to secure bonds.

1 In the discretion of the board any bonds issued under
2 the provisions of this article may be secured by a trust
3 agreement by and between the board and a corporate trustee
4 or trustees, which may be any trust company or bank in the
5 state of West Virginia having the powers of a trust company.
6 The bond resolution providing for the issuance of bonds so
7 secured shall pledge the revenues to be received by the
8 board, including any or all of the revenues specified in
9 subsection (c), section eight. This article may contain
10 such provisions for protecting and enforcing the rights and
11 remedies of the bondholders as may be reasonable and proper
12 and not in violation of law, including particularly such
13 provisions as have hereinabove been specifically authorized
14 to be included in any bond resolution of the board, and may
15 restrict the individual right of action by bondholders. In
16 addition to the foregoing, any trust agreement may contain
17 such other provisions as the board considers reasonable and
18 proper for the security of the bondholders. All expenses
19 incurred in carrying out the provisions of the trust agree-

20 ment may be treated as a part of the cost of the operation of
21 an education loan program.

§18-27-10. Bonds as obligation of board only.

1 Bonds issued under authority of this article shall be obli-
2 gations of the board only, and not of the state of West
3 Virginia. Bonds issued under authority of this article shall
4 state upon the face of each bond that they represent and
5 constitute a debt of the board, but not of the state of West
6 Virginia within the meaning of the provisions of the con-
7 stitution or statutes of the state of West Virginia; and they
8 do not constitute a pledge of the full faith and credit of the
9 board or of the state of West Virginia. The bonds may
10 not grant to the owners or holders thereof any right to
11 have the board or the Legislature levy any taxes or appro-
12 priate any funds for the payment of the principal thereof
13 or interest thereon. Such bonds are payable, and shall state
14 that they are payable, solely from the revenues pledged for
15 their payment in accordance with the bond resolution.

16 Nothing in this article may be construed to authorize
17 the board or any department, board, commission or other
18 agency to create an obligation of the state of West Virginia
19 within the meaning of the constitution or the code of West
20 Virginia.

§18-27-11. Pledge of revenues.

1 The board shall fix, revise, charge and collect fees and
2 is empowered to contract with any person, partnership,
3 association or corporation, or other body, public or private,
4 in respect thereof. Each agreement entered into by the
5 board with an institution of higher education shall provide
6 that the fees and other amounts payable by the institution
7 of higher education with respect to any program of the
8 board shall be sufficient at all times, (a) to pay its share
9 of the administrative costs and expenses of such program,
10 (b) to pay the principal of, the premium, if any, and the
11 interest on outstanding bonds of the board, issued in respect
12 of such program to the extent that other revenues of the
13 board pledged for the payment of the bonds are insufficient
14 to pay the bonds as they become due and payable, (c) to

15 create and maintain reserves which may but need not be
16 required or provided for in the bond resolution relating
17 to such bonds of the board, and (d) to establish and maintain
18 whatever education loan servicing, control or audit procedures
19 are deemed to be necessary to the prudent operations of the
20 board. The board shall pledge the revenues from each pro-
21 gram, as described in subsection (c), section eight of this
22 article, as security for the issue of bonds relating to such
23 program. Such pledge shall be valid and binding from the
24 time when the pledge is made; the revenues so pledged by
25 the board shall immediately be subject to the lien of such
26 pledge without any physical delivery thereof or further act,
27 and the lien of any such pledge shall be valid and binding
28 against all parties having claims of any kind in tort, contract
29 or otherwise against the board or any participating institution
30 of higher education, irrespective of whether such parties have
31 notice thereof. Neither the bond resolution nor any financing
32 statement, continuation statement or other instrument by
33 which a pledge is created or by which the board's interest
34 in revenues is assigned need be filed or recorded in any
35 public records in order to perfect the lien thereof as against
36 third parties except that a copy thereof shall be filed in the
37 records of the board and with the state treasurer.

§18-27-12. Funds from sale of bonds as trust funds; application of funds.

1 All moneys received by or on behalf of the board pursuant
2 to the authority of this article, whether as proceeds from the
3 sale of bonds or as revenues, are trust funds to be held and
4 applied solely as provided in this article. Any officer with
5 whom, or any bank or trust company with which, such moneys
6 are deposited shall act as trustee of such moneys and shall hold
7 and apply the same for the purposes hereof, subject to such
8 regulations as this article and the bond resolution authorizing
9 the bonds of any issue may provide.

§18-27-13. Rights of bondholders.

1 Any holder of bonds issued pursuant to this article or a
2 trustee under a trust agreement entered into pursuant to this
3 article, except to the extent that their rights are restricted by

4 any bond resolution, may, by any suitable form of legal pro-
5 ceedings, protect and enforce any rights under the laws of this
6 state or granted by the bond resolution. Such rights include the
7 right to compel the performance of all duties of the board re-
8 quired by this article or the bond resolution; to enjoin unlawful
9 activities; and in the event of default with respect to the pay-
10 ment of any principal of, premium, if any, and interest on any
11 bond or in the performance of any covenant or agreement on
12 the part of the board in the bond resolution, to apply to the
13 circuit court to appoint a receiver to administer and operate
14 the education loan program or programs, the revenues of which
15 are pledged to the payment of principal of, premium, if any,
16 and interest on such bonds, with full power to pay, and to
17 provide for payment of, principal of, premium, if any, and
18 interest on such bonds, and with such powers, subject to the
19 direction of the court, as are permitted by law and are ac-
20 corded receivers, excluding any power to pledge additional
21 revenues of the board to the payment of such principal, pre-
22 mium and interest.

§18-27-14. Refunding bonds; purpose; proceeds; investment of proceeds.

1 (a) The board is authorized to provide for the issuance of
2 bonds of the board for the purpose of refunding any bonds of
3 the board then outstanding, including the payment of any
4 redemption premium thereon and any interest accrued or to
5 accrue to the earliest or any subsequent date of redemption,
6 purchase or maturity of such bonds.

7 (b) The proceeds of any such bonds issued for the purpose
8 of refunding outstanding bonds may, in the discretion of the
9 board, be applied to the purchase or retirement at maturity or
10 redemption of such outstanding bonds either on their earliest or
11 any subsequent redemption date or upon the purchase or at the
12 maturity thereof and may, pending such application, be placed
13 in escrow to be applied to such purchase or retirement at
14 maturity or redemption on such date as may be determined by
15 the board.

16 (c) Any such escrowed proceeds, pending such use, may be
17 invested and reinvested in direct obligations of the United

18 States of America, maturing at such time or times as are ap-
19 propriate to assure the prompt payment of the principal of
20 and interest and redemption premium, if any, on the outstand-
21 ing bonds to be so refunded. The interest, income and profits,
22 if any, earned or realized on any such investment may also
23 be applied to the payment of the outstanding bonds to be so
24 refunded. After the terms of the escrow have been fully satis-
25 fied and carried out, any balance of such proceeds and inter-
26 est, income and profits, if any, earned or realized on the in-
27 vestments thereof shall be returned to the institution of higher
28 education for use by it in any lawful manner.

29 (d) All such refunding bonds are subject to this article in
30 the same manner and to the same extent as other revenue
31 bonds issued pursuant to this article.

§18-27-15. Investment of funds of board.

1 Except as otherwise provided in subsection (c), section
2 fourteen of this article, the board may invest any funds in
3 (i) direct obligations of the United States of America, (ii) obli-
4 gations as to which the timely payment of principal and inter-
5 est is fully guaranteed by the United States of America, (iii)
6 obligations of the federal intermediate credit banks, federal
7 banks for cooperatives, federal land banks, federal home loan
8 banks, federal national mortgage association, government na-
9 tional mortgage association and the student loan marketing as-
10 sociation, (iv) certificates of deposit or time deposits consti-
11 tuting direct obligations of any bank: *Provided*, That invest-
12 ments may be made only in those certificates of deposit or
13 time deposits in banks which are insured by the federal de-
14 posit insurance corporation if then in existence, and (v) in
15 withdrawable capital accounts or deposits of state or federal
16 chartered savings and loan associations which are insured by
17 the federal savings and loan insurance corporation. Any such
18 securities may be purchased at the offering or market price
19 thereof at the time of such purchase. All such securities so
20 purchased shall mature or be redeemable on a date or dates
21 prior to the time when, in the judgment of the board, the funds
22 so invested will be required for expenditure. The express
23 judgment of the board as to the time when any funds will be

24 required for expenditure or be redeemable is final and con-
25 clusive.

§18-27-16. Bonds as legal investments.

1 All banks, bankers, trust companies, savings banks and in-
2 stitutions, building and loan associations, savings and loan
3 associations, investment companies, insurance companies and
4 associations, and all executors, administrators, guardians, trus-
5 tees and other fiduciaries may legally invest any sinking funds,
6 moneys or other funds belonging to them or within their con-
7 trol in any bonds issued pursuant to this article.

§18-27-17. Account of activities; receipts and expenditures; annual report; audit.

1 The board shall keep an accurate account of all its ac-
2 tivities and of all its receipts and expenditures and shall
3 annually in the month of January make a report thereof to
4 its members, to the governor, the state treasurer, the clerk
5 of the House of Delegates, the clerk of the Senate, and the
6 commissioner of the department of finance and administration.
7 Such report is a public record and open for inspection at
8 the offices of the board during normal business hours. The
9 report shall include: (a) Summaries of all applications by
10 institutions of higher education for education loan financing
11 assistance presented to the members of the board during
12 such fiscal year; (b) summaries of all education loan programs
13 which have received any form of financial assistance from
14 the board during such year; (c) the nature and amount of
15 all such assistance; (d) a report concerning the financial con-
16 dition of the various education loan series portfolios; and (e)
17 projected activities of the board for the next fiscal year,
18 including projections of the total amount of financial assist-
19 ance anticipated and the amount of revenue bonds or other
20 evidences of indebtedness that will be necessary to provide
21 the projected level of assistance during the next fiscal year.
22 The auditor of the state of West Virginia may investigate
23 the affairs of the board, may examine the properties and
24 records of the board, and may prescribe methods of account-
25 ing and the rendering of periodical reports in relation to
26 financings undertaken by the board.

§18-27-18. Waiver of competitive bidding.

1 Competitive bidding requirements of the code of West
2 Virginia or any other similar requirements that may be
3 lawfully waived are waived by this section and any require-
4 ment of competitive bidding or other restriction imposed
5 on the procedure for award of contracts is not applicable to
6 any action taken under authority of this article.

§18-27-19. Institution powers; interest rates.

1 Notwithstanding any other provision of law, institutions
2 may borrow money from the board, make education loans and
3 take all other actions and do such things as are necessary
4 or convenient to consummate the transactions contemplated
5 under this article. It is lawful for the board to establish,
6 charge, contract for and receive any amount or rate of interest
7 or compensation with respect to board loans and for par-
8 ticipating institutions to charge, contract for and receive any
9 amount or rate of interest or compensation with respect to
10 education loans.

§18-27-20. Article as alternative method; application of bond law; powers not subject to supervision or regulation by other element or government.

1 The foregoing sections of this article provide a complete,
2 additional and alternative method for the doing of the things
3 authorized thereby and shall be regarded as supplemental
4 and additional to, and the limitations imposed by this article
5 do not limit or otherwise affect powers or rights conferred
6 by other laws, and the issuance of bonds and refunding bonds
7 under this article need not comply with the requirements of
8 any other law applicable to the issuance of bonds. Except
9 as otherwise expressly provided in this article, none of the
10 powers granted to the board under this article shall be subject
11 to the supervision or regulation or require the approval or
12 consent of any municipality or political subdivision or any
13 department, division, commission, board, body, bureau, official
14 or agency thereof or of the state.

§18-27-21. Liberal construction of article.

1 This article being necessary for the welfare of the state

2 and its inhabitants, shall be liberally construed to effect its
3 purpose.

§18-27-22. Exercise of powers as essential public function; exemption from taxation.

1 The exercise of the powers granted by this article will
2 be in all respects for the benefit of the people of this
3 state, for the increase of their commerce, welfare and pros-
4 perity, and for the improvement of their health and living
5 conditions, and as the operation and maintenance of a pro-
6 gram by the board or its agent will constitute the performance
7 of an essential public function, neither the board nor its
8 agent shall be required to pay any taxes or assessments,
9 including mortgage recording taxes, upon or in respect of
10 a program, and moneys or any property acquired by, retained
11 by or used by the board or its agents under the provisions
12 of this article and the income therefrom shall at all times
13 be free from taxation of every kind by the state and by the
14 municipalities and other political subdivisions of the state.

CHAPTER 54

(S. B. 245—By Mr. Tonkovich)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to the payment of tuition fees for teachers for renewal of certification; limiting the amount of payment per teacher; and requiring the West Virginia department of education to promulgate rules pursuant to this section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING.**§18A-3-3a. Payment of tuition, registration and other fees for teachers; maximum payment per teacher.**

1 The West Virginia department of education shall establish
2 in its annual budget a separate line item and shall pay from
3 the appropriations therefor, to the extent that appropriations
4 are provided, the tuition, registration and other fees of the
5 teachers, as defined in section one, article one, chapter
6 eighteen of this code, with continuing contracts who have
7 completed any courses meeting the requirements of the
8 department for renewal of certification as required in section
9 three of this article in any college or university within the
10 state. A teacher may enroll for such courses in a college or
11 university outside the state and, upon receiving prior
12 approval from the department, be reimbursed for tuition,
13 registration and other fees upon completion thereof.

14 However, payment for any single fee made by the
15 department pursuant to the provisions of this section shall
16 not exceed the amount of the highest corresponding fee
17 charged at a West Virginia state-supported college or
18 university: *Provided*, That the payment for tuition,
19 registration or other fees under this section shall be limited to
20 payment of such fees for up to a maximum of fifteen semester
21 hours per teacher and shall be in accordance with rules and
22 regulations promulgated by the department pursuant to this
23 section.

CHAPTER 55

(H. B. 2034—By Mr. Barley and Mr. Prunty)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and eight-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the rights of school service personnel; establishing Saturday and Sunday minimum pay; establishing class titles of auditor and mail clerk and corresponding pay grades; and requiring written consent

before reclassification or relegation of service employee's condition of employment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 The purpose of this section is to establish an employment
2 term and class titles for service personnel. The employment
3 term for service personnel shall be no less than ten months,
4 a month being defined as twenty employment days: *Provided,*
5 That the county board of education may contract with all or
6 part of these personnel for a longer term. The beginning and
7 closing dates of the ten-month term shall not exceed forty-
8 three weeks. Service personnel employed on a yearly or twelve-
9 month basis may be employed by calendar months. Whenever
10 there is a change in job assignment during the school year, the
11 minimum pay scale and any county supplement shall be applic-
12 able.

13 Service personnel employed in the same classification for
14 more than the two hundred day minimum employment term
15 shall be paid for additional employment at a daily rate of not
16 less than the daily rate paid for the two hundred day minimum
17 employment term.

18 No service employee, without his agreement, shall be requir-
19 ed to report for work more than five days per week and no
20 part of any working day may be accumulated by the employer
21 for future work assignments, unless the employee agrees
22 thereto.

23 Should an employee whose regular work week is scheduled
24 from Monday through Friday agree to perform any work as-

25 signments on a Saturday or Sunday, the employee shall be
26 paid for at least one-half day of work for each such day he
27 reports for work, and if the employee works more than three
28 and one-half hours on any Saturday or Sunday, he shall be
29 paid for at least a full day of work for each such day.

30 Custodians required to work a daily work schedule that is
31 interrupted, that is, who do not work a continuous period in
32 one day, shall be paid additional compensation which shall be
33 equal to at least one eighth of their total salary as provided by
34 their state minimum salary and any county pay supplement,
35 and payable entirely from county funds.

36 Upon the change in classification or upon meeting the re-
37 quirements of an advanced classification of or by any employee,
38 his salary shall be made to comply with the requirements of
39 this article, and to any county salary schedule in excess of the
40 minimum requirements of this article, based upon his ad-
41 vanced classification and allowable years of employment.

42 An employee's contract as provided in sections four and
43 five, article two of this chapter shall state the appropriate
44 monthly salary the employee is to be paid, based on the class
45 title as provided in this article and any county salary schedule
46 in excess of the minimum requirements of this article.

47 The column heads of the state minimum pay scale and class
48 titles, set forth in section eight-a of this article, are defined
49 as follows:

50 "Pay grade" means the monthly salary applicable to class
51 titles of service personnel.

52 "Years of employment" means the number of years which
53 an employee classified as service personnel has been employed
54 by a board of education in any position prior to or subsequent
55 to the effective date of this section and including service in
56 the armed forces of the United States if the employee were
57 employed at the time of his induction. For the purpose of
58 section eight-a of this article, years of employment shall be
59 limited to the number of years shown and allowed under the
60 state minimum pay scale as set forth in section eight-a of
61 this article.

62 "Class title" means the name of the position or job held by
63 service personnel.

64 "Accountant I" means personnel employed to maintain
65 payroll records and reports and perform one or more opera-
66 tions relating to a phase of the total payroll.

67 "Accountant II" means personnel employed to maintain
68 accounting records and to be responsible for the accounting
69 process associated with billing, budgets, purchasing and re-
70 lated operations.

71 "Accountant III" means personnel who are employed in the
72 county board of education office to manage and supervise
73 accounts payable and/or payroll procedures.

74 "Aide I" means those personnel selected and trained for
75 teacher-aide classifications such as monitor aide, clerical aide,
76 classroom aide or general aide.

77 "Aide II" means those personnel referred to in the "Aide
78 I" classification who have completed a training program ap-
79 proved by the state board of education, or who hold a high
80 school diploma or have received a general educational de-
81 velopment certificate.

82 "Aide III" means those personnel referred to in the "Aide
83 I" classification who hold a high school diploma or a general
84 educational development certificate, and have completed six
85 semester hours of college credit at a higher educational in-
86 stitution.

87 "Audiovisual technician" means personnel employed to
88 perform minor maintenance on audiovisual equipment, films,
89 supplies and the filling of requests for equipment.

90 "Auditor" means personnel employed to examine and verify
91 accounts of individual schools and to assist schools and school
92 personnel in maintaining complete and accurate records of
93 their accounts.

94 "Bus operator" means personnel employed to operate school
95 buses and other school transportation vehicles as provided by
96 the state board of education.

97 "Buyer" means personnel employed to review and write
98 specifications, negotiate purchase bids and recommend pur-
99 chase agreements for materials and services that meet prede-
100 termined specifications at the lowest available costs.

101 "Cabinetmaker" means personnel employed to construct
102 cabinets, tables, bookcases and other furniture.

103 "Cafeteria manager" means personnel employed to direct
104 the operation of a food services program in a school, including
105 assigning duties to employees, approving requisitions for sup-
106 plies and repairs, keeping inventories, inspecting areas to
107 maintain high standards of sanitation, preparing financial re-
108 ports and keeping records pertinent to food services of a
109 school.

110 "Carpenter I" means personnel classified as a carpenter's
111 helper.

112 "Carpenter II" means personnel classified as a journeyman
113 carpenter.

114 "Chief mechanic" means personnel employed to be respon-
115 sible for directing activities which ensure that student trans-
116 portation or other board-owned vehicles are properly and safely
117 maintained.

118 "Clerk I" means personnel employed to perform clerical
119 tasks.

120 "Clerk II" means personnel employed to perform general
121 clerical tasks, prepare reports and tabulations and operate
122 office machines.

123 "Computer operator" means qualified personnel employed
124 to operate computers.

125 "Cook I" means personnel employed as a cook's helper.

126 "Cook II" means personnel employed to interpret menus,
127 to prepare and serve meals in a food service program of a
128 school and shall include personnel who have been employed as
129 a "Cook I" for a period of four years, if such personnel have
130 not been elevated to this classification within that period of
131 time.

- 132 “Cook III” means personnel employed to prepare and serve
133 meals, make reports, prepare requisitions for supplies, order
134 equipment and repairs for a food service program of a school
135 system.
- 136 “Crew leader” means personnel employed to organize the
137 work for a crew of maintenance employees to carry out as-
138 signed projects.
- 139 “Custodian I” means personnel employed to keep buildings
140 clean and free of refuse.
- 141 “Custodian II” means personnel employed as a watchman
142 or groundsman.
- 143 “Custodian III” means personnel employed to keep build-
144 ings clean and free of refuse, to operate the heating or cooling
145 systems and to make minor repairs.
- 146 “Custodian IV” means personnel employed as head cus-
147 todians. In addition to providing services as defined in “Cus-
148 todian III,” their duties may include supervising other cus-
149 todian personnel.
- 150 “Director or coordinator of services” means personnel not
151 defined as professional personnel or professional educators
152 in section one, article one of this chapter, who are assigned
153 to direct a department or division.
- 154 “Draftsman” means personnel employed to plan, design and
155 produce detailed architectural/engineering drawings.
- 156 “Electrician I” means personnel employed as an appren-
157 tice electrician helper or who holds an electrician helper
158 license issued by the state fire marshal.
- 159 “Electrician II” means personnel employed as an electrician
160 journeyman or who holds a journeyman electrician license
161 issued by the state fire marshal.
- 162 “Electronic technician I” means personnel employed at the
163 apprentice level to repair and maintain electronic equipment.
- 164 “Electronic technician II” means personnel employed at the
165 journeyman level to repair and maintain electronic equipment.

166 "Executive secretary" means personnel employed as the
167 county school superintendent's secretary or as a secretary who
168 is assigned to a position characterized by significant adminis-
169 trative duties.

170 "Food services supervisor" means qualified personnel not
171 defined as professional personnel or professional educators
172 as in section one, article one of this chapter, employed to man-
173 age and supervise a county school system's food service pro-
174 gram. The duties would include preparing in-service training
175 programs for cooks and food service employees, instructing
176 personnel in the areas of quantity cooking with economy and
177 efficiency, and keeping aggregate records and reports.

178 "Foreman" means skilled persons employed for supervision
179 of personnel who work in the areas of repair and maintenance
180 of school property and equipment.

181 "General maintenance" means personnel employed as help-
182 ers to skilled maintenance employees and to perform minor
183 repairs to equipment and buildings of a county school system.

184 "Glazier" means personnel employed to replace glass or
185 other materials in windows and doors and to do minor car-
186 pentry tasks.

187 "Graphic artist" means personnel employed to prepare
188 graphic illustrations.

189 "Groundsman" means personnel employed to perform duties
190 that relate to the appearance, repair and general care of school
191 grounds in a county school system. Additional assignments
192 may include the operation of a small heating plant and routine
193 cleaning duties in buildings.

194 "Handyman" means personnel employed to perform routine
195 manual tasks in any operation of the county school system.

196 "Heating and air conditioning mechanic I" means per-
197 sonnel employed at the apprentice level to install, repair and
198 maintain heating and air conditioning plants and related elec-
199 trical equipment.

200 "Heating and air conditioning mechanic II" means person-
201 nel employed at the journeyman level to install, repair and

202 maintain heating and air conditioning plants and related elec-
203 trical equipment.

204 "Heavy equipment operator" means personnel employed to
205 operate heavy equipment.

206 "Inventory supervisor" means personnel who are employed
207 to supervise or maintain operations in the receipt, storage,
208 inventory and issuance of materials and supplies.

209 "Key punch operator" means qualified personnel employed
210 to operate key punch machines or verifying machines.

211 "Locksmith" means personnel employed to repair and main-
212 tain locks and safes.

213 "Lubrication man" means personnel employed to lubricate
214 and service gasoline or diesel-powered equipment of a county
215 school system.

216 "Machinist" means personnel employed to perform machi-
217 nist tasks which include the ability to operate a lathe, planer,
218 shaper, threading machine and wheel press. Such personnel
219 should also have ability to work from blueprints and drawings.

220 "Mail clerk" means personnel employed to receive, sort,
221 dispatch, deliver or otherwise handle letters, parcels and other
222 mail.

223 "Maintenance clerk" means personnel employed to maintain
224 and control a stocking facility to keep adequate tools and
225 supplies on hand for daily withdrawal for all school main-
226 tenance crafts.

227 "Mason" means personnel employed to perform tasks con-
228 nected with brick and block laying and carpentry tasks related
229 to such laying.

230 "Mechanic" means personnel employed who can independ-
231 ently perform skilled duties in the maintenance and repair of
232 automobiles, school buses and other mechanical and mobile
233 equipment to use in a county school system.

234 "Mechanic assistant" means personnel employed as a
235 mechanic apprentice and helper.

236 "Office equipment repairman I" means personnel employed
237 as an office equipment repairman apprentice or helper.

238 "Office equipment repairman II" means personnel respon-
239 sible for servicing and repairing all office machines and equip-
240 ment. Personnel shall be responsible for parts being purchased
241 necessary for the proper operation of a program of continuous
242 maintenance and repair.

243 "Painter" means personnel employed to perform duties of
244 painting, finishing and decorating of wood, metal and con-
245 crete surfaces of buildings, other structures, equipment, ma-
246 chinery and furnishings of a county school system.

247 "Plumber I" means personnel employed as an apprentice
248 plumber and helper.

249 "Plumber II" means personnel employed as a journeyman
250 plumber.

251 "Printing operator" means personnel employed to operate
252 duplication equipment, and as required, to cut, collate, staple,
253 bind and shelve materials.

254 "Printing supervisor" means personnel employed to super-
255 vise the operation of a print shop.

256 "Programmer" means personnel employed to design and
257 prepare programs for computer operation.

258 "Roofing/sheet metal mechanic" means personnel employed
259 to install, repair, fabricate and maintain roofs, gutters, flashing
260 and duct work for heating and ventilation.

261 "Sanitation plant operator" means personnel employed to
262 operate and maintain a water or sewage treatment plant to
263 ensure the safety of the plant's effluent for human consump-
264 tion or environmental protection.

265 "School bus supervisor" means qualified personnel employed
266 to assist in selecting school bus operators and routing and
267 scheduling of school buses, operate a bus when needed, relay
268 instructions to bus operators, plan emergency routing of buses
269 and promoting good relationships with parents, pupils, bus
270 operators and other employees.

271 "Secretary I" means personnel employed to transcribe from
272 notes or mechanical equipment, receive callers, perform
273 clerical tasks, prepare reports and operate office machines.

274 "Secretary II" means personnel employed in any elemen-
275 tary, secondary, kindergarten, nursery, special education, vo-
276 cational or any other school as a secretary. The duties may
277 include performing general clerical tasks, transcribing from
278 notes or stenotype or mechanical equipment or a sound-pro-
279 ducing machine, preparing reports, receiving callers and re-
280 ferring them to proper persons, operating office machines,
281 keeping records and handling routine correspondence. There is
282 nothing implied herein that would prevent such employees from
283 holding or being elevated to a higher classification.

284 "Secretary III" means personnel assigned to the county
285 board of education office administrators in charge of various
286 instructional, maintenance, transportation, food services, oper-
287 ations and health departments, federal programs or departments
288 with particular responsibilities of purchasing and financial con-
289 trol or any personnel who have served in a position which
290 meets the definition of "secretary II" herein for twelve con-
291 tinuous years.

292 "Supervisor of maintenance" means skilled personnel not de-
293 fined as professional personnel or professional educators as in
294 section one, article one of this chapter. His responsibilities
295 would include directing the upkeep of buildings and shops,
296 issuing instructions to subordinates relating to cleaning, repairs
297 and maintenance of all structures, mechanical and electrical
298 equipment of a board of education.

299 "Supervisor of transportation" means qualified personnel
300 employed to direct school transportation activities, properly
301 and safely, and to supervise the maintenance and repair of
302 vehicles, buses, and other mechanical and mobile equipment
303 used by the county school system.

304 "Switchboard operator-receptionist" means personnel em-
305 ployed to refer incoming calls, to assume contact with the pub-
306 lic, to direct and to give instructions as necessary, to operate
307 switchboard equipment and to provide clerical assistance.

308 "Truck driver" means personnel employed to operate light
309 or heavy duty gasoline and diesel-powered vehicles.

310 "Warehouse clerk" means personnel employed to be re-
311 sponsible for receiving, storing, packing and shipping goods.

312 "Watchman" means personnel employed to protect school
313 property against damage or theft. Additional assignments may
314 include operation of a small heating plant and routine clean-
315 ing duties.

316 "Welder" means personnel employed to provide acetylene
317 or electric welding services for a school system.

318 In addition to the compensation provided for in section
319 eight-a of this article, for service personnel, each service em-
320 ployee shall, notwithstanding any provisions in this code to
321 the contrary, be entitled to all service personnel employee
322 rights, privileges and benefits provided under this or any other
323 chapter of this code without regard to such employee's hours
324 of employment or the methods or sources of compensation.

325 Service personnel whose years of employment exceed the
326 number of years shown and provided for under the state mini-
327 mum pay scale set forth in section eight-a of this article, may
328 not be paid less than the amount shown for the maximum
329 years of employment shown and provided for in the classifica-
330 tion in which he is employed.

331 The county board of education may establish salary sched-
332 ules which shall be in excess of the state minimum fixed by
333 this article, these county schedules to be uniform throughout
334 the county with regard to any training classification, exper-
335 ience, years of employment, responsibility, duties, pupil par-
336 ticipation, pupil enrollment, size of buildings, operation of
337 equipment or other requirements. Further, uniformity shall
338 apply to all salaries, rates of pay, benefits, increments or
339 compensation for all persons regularly employed and per-
340 forming like assignments and duties within the county.

341 In establishing such local salary schedules, no county, after
342 the first day of July, one thousand nine hundred eighty-one,
343 shall reduce the amount of money that is the difference be-
344 tween the existing state minimum pay scale and the county's

345 pay scale as of the first day of January, one thousand nine
346 hundred eighty-one, except that a county's pay scale may be
347 reduced when such pay scale is provided from excess levy
348 funds and such excess levy is not renewed.

349 The county boards shall review each service personnel em-
350 ployee job classification annually and shall reclassify all service
351 employees as required by such job classifications. The state
352 superintendent of schools is hereby authorized to withhold
353 state funds appropriated pursuant to this article for salaries for
354 service personnel who are improperly classified by such county
355 boards. Further, he shall order county boards to correct im-
356 mediately any improper classification matter and with the
357 assistance of the attorney general shall take any legal action
358 necessary against any county board to enforce such order.

359 The state board of education is authorized to establish
360 other class titles of service personnel positions and jobs not
361 listed in this section. The state board of education is further
362 authorized to provide appropriate pay grades for such posi-
363 tions and jobs but pay shall be established within the mini-
364 mum salary scale in section eight-a of this article.

365 No service employee, without his written consent, may be
366 reclassified by class title, nor may a service employee, without
367 his written consent, be relegated to any condition of employ-
368 ment which would result in a reduction of his salary, rate of
369 pay, compensation or benefits earned during the current fiscal
370 year or which would result in a reduction of his salary, rate of
371 pay, compensation or benefits for which he would qualify by
372 continuing in the same job position and classification held
373 during said fiscal year and subsequent years.

374 Any board failing to comply with the provisions of this
375 article may be compelled to do so by mandamus, and shall be
376 liable to any party prevailing against the board for court costs
377 and his reasonable attorney fee, as determined and establish-
378 ed by the court.

379 The new provisions of this section shall become effective
380 the first day of July, one thousand nine hundred eighty-two.

§18A-4-8a. Service personnel minimum monthly salaries.

STATE MINIMUM PAY SCALE PAY GRADE

Years of Employ- ment	STATE MINIMUM PAY SCALE PAY GRADE							
	A	B	C	D	E	F	G	H
0	674	694	734	784	834	894	924	994
1	692	712	752	802	852	912	942	1012
2	710	730	770	820	870	930	960	1030
3	728	748	788	838	888	948	978	1048
4	746	766	806	856	906	966	996	1066
5	764	784	824	874	924	984	1014	1084
6	782	802	842	892	942	1002	1032	1102
7	800	820	860	910	960	1020	1050	1120
8	818	838	878	928	978	1038	1068	1138
9	836	856	896	946	996	1056	1086	1156
10	854	874	914	964	1014	1074	1104	1174
11	872	892	932	982	1032	1092	1122	1192
12	890	910	950	1000	1050	1110	1140	1210
13	908	928	968	1018	1068	1128	1158	1228
14	926	946	986	1036	1086	1146	1176	1246
15	944	964	1004	1054	1104	1164	1194	1264
16	962	982	1022	1072	1122	1182	1212	1282

CLASS TITLE	PAY GRADE
Accountant I	D
Accountant II	E
Accountant III	F
Aide I	A
Aide II	B
Aide III	C
Audiovisual Technician	C
Auditor	G
Bus Operator	D
Buyer	F
Cabinetmaker	G

Cafeteria Manager	D
Carpenter I.....	E
Carpenter II	F
Chief Mechanic	G
Clerk I	B
Clerk II	C
Computer Operator	E
Cook I	A
Cook II	B
Cook III	C
Crew Leader	F
Custodian I	A
Custodian II	B
Custodian III	C
Custodian IV	D
Director or Coordinator of Services	H
Draftsman	D
Electrician I	F
Electrician II	G
Electronic Technician I	F
Electronic Technician II	G
Executive Secretary	G
Food Services Supervisor	G
Foreman	G
General Maintenance	C
Glazier	D
Graphic Artist	D
Groundsman	B
Handyman	B
Heating and Air Conditioning Mechanic I	E
Heating and Air Conditioning Mechanic II	G
Heavy Equipment Operator	E
Inventory Supervisor	D
Key Punch Operator	B
Locksmith	G
Lubrication Man	C
Machinist	F
Mail Clerk	D
Maintenance Clerk	C

Mason	G
Mechanic	F
Mechanic Assistant	E
Office Equipment Repairman I	F
Office Equipment Repairman II	G
Painter	E
Plumber I	E
Plumber II	G
Printing Operator	B
Printing Supervisor	D
Programmer	H
Roofing/Sheet Metal Mechanic	F
Sanitation Plant Operator	F
School Bus Supervisor	E
Secretary I	D
Secretary II	E
Secretary III	F
Supervisor of Maintenance	H
Supervisor of Transportation	H
Switchboard Operator-Receptionist	D
Truck Driver	D
Warehouse Clerk	C
Watchman	B
Welder	F

1 On and after the first day of July, one thousand nine
2 hundred seventy-nine, the minimum monthly pay for each
3 service employee whose employment is for a period of more
4 than three and one-half hours a day shall be at least the
5 amounts indicated in the "state minimum pay scale" as set
6 forth in this section, and the minimum monthly pay for each
7 service employee whose employment is for a period of three
8 and one-half hours or less a day shall be at least one half
9 the amount indicated in the "state minimum pay scale" set
10 forth in this section.

11 Any service employee required to work on any legal holi-
12 day shall be paid at a rate one and one-half times his usual
13 hourly rate.

CHAPTER 56

(S. B. 528—By Mr. Ash and Mr. Galperin)

[Passed March 11, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight-b and fifteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to seniority rights for service personnel; establishing an order of preference for filling positions to be used in conjunction with seniority; defining the word "promotion"; defining classification category of employment; providing an alternative procedure for making extra-duty assignments; relating to the employment of service personnel substitutes; defining the time period in which county boards must fill vacancies; and providing a method for filling the vacancies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8b. Seniority rights for school personnel.

§18A-4-15. Employment of service personnel substitutes.

§18A-4-8b. Seniority rights for school personnel.

1 (a) A county board of education shall make decisions affecting
2 promotion and filling of any service personnel positions of
3 employment or jobs occurring throughout the school year
4 that are to be performed by service personnel as provided in
5 section eight, article four of this chapter, on the basis of
6 seniority, qualifications and evaluation of past service in the
7 following order:

8 (1) Regularly employed service personnel.

9 (2) Service personnel whose employment has been
10 discontinued in accordance with this section.

11 (3) Substitute service personnel.

12 (4) New service personnel.

13 (b) The county board of education may not prohibit a service
14 employee from retaining or continuing his employment in

15 any positions or jobs held prior to the effective date of this
16 section.

17 A promotion shall be defined as any change in his
18 employment that the employee deems to improve his
19 working circumstance within his classification category of
20 employment and shall include a transfer to another
21 classification category or place of employment if the position
22 is not filled by an employee who holds a title within that
23 classification category of employment. Each class title listed
24 in section eight, article four of this chapter shall be
25 considered a separate classification category of employment
26 for service personnel, except for those class titles having
27 Roman numeral designations, which shall be considered a
28 single classification of employment. The cafeteria manager
29 class title shall be included in the same classification category
30 as cooks. The executive secretary class title shall be included
31 in the same classification category as secretaries.

32 For purposes of determining seniority under this section,
33 an employee's seniority begins on the date that he enters into
34 his assigned duties.

35 Notwithstanding any other provisions of this chapter to the
36 contrary, decisions affecting such personnel with respect to
37 extra-duty assignments, shall be made in the following
38 manner: An employee with the greatest length of service time
39 in a particular category of employment shall be given priority
40 in accepting such assignments, followed by other fellow
41 employees on a rotating basis according to the length of their
42 service time until all such employees have had an
43 opportunity to perform similar assignments. The cycle then
44 shall be repeated: *Provided*, That an alternative procedure for
45 making extra-duty assignments within a particular
46 classification category of employment may be utilized if the
47 alternative procedure is approved both by the county board
48 of education and by an affirmative vote of four fifths of the
49 employees within that classification category of employment.

50 All decisions by county boards of education concerning
51 reduction in work force of all personnel shall be made on the
52 basis of seniority, as hereinafter provided:

53 (1) The seniority of any such service personnel shall be
54 determined on the basis of the length of time the employee
55 has been employed by the county board of education within a
56 particular job classification. For the purpose of establishing
57 seniority for a preferred recall list as hereinafter provided,

58 when an employee has been employed in one or more
59 classifications, the seniority accrued in each previous
60 classification shall be retained by the employee.

61 Should a county board of education be required to reduce
62 the number of employees within a particular job
63 classification, the employee with the least amount of seniority
64 within that classification or grades of classification shall be
65 properly released and employed in a different grade of that
66 classification if there is a job vacancy: *Provided*, That if there
67 is no job vacancy for employment within such classification
68 or grades of classification, he shall be employed in any other
69 job classification which he previously held with the county
70 board if there is a vacancy and shall retain any seniority
71 accrued in such job classification or grade of classification.

72 If two or more employees accumulate identical seniority,
73 the priority shall be determined by a random selection system
74 established by the employees and approved by the county
75 board.

76 (2) The seniority of professional personnel shall be
77 determined on the basis of the length of time the employee
78 has been employed by the county board of education. For the
79 purposes of establishing seniority for a preferred recall list as
80 hereinafter provided, when an employee holds valid
81 certification or licensure in one or more areas, the seniority
82 shall accrue in each area.

83 Whenever a county board is required to reduce the number
84 of professional personnel in its employment, the employee
85 with the least amount of seniority shall be properly notified
86 and released from employment pursuant to the provisions of
87 section two, article two of this chapter: *Provided, however*,
88 That such employee shall be employed in any other position
89 for which he is certified and/or licensed if his seniority is
90 greater than the seniority of any other employee in that area
91 of certification and/or licensure.

92 All employees whose seniority with the county board is
93 insufficient to allow their retention by the county board
94 during a reduction in work force shall be placed upon a
95 preferred recall list and shall be recalled to employment by
96 the county board on the basis of seniority.

97 Employees placed upon the preferred list shall be recalled
98 to any position openings by the county board within the
99 classification(s), where they had previously been employed,

100 or to any lateral position for which the employee is qualified
101 or to a lateral area for which an employee has certification
102 and/or licensure.

103 Employees on the preferred recall list shall not forfeit their
104 right to recall by the county board if compelling reasons
105 require an employee to refuse an offer of reemployment by
106 the county board.

107 The county board shall be required to notify all employees
108 on the preferred recall list of all position openings that from
109 time to time exist. Such notice shall be sent by certified mail
110 to the last known address of the employee; it shall be the duty
111 of each such employee to notify the county board of any
112 change in the address of such employee.

113 No position openings may be filled by the county board,
114 whether temporary or permanent, until all employees on the
115 preferred recall list have been properly notified of existing
116 vacancies and have been given an opportunity to accept
117 reemployment.

§18A-4-15. Employment of service personnel substitutes.

1 The county board may employ and the county
2 superintendent, subject to the approval of the county board
3 of education, may employ and assign substitute service
4 personnel to perform any of the following duties:

5 (1) To fill the temporary absence of another service
6 employee;

7 (2) To fill the position of a regular service employee on
8 leave of absence: *Provided*, That if such leave of absence is to
9 extend beyond thirty days, the board, within ten working
10 days from the commencement of the leave of absence, shall
11 give regular employee status to a person hired to fill such
12 position: *Provided, however*, That if a board has in effect an
13 official, written policy of posting job vacancies, it shall be
14 allowed twenty working days to fill this position. The person
15 employed on a regular basis shall be selected under the
16 procedure set forth in section eight-b of this article. The
17 substitute shall hold such position and regular employee
18 status only until the regular employee returns to such
19 position and shall have and shall be accorded all rights,
20 privileges and benefits pertaining to such position;

21 (3) To perform the service of a service employee who is
22 authorized to be absent from duties without loss of pay;

23 (4) To temporarily fill a vacancy in a permanent position

24 caused by severance of employment by the resignation,
25 retirement, permanent disability or death of the regular
26 service employee who had been assigned to fill such position:
27 *Provided*, That within ten working days from the
28 commencement of the vacancy, the board shall fill such
29 vacancy under the procedures set out in section eight-b of
30 this article and section five, article two of this chapter and
31 such person hired to fill the vacancy shall have and shall be
32 accorded all rights, privileges and benefits pertaining to such
33 position: *Provided, however*, That if a board has in effect an
34 official, written policy of posting job vacancies, it shall be
35 allowed twenty working days to fill the vacancy;

36 (5) To fill the vacancy created by a regular employee's
37 suspension: *Provided*, That a substitute service employee
38 shall not be assigned to fill the vacancy on a permanent basis
39 until such termination by the county board of education
40 becomes final.

41 The salary of a substitute service employee shall be based
42 upon his years of employment as defined in section eight of
43 this article and as provided in the state minimum pay scale
44 set forth in section eight-a of this article and shall be in
45 accordance with the salary schedule of persons regularly
46 employed in the same position in the county in which he is
47 employed.

48 Before any service employee enters upon his duties, he
49 shall execute with the county board of education a written
50 contract as provided in section five, article two of this
51 chapter.

CHAPTER 57

(Com. Sub. for H. B. 1415—By Miss Davis and Mr. Moore)

[Passed March 13, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to duty-free lunch periods for certain teachers and service personnel; and providing a planning period for certain teachers within each regular school day.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-14. Duty-free lunch and daily planning period for certain employees.

1 (1) Notwithstanding the provisions of section seven, article
2 two of this chapter, every teacher who is employed for a
3 period of time more than one half the class periods of the
4 regular school day and every service personnel whose em-
5 ployment is for a period of more than three and one-half
6 hours per day and whose pay is at least the amount indicated
7 in the "state minimum pay scale" as set forth in section
8 eight-a of this article shall be provided a daily lunch recess
9 of not less than thirty consecutive minutes, and such em-
10 ployee shall not be assigned any responsibilities during this
11 recess. Such recess shall be included in the number of hours
12 worked, and no county shall increase the number of hours
13 to be worked by an employee as a result of such employee
14 being granted a recess under the provisions of this section.

15 (2) Every teacher who is regularly employed for a period
16 of time more than one half the class periods of the regular
17 school day shall be provided at least one planning period
18 within each regular school day to be used to complete neces-
19 sary preparations for the instruction of pupils. Such planning
20 period shall be the length of the usual class period in the
21 school to which such teacher is assigned, and shall be not
22 less than thirty minutes. No teacher shall be assigned any
23 responsibilities during this period, and no county shall in-
24 crease the number of hours to be worked by a teacher as a
25 result of such teacher being granted a planning period sub-
26 sequent to the adoption of this section (March 13, 1982).

27 Principals, and assistant principals, where applicable, shall
28 cooperate in carrying out the provisions of this subsection,
29 including, but not limited to, assuming control of the class
30 period or supervision of students during the time the teacher

31 is engaged in the planning period. Substitute teachers may
32 also be utilized to assist with classroom responsibilities under
33 this subsection: *Provided*, That any substitute teacher who is
34 employed to teach a minimum of two consecutive days in the
35 same position shall be granted a planning period pursuant to
36 this section.

37 (3) Nothing in this section shall be construed to prevent
38 any teacher from exchanging his lunch recess or planning
39 period or any service personnel from exchanging his lunch
40 recess for any compensation or benefit mutually agreed upon
41 by the employee and the county superintendent of schools or
42 his agent: *Provided*, That a teacher and the superintendent
43 or his agent may not agree to terms which are different from
44 those available to any other teacher granted rights under
45 this section within the individual school or to terms which
46 in any way discriminate among such teachers within the
47 individual school, and that service personnel granted rights
48 under this section and the superintendent or his agent may
49 not agree to terms which are different from those available to
50 any other service personnel within the same classification
51 category granted rights under this section within the individual
52 school or to terms which in any way discriminate among such
53 service personnel within the same classification category
54 within the individual school.

CHAPTER 58

(S. B. 276—By Mr. Heck)

[Passed March 3, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries, wages and other benefits; relating to extra-curricular assignments; deleting provision providing that if properly certified replacement for a coach or a band director cannot be employed the employee under the

extracurricular assignment agreement will continue that assignment; deleting provision that dismissal of coach or band director under employment contract or extracurricular assignment agreement shall be grounds for termination of other contract; and deleting requirement that coach or band director who resigns from his extracurricular assignment may be placed on transfer list.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-16. Extracurricular assignments.

1 (1) The assignment of teachers and service personnel
2 to extracurricular assignments shall be made only by
3 mutual agreement of the employee and the superintend-
4 ent, or designated representative, subject to board ap-
5 proval. Extracurricular duties shall mean, but not be
6 limited to, any activities that occur at times other than
7 regularly scheduled working hours, which include the
8 instructing, coaching, chaperoning, escorting, providing
9 support services or caring for the needs of students, and
10 which occur on a regularly scheduled basis.

11 (2) The employee and the superintendent, or a
12 designated representative, subject to board approval,
13 shall mutually agree upon the maximum number of
14 hours of extracurricular assignment in each school year
15 for each extracurricular assignment.

16 (3) The terms and conditions of the agreement between
17 the employee and the board of education shall be in
18 writing and signed by both parties.

19 (4) An employee's contract of employment shall be
20 separate from the extracurricular assignment agreement
21 provided for in this section and shall not be conditioned
22 upon the employee's acceptance or continuance of any
23 extracurricular assignment proposed by the superintend-
24 ent, a designated representative, or the board.

CHAPTER 59

(H. B. 1101—By Mr. Whitlow and Mr. Gilliam)

[Passed March 12, 1982; in effect April 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-five and forty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the delivery of ballots and election supplies by special messengers; increase in allowance and mileage; compensation of election officials generally; increase in expenses and mileage.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-25. Supplies by special messenger.

§3-1-44. Compensation of election officials; expenses.

§3-1-25. Supplies by special messenger.

1 In case any commissioner of election so appointed shall
2 fail to appear at the offices of the clerks of such county
3 and circuit courts, by the close of the second day, prior to
4 any election, as required by the preceding section, the board
5 of ballot commissioners, or the chairman thereof, shall forth-
6 with dispatch a special messenger to the commissioners of
7 election of each respective precinct with the ballots, registra-
8 tion records, ballot boxes, poll books and other supplies for
9 such precinct. Such messenger, if not a county employee,
10 shall be allowed five dollars for this service and, even if he
11 be a county employee, twenty cents a mile for the distance
12 necessary to be traveled by him, and shall promptly report to
13 the clerks of the circuit court and county commission, respec-
14 tively, and file with such clerks the receipts of the person to
15 whom he delivered such ballots and other supplies, and his
16 affidavit, stating when and to whom he delivered them.

§3-1-44. Compensation of election officials; expenses.

1 Each ballot commissioner shall be allowed and paid a sum,
2 to be fixed by the county commission, not exceeding fifty
3 dollars for each day he shall serve as such, but, in no case
4 shall a ballot commissioner receive allowance for more than
5 ten days' services for any one primary, general or special
6 election. Each commissioner of election and poll clerk shall
7 be allowed and paid a sum, to be fixed by the county com-
8 mission, not exceeding fifty dollars for one day's services for
9 attending the school of instruction for election officials and
10 a sum not exceeding fifty dollars for his services at any one
11 election: *Provided*, That each commissioner of election and
12 poll clerk shall be paid and allowed a sum not exceeding
13 fifty dollars for his services at any of the three special elections
14 hereinafter specified and described. The commissioners of
15 election obtaining and delivering the election supplies, as
16 provided in section twenty-four of this article, and returning
17 them as provided in articles five and six of this chapter, shall
18 be allowed and paid an additional sum, likewise fixed by
19 the county commission, not exceeding fifty dollars for all
20 such services at any one election and, in addition, shall be
21 allowed and paid mileage at the rate of twenty cents per mile
22 necessarily traveled in the performance of such services. The
23 compensation of election officers, cost of printing ballots, and
24 all other expenses incurred in holding and making the return
25 of elections, other than the three special elections hereinafter
26 specified and described, shall be audited by the county com-
27 mission and paid out of the county treasury.

28 The compensation of election officers, cost of printing
29 ballots, and all other reasonable and necessary expenses in
30 holding and making the return of a special election for the
31 purpose of taking the sense of the voters on the question of
32 calling a constitutional convention, of a special election to
33 elect members of a constitutional convention, and of a special
34 election to ratify or reject the proposals, acts and ordinances
35 of a constitutional convention shall be obligations of the
36 state incurred by the ballot commissioners, clerks of the circuit
37 courts, clerks of the county commissions, and county com-
38 missions of the various counties as agents of the state, and

39 all such expenses shall be audited by the secretary of state.
40 The secretary of state shall prepare and transmit to the county
41 commissions forms on which the county commissions shall
42 certify all such expenses of such special elections to the secre-
43 tary of state. If satisfied that such expenses as certified by
44 the county commissions are reasonable and were necessarily
45 incurred, the secretary of state shall requisition the necessary
46 warrants from the auditor of the state to be drawn on the
47 state treasurer, and shall mail such warrants directly to the
48 vendors of such special election services, supplies and facilities.

CHAPTER 60

(Com. Sub. for S. B. 313—By Mr. Boettner and Mr. Palumbo)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, eight, nine, twelve, thirteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-four, twenty-six, twenty-seven, twenty-eight and thirty-three, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to electronic voting systems generally; providing certain definitions; providing procedure for adopting electronic voting systems; providing procedure for terminating use of electronic voting systems; establishing duty of county commission to acquire vote recording devices, automatic tabulating equipment and to provide a central counting center; providing for approval of electronic voting system by state election commission; authorizing compensation for qualified experts; establishing minimum requirements of electronic voting systems; providing for ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; providing for inspection of vote recording devices; prescribing manner of delivery of vote recording devices; requiring examination of vote recording devices before use; providing for use of reserve vote recording devices in place of vote recording device in

disrepair; establishing procedures at polling places; providing for control of and accounting for ballots and other duties of election officers and penalties for violations; establishing procedures for independent voting in primary elections; establishing procedures for absent voter ballots; establishing procedures for challenged ballots; requiring testing of automatic tabulating equipment; providing procedure for central counting center; providing for post-election custody and inspection of vote recording devices, ballot labels, ballot cards and materials; establishing canvass and recount procedures; defining criminal offenses for tampering with vote recording devices; ballot labels, ballot cards, program decks, standard validation test decks, or other automatic tabulating equipment; and setting forth penalties therefor.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, eight, nine, twelve, thirteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-four, twenty-six, twenty-seven, twenty-eight and thirty-three, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

- §3-4A-2. Definitions.
- §3-4A-3. Procedure for adopting electronic voting systems.
- §3-4A-4. Procedure for terminating use of electronic voting systems.
- §3-4A-5. Duty of county commission to acquire vote recording devices, acquire use of automatic tabulating equipment, and provide a central counting center.
- §3-4A-8. Approval of electronic voting system by state election commission; expenses; compensation of persons examining system.
- §3-4A-9. Minimum requirements of electronic voting systems.
- §3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.
- §3-4A-13. Inspection of vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to vote recording devices.
- §3-4A-16. Delivery of vote recording devices; time; arrangement for voting.
- §3-4A-17. Check of vote recording devices before use; corrections; reserve vote recording devices.
- §3-4A-18. Disrepair of vote recording devices in use; reserve vote recording devices.
- §3-4A-19. Conducting electronic voting system elections generally; duties of election officers.

- §3-4A-20. "Independent" voting in primary elections.
- §3-4A-21. Absent voter ballots; issuance, processing and tabulation.
- §3-4A-24. Voting by challenged voter.
- §3-4A-26. Test of automatic tabulating equipment.
- §3-4A-27. Proceedings at the central counting center.
- §3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.
- §3-4A-33. Tampering with vote recording devices; ballot labels, ballot or ballot cards, program decks, standard validation test decks, or other automatic tabulating equipment; other dishonest practices; attempts; penalty.

§3-4A-2. Definitions.

1 As used in this article, unless otherwise specified:

2 (a) "Automatic tabulating equipment" means all
3 apparatus necessary to electronically count votes recorded on
4 ballot cards and tabulate the results;

5 (b) "Ballot card" means a tabulating card or paper on
6 which votes may be recorded by means of perforating or
7 marking in electronic sensitized ink or pencil;

8 (c) "Ballot labels" means the cards, papers, booklet, pages
9 or other material showing the names of offices and candidates
10 and the statements of measures to be voted on, which are
11 placed on the vote recording device;

12 (d) "Central counting center" means a facility equipped
13 with suitable and necessary automatic tabulating equipment,
14 selected by the county commission, for the electronic
15 counting of votes recorded on ballot cards;

16 (e) "Electronic voting system" is a means of conducting an
17 election whereby votes are recorded on ballot cards by means
18 of marking with electronic sensitized ink or perforating, and
19 such votes are subsequently counted by automatic tabulating
20 equipment at the central counting center;

21 (f) "Program deck" means the actual punch card deck or
22 decks containing the program for counting and tabulating the
23 votes, including the "application program deck";

24 (g) "Application program deck" means the punch card
25 deck containing specific option cards, used and necessary to
26 modify the program of general application, to conduct and
27 tabulate a specific election according to applicable law;

28 (h) "Standard validation test deck" means a deck of ballot
29 cards wherein all voting possibilities which can occur in an
30 election are represented; and

31 (i) "Vote recording device" means equipment in which
32 ballot labels and ballot cards are placed to allow a voter to
33 record his vote.

§3-4A-3. Procedure for adopting electronic voting systems.

1 An electronic voting system that has been approved in
2 accordance with section eight of this article may be adopted
3 for use in general, primary and special elections in any county
4 by either of the following procedures, and not otherwise:

5 (1) By a majority of the members of the county
6 commission voting to adopt the same at a special public
7 meeting called for the purpose of said adoption, with due
8 notice thereof published as a Class II-0 legal advertisement in
9 compliance with the provisions of article three, chapter
10 fifty-nine of this code, and the publication area for such
11 publication shall be the county involved: *Provided*, That such
12 meeting shall be held not less than six months prior to a
13 general election or six months prior to a primary election. If at
14 such meeting, such county commission shall enter an order of
15 its intention to adopt the use of an electronic voting system, it
16 shall thereafter forthwith cause to be published a certified
17 copy of such order as a Class II-0 legal advertisement in
18 compliance with the provisions of article three, chapter
19 fifty-nine of this code, and the publication area for such
20 publication shall be the county involved. The first publication
21 of such order shall not be less than twenty days after the entry
22 of such order. Such county commission shall not adopt the
23 use of an electronic voting system until six months after the
24 entry of such order of its intention to adopt the same.
25 Promptly after the expiration of six months after the entry of
26 such order of intention to adopt the use of an electronic
27 voting system, if no petition has theretofore been filed with
28 such county commission requesting a referendum on the
29 question of adoption of an electronic voting system as
30 hereinafter provided, such county commission shall enter a
31 final order adopting the electronic voting system, and the
32 electronic voting system shall thereby be adopted.

33 If five percent or more of the registered voters of such
34 county shall sign a petition requesting that an electronic
35 voting system be not adopted for use in such county and such
36 petition be filed with the county commission of such county
37 within six months after the entry of such order of intention to
38 adopt the use of an electronic voting system, such county
39 commission shall submit to the voters of such county at the
40 next general or primary election, whichever shall first occur,
41 the question: "Shall an electronic voting system be adopted
42 inCounty?" If this question be answered in the

43 affirmative by a majority of the voters in such election upon
44 the question, an electronic voting system shall thereby be
45 adopted. If such question shall not be answered in the
46 affirmative by such majority, the use of an electronic voting
47 system shall not be adopted.

48 (2) By the affirmative vote of a majority of the voters of
49 such county voting upon the question of the adoption of an
50 electronic voting system in such county. If five percent or
51 more of the registered voters of such county shall sign a
52 petition requesting the adoption of an electronic voting
53 system for use in such county, and such petition be filed with
54 the county commission of such county, such county
55 commission shall submit to the voters of such county at the
56 next general or primary election, following by not less than
57 six months the date of the filing of such petition, the
58 question: "Shall an electronic voting system be adopted in
59 County?" If this question be answered in the
60 affirmative by a majority of the voters of such county voting
61 upon the question, an electronic voting system shall thereby
62 be adopted. If such question shall not be answered in the
63 affirmative by such majority, the use of an electronic voting
64 system shall not be adopted: *Provided*, That nothing in this
65 section shall be construed to affect or invalidate the adoption
66 of any electronic voting system by any county in accord-
67 ance with applicable law prior to the effective date of this
68 section.

§3-4A-4. Procedure for terminating use of electronic voting systems.

1 The use of an electronic voting system may be terminated:

2 (1) By a majority of the members of the county
3 commission voting to terminate use of the system at a special
4 public meeting called for the purpose of said termination,
5 with due notice thereof published as a Class II-0 legal
6 advertisement in compliance with the provisions of article
7 three, chapter fifty-nine of this code, and the publication area
8 for such publication shall be the county involved: *Provided*,
9 That such meeting shall be held not less than six months
10 prior to a general election or six months prior to a primary
11 election. If at such meeting, such county commission shall
12 enter an order of its intention to terminate use of an electronic
13 voting system, it shall thereafter forthwith cause to be
14 published a certified copy of such order as a Class II-0 legal

15 advertisement in compliance with the provisions of article
16 three, chapter fifty-nine of this code, and the publication area
17 for such publication shall be the county involved. The first
18 publication of such order shall not be less than twenty days
19 after the entry of such order. Such county commission shall
20 not terminate the use of an electronic voting system until
21 ninety days after the entry of such order of its intention to
22 terminate the same. Promptly after the expiration of ninety
23 days after the entry of such order of intention to terminate the
24 use of an electronic voting system, if no petition has
25 theretofore been filed with such county commission
26 requesting a referendum on the question of termination of the
27 electronic voting system as hereinafter provided, such county
28 commission shall enter a final order terminating the use of
29 the electronic voting system, and the use of electronic voting
30 system shall thereby be terminated. If a petition has been
31 submitted as provided in this subdivision, the county
32 commission shall not terminate the use of the system but
33 shall proceed as provided in this subdivision.

34 If five percent or more of the registered voters of such
35 county shall sign a petition requesting that the use of an
36 electronic voting system be terminated in such county and
37 such petition be filed with the county commission of such
38 county within ninety days after the entry of such order of
39 intention to terminate the use of an electronic voting system,
40 such county commission shall submit to the voters of such
41 county at the next general or primary election, whichever
42 shall first occur, the question: "Shall the use of an electronic
43 voting system be terminated inCounty?" If this
44 question be answered in the affirmative by a majority of the
45 voters in such election upon the question, the use of an
46 electronic voting system shall thereby be terminated. If such
47 question shall not be answered in the affirmative by such
48 majority, the use of an electronic voting system shall
49 continue.

50 (2) By the affirmative vote of a majority of the voters of
51 such county voting upon the question of termination of the
52 use of an electronic voting system in such county. If five
53 percent or more of the registered voters of such county shall
54 sign a petition requesting the termination of the use of an
55 electronic voting system in such county, and such petition be
56 filed with the county commission of such county, such
57 county commission shall submit to the voters of such county

58 at the next general or primary election, following by not less
 59 than ninety days the date of the filing of such petition, the
 60 question: "Shall the use of an electronic voting system be
 61 terminated inCounty?" If this question be
 62 answered in the affirmative by a majority of the voters of such
 63 county voting upon the question, the use of an electronic
 64 voting system shall thereby be terminated. If such question
 65 shall not be answered in the affirmative by a majority of the
 66 voters of such county voting upon the question, the use of an
 67 electronic voting system shall thereby continue.

§3-4A-5. Duty of county commission to acquire vote recording devices, acquire use of automatic tabulating equipment, and provide a central counting center.

1 If the use of an electronic voting system shall have been
 2 adopted as hereinbefore provided, it shall be the duty of the
 3 county commission of such county to acquire the necessary
 4 number of vote recording devices to supply all or part of the
 5 election precincts within such county as soon as possible, and
 6 to acquire such reserve vote recording device or devices as
 7 will be deemed necessary. All such acquisition of vote
 8 recording devices shall be by sealed competitive bidding.

9 If it shall be impossible for the county commission to
 10 comply with its order or with the decision of the voters in a
 11 referendum at the next primary or general election, it shall in
 12 any event do so at the next following primary or general
 13 election, whichever shall first occur.

14 It shall be the further duty of the county commission of
 15 such county to acquire prior to any election in which such
 16 electronic voting system is to be used, the use of automatic
 17 tabulating equipment approved by the state election
 18 commission, for the purpose of counting votes in such
 19 election. In addition, the county commission of such county
 20 shall provide the necessary central counting center for use in
 21 said election. Such central counting center shall be located at
 22 the county seat of the county involved.

§3-4A-8. Approval of electronic voting system by state election commission; expenses; compensation of persons examining system.

1 Any person or corporation owning or being interested in
 2 any electronic voting system may apply to the state election
 3 commission to the end that such system may be examined
 4 and a report be made on its accuracy, efficiency, capacity and

5 safety. Upon the written application of any vendor tendered
6 to the secretary of state or to any clerks in his office in charge
7 of receiving filings for any purpose, it shall be the
8 nondelegable, nondiscretionary duty of the secretary of state
9 to fix a date, time and place, not more than thirty days after
10 the receipt of such application, for a meeting of the state
11 election commission for mutual consideration of such
12 application, and to mail notice thereof by certified mail to
13 each member of the commission.

14 The state election commission shall appoint two qualified
15 computer experts who are not members of the same political
16 party to examine the system and make full reports thereon to
17 the commission within thirty days from the date of the
18 application. They shall state in the report whether or not the
19 system so examined complies with the requirements of this
20 article and can be safely used by voters at elections under the
21 conditions prescribed in this article. If the report be in the
22 affirmative on said question, the system may be approved by
23 the commission and, if approved by the commission, a
24 system of its make and design may be adopted for use at
25 elections as herein provided: *Provided*, That under no
26 circumstances shall a system be approved that is not capable
27 of accurately tabulating returns based upon all possible
28 combinations of voting patterns including, but not limited to,
29 crossover voting and in accordance with section five, article
30 six of this chapter.

31 No electronic voting system shall be used at any election
32 unless it has heretofore or hereafter been approved under this
33 section or its former provisions. Each of the two qualified
34 computer experts appointed by the commission shall be
35 entitled to reasonable compensation and expenses in making
36 such examination and report, and such compensation shall
37 be paid by the person or corporation applying for such
38 examination, which sum shall be paid in advance of making
39 the examination and which sum shall be the sole
40 compensation to be received by any such expert for his work
41 hereunder.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and design
2 shall not be approved by the state election commission or be
3 purchased, leased or used, by any county commission unless
4 it shall fulfill the following requirements:

5 (1) It shall secure or ensure the voter absolute secrecy in
6 the act of voting, or, at the voter's election, shall provide for
7 open voting;

8 (2) It shall be so constructed that no person except in
9 instances of open voting, as herein provided for, can see or
10 know for whom any voter has voted or is voting;

11 (3) It shall permit each voter to vote at any election for all
12 persons and offices for whom and which he is lawfully
13 entitled to vote, whether or not the name of any such person
14 appears on a ballot label as a candidate; and it shall permit
15 each voter to vote for as many persons for an office as he is
16 lawfully entitled to vote for; and to vote for or against any
17 question upon which he is lawfully entitled to vote and the
18 automatic tabulating equipment used in such electronic
19 voting systems shall reject choices recorded on any ballot
20 card or paper ballot if the number of such choices exceeds the
21 number to which a voter is entitled;

22 (4) It shall permit each voter to deposit, write in, or affix
23 upon devices to be provided for that purpose, ballots
24 containing the names of persons for whom he desires to vote
25 whose names do not appear upon the ballot labels;

26 (5) It shall permit each voter to change his vote for any
27 candidate and upon any question appearing upon the ballot
28 labels up to the time when his ballot or ballot card is
29 deposited in the ballot box;

30 (6) It shall contain a program deck consisting of cards that
31 are sequentially numbered and capable of tabulating all votes
32 cast in each election;

33 (7) It shall contain two standard validation test decks
34 approved as to form and testing capabilities by the state
35 election commission;

36 (8) It shall correctly record and count accurately all votes
37 cast for each candidate and for and against each question
38 appearing upon the ballots or ballot labels;

39 (9) It shall permit each voter at any election other than
40 primary elections, by one mark or punch to vote a straight
41 party ticket, and by one mark or punch to vote for all
42 candidates of one party for presidential electors; and to vote a
43 mixed ticket selected from the candidates of any and all
44 parties and from independent candidates; and it shall permit
45 the proper counting, to the fullest extent possible, of all votes
46 cast for all candidates: *Provided, That, in the event of*
47 *crossover voting from a straight party ticket, the system shall*

48 not discard any vote on the straight ticket, unless (i) a
49 candidate opposite the discarded vote on the straight ticket
50 has been clearly chosen by the voter, or (ii) the voter, by mark
51 or punch has clearly indicated which choices on each ticket,
52 not in excess of the total number permitted, the voter has
53 made, or (iii) the choices made by the voter are so
54 contradictory that the voter's choice is indiscernable, in
55 which event, all votes for the candidates for such office shall
56 be discarded;

57 (10) It shall permit each voter in primary elections to vote
58 only for the candidates of the party with which he has
59 declared his affiliation, and preclude him from voting for any
60 candidate seeking nomination by any other political party,
61 permit him to vote for the candidates, if any, for nonpartisan
62 nomination or election, and permit him to vote on public
63 questions;

64 (11) It shall be provided with means for sealing the vote
65 recording device to prevent its use and to prevent tampering
66 with ballot labels, both before the polls are open or before the
67 operation of the vote recording device for an election is begun
68 and immediately after the polls are closed or after the
69 operation of the vote recording device for an election is
70 completed;

71 (12) It shall have the capacity to contain the names of
72 candidates constituting the tickets of at least nine political
73 parties, and to accommodate the wording of at least fifteen
74 questions;

75 (13) It shall be durably constructed of material of good
76 quality and in a workmanlike manner and in a form which
77 shall make it safely transportable;

78 (14) It shall be so constructed with frames for the placing
79 of ballot labels and with suitable means for the protection of
80 such labels, that the labels on which are printed the names of
81 candidates and their respective parties, titles of offices, and
82 wording of questions shall be so reasonably protected from
83 mutilation, disfigurement or disarrangement;

84 (15) It shall bear a number that will identify it or
85 distinguish it from any other machine;

86 (16) It shall be so constructed that a voter may easily learn
87 the method of operating it and may expeditiously cast his
88 vote for all candidates of his choice, and upon any public
89 question; and

90 (17) It shall be accompanied by a mechanically operated

91 instruction model which shall show the arrangement of ballot
 92 labels, party columns or rows, and questions.

**§3-4A-12. Ballot label arrangement in vote recording devices;
 when uniform numbering required; drawing by lot
 to determine position of candidates on ballots or
 ballot labels; sealing of devices; record of
 identifying numbers.**

1 When the ballot labels are printed and delivered to the clerk
 2 of the county commission, he shall place them in the vote
 3 recording devices in such manner as will most nearly
 4 conform to the arrangement prescribed for paper ballots, and
 5 as will clearly indicate the party designation or emblem of
 6 each candidate. Each column, row or page containing the
 7 names of the office and candidates for such office shall be so
 8 arranged as to clearly indicate the office for which the
 9 candidate is running. The names of the candidates for each
 10 office indicated shall be placed on the ballot label and the
 11 arrangement of the ballot label shall conform as nearly as
 12 practicable to the plan herein given:

Democratic Ticket		Republican Ticket	
For House of Delegates		For House of Delegates	
Name		Name	
Democratic:	79 ▶	◀80	Republican
Democratic:	81 ▶	◀82	Republican
Democratic:	83 ▶	◀84	Republican
Democratic:	85 ▶	◀86	Republican

13 or:

Democratic Ticket	Republican Ticket
For House of Delegates	For House of Delegates
Name	Name
	◀69
70▶	
	◀71
72▶	
	◀73
74▶	
	◀75
76▶	

14 The secretary of state shall assign a uniform number
 15 applicable to all counties using electronic voting for all
 16 straight party tickets and for all candidates running for
 17 offices to be voted upon by all of the voters of the state. The
 18 numbers so designated by the secretary of state shall be used
 19 by all counties using electronic voting systems irrespective of
 20 the fact that in one or more such counties the number or
 21 numbers so designated may result in other than strict
 22 sequential ballot arrangement.

23 After taking into account the numbers so assigned by the
 24 secretary of state to straight party tickets and all candidates
 25 for offices to be voted upon by all the voters of the state, the
 26 clerk of the circuit court shall appoint a time at which all
 27 candidates for the House of Delegates, magistrate and the
 28 office of delegate to a political party national convention are
 29 to appear in his office for the purpose of drawing by lot to
 30 determine where their names will appear on the ballots or
 31 ballot labels. The clerk shall give due notice of such time to
 32 each such candidate by registered or certified mail, return
 33 receipt requested. At the time appointed, all such candidates
 34 for the House of Delegates, magistrate and the office of

35 delegate to a political party national convention shall
36 assemble in the office of such clerk and such candidates shall
37 then proceed to draw by lot to determine where their names
38 shall appear on the ballots or ballot labels. The number so
39 drawn by each such candidate shall determine where his or
40 her name shall appear on the ballots or ballot labels. In the
41 event any candidate or candidates fail to appear at the time
42 appointed, the clerk shall draw for such absent candidate or
43 candidates in the presence of those candidates assembled, if
44 any, and the number so drawn by the clerk shall determine
45 where the name of any absent candidate or candidates shall
46 appear on the ballots or ballot labels. The circuit clerk shall
47 record the number drawn by each candidate and his name in
48 an appropriate book. The ballot commissioners shall proceed
49 to have the ballot labels printed according to the provisions of
50 this article. After receiving the printed ballot labels, the clerk
51 of the county commission shall ascertain their accuracy and
52 proceed to have the ballot labels placed in the vote recording
53 devices. The clerk of the county commission shall then seal
54 the vote recording devices so as to prevent tampering with
55 ballot labels. The clerk of the county commission shall then
56 enter in an appropriate book, opposite the number of each
57 precinct, the identifying or distinguishing number of the
58 specific vote recording device or devices to be used in that
59 precinct.

**§3-4A-13. Inspection of vote recording devices; duties of county
commission, ballot commissioners and election
commissioners; records relating to vote recording
devices.**

1 When the clerk of the county commission has completed
2 the preparation of the vote recording devices, as provided in
3 the next preceding section, and not later than seven days
4 before the date of the election, he shall notify the members of
5 the county commission and the ballot commissioners that the
6 devices are ready for use. Thereupon the members of the
7 county commission and the ballot commissioners shall
8 convene at the office of the clerk or at such other place
9 wherein the vote recording devices are stored, not later than
10 five days before the day of the election, and shall inspect the
11 devices to determine whether the requirements of this article
12 have been met. Notice of the place and time of such
13 inspection shall be published, no less than three days prior
14 thereto, as a Class I-0 legal advertisement in compliance with

15 the provisions of article three, chapter fifty-nine of this code,
16 and the publication area for such publication shall be the
17 county involved. Any candidate, and one representative of
18 each political party on the ballot may be present during such
19 examination. If the devices are found to be in proper order,
20 the members of the county commission and the ballot
21 commissioners shall endorse their approval in the book in
22 which the clerk entered the numbers of the devices opposite
23 the numbers of the precincts. The devices shall then be
24 secured in double lock rooms. The county clerk and the
25 president or president pro tempore of the county commission
26 shall each have a key. The rooms shall be unlocked only in
27 their presence and only for the removal of the devices for
28 transportation to the polls. Upon such removal of the devices,
29 the county clerk and president or president pro tempore of
30 the county commission shall certify in writing signed by
31 them that the same were found to be sealed when removed
32 for transportation to the polls.

33 Not later than three days before the election the election
34 commissioner of each precinct who shall have been
35 previously designated by the ballot commissioners, shall
36 attend at the office of the clerks of the circuit court and county
37 commission of such county to receive the necessary election
38 records, books and supplies required by law. Such election
39 commissioners shall receive the per diem mileage rate
40 prescribed by law for this service. Such election
41 commissioners shall give the ballot commissioners a
42 sequentially numbered written receipt, on a printed form,
43 provided by the clerk of the county commission, for such
44 records, books and supplies. Such receipt shall be prepared
45 in duplicate. One copy of the receipt shall remain with the
46 clerk of the county commission and one copy shall be
47 delivered to the president or president pro tempore of the
48 county commission.

**§3-4A-16. Delivery of vote recording devices; time; arrangement
for voting.**

1 The clerk of the county commission shall deliver or cause to
2 be delivered each vote recording device to the polling place
3 where it is to be employed. Such delivery shall be made not
4 less than one hour prior to the opening of the polls and shall
5 be made in the presence of the precinct election
6 commissioners. At the time of the delivery of the vote

7 recording device, it shall be sealed in such a way to prevent its
8 use prior to the opening of the polls and to prevent any
9 tampering with the ballot labels. Immediately prior to the
10 opening of the polls on election day, the seal shall be broken
11 and the vote recording device shall be opened in the presence
12 of the precinct election commissioners, who shall certify in
13 writing signed by them to the clerk of the county
14 commission, that the devices have been delivered in their
15 presence, that the devices were found to be sealed upon such
16 delivery, and that the seals have been broken and the devices
17 opened in their presence. The election commissioners shall
18 then cause the vote recording device to be arranged in the
19 voting booth in such manner that the front of the vote
20 recording device, on which the ballot labels appear, will not
21 be visible, when the vote recording device is being operated,
22 to any person other than the voter if the voter shall elect to
23 close the curtain, screen or hood to the voting booth.

**§3-4A-17. Check of vote recording devices before use;
corrections; reserve vote recording devices.**

1 Before permitting the first voter to vote, the election
2 commissioners shall examine the vote recording devices to
3 ascertain whether the ballots or ballot labels are arranged as
4 specified on the facsimile diagram furnished to the precinct.
5 If the ballots or ballot labels are arranged incorrectly, the
6 commissioners shall immediately notify the clerk of the
7 county commission of the foregoing facts in writing,
8 indicating the number of the device, and obtain from such
9 clerk a reserve vote recording device, and thereafter proceed
10 to conduct the election. Any reserve vote recording device so
11 used shall be prepared for use by the clerk or his duly
12 appointed deputy and said reserve vote recording device
13 shall be prepared, inspected and sealed, and delivered to the
14 polling place wherein the seal shall be broken and such
15 device opened in the presence of the precinct election
16 commissioners who shall certify in writing signed by them to
17 the clerk of the county commission, that the reserve vote
18 recording device was found to be sealed upon delivery to the
19 polling place, that the seal was broken and the device opened
20 in their presence at the polling place. The vote recording
21 device found to have been with incorrect ballot labels shall be
22 returned immediately to the custody of the clerk who shall
23 then promptly cause such vote recording device to be

24 repaired, prepared and resealed in order that it may be used
25 as a reserve vote recording device if needed.

**§3-4A-18. Disrepair of vote recording devices in use; reserve
vote recording devices.**

1 If, during the conduct of an election, a vote recording
2 device becomes in a state of disrepair so that it cannot be
3 operated in a manner that will comply with the provisions of
4 this article, the election commissioners shall seal the device
5 in such manner as to prevent further voting thereon. Then the
6 election commissioners shall secure from the county clerk a
7 reserve vote recording device, which shall be prepared,
8 inspected and delivered to the polling place wherein the seal
9 shall be broken and such device opened in the presence of the
10 precinct election commissioners who shall certify in writing
11 signed by them to the clerk of the county commission, that
12 the reserve vote recording device was found to be sealed
13 upon delivery to the polling place, that the seal was broken
14 and the device opened in their presence at the polling place.
15 The commissioners shall proceed to conduct the election.

**§3-4A-19. Conducting electronic voting system elections
generally; duties of election officers.**

1 (1) The election officers shall constantly and diligently
2 maintain a watch in order to see that no person votes more
3 than once and to prevent any voter from occupying the voting
4 booth for more than five minutes.

5 (2) In primary elections, before a voter is permitted to
6 occupy the voting booth, the election commissioner
7 representing the party to which the voter belongs shall direct
8 the voter to the vote recording device which will allow the
9 voter to vote only for the candidates who are seeking
10 nomination on the ticket of the party with which the voter is
11 affiliated.

12 (3) The poll clerk shall issue to each voter when he signs
13 the pollbook a card or ticket numbered to correspond to the
14 number on the pollbook of such voter, and in the case of a
15 primary election, indicating the party affiliation of such voter,
16 which numbered card or ticket shall be presented to the
17 election commissioner in charge of the vote recording device.

18 (4) One hour before the opening of the polls the precinct
19 election commissioners shall arrive at the polling place and
20 set up the voting booths so that they will be in clear view of

21 the election commissioners, open the vote recording devices,
22 place them in the voting booths, and examine them to see that
23 they have the correct ballots or ballot labels by comparing
24 them with the sample ballots, and are in proper working
25 order. They shall open and check the ballots, ballot cards,
26 supplies, records and forms, and post the sample ballots or
27 ballot labels and instructions to voters. Upon ascertaining
28 that all ballots, ballot cards, supplies, records and forms
29 arrived intact, the election commissioners shall so certify in
30 writing their findings upon forms provided and collected by
31 the clerk of the county commission over their signatures to
32 the clerk of the county commission. Any discrepancies shall
33 be so noted and reported immediately to the clerk of the
34 county commission. The election commissioners shall then
35 number in sequential order the ballot card stub of each ballot
36 card in their possession and report in writing to the clerk of
37 the county commission the number of ballot cards received.
38 They shall issue such ballot cards in sequential order to each
39 voter.

40 (5) Each voter shall be instructed how to operate the vote
41 recording device before he enters the voting booth.

42 (6) Any voter who shall spoil, deface or mutilate the ballot
43 or ballot card delivered to him, on returning the same to the
44 poll clerks, shall receive another in place thereof. Every
45 person who does not vote any ballot or ballot card delivered
46 to him shall, before leaving the election room, return such
47 ballot or ballot card to the poll clerks. When a spoiled or
48 defaced ballot or ballot card is returned, the poll clerks shall
49 make a minute of the fact on the pollbooks, at the time, and
50 the word "spoiled" shall be written across the face of the
51 ballot or ballot card and it shall be placed in an envelope for
52 spoiled ballots or ballot cards.

53 Immediately on closing the polls, the election
54 commissioners shall ascertain the number of spoiled ballots
55 or ballot cards during the election and the number of ballots
56 or ballot cards remaining not voted. The election
57 commissioners shall also ascertain from the pollbooks the
58 number of persons who voted and shall report, in writing
59 signed by them to the clerk of the county commission, any
60 irregularities in the ballot boxes, the number of ballots or
61 ballot cards cast, the number of ballots or ballot cards spoiled
62 during the election and the number of ballots or ballot cards
63 unused. All unused ballots or ballot cards shall at the same

64 time be returned to the clerk of the county commission who
65 shall count them and record the number. If there is no
66 discrepancy, the unused ballots or ballot cards shall be
67 destroyed forthwith, before a representative of each party on
68 the ballot, by fire or otherwise, by the clerk of the county
69 commission or a duly designated deputy clerk. If there is a
70 discrepancy, the unused ballots or ballot cards shall be
71 impounded and secured under double locks until the
72 discrepancy is resolved. The county clerk and the president
73 or president pro tempore of the county commission shall each
74 have a key. Upon resolution of the discrepancy, the unused
75 ballots or ballot cards shall forthwith, before a
76 representative of each party on the ballot, be destroyed by
77 fire or otherwise, by the clerk of the county commission or a
78 duly designated deputy clerk.

79 Each commissioner who is a member of an election board
80 which fails to account for every ballot or ballot card delivered
81 to it shall be guilty of a misdemeanor, and, upon conviction
82 thereof, shall be fined not more than one thousand dollars or
83 confined in the county jail for not more than one year, or both.

84 The board of ballot commissioners of each county, or the
85 chairman thereof, shall preserve the ballots or ballot cards
86 that are left over in their hands, after supplying the precincts
87 as provided, until the close of the polls on the day of election,
88 and such ballots or ballot cards, shall then be destroyed by
89 such board, or the chairman thereof, by fire or otherwise.

90 (7) Where ballot cards are used, the voter, after he has
91 marked his ballot card, shall, before leaving the voting booth,
92 place the ballot card inside the envelope provided for this
93 purpose, with the stub extending outside said envelope, and
94 return it to an election commissioner who shall remove the
95 stub and deposit the envelope with the ballot card inside in
96 the ballot box. No ballot card from which the stub has been
97 detached shall be accepted by the officer in charge of the
98 ballot box, but such ballot card shall be marked "spoiled" and
99 placed with the spoiled ballots or ballot cards.

100 (8) The precinct election commissioners shall prepare a
101 report in quadruplicate of the number of voters who have
102 voted, as indicated by the pollbooks, and shall place two
103 copies of this report in the ballot box, which thereupon shall
104 be sealed with a paper seal signed by the election
105 commissioners so that no additional ballots may be deposited
106 or removed from the ballot box. Two election commissioners

107 of different political parties shall forthwith deliver the ballot
108 box to the clerk of the county commission at the central
109 counting center and receive a signed numbered receipt
110 therefor, which receipt shall carefully set forth in detail any
111 and all irregularities pertaining to the ballot boxes and noted
112 by the precinct election officers.

113 The receipt shall be prepared in duplicate, a copy of which
114 shall remain with the clerk of the county commission who
115 shall have any and all irregularities noted. The time of their
116 departure from the polling place shall be noted on the two
117 remaining copies of the report, which shall be immediately
118 mailed to the clerk of the county commission.

119 (9) The pollbooks, register of voters, unused ballots or
120 ballot cards, spoiled ballots or ballot cards and other records
121 and supplies shall be delivered to the clerk of the county
122 commission, all in conformity with the provisions of this
123 section.

§3-4A-20. "Independent" voting in primary elections.

1 If at any primary elections, nonpartisan candidates for
2 office and public questions are submitted to the voters and on
3 which candidates and questions persons registered as
4 "independent" are entitled to vote, as provided in section
5 eighteen, article two of this chapter, the election officers shall
6 provide a vote recording device so that such "independent"
7 voters may vote only those portions of the ballot or ballot card
8 relating to the nonpartisan candidates and the public
9 questions submitted, or provide a ballot card containing only
10 provision for voting for those candidates and/or upon those
11 issues common to the ballots provided to all voters regardless
12 of political party affiliation.

13 If vote recording devices are not available for the
14 "independent" voters, provision shall be made for sealing the
15 partisan section or sections of the ballot or ballot labels on a
16 vote recording device using temporary seals, thus permitting
17 the independent voter to vote for the nonpartisan section or
18 sections of the ballot or ballot labels. After the "independent"
19 voter has voted, the temporary seals may be removed and the
20 device may then be used by partisan voters.

§3-4A-21. Absent voter ballots; issuance, processing and tabulation.

1 Absentee voters shall cast their votes on absent voter ballot
2 cards. If absentee voters shall be deemed eligible to vote in

3 person at the office of the clerk of the circuit court, in
4 accordance with the provisions of article three of this chapter,
5 the clerk of the circuit court of each county shall provide a
6 vote recording device for the use of such absentee voters. For
7 all absentee voters deemed eligible to vote an absent voter's
8 ballot card by mail, in accordance with the provisions of
9 article three of this chapter, the clerk of the circuit court of
10 each county shall prepare and issue an absent voter ballot
11 packet consisting of the following:

12 (a) One official absent voter ballot card;

13 (b) One punching tool;

14 (c) One disposable styrofoam block to be placed behind
15 the ballot card for voting purposes and to be discarded after
16 use by the voter;

17 (d) One absent voter instruction ballot;

18 (e) One absent voter's ballot envelope No. 1, unsealed,
19 which shall have no writing thereon and which shall be
20 identical to the secrecy envelope used for placement of ballot
21 cards at the polls; and

22 (f) One absent voter's ballot envelope No. 2, which
23 envelope shall be marked with the proper precinct number
24 and shall provide a place on its seal for the absent voter to
25 affix his signature. Such envelope shall also otherwise
26 contain the forms and instructions as provided in section five,
27 article three of this chapter, relating to the absentee voting of
28 paper ballots.

29 Upon receipt of an absent voter's ballot card by mail, the
30 voter shall mark the ballot card with the punch tool and the
31 voter may receive assistance in voting his absent voter's
32 ballot card in accordance with the provisions of section six,
33 article three of this chapter.

34 After the voter has voted his absent voter's ballot card, he
35 shall (1) enclose the same in absent voter's ballot envelope
36 No. 1, and seal that envelope, (2) enclose sealed absent voter's
37 ballot envelope No. 1 in absent voter's ballot envelope No. 2,
38 (3) complete and sign the forms, if any, on absent voter's
39 ballot envelope No. 2 according to the instructions thereon,
40 and (4) mail, postage prepaid, sealed absent voter's ballot
41 envelope No. 2 to the clerk of the circuit court of the county in
42 which he is registered to vote, unless the voter has appeared
43 in person, in which event he shall hand deliver the sealed
44 absent voter's ballot envelope No. 2 to the clerk.

45 Upon receipt of such sealed envelope, the circuit clerk shall
46 (1) enter onto the envelope such information as may be
47 required of him according to the instructions thereon; (2)
48 enter his challenge, if any, to the absent voter's ballot; (3)
49 enter the required information into a record of persons
50 making application for and voting an absent voter's ballot by
51 personal appearance or by mail (the form of which record and
52 information to be entered therein shall be prescribed by the
53 secretary of state); and (4) place such sealed envelope in a
54 secure location in his office, there to remain until delivered to
55 the polling place in accordance with the provisions of this
56 article or, in case of a challenged ballot, to the county
57 commission sitting as a board of canvassers.

58 When absent voters' ballots have been delivered to the
59 election board of any precinct, the election commissioners
60 shall, at the close of the polls, proceed to determine the
61 legality of such ballots as prescribed in article three of this
62 chapter. The commissioners shall then open the No. 2
63 envelope. Without opening the absent voter ballot envelope
64 No. 1, the commissioners shall shuffle and intermingle them
65 and deposit same in the ballot box. The commissioner shall
66 provide an absent voter ballot envelope No. 1 for any voted
67 ballot card which, when opened, has no such envelope.

§3-4A-24. Voting by challenged voter.

1 If the right of any person to vote be challenged in
2 accordance with provisions of article one of this chapter
3 relating to the challenging of voters, and a vote recording
4 device is used that tabulates the vote as an individual vote,
5 such person shall be permitted to cast his vote by use of the
6 vote recording device. He shall be provided with a challenged
7 ballot card and ballot envelopes for the insertion of the ballot
8 card after voting. There shall be an inner envelope marked
9 with the precinct number for the challenged ballot card.
10 There shall also be an outer envelope for the inner envelope
11 and the challenged voter stub, which envelope shall provide a
12 place for the challenged voter to affix his signature on the seal
13 of such outer envelope.

14 After the county commission, as prescribed in article one of
15 this chapter, has determined that the challenges are
16 unfounded, the commissioners shall remove the outer
17 envelopes. Without opening the inner envelope, the
18 commissioners shall shuffle and intermingle such inner

19 envelopes. The commissioners shall then open the inner
20 envelopes, remove the ballot cards and add the votes to the
21 previously counted totals.

§3-4A-26. Test of automatic tabulating equipment.

1 One week prior to the start of the count of the votes
2 recorded on ballots or ballot cards, the clerk of the county
3 commission shall have the automatic tabulating equipment
4 tested to ascertain that it will accurately count the votes cast
5 for all offices and on all measures. Public notice of the time
6 and place of the test shall be given not less than forty-eight
7 hours nor more than two weeks prior thereto by publication
8 of such notice as a Class I-0 legal advertisement, in
9 compliance with the provisions of article three, chapter
10 fifty-nine of this code, and the publication area for such
11 publication shall be the county involved.

12 The test shall be open to representatives of the political
13 parties, candidates, the press and the public. It shall be
14 conducted five times by processing two separate sets of a
15 preaudited group of ballots or ballot cards as appropriate, so
16 punched or marked as to record a predetermined number of
17 valid votes for each candidate and on each measure. It shall
18 include for each multi-candidate office one or more ballot
19 cards which have crossover votes in order to test the ability
20 of the automatic tabulating equipment to record those votes
21 in accordance with the provisions of this article and
22 applicable law, and it shall include for each office one or more
23 ballot cards which have votes in excess of the number
24 allowed by law in order to test the ability of the automatic
25 tabulating equipment to reject such votes. If, in the process of
26 any of the test counts, any error is detected, the cause of such
27 error shall be ascertained and corrective action promptly
28 taken. After the completion of said corrective action, the test
29 counts shall continue, including a retesting of those precincts
30 previously test counted. Prior to the continuation of the
31 testing, the county commission shall certify in writing, signed
32 by them, the nature of the error, the cause thereof and the
33 type of corrective action taken. Such certification shall be
34 recorded in the office of the clerk of the county commission
35 in the miscellaneous record book. Immediately after
36 conclusion of this completed test, a certified duplicate copy
37 of the program deck shall be sent by certified mail to the
38 offices of the state election commission, where it shall be

39 preserved and secured for one year, and made available for
40 comparison or analysis by order of a circuit court or the
41 supreme court of appeals.

42 The program deck to be used in the election shall
43 immediately be certified by the county commission to be free
44 from error as determined by the test, shall be placed with
45 such certification in a sealed container and kept under
46 individual multiple locks with individual keys for each lock.
47 The number of locks and keys shall be the same as the
48 number of county commissioners together with the county
49 clerk, with each commissioner and the county clerk having a
50 single key in his possession. Such sealed container shall be
51 opened to conduct the test required to be conducted
52 immediately before the start of the official count.

53 The test shall be repeated immediately before the start of
54 the official count. The test shall also be conducted at the
55 conclusion of the official count before the count is approved
56 as errorless and before the election returns are approved as
57 official.

58 All results of all of the tests shall be immediately certified
59 by the county commission and filed in the office of the clerk
60 of the county commission and immediately recorded in the
61 miscellaneous record book. On completion of the count, the
62 program deck, test materials and ballot cards shall be sealed,
63 except for purposes of the canvass as provided in section
64 twenty-eight of this article, and retained and kept under
65 individual multiple locks with individual keys for each lock.
66 Said numbers of locks and keys shall be the same as the
67 number of county commissioners together with the county
68 clerk, with each commissioner and the county clerk having a
69 single key in his possession.

§3-4A-27. Proceedings at the central counting center.

1 (1) All proceedings at the central counting center shall be
2 under the supervision of the clerk of the county commission,
3 and shall be conducted under circumstances which allow
4 observation by all persons entitled to be present. The
5 proceedings shall take place in a room of sufficient size and
6 satisfactory arrangement to permit such observation. Those
7 persons entitled to be present shall include all candidates
8 whose names appear on the ballots being counted, or if such
9 candidate be absent, a representative of such candidate, and
10 two representatives of each political party on such ballot, who

11 shall be chosen by the local chairman of such political party's
12 executive committee. A reasonable number of the general
13 public shall also be freely admitted to the room. In the event
14 all members of the general public desiring admission to the
15 room cannot be admitted at one time, the county commission
16 shall provide for a periodic and convenient rotation of
17 admission to the room for observation, to the end that each
18 member of the general public desiring admission shall,
19 during the proceedings at the central counting center, be
20 granted such admission for reasonable periods of time for
21 observation: *Provided*, That no person except those
22 authorized for the purpose shall touch any ballot or ballot
23 card or other official records and papers utilized in the
24 election during such observation. All persons who are
25 engaged in processing and counting of the ballots shall be
26 representative of each political party on the ballot, and shall
27 be deputized in writing and take an oath that they will
28 faithfully perform their assigned duties. Such deputies shall
29 be issued an official badge or identification card which shall
30 be assigned an identity control number, and such deputies
31 shall prominently wear on his or her outer garments the
32 issued badge or identification card. Upon completion of the
33 deputies' duties, the badges or identification cards shall be
34 returned to the county clerk. If any ballot card is damaged or
35 defective so that it cannot properly be counted by the
36 automatic tabulating equipment, a true duplicate copy shall
37 be made of the damaged ballot card in the presence of
38 representatives of each political party on the ballot and
39 substituted for the damaged ballot card. All duplicate ballot
40 cards shall be clearly labeled "duplicate" and shall bear a
41 serial number which shall be recorded on the damaged or
42 defective ballot card and on the replacement ballot card.

43 (2) The returns printed by the automatic tabulating
44 equipment at the central counting center, to which have been
45 added write-in and other valid votes, shall, when certified by
46 the board of canvassers, constitute the official return of each
47 precinct or election district. Further, all such returns shall be
48 printed on a precinct basis. Upon completion of the count, the
49 returns shall be open to the public by posting such returns
50 precinct by precinct at the central counting center. Upon
51 completion of the canvass, the returns shall be posted in the
52 same manner.

53 (3) If for any reason it becomes impracticable to count all
54 or a part of the ballots with tabulating equipment, the board
55 of canvassers may direct that they be counted manually,
56 following as far as practicable the provisions governing the
57 counting of paper ballots.

58 (4) As soon as possible after the completion of the count,
59 the clerk of the county commission shall have the vote
60 recording devices properly boxed or securely covered and
61 removed from the polling place to a proper and secure place
62 of storage.

§3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.

1 (1) The vote recording devices, the ballot labels, ballot
2 cards, program decks and standard validation test decks shall
3 remain sealed during the canvass of the returns of the
4 election and for a period of seven days thereafter, except that
5 such equipment may be opened for the canvass and it shall be
6 resealed immediately thereafter. During such period any
7 candidate or the local chairman of a political party may be
8 permitted to examine any of the materials so sealed:
9 *Provided*, That a notice of the time and place of such
10 examination shall be posted at the central counting center
11 before and on the hour of nine o'clock in the morning on the
12 day the examination is to occur, and all persons entitled to
13 be present at the central counting center may, at their option,
14 be present. Upon completion of the canvass and after a
15 seven-day period has expired, the vote recording devices, the
16 ballot labels, ballot cards, program decks and standard
17 validation test decks shall be sealed for one year: *Provided*,
18 *however*, That the vote recording devices and all tabulating
19 equipment may be released for use in any other lawful
20 election to be held more than ten days after the canvass is
21 completed, and any of the electronic voting equipment herein
22 discussed may be released for inspection or review by a
23 request of a circuit court or the supreme court of appeals.

24 (2) In canvassing the returns of the election, the board of
25 canvassers shall examine all of the vote recording devices, the
26 ballot labels, ballot cards and the automatic tabulating
27 equipment used in such election and shall determine the
28 number of votes cast for each candidate and for and against
29 each question and by such examination shall procure the
30 correct returns and ascertain the true results of the election.

31 Any candidate or his party representative may be present at
32 such examination.

33 (3) If any candidate shall demand a recount of the votes
34 cast at an election, the ballots and ballot cards shall be
35 reexamined during such recount for the purpose of
36 reascertaining the total number of votes cast for any
37 candidate in the same manner and according to the same
38 rules as are utilized in the original vote count pursuant to
39 section twenty-seven of this article.

40 (4) During the canvass and any requested recount, at least
41 five percent of the precincts shall be chosen at random and
42 the ballot cards cast therein counted manually. The same
43 random selection shall also be counted by the automatic
44 tabulating equipment. If the variance between the random
45 manual count and the automatic tabulating equipment count
46 of the same random ballots, is equal to or greater than one
47 percent, then a manual recount of all ballot cards shall be
48 required. In the course of any recount, if a candidate for an
49 office shall so demand, or if the board of canvassers shall so
50 elect to recount the votes cast for an office, the votes cast for
51 that office in any precinct shall be recounted by manual
52 count.

**§3-4A-33. Tampering with vote recording devices, ballot labels,
ballot or ballot cards, program decks, standard
validation test decks, or other automatic
tabulating equipment; other dishonest practices;
attempts; penalty.**

1 Any person not an election officer or other public official
2 who shall tamper or attempt to tamper with any vote
3 recording device, ballot label, ballot or ballot card, program
4 deck, standard validation test deck, or automatic tabulating
5 equipment, or in any way intentionally impair or attempt to
6 impair, their use, and any person who shall be guilty of or
7 shall attempt any dishonest practice upon any such devices
8 or equipment, or with or by their use, shall be deemed guilty
9 of a felony, and, upon conviction thereof, shall be confined in
10 the penitentiary for not less than one year nor more than ten
11 years, or fined not less than five thousand dollars or both.

12 Any clerk of a county commission, county commissioner,
13 ballot commissioner, election commissioner, or poll clerk, or
14 any custodian, technician, or other public official authorized
15 to take part in the holding of an election or in preparing for an

16 election, who, with intent to cause or permit any vote
17 recording device, program deck, standard validation test
18 deck, or other automatic tabulating equipment to fail to
19 record, test or tabulate correctly all votes cast thereon or
20 tabulated therewith, tampers with or disarranges such device
21 in any way, or any part or appliance thereof, or who causes or
22 consents to the use of such device or equipment for vote
23 recording, testing or tabulating at any election with
24 knowledge of the fact that the same is not in order, or not
25 perfectly set and adjusted so that it will correctly record, test
26 or tabulate all votes cast, or who, with the purpose of
27 defrauding or deceiving any voter or of causing it to be
28 doubtful for what ticket or candidate or candidates or
29 proposition any vote is cast, or of causing it to appear on said
30 device or devices that the votes cast for one ticket, candidate
31 or proposition, were cast for another ticket, candidate or
32 proposition, removes, changes or mutilates any ballot, ballot
33 card or ballot label on said device or any part thereof, or does
34 any other thing intended to interfere with the validity or
35 accuracy of the election, shall be deemed guilty of a felony,
36 and, upon conviction thereof, shall be confined in the
37 penitentiary not less than one year nor more than ten years, or
38 fined not less than five thousand dollars, or both.

CHAPTER 61

(H. B. 1290—By Mr. Shaffer)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article six of said chapter, relating to requiring primary and general election ballots to contain language explaining prohibitions on the number of delegates of the House of Delegates who may be elected from any single county in a multi-county delegate district; and requiring the county of residence of each candidate for the House of Delegates in a

multi-county delegate district to be printed on primary and general election ballots.

Be it enacted by the Legislature of West Virginia:

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

Article

5. **Primary Elections and Nominating Procedures.**
6. **Conduct and Administration of Elections.**

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-13. Form and contents of ballots.

1 The official primary ballot shall contain at the left of
2 each column of names of candidates, a perpendicular column,
3 and shall be so printed as to leave a square at the left of
4 each name on the ballot.

5 On such primary ballot, the names of candidates for president
6 of the United States, for United States senator and for repre-
7 sentative in Congress, shall be placed in the first column of candi-
8 dates; the names and county of residence of candidates for all
9 state offices, including the names and county of residence of
10 candidates for the state Senate and including the names of can-
11 didates for the House of Delegates, which shall immediately
12 follow the names of candidates for the state Senate, and all
13 other offices to be filled by the voters of a political division
14 greater than a county, including the state executive committee,
15 shall be placed in the second column; the names of all candi-
16 dates for county offices, congressional, senatorial and delegate
17 district executive committees, shall be placed in the third
18 column; the names of all candidates for office in the
19 magisterial districts shall be placed in the fourth column;
20 and the names of all candidates for delegates to the national
21 convention of the party shall be placed in the fifth column
22 and in counties using voting machines the names of all
23 candidates for delegates to the national convention of the
24 party shall be placed after the names of all other candidates
25 for all of the other above specified offices.

26 In those delegate districts set forth in subsection (d),
27 section two, article two, chapter one of this code which
28 embrace more than one county and in which there is a
29 prohibition regarding the number of delegates to be elected
30 or appointed who are residents of any single county within
31 the district, there shall be printed on the ballot, including,
32 but not limited to, voting machines and electronic voting
33 system ballots, in bold type, immediately preceding the names
34 of candidates for the House of Delegates, a clear explanation
35 of such prohibition. In those delegate districts which em-
36 brace more than one county, the county of residence of each
37 candidate for the House of Delegates shall be printed beneath
38 the name of each such candidate on the ballot, including,
39 but not limited to, voting machines and electronic voting
40 system ballots.

41 The face of every primary election ballot shall conform
42 as nearly as practicable to that used at the general election.

43 The secretary of state, or the circuit court clerk, as the
44 case may be, shall arrange the names of the candidates to be
45 printed on the ballot in alphabetical order, according to the
46 surname, under the title of the respective offices upon the
47 ballot.

48 A separate ballot, in connection with a primary election,
49 for the election of members of county board of education,
50 shall be printed in bold type, under the caption, "Nonpartisan
51 Ballot of Election of Members of the County
52 Board of Education." The names of the candidates for
53 election to the county board of education, and the number
54 of candidates for which each voter is entitled to vote shall
55 be printed beneath the caption, without reference to political
56 party affiliation, and without designation as to a particular
57 term of office.

58 In printing each set of ballots the position of the names
59 of the candidates shall be changed in each office division as
60 many times as there are candidates in that office division.
61 As nearly as possible an equal number of ballots shall be
62 printed after each change. In making the change of position,
63 the printer shall take the line of type containing the first

64 name in the office division concerned and place it at the
65 bottom of the list of names in that division and move up
66 the column so that the name that before was second shall
67 be first after the change. After the ballots are printed they
68 shall be kept in separate piles, one pile for each change in
69 position, and shall then be gathered by taking one from
70 each pile. Sample ballots shall be in the same form as the
71 official ballots, but the order of the names thereon need not
72 be alternated.

73 All ballots used in primary elections shall be printed
74 on paper conforming as nearly as practicable in weight and
75 texture, to the samples furnished by the secretary of state,
76 but shall not be printed on the same color paper, and the
77 paper shall be sufficiently thick so that the printing cannot
78 be discernible from the back. On the back of the ballot
79 shall be printed in black ink, and in plain, legible, black face
80 pica type, the name of the political party as contained in the
81 heading or "Nonpartisan Board of Education," as the case
82 may be, followed by the word "ballot." Under this designa-
83 tion shall be printed two blank lines followed by the words
84 "poll clerks."

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

1 All ballots prepared under the provisions of this article
2 shall be printed in black ink on number two white book
3 paper sufficiently thick so that the printing cannot be dis-
4 tinguished from the back, and shall contain the names of
5 every candidate whose nomination for any office to be voted
6 for at the election has been certified and filed according
7 to law, and no others, except that if it shall appear to the
8 satisfaction of the ballot commissioners that a person has
9 been legally nominated as a candidate for an office and is
10 lawfully entitled to have his name upon the ballot and no
11 certificate of the nomination has been received by the clerk
12 of the circuit court, they shall print the name of such can-
13 didate upon the ballot in its proper place.




14 The tickets, except the heading, which shall be in display
15 type, shall be printed in eight point type; the name or

16 designation of the office and the residence and county of resi-
17 dence of the candidate in lower case letters, and the name of the
18 candidate in capital letters. The name and residence of the can-
19 didate may be printed in the same line. The name of each can-
20 didate shall be printed in a space defined by ruled lines, and
21 with a black square on its left enclosed by heavy dark lines. If,
22 upon any ticket, there be no candidate or candidates for a desig-
23 nated office, a blank space equal to the space that would
24 be occupied by such name or names, if they were printed
25 thereon, with the blank space herein provided for, shall
26 be left. The heading of each party ticket including the
27 name of the party and the device or emblem above and
28 the large circle between the device or emblem and such
29 name, shall be separated from the rest of the ticket by heavy
30 lines and the circle above the name of the party in which
31 the voter is to place the cross mark, if he desires to vote
32 the straight ticket, shall be defined by heavier lines than the
33 lines defining the blank spaces before the name of candidates,
34 and such circle shall be surrounded by the following words
35 printed in heavy face six point type: "For a straight ticket
36 mark within this circle." Each party ticket shall be sepa-
37 rated from other party tickets and bordered on either side
38 by a heavy border, or a broad solid line, at least one sixteenth
39 of an inch wide, and the edges of the ballot on either side
40 trimmed off to within one-half inch of the border or solid
41 line described.

42 The names of the candidates shall be arranged on the
43 ballot in tickets or lists, in separate columns under the
44 respective party or political or other designation certified,
45 each column or ticket containing the names of candidates
46 nominated by the same political party and no others. In
47 elections for presidential electors, the names of candidates
48 for electors of any political party or group of petitioners,
49 shall not be placed on the ballot, but shall, after nomination,
50 be filed with the secretary of state. In place of their names,
51 there shall be printed first on the ballots the names of the
52 candidates for president and vice president, respectively,
53 of each such party or group of petitioners, and they shall
54 be arranged under the title of the office. Before the names of
55 such candidates for president and vice president of each

56 party, or group, a single square shall be printed, in front of
 57 a brace in which the voter shall place the cross mark for
 58 the candidate of his choice for such offices. A vote for any of
 59 such candidates shall be a vote for the electors of the party
 60 by which such candidates were named, and whose names have
 61 been filed with the secretary of state.

62 The names of the candidates on each ticket shall be
 63 arranged in groups, with a heading over each group printed
 64 in heavy faced eight point type to indicate the political divi-
 65 sions in which such group is to be voted for. The arrange-
 66 ment of the ballot shall conform as nearly as practicable
 67 to the plan here given:

Device	Device	Device
		
<p>Republican Ticket</p>	<p>Democratic Ticket</p>	<p>Prohibition Ticket</p>
<p>For Governor</p>	<p>For Governor</p>	<p>For Governor</p>
<p>Name</p>	<p>Name</p>	<p>Name</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

68 The tickets of the several political parties shall be printed
69 on the ballot in parallel columns, each ticket in a separate
70 column headed by the chosen device, and the tickets in such
71 order on the ballot and the names of the office in such order
72 on the ticket as the secretary of state shall direct, preference,
73 however, being given to the political party which cast the
74 highest number of votes for the head of the ticket at the last
75 preceding presidential election, and so on. No ticket or list
76 of candidates shall be printed under the name of any party
77 containing more candidates for any office than are to be
78 elected.

79 In those delegate districts set forth in subsection (d),
80 section two, article two, chapter one of this code which
81 embrace more than one county and in which there is a
82 prohibition regarding the number of delegates to be elected
83 or appointed who are residents of any single county within
84 the district, there shall be printed on the ballot, including,
85 but not limited to, voting machines and electronic voting
86 system ballots, in bold type, immediately preceding the names
87 of candidates for the House of Delegates, a clear explana-
88 tion of such prohibition. In those delegate districts which
89 embrace more than one county, the county of residence of
90 each candidate for the House of Delegates shall be printed
91 beneath the name of each such candidate on the ballot,
92 including, but not limited to, voting machines and electronic
93 voting system ballots.

94 The ballot shall be so printed as to give each voter a clear
95 opportunity to designate by a cross mark in a large, blank,
96 circular space, three quarters of an inch in diameter, below
97 the device and above the name of the party at the head of
98 the ticket or list of candidates, his choice of a party ticket
99 and desire to vote for each and every candidate thereon; and
100 by a cross mark, in a blank, enclosed space on the left side
101 and before the name of each candidate, his choice of par-
102 ticular candidates.

103 For any office or offices for which there is to be more than
104 one candidate elected, that section of the ballot relating to
105 said office shall be printed in such a manner so as to
106 provide for the rotation of names in order to assure that

107 each candidate from each party for said office is opposite
108 the name of each candidate for said office from the other
109 party or parties on the ballot an equal number of times. If
110 any party fails to nominate or to fill a ballot vacancy for
111 as many candidates as there are persons to be elected to
112 said office, then the ballot shall be printed in such a manner
113 so as to provide that the space created by the vacancy shall
114 be opposite the names of each of the candidates for said
115 office from the other party or parties an equal number of
116 times.

117 On the back of the ballot shall be printed or stamped in
118 black ink the words "Official Ballot," with the date of the
119 election, and underneath shall be two blank lines, followed
120 by the words "Poll Clerks."

CHAPTER 62

(H. B. 1953—By Mr. Albright and Mr. Kopp)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-e, relating to pre-candidacy financing and expenditures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5e. Pre-candidacy financing and expenditures.

- 1 (a) Notwithstanding any other provision of this code, it shall
- 2 be lawful for a person, otherwise qualified to be a candidate
- 3 for any public office or position to be determined by public
- 4 election, to receive contributions or make expenditures, or

5 both, personally or by another individual acting as a treasurer
6 or financial agent, to determine the advisability of becoming
7 such a candidate or preparing to be such a candidate:
8 *Provided*, That such contributions may be received and such
9 expenditures made only during the four years immediately
10 preceding the term for which such person may be a candidate
11 or during the term of office immediately preceding the term
12 for which such person may be a candidate, whichever is less:
13 *Provided, however*, That no person shall be disqualified from
14 receiving contributions or making expenditures as permitted
15 under the provisions of this section solely because such person
16 then holds a public office or position.

17 (b) Any person undertaking to determine the advisability of
18 becoming or preparing to be a candidate, who desires to re-
19 ceive contributions before filing a certificate of candidacy, shall
20 name himself or another individual to act as a treasurer or fin-
21 ancial agent and shall file a designation of financial agent in the
22 manner provided in section four of this article before receiving
23 any contributions permitted by this section. Any expenditures
24 made before the filing of a designation of financial agent shall
25 be reported in accordance with the provisions of this section,
26 regardless of the source of funds used for such expenditures.

27 (c) A person who receives a contribution who is acting for
28 and by himself or as treasurer or agent for another pursuant
29 to the provisions of this section shall keep detailed accounts of
30 every sum of money or other thing of value received by him,
31 and of all expenditures and disbursements made, and liabilities
32 incurred, in the same manner as such accounts are required by
33 section five of this article, for the period prior to the date of
34 filing for candidacy for the office he is considering seeking.
35 Any such person who has received contributions or made ex-
36 penditures subject to the provisions of this section shall file an-
37 nually on the last Saturday in March, and also on the last
38 Saturday in March or within fifteen days thereafter next pre-
39 ceeding the election at which the names of candidates would
40 appear on the ballot for the public office or position which the
41 person originally considered seeking, a detailed itemized
42 statement, subscribed and sworn to before an officer autho-
43 rized to administer oaths, setting forth all contributions re-

44 ceived and expenditures made pursuant to the provisions of
45 this section concerning the candidacy of that person. If the
46 person on whose behalf such contributions are received or
47 expenditures are made becomes a candidate for any office or
48 position to be decided at such election then the itemized state-
49 ment shall be included within the first statement required to be
50 filed by the provisions of section five of this article. If such
51 person does not become a candidate for any office or position
52 to be decided at such election, then the detailed itemized state-
53 ment required by this subsection shall be the only statement
54 required to be filed by such person. Regardless of whether
55 such person becomes a candidate as originally intended, or
56 becomes a candidate for some office other than the office or
57 position originally intended, or does not become a candidate,
58 all limits on campaign contributions and campaign expendi-
59 tures applicable to the candidacy of or advocacy of the can-
60 didacy of such person for the office he actually seeks, shall
61 be applicable to and inclusive of the receipts had and ex-
62 penditures made during such pre-candidacy period as well as
63 after the person becomes a candidate.

CHAPTER 63

(Com. Sub. for H. B. 1849—By Mr. Speaker, Mr. See)

[Passed March 13, 1982: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article six of said chapter; to further amend said article six by adding thereto a new section, designated section sixteen; to amend and reenact section one, article six-a of said chapter; to amend and reenact sections two and eleven, article ten of said chapter; and to further amend said article ten by adding thereto three new sections, designated sections nineteen, twenty and twenty-one, all relating to employment security generally; establishing a minimum contribution for certain employers; extending to the last day of September, one thousand

nine hundred eighty-one, as the time during which certain delinquent contributions from certain employers may be made without additional penalty; employee eligibility and benefits; employees receiving federal employment supplement; deduction of child support; extended benefit program; when benefits begin; assignment of benefits prohibited; exemption from process; disclosure of information to child support agencies; disclosure to food stamp agencies; and recovery of benefits paid in error.

Be it enacted by the Legislature of West Virginia:

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

Article

- 5. **Employer Coverage and Responsibility.**
- 6. **Employee Eligibility; Benefits.**
- 6A. **Extended Benefits Program.**
- 10. **General Provisions.**

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-5. Rate of contribution.

§21A-5-7. Joint and separate accounts.

§21A-5-5. Rate of contribution.

1 On or after January first, one thousand nine hundred forty-
2 one, an employer shall make payments to the unemployment
3 compensation fund equal to two and seven-tenths percent of
4 wages paid by him with respect to employment during each
5 calendar year beginning with the calendar year one thou-
6 sand nine hundred forty-one, subject, however, to other pro-
7 visions of this article; except that on and after January first,
8 one thousand nine hundred seventy-two, each employer subject
9 to this chapter shall pay contributions at the rate of one

10 and five-tenths percent of wages paid by him with respect
11 to employment during each calendar year until he has been
12 an employer for not less than thirty-six consecutive months
13 ending on the computation date; thereafter, his contribution
14 rate shall be determined in accordance with the provisions
15 of section ten of this article.

16 On and after July one, one thousand nine hundred eighty-
17 one, each employer subject to this chapter shall pay contri-
18 butions at the rate of two and seven-tenths percent of wages
19 paid by him with respect to employment during each calendar
20 year until he has been an employer for not less than thirty-
21 six consecutive months ending on the computation date;
22 thereafter, his contribution rate shall be determined in ac-
23 cordance with the provisions of section ten of this article.

24 Notwithstanding any other provision of this chapter to the
25 contrary, on or after the first day of July, one thousand nine
26 hundred seventy-eight, any foreign corporation or business
27 entity engaged in the construction trades shall pay contribu-
28 tions at the rate of two and seven-tenths percent of wages paid
29 by him with respect to employment during each calendar year.

30 Notwithstanding any other provision of this chapter to the
31 contrary, on or after the first day of July, one thousand nine
32 hundred eighty-one, any foreign corporation or business entity
33 engaged in the construction trades shall pay contributions at the
34 rate of seven and five-tenths percent of wages paid by him with
35 respect to employment during each calendar year until he has
36 been an employer for not less than thirty-six consecutive months
37 ending on the computation date; thereafter, his contribution
38 rate shall be determined in accordance with the provisions
39 of section ten of this article: *Provided*, That any corporation or
40 business entity engaged in the construction trades shall make
41 payments to the fund at the rates applicable to such em-
42 ployer as of January first, one thousand nine hundred eighty-
43 one, for wages paid with respect to employment on con-
44 struction contracts entered into for which bids are submitted
45 in this state prior to April fifteenth, one thousand nine hundred
46 eighty-one: *Provided, however*, That beginning the first day
47 of January one, one thousand nine hundred eighty-two, and
48 any calendar year thereafter, the rate which applies to such

49 corporation or business entity, shall not be less than two and
50 seven-tenths percent of such wages, unless such corporation or
51 business entity elects to have its rate of contribution determined
52 in accordance with the provisions of section ten of this
53 article: *Provided further*, That the burden shall be on such
54 corporation or business entity to prove that any such contract
55 was executed or that any such bid was submitted therefor
56 prior to April fifteenth, one thousand nine hundred eighty-
57 one.

§21A-5-7. Joint and separate accounts.

1 (1) The commissioner shall maintain a separate account for
2 each employer, and shall credit his account with all con-
3 tributions paid by him prior to July first, one thousand nine
4 hundred sixty-one. On and after July first, one thousand
5 nine hundred sixty-one, the commissioner shall maintain a
6 separate account for each employer, and shall credit said
7 employer's account with all contributions of such employer
8 in excess of seven tenths of one percent of taxable wages;
9 and on and after July first, one thousand nine hundred seventy-
10 one, the commissioner shall maintain a separate account for
11 each employer, and shall credit said employer's account with all
12 contributions of such employer in excess of four tenths of one
13 percent of taxable wages: *Provided*, That any adjustment
14 made in an employer's account after the computation date
15 shall not be used in the computation of the balance of an
16 employer until the next following computation date: *Pro-*
17 *vided, however*, That nothing in this chapter shall be con-
18 strued to grant an employer or individual in his service prior
19 claims or rights to the amounts paid by him into the fund,
20 either on his behalf or on behalf of such individuals. The
21 account of any employer which has been inactive for a
22 period of four consecutive calendar years shall be terminated
23 for all purposes.

24 (2) Benefits paid to an eligible individual for regular and
25 extended total or partial unemployment beginning after the
26 effective date of this article shall be charged to the account
27 of the last employer with whom he has been employed as
28 much as thirty working days, whether or not such days are con-
29 secutive: *Provided*, That no employer's account shall be

30 charged with benefits paid to any individual who has been
31 separated from a noncovered employing unit in which he
32 was employed as much as thirty days, whether or not such
33 days are consecutive: *Provided, however,* That no employer's
34 account shall be charged with more than fifty percent of the
35 benefits paid to an eligible individual as extended benefits
36 under the provisions of article six-a of this chapter: *Pro-*
37 *vided further,* That state and local government employers shall
38 be charged with one hundred percent of the benefits paid
39 to an eligible individual as extended benefits.

40 (3) The commissioner shall, for each calendar year here-
41 after, classify employers in accordance with their actual ex-
42 perience in the payment of contributions on their own be-
43 half and with respect to benefits charged against their ac-
44 counts, with a view of fixing such contribution rates as will
45 reflect such experiences. For the purpose of fixing such con-
46 tribution rates for each calendar year, the books of the de-
47 partment shall be closed on July thirty-one of the pre-
48 ceding calendar year, and any contributions thereafter paid,
49 as well as benefits thereafter paid with respect to compensable
50 weeks ending on or before June thirty of the preceding calendar
51 year, shall not be taken into account until the next annual
52 date for fixing contribution rates: *Provided,* That if an em-
53 ployer has failed to furnish to the commissioner on or be-
54 fore July thirty-one of such preceding calendar year the wage
55 information for all past periods necessary for the computation
56 of the contribution rate, such employer's rate shall be, if it is
57 immediately prior to such July thirty-one, less than three and
58 three-tenths percent, increased to three and three-tenths
59 percent: *Provided, however,* That any payment made or any
60 information necessary for the computation of a reduced rate
61 furnished on or before the termination of an extension of time
62 for such payment or reporting of such information granted
63 pursuant to a regulation of the commissioner authorizing such
64 extension, shall be taken into account for the purposes of fixing
65 contribution rates: *Provided further,* That when the time for
66 filing any report or making any payment required hereunder
67 falls on Saturday, Sunday, or a legal holiday, the due date
68 shall be deemed to be the next succeeding business day: *And*
69 *provided further,* That whenever, through mistake or in-

70 advertence, erroneous credits or charges are found to have
71 been made to or against the reserved account of any employer,
72 the rate shall be adjusted as of January one of the calendar year
73 in which such mistake or inadvertence is discovered, but
74 payments made under any rate assigned prior to January
75 one of such year shall not be deemed to be erroneously col-
76 lected.

77 (4) The commissioner may prescribe regulations for the
78 establishment, maintenance and dissolution of joint accounts
79 by two or more employers, and shall, in accordance with
80 such regulations and upon application by two or more em-
81 ployers to establish such an account, or to merge their
82 several individual accounts in a joint account, maintain such
83 joint account as if it constituted a single employer's account.

84 (5) State and local government employers are hereby
85 authorized to enter into joint accounts and to maintain such
86 joint account or accounts as if it or they constituted a single
87 employer's account or accounts.

88 (6) Effective on and after July one, one thousand nine
89 hundred eighty-one, if an employer has failed to furnish to
90 the commissioner on or before August thirty-one of one thou-
91 sand nine hundred eighty, and each year thereafter, with the
92 exception of one thousand nine hundred eighty-one, which
93 due date shall be September thirty, one thousand nine hundred
94 eighty-one, the wage information for all past periods neces-
95 sary for the computation of the contribution rate, such em-
96 ployer's rate shall be, if it is immediately prior to July one,
97 one thousand nine hundred eighty-one, less than seven and
98 five-tenths percent, increased to seven and five-tenths per-
99 cent.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-4. Individual not denied benefits by receiving vocational training.

§21A-6-16. Child support intercept of unemployment benefits.

§21A-6-4. Individual not denied benefits by receiving vocational training.

- 1 Notwithstanding any other provision in this article, no
- 2 individual shall be denied unemployment compensation bene-

3 fits because of his receiving training as part of an area
4 vocational program, or similar program, which has as its
5 object the training of unemployed individuals in new oc-
6 cupational skills: *Provided*, That such individual's training
7 and training institution are approved by the commissioner,
8 and such individual produces evidence of his continued at-
9 tendance and satisfactory progress at such training institution
10 when requested to do so by the commissioner.

11 Notwithstanding any other provisions of this chapter, no
12 otherwise eligible individual shall be denied benefits for any
13 week because he or she is in training approved under section
14 236(a)(1) of the Federal Trade Act of 1974, nor shall such
15 individual be denied benefits by reason of leaving work to
16 enter such training, if the work left is not suitable employ-
17 ment, or because of the application of the provisions of this
18 chapter or any applicable federal unemployment compensa-
19 tion law relating to availability for work, active search for work
20 or refusal to work to any such week in training.

21 For purposes of this section, the term "suitable employ-
22 ment" means with respect to an individual, work of a sub-
23 stantially equal or higher skill level than the individual's past
24 adversely affected employment as defined for purposes of
25 the Federal Trade Act of 1974 and wages for such work
26 at not less than eighty percent of the individual's average
27 weekly wage as determined for the purposes of the Federal
28 Trade Act of 1974.

§21A-6-16. Child support intercept of unemployment benefits.

1 (a) An individual filing a new claim for unemployment
2 compensation shall, at the time of filing such claim, dis-
3 close whether or not the individual owes child support ob-
4 ligations as hereafter defined under subsection (g). If any
5 such individual discloses that he or she owes child support
6 obligations and is determined to be eligible for unemploy-
7 ment compensation, the commissioner shall notify the de-
8 partment of welfare that the individual has been determined
9 to be eligible for unemployment compensation.

10 (b) The commissioner shall deduct and withhold from
11 any unemployment compensation payable to an individual

12 that owes such child support obligations as defined under
13 subsection (g):

14 (1) The amount specified by the individual to the com-
15 missioner to be deducted and withheld under this subsection,
16 if neither subdivision (2) nor subdivision (3) is applicable;
17 or

18 (2) The amount, if any, determined pursuant to an agree-
19 ment submitted to the commissioner under section 454(20)
20 (B)(i) of the Social Security Act by the department of welfare,
21 unless subdivision (3) is applicable; or

22 (3) Any amount otherwise required to be deducted and
23 withheld from such unemployment compensation pursuant to
24 legal process, as that term is defined in section 462(e) of
25 the Social Security Act, properly served upon the commis-
26 sioner.

27 (c) Any amount deducted and withheld under subsection
28 (b) shall be paid by the commissioner to the department of
29 welfare.

30 (d) Any amount deducted and withheld under subsection
31 (b) shall for all purposes be treated as if it were paid to
32 the individual as unemployment compensation and paid by
33 such individual to the department of welfare in satisfaction
34 of the individual's child support obligations.

35 (e) For purposes of subsections (a) through (d), the
36 term "unemployment compensation" means any compensation
37 payable under this chapter, including amounts payable by the
38 commissioner pursuant to an agreement under any federal
39 law providing for compensation, assistance or allowances with
40 respect to unemployment.

41 (f) This section applies only if appropriate arrangements
42 have been made for reimbursement by the department of
43 welfare for the administrative costs incurred by the commis-
44 sioner under this section which are attributable to child sup-
45 port obligations being enforced by the state or local child
46 support enforcement agency.

47 (g) The term "child support obligations" means, for

48 purposes of these provisions, only obligations which are being
49 enforced pursuant to a plan described in section 454 of the
50 Social Security Act which has been approved by the secre-
51 tary of health and human services under Part D of Title IV of
52 the Social Security Act.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-1. Definitions.

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

3 (1) "Extended benefit period" means a period which:

4 (A) Begins with the third week after a week for which
5 there is a state "on" indicator; and

6 (B) Ends with either of the following weeks, whichever
7 occurs later:

8 (i) The third week after the first week for which there
9 is a state "off" indicator; or

10 (ii) The thirteenth consecutive week of such period. Not-
11 withstanding the foregoing provisions of this section, no ex-
12 tended benefit period may begin by reason of a state "on"
13 indicator before the fourteenth week following the end of a
14 prior extended benefit period which was in effect with
15 respect to this state, and no extended benefit period may
16 become effective in this state prior to the sixty-first day
17 following the date of enactment of the Federal-State Ex-
18 tended Unemployment Compensation Act of 1970, and, with-
19 in the period beginning on such sixty-first day and ending
20 on December thirty-one, one thousand nine hundred seventy-
21 one, an extended benefit period may become effective and
22 be terminated in this state solely by reason of a state "on"
23 and state "off" indicator, respectively.

24 (2) There is a "state 'on' indicator" for this state for
25 a week if the commissioner determines, in accordance with
26 the regulations of the United States secretary of labor, that
27 for the period consisting of such week and the immediately
28 preceding twelve weeks, the rate of insured unemployment
29 (not seasonally adjusted) under this article:

30 (A) Equaled or exceeded one hundred twenty percent of
31 the average of such rates for the corresponding thirteen-week
32 period ending in each of the preceding two calendar years,
33 and

34 (B) Equaled or exceeded five percent.

35 (3) There is a "state 'off' indicator" for this state for
36 a week if the commissioner determines, in accordance with
37 the regulations of the United States secretary of labor, that
38 for the period consisting of such week and the immediately
39 preceding twelve weeks, the rate of insured unemployment
40 (not seasonally adjusted) under this article:

41 (A) Was less than one hundred twenty percent of the
42 average of such rates for the corresponding thirteen-week
43 period ending in each of the preceding two calendar years,
44 or

45 (B) Was less than five percent.

46 (4) "Rate of insured unemployment," for purposes of
47 subdivisions (2) and (3) of this section, means the percentage
48 derived by dividing

49 (A) The average weekly number of individuals filing claims
50 for regular compensation in this state for weeks of unem-
51 ployment with respect to the most recent thirteen-consecutive-
52 week period, as determined by the commissioner on the basis
53 of his reports to the United States secretary of labor by

54 (B) The average monthly employment covered under this
55 chapter for the first four of the most recent six completed
56 calendar quarters ending before the end of such thirteen-
57 week period.

58 (5) "Regular benefits" means benefits payable to an
59 individual under this chapter or under any other state law
60 (including benefits payable to federal civilian employees
61 and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other
62 than extended benefits.

63 (6) "Extended benefits" means benefits (including bene-
64 fits payable to federal civilian employees and to ex-service-
65 men pursuant to 5 U.S.C., chapter 85) payable to an in-

66 dividual under the provisions of this article for weeks of
67 unemployment in his eligibility period.

68 (7) "Eligibility period" of an individual means the period
69 consisting of the weeks in his benefit year which begin in
70 an extended benefit period and, if his benefit year ends within
71 such extended benefit period, any weeks thereafter which be-
72 gin in such period.

73 (8) "Exhaustee" means an individual who, with respect
74 to any week of unemployment in his eligibility period:

75 (A) Has received, prior to such week, all of the regular
76 benefits which were available to him under this chapter or
77 any other state law (including dependents' allowances and
78 benefits payable to federal civilian employees and ex-servicemen
79 under 5 U.S.C., chapter 85) in his current benefit year that
80 includes such week: *Provided*, That for the purposes of this
81 subdivision, an individual shall be deemed to have received
82 all of the regular benefits which were available to him al-
83 though (i) as a result of a pending appeal with respect
84 to wages and/or employment which were not considered
85 in the original monetary determination in his benefit year,
86 he may subsequently be determined to be entitled to added
87 regular benefits, or (ii) he may be entitled to regular benefits
88 with respect to future weeks of unemployment, but such
89 benefits are not payable with respect to such week of un-
90 employment by reason of the provisions of section one-a,
91 article six of this chapter; or

92 (B) His benefit year having expired prior to such week,
93 has no, or insufficient, wages and/or employment on the
94 basis of which he could establish a new benefit year which
95 would include such week; and

96 (C) Has no right to unemployment benefits or allowances,
97 as the case may be, under the Railroad Unemployment In-
98 surance Act, the Trade Expansion Act of 1962, the Automo-
99 tive Products Trade Act of 1965 and such other federal
100 laws as are specified in regulations issued by the United
101 States secretary of labor; and has not received and is not
102 seeking unemployment benefits under the unemployment com-
103 pensation law of the Virgin Islands or of Canada; but if

104 he is seeking such benefits and the appropriate agency finally
105 determines that he is not entitled to benefits under such law
106 he is considered an exhaustee.

107 (9) "State law" means the unemployment insurance law
108 of any state, approved by the United States secretary of
109 labor under section 3304 of the Internal Revenue Code of
110 1954.

111 (10) No individual shall be entitled to extended benefits
112 during a period of unemployment if he was disqualified under
113 the provisions of subdivision (1), (2) or (3), section
114 three, article six of this chapter, which disqualification shall
115 not be terminated until such individual has returned to
116 covered employment and has been employed in covered em-
117 ployment for at least thirty working days.

118 (11) (A) Notwithstanding any other provisions of this
119 section, an individual shall be ineligible for payment of ex-
120 tended benefits for any week of unemployment in his eligibility
121 period if the commissioner finds that during such period:

122 (i) He failed to accept any offer of suitable work or failed
123 to apply for any suitable work (as defined under subdivision
124 (11) (C) of this section, to which he was referred by the
125 commissioner; or

126 (ii) He failed to actively engage in seeking work as
127 prescribed under subdivision (11) (E).

128 (B) Any individual who has been found ineligible for
129 extended benefits by reason of the provisions in subdivision
130 (11) (A) of this section shall also be denied benefits be-
131 ginning with the first day of the week following the week
132 in which such failure occurred and until he has been em-
133 ployed in each of four subsequent weeks (whether or not
134 consecutive) and has earned remuneration equal to not less
135 than four times the extended weekly benefit amount;

136 (C) For purposes of this subdivision (11) (A) (i) of this
137 section, the term "suitable work" means, with respect to any
138 individual, any work which is within such individual's capa-
139 bilities: *Provided, however,* That the gross average weekly
140 remuneration payable for the work must exceed the sum of:

141 (i) The individual's average weekly benefit amount (as
142 determined under subdivision (11) (D) of this section) plus;

143 (ii) The amount, if any, of supplemental unemployment
144 benefits (as defined in section 501 (c)(17)(D) of the In-
145 ternal Revenue Code of 1954) payable to such individual
146 for such week; and further,

147 (iii) Pays wages equal to the higher of:

148 (I) The minimum wages provided by section (6)(a)(1)
149 of the Fair Labor Standards Act of 1938, without regard
150 to any exemption; or

151 (II) The state or local minimum wage;

152 (iv) Provided that no individual shall be denied ex-
153 tended benefits for failure to accept an offer or referral to
154 any job which meets the definition of suitability as described
155 above if:

156 (I) The position was not offered to such individual in
157 writing and was not listed with the employment service; or

158 (II) Such failure could not result in a denial of benefits
159 under the definition of suitable work for regular benefit
160 claimants in section five, article six of this chapter, to the
161 extent that the criteria of suitability in that section are not
162 inconsistent with the provisions of this subdivision (11) (C)
163 of this section; or

164 (III) The individual furnishes satisfactory evidence to
165 the commissioner that his or her prospects for obtaining work
166 in his or her customary occupation within a reasonably short
167 period are good. If such evidence is deemed satisfactory for
168 this purpose, the determination of whether any work is suit-
169 able with respect to such individual shall be made in accord-
170 ance with the definition of suitable work in section five,
171 article six of this chapter, without regard to the definition
172 specified by subdivision (11) (C) of this section.

173 (D) Notwithstanding the provisions of this section to
174 the contrary, no work shall be deemed to be suitable work
175 for an individual which does not accord with the labor standard
176 provisions required by section 3304(a)(5) of the Internal

177 Revenue Code of 1954 and set forth herein under subdivision
178 (11) (C) (iii) (I) of this section.

179 (E) For the purposes of subdivision (11) (A) (ii) of this
180 section an individual shall be treated as actively engaged
181 in seeking work during any week if:

182 (i) The individual has engaged in a systematic and sus-
183 tained effort to obtain work during such week, and

184 (ii) The individual furnishes tangible evidence that he has
185 engaged in such effort during such week.

186 (F) The employment service shall refer any claimant
187 entitled to extended benefits under this article to any suitable
188 work which meets the criteria prescribed in subdivision
189 (11) (C).

190 (G) An individual shall not be eligible to receive ex-
191 tended benefits with respect to any week of unemployment
192 in his eligibility period if such individual has been dis-
193 qualified for regular benefits under this chapter because he
194 or she voluntarily left work, was discharged for misconduct
195 or refused an offer of suitable work unless the disqualification
196 imposed for such reasons has been terminated in accordance
197 with specific conditions established under this subdivision re-
198 quiring the individual to perform service for remuneration sub-
199 sequent to the date of such disqualification.

200 (12) Notwithstanding any other provisions of this chap-
201 ter, if the benefit year of any individual ends within an ex-
202 tended benefit period, the remaining balance of extended
203 benefits that such individual would, but for this section, be
204 entitled to receive in that extended benefit period, with respect
205 to weeks of unemployment beginning after the end of the
206 benefit year, shall be reduced (but not below zero) by the
207 product of the number of weeks for which the individual re-
208 ceived any amounts as trade readjustment allowances within
209 that benefit year, multiplied by the individual's weekly benefit
210 amount for extended benefits.

211 (13) An unemployed individual shall be eligible to receive
212 benefits with respect to any week only if it has been found that
213 he has been paid wages by an employer who was subject to the

214 provisions of this chapter during the base period of his cur-
215 rent benefit year in an amount at least equal to forty times his
216 benefit rate for total unemployment.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-2. Assignment of benefits invalid; exemption from process; excep-
tion.

§21A-10-11. Requiring information; use of information; libel and slander
actions prohibited.

§21A-10-19. Disclosure of information to child support agencies.

§21A-10-20. Disclosure of information to food stamp agencies.

§21A-10-21. Recovery of benefits paid through departmental error; limita-
tion.

**§21A-10-2. Assignment of benefits invalid; exemption from pro-
cess; exception.**

1 An assignment, pledge or encumbrance of any benefit due
2 or payable under this chapter shall be invalid. Right to bene-
3 fits shall be exempt from levy, execution, attachment, or other
4 processes for the collection of debt. Benefits received by an
5 individual so long as they are not mingled with other funds of
6 the recipient, shall be exempt from process for the collection
7 of a debt. The waiver of any exemption provided in this sec-
8 tion shall be void: *Provided*, That the provisions of this
9 section shall not apply to the assignment or collection of
10 child support payments under the provisions of section sixteen,
11 article six of this chapter.

12 Collection of debts incurred for necessities furnished to
13 an individual, his spouse, or dependents, during a period of
14 unemployment shall be exempt from the operation of the above
15 provision.

**§21A-10-11. Requiring information; use of information; libel and
slander actions prohibited.**

1 The commissioner may require an employing unit to provide
2 sworn or unsworn reports concerning:

3 (1) The number of individuals in its employ.

4 (2) Individually their hours of labor.

5 (3) Individually the rate and amount of wages.

6 (4) Such other information as is reasonably connected with
7 the administration of this chapter.

8 Information thus obtained shall not be published or be open
9 to public inspection so as to reveal the identity of the employ-
10 ing unit of the individual, with the exception of information fur-
11 nished to the department of welfare as required under the
12 provisions of section sixteen, article six of this chapter, and
13 information furnished to the United States department of agri-
14 culture. However, a claimant of benefit or any other interested
15 party shall, upon request, be supplied with information from
16 such records to the extent necessary for the proper presenta-
17 tion or defense of a claim. Such information may be made
18 available to any agency of this or any other state, or any federal
19 agency, charged with the administration of an unemployment
20 compensation law or the maintenance of a system of public
21 employment offices.

22 A person who violates the provisions of this section shall be
23 guilty of a misdemeanor, and, upon conviction, shall be fined
24 not less than twenty dollars nor more than two hundred dollars,
25 or imprisoned not longer than ninety days, or both.

26 No action for slander or libel, either criminal or civil, shall
27 be predicated upon information furnished by any employer or
28 any employee to the commissioner in connection with the ad-
29 ministration of any of the provisions of this chapter.

§21A-10-19. Disclosure of information to child support agencies.

1 (1) The department of employment security shall disclose,
2 upon request, to officers or employees of any state or local child
3 support enforcement agency, any wage information with re-
4 spect to an identified individual which is contained in its
5 records.

6 The term "state or local child support enforcement agency"
7 means any agency of a state or political subdivision thereof
8 operating pursuant to a plan described in section 454 of the
9 Social Security Act, which has been approved by the secretary
10 of health and human services under Part D, Title IV of the
11 Social Security Act.

12 (2) The requesting agency shall agree that such information

13 is to be used only for the purpose of establishing and collect-
14 ing child support obligations from, and locating, individuals
15 owing such obligations which are being enforced pursuant to
16 a plan described in section 454 of the Social Security Act
17 which has been approved by the secretary of health and human
18 services under Part D, Title IV of the Social Security Act.

19 (3) The information shall not be released unless the re-
20 questing agency agrees to reimburse the costs involved for fur-
21 nishing such information.

22 (4) In addition to the requirements of this section, all other
23 requirements with respect to confidentiality of information ob-
24 tained in the administration of this chapter and the sanctions
25 imposed on improper disclosure shall apply to the use of such
26 information by officers and employees of child support agen-
27 cies.

§21A-10-20. Disclosure of information to food stamp agencies.

1 (1) The department of employment security shall disclose,
2 upon request, to officers and employees of the United States
3 department of agriculture and any state food stamp agency,
4 with respect to an identified individual, any of the following
5 information which is contained in its records:

6 (a) Wage information;

7 (b) Whether the individual is receiving, has received, or
8 has made application for unemployment compensation and
9 the amount of any compensation being received or to be re-
10 ceived by such individual;

11 (c) The current or most recent home address of the in-
12 dividual; and

13 (d) Whether the individual has refused an offer of em-
14 ployment and if so, a description of the employment offered
15 and the terms, conditions and rate of pay therefor.

16 (2) The term "state food stamp agency" means any agency
17 described in section (3) (n) (1) of the Food Stamp Act of
18 1977 which administers the food stamp program established
19 under such act.

20 (3) The requesting agency shall agree that such informa-

21 tion shall be used only for purposes of determining the
22 applicant's eligibility for benefits, or the amount of benefits,
23 under the food stamp program established under the Food
24 Stamp Act of 1977.

25 (4) In addition to the requirements of this section, all
26 other requirements with respect to confidentiality of informa-
27 tion obtained in the administration of this chapter and the
28 sanctions imposed for improper disclosure of information
29 obtained in the administration of this chapter shall apply to the
30 use of such information by the officers and employees of
31 any food stamp agency or the United States department of
32 agriculture.

**§21A-10-21. Recovery of benefits paid through departmental error;
limitation.**

1 A person who, by reason of departmental error, irrespective
2 of the nature of said error, has received a sum as a benefit
3 under this chapter, shall either have such sum deducted from
4 a future benefit payable to him or shall repay to the com-
5 missioner the amount which he has received. Collection shall
6 be made in the same manner as collection of past due pay-
7 ment: *Provided*, That such collection or deduction of benefits
8 shall be barred after the expiration of two years.

CHAPTER 64

(S. B. 445—By Mr. Boettner, Mrs. Chace, Mr. Davis, Mr. Jones and Mr. White)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter seven; section thirty-three, article five, chapter twenty-eight; sections three, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen, all of article thirteen, chapter thirty-eight; to amend and reenact sections fourteen and twenty-three, article one; sections one, two, three, four, five, seven, eight, thirteen, fourteen, fifteen, sixteen, sixteen-a, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-four, twenty-four-a, twenty-five, twenty-six and twenty-seven, article two; sections one, two, three, four, five, six and seven,

article three; article four; article five; sections two and three, article seven; section eight, article eight; sections one-a, five, six and seven, article nine; sections eight and fifteen, article ten; sections eight and nine, article fifteen, all of chapter forty-four; to further amend said chapter by adding thereto a new article, designated article three-a; to amend and reenact section four, article ten, chapter fifty-six; and to amend and reenact section nine, article one, chapter fifty-nine, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to abolishing commissioners of accounts; creating fiduciary commissioners and providing for their powers and duties; changing references to commissioners of accounts to fiduciary commissioners; changing references to county courts to county commissions; allowing county clerk to designate one or more assistants as responsible for probate matters; requiring appraisements to be filed in quadruplicate; providing for a system of unsupervised administrators upon the filing of an appraisal, affidavit, statement of receipts and disbursements and statement of proposed distribution; requiring supervision in certain cases; providing for actual notice to beneficiaries and to the tax commissioner; requiring notice by publication; providing for filing fees; establishing a special revenue account for the purpose of reviewing appraisements; requiring the tax commissioner to act within sixty days of the date of notice to release his lien for taxes or request supervision; requiring confirmation by the county commission of the final distribution; allowing bona fide purchaser of real estate without notice of any claim to take clear title; providing for waiver of right to request supervision if not made within sixty days of the date of notice; eliminating certain references to trustees; reducing time periods for payment of creditors, claims and legacies; reducing time periods in which personal representative may be held responsible; reducing time periods for personal representative to report to fiduciary commissioner; deleting references to inventories; deleting references to record of fiduciaries in the office of the clerk of the county commission; requiring county commissions to establish fee schedules or rates of compensation which fiduciary commissioners may charge; requiring county commissions to review all fees according to certain standards; relating to the administration of estates and trusts generally; procedures relating to the estates of persons confined in penitentiaries; providing for the duties

of fiduciary commissioners; procedures relating to the assignment by certain insolvents for the benefit of creditors; providing for the reference of such insolvents' estates to fiduciary commissioners; providing a short title by which the provisions of said chapter forty-four may be known and cited; providing generally for the persons to whom the provisions of said chapter shall apply; providing for certain rules of construction with respect to said chapter and certain rules with respect to the interpretation of references to the provisions of said chapter; requiring that all persons acting in a personal representative or fiduciary capacity qualify as such upon the showing of their need and entitlement to be so appointed; restricting the power of persons appointed as executor of a will to serve as such until the qualification and permitting such persons to perform such limited functions prior to such qualification; providing for administrators cum testamento annexo and their qualification, oath and bond; the appointment of administrator for the administration of the estates of intestate decedents; providing for certain preferences with respect to the person to be appointed as such and for the persons who may be appointed; the appointment of a curator during periods of contest or prior to the qualification and appointment of an executor or administrator and establishing the duties of such curator; requiring such curators to account for the estate coming into their hands upon the qualification of any such executor or administrator; requiring that persons to whom letters of testamentary are granted as administrators give bond and take an oath and the content of such oath; providing for the termination of the appointment of a creditor or other person as administrator if a distributee requests appointment as such; the penal sum and form of the bond to be given by executors and administrators and for the removal of such person as personal representative for failure to post bond in sufficient penal sum; providing for certain exceptions with respect to persons required to post such bond; providing for administrator de bonis non in cases of the death, resignation or removal of any executor or administrator cum testamento annexo; providing that marriage of a woman who is a personal representative shall not extinguish her authority to act in such capacity; the authority of the sheriff to serve as administrator in certain cases; requiring such sheriff to make certain reports to the county commission with respect thereto; requiring the sheriff in such cases to account for all moneys and property

which remain unadministered at the end of his term; providing for certain penalties against such sheriff with respect to his failure to report or make such settlements at the time prescribed; removal of personal representative for cause by petition to the county commission and providing for hearing with respect thereto; providing for the issuance of letters testamentary or letters of administration and the effect thereof; providing for the affidavit by the executor or administrator at the time of qualification of heirs, distributees, devisees and legatees; the appraisal of estates and its form and content and providing for certain rules with respect thereto; the duty of the personal representative to administer all personal property coming into his hands; providing for cases in which administrator de bonis non may administer assets for which his predecessor personal representative was liable; providing for the delivery of all assets remaining in the hands of the predecessor personal representative to the administrator de bonis non and the accounting for such assets; the allowance of food and fuel for the family of any decedent and for the consumption thereof for such family; limiting the right of a personal representative to sell estate assets in certain cases and requiring the sale of such assets when the value thereof is likely to be impaired; permitting the sale of assets for the payment of certain funeral expenses, administration costs, debts, legacies in certain cases; requiring administration of assets subject to a life estate per autre vie; permitting a personal representative to sue or be sued with respect to certain claims against his decedent and in cases relating to the taking of any goods or assets of the estate or for the waste, damage or destruction thereof; permitting a personal representative to have execution or other process for the enforcement of a judgment either in his favor or in the favor of his decedent; permitting actions to be maintained against the surety of any personal representative if judgments against him are returned unsatisfied; providing that the personal representative and his surety shall not be liable for any amount beyond the assets coming into the hands of the personal representative in certain cases; providing for the payment of certain wages, pensions or other moneys due a deceased person in certain cases and the discharge of the employer for the payment thereof; creating the office of fiduciary supervisor in each county and the office of fiduciary commissioner and providing for the nature of their respective offices and the

relationship of such offices to the county commission; the general powers and duties of the fiduciary supervisor; providing for the salary of such fiduciary supervisor; providing for the qualification of such fiduciary supervisor; providing for a test to be given under the authority of the state tax commissioner with respect thereto; providing that the fiduciary supervisor shall have general supervision of all fiduciary matters and of all fiduciary commissioners; limiting the right of the fiduciary supervisor or any of his deputies or employees to engage in the practice of law; providing for a penalty for persons who practice law in violation of such prohibition; providing for the proof and allowance of claims against the estate of the decedent; the notice to creditors for the filing of claims against such estates and the content of such notice; reference of disputed claims to fiduciary commissioners and the limitation upon such reference; requiring that claims be proven by vouchers and affidavits and that when so proven such claims are taken as proved unless objected to in whole or in part by filing thereto; providing for hearings with respect to objected or disputed claims; providing for the payment of funeral expenses; permitting the presentation of claims prior to publication of the aforesaid notice; establishing procedures for the payment of contingent or unliquidated claims and the proof thereof; the continuance of hearings upon all claims by the fiduciary supervisor; providing for off-sets against any claim made against a decedent's estate; protection by heirs or devisees against liens on real property which has descended or has been devised to them; providing for the disallowance of claims barred by statute of limitations and the manner of tolling such statutes with respect to claims against decedents' estates; permitting the payment in advance of certain claims made against a decedent's estate; providing that personal representatives are not precluded from instituting actions for the collection and recovery of debts or claims and permitting off-sets and counterclaims in such actions; providing for the report of claims of creditors by fiduciary commissioners and fiduciary supervisors and upon the assets and shares of distributees and legatees; providing for the apportionment of federal estate taxes and the limitations and procedures relating thereto; establishing procedures for summary settlements before fiduciary supervisors and certain findings required to be made with respect thereto; requiring that certain notices be given

with respect thereto and that certain hearings be had with respect to disputed matters relating to such summary settlements; the final settlement of estates through such summary procedure; providing for the payment of contingent and unliquidated claims and claims that have not matured; providing for the taking of exceptions to the report of the fiduciary supervisor or fiduciary commissioner and for hearings with respect to such exceptions and for certain findings upon such hearings; the confirmation of such findings by the county commission and the effect of such confirmation; appeals from such orders of confirmation to the circuit court; permitting the reference of matters subject to exception to fiduciary commissioners and the authority of the fiduciary commissioners with respect thereto; providing for a report of claims and for an abbreviated form thereof in certain cases; requiring the recordation of reports of claims in the office of the clerk of the county commission; providing for an order of preference with respect to the payment of certain claims and the order of payment of claims within a certain classification and establishing procedures for the payment of claims on a ratable basis; establishing certain limitations upon the liability of personal representatives with respect to funds distributed by him; establishing times when claims and legacies may be paid and distributed; providing procedures for the accounting of moneys not disposed of and distributed at time of settlement and procedures for the subsequent payment and distribution of such moneys; providing that a personal representative may not be compelled to make distribution until one year from the date of his qualification and establishing certain limitations with respect thereto; limiting the right of claimants or creditors for payments from the personal representative when claims are not timely presented or proved; establishing procedures for the maintaining of actions against distributees and legatees; limiting the right of enforcement of liens with respect to secured claims which have become barred; establishing the number of fiduciary commissioners in each county and their general powers and duties; authorizing special fiduciary commissioners in certain cases and the appointment of successor fiduciary commissioners upon the resignation or removal of any existing commissioner; providing that matters heretofore referred to commissioners of accounts shall remain with such commissioners of accounts, who shall become special

fiduciary commissioners and providing that matters heretofore referred to such persons shall remain with them until concluded or otherwise recalled for cause; requiring the inspection by fiduciary commissioners of all inventories, appraisements and accounts of sale returned to him; requiring such commissioners to distribute or deliver copies thereof to those persons required by law to receive them; providing a penalty for the failure of such fiduciary commissioners in the event of failure or refusal to do so; requiring that fiduciary commissioners periodically determine the existence and sufficiency of any bond required to be posted by any person with respect to matters referred to him in certain cases and procedures for requiring the posting of and requiring fiduciary supervisors to perform such duties in certain cases; the reference of matters to fiduciary commissioners by the county commission; establishing rules of procedure before such fiduciary commissioners; establishing a method by which fees are to be charged by fiduciary commissioners and fiduciary supervisors and the disposition of such fees; establishing the amount of such fees in certain cases; requiring itemized vouchers for the payment of such fees and the approval thereof by the county commission; establishing a county fiduciary fund; providing for the payment of certain moneys into such fund and for its disposition; requiring county commissioners to give certain annual reports to the Legislature with respect to the costs of administering estates within the several counties; providing for certain general rules applicable to the reference of estates to fiduciary supervisors and fiduciary commissioners; providing separate rules for counties having tribunals for police and fiscal purposes; establishing procedures for the accounting by personal representative and the filing of inventories by such personal representatives; providing the appraisals filed in the case of decedents' estates are to be deemed to be such inventories; authorizing the fiduciary supervisor to compel compliance with section; requiring the accounting of the proceeds of sales by personal representatives; requiring the recordation of all inventories, appraisals and reports of sale and accounting thereon; requiring personal representatives to exhibit the account for final settlement and the time during which such settlements are to be made; procedures to compel compliance with respect to the exhibiting of inventories, appraisals, accounts and

settlements are due and providing that personal representatives of certain estates need not account but once every three years; requiring the examination for sufficiency of bond required at time of examination; procedures for the annual settlement of account and objections thereto and providing that failure to do so may result in forfeiture of commission unless the same be allowed by county commission; procedures to compel accounting by personal representatives by any interested person; requiring the publication of monthly notices with respect to proposed settlement of every personal representative; the authority of the fiduciary supervisor or fiduciary commissioner to compel exhibiting of securities, moneys or other documents at the time of accounting; authority of such supervisor or commissioner to petition the circuit court for order to compel compliance; the liability of personal representatives with respect to any loss to his estate through his negligence or improper conduct; the compensation and expenses of personal representatives and the reimbursement of such expenses; requiring fiduciary supervisors, fiduciary commissioners or commissioners in chancery to deliver receipts for all vouchers filed with him; reports of fiduciary supervisor or fiduciary commissioners with respect to accountings and objections thereto and requiring the filing of such reports; the examination of such reports by the county commission or circuit court and providing for the collection or the recommittal of such report if found necessary; the confirmation of such reports and the effect thereof and the manner in which such reports are made conclusive; authorizing the county commission or circuit court to direct the investment of funds in cases where the same appears to be proper; the disbursement of the balance of accounts after settlement and actions to compel such disbursements; the final report of the personal representative following such disbursement and the content thereof; the duty of the clerk of the circuit court to report to the fiduciary supervisor as to any final orders entered in actions to compel settlement and the content of such report and the penalties for failure to make such report and to properly record the same; requiring the clerk of the county commission to maintain a record of fiduciaries and the matters required to be kept in such record; procedures relating to the appointment on nonresidents as personal representatives or guardians and when bond shall be required of such person; upon whom

service of notice and process may be had in cases of appointment of nonresident personal representatives or guardians and the manner of obtaining such service; constituting the clerk of the county commission as attorney-in-fact for such nonresident personal representatives and guardians; prohibiting certain persons from serving as surety upon the bond of personal representatives; prescribing certain rules for the giving of additional bond and when a new or additional bond may be required; the revoking of the authority of a personal representative for failure to give such new or additional surety; the jurisdiction of the county commission to revoke the authority of any personal representative; the authority of personal representatives to compromise certain claims due from or owing to the estate for which they serve; procedures for the compelling of the transfer of securities from a personal representative to his successor; requiring personal representatives to pay the necessary costs in proceedings to compel compliance with provisions of this chapter and the disposition of such costs; clarifying the authority of the clerk of the county commission in certain counties having tribunals for police or fiscal affairs in lieu of county commissions; authorizing the designation of testamentary trustees of beneficiaries of insurance policies and the disposition of such insurance proceeds in such cases; permitting the distribution of assets in satisfaction of pecuniary bequests and the authority of personal representatives to enter into certain agreements with respect thereto; the limitations with respect to such agreements; the authority of personal representatives to enter into agreement with a commissioner of internal revenue of the United States for approval of such agreements in order to maximize appropriate marital deductions, if any, available under the internal revenue law of the United States; permitting personal representatives to invest moneys and assets in their hands and certain procedures relating thereto; specifying the nature and types of securities in which personal representatives may invest estate assets and trust funds; permitting personal representatives to petition the circuit court for authority to invest such funds or assets; the authority of beneficiaries to petition courts for the purpose of instructing personal representatives with respect to investments; petitions to circuit court for the purpose of obtaining authority to retain funds of such trusts for certain contingencies and the notice

required and procedures relating thereto; providing for authority of banks and trust companies to commingle trust funds and certain requirements and limitations relating thereto; requiring an accounting as to such funds held in common and extending authority to cite certain sections of the code as the "Uniform Common Trust Fund Act"; providing for the reenactment of the "Uniform Management of Institutional Funds Act" and providing a short title and the definition of certain terms with respect thereto; rules for the appreciation of assets with respect thereto; the investment authority and delegation of management with respect to such funds; providing certain standards and rules of conduct with respect to the management of such funds; the release of restrictions on the use of and investment of such funds; rules relating to the uniformity of application and to the construction of the provisions of such act; providing certain rules and procedures with respect to the resignation of personal representatives and the petition to be filed with the county commission with respect thereto; the notice or notices to be given with respect to such resignation and to whom such notices are to be given; providing for a petition with respect thereto and its contents; the hearing to be had on such petition and procedures relating thereto; the real estate of decedents and certain procedure relating to the sale of such real estate when required by will; the disposition of the rents or proceeds received upon such real estate or the proceeds of the sale thereof; the disposition of real estate of such decedents when required for the payment of such decedent's debts; the liability of the heirs or devisees of such real estate and the limitation upon the liability of such real estate for such debts; providing for an action to subject real estate to the payments of the debts of the decedent and certain rules with respect thereto; the persons who are to be made parties to any such action; certain rules of evidence with respect to such actions; the jurisdiction of the court hearing such actions; requiring the appointment of a commissioner in chancery or other commissioner for the purpose of ascertaining the liens upon such real estate, the holders thereof and the amounts due as well as establishing the priorities of any such liens; the notice to be given with respect thereto and to whom such notice is required to be directed; providing for an order or decree of distribution with respect to the funds derived from the sale of such real estate pursuant to such action; providing for limiting the cost recoverable with respect

to any other action brought later by creditors and the authority to enjoin the bringing thereof; establishing procedures relating to the presumption of death of certain persons and when such persons are to be presumed dead; establishing procedures with respect to the presumption of death of persons in the military service or certain other service of the United States with respect to certain hostilities in which the United States is engaged; when the spouse of such persons presumed dead may remarry; providing for petitions to the circuit court for a declaration that such supposed decedents are presumed dead and the jurisdiction of such courts with respect thereto; providing for the administration of the estates of persons presumed to be dead and the application for probate with respect thereto; the notice required to be given with respect to such application and the publication of such notice; providing for ancillary letters testamentary for nonresidents presumed to be dead; the hearing to be had with respect to the application for probate of the estate of resident and nonresident persons presumed to be dead; the probate of the will of such persons and the power of the clerk with respect thereto; the institution of an action by the personal representative for the settlement of such supposed decedent's estate and requiring certain notice and publication with respect thereto; providing for the distribution of the estate of such supposed decedent; the vacation of proceedings upon the reappearance of such supposed decedent; providing certain rules with respect to the final accounting of the personal representative of such supposed decedent and the effect of his acts with respect thereto; providing certain standards with respect to the title of certain purchasers and distributees of the estate of such supposed decedent; the substitution of a supposed decedent upon his reappearance in any actions pending upon such reappearance; the reopening and effect of judgments after such substitution; providing that provisions of chapter forty-four shall apply to the estate of supposed decedent insofar as the same relate to the administration of their estates; providing for the payment of certain costs with respect to administration; providing generally for the appointment of guardians for infants and extending the rights of the parents to such children to name such persons to have custody of the person of such child; providing for renunciation for refusal to serve as such guardian and the voiding of such appointment thereby; the authority of the county commission to appoint such guardian for resident

infants and for nonresident infants in certain cases; establishing the rights of certain minors who have attained the age of fourteen years to nominate a guardian; requiring guardians to post bond and the appointment of a curator until such bond has been posted; providing certain procedures for the management of infant wards' estates and for the maintenance, education and custody of such infant wards; limiting the duration of the guardianship of such wards; procedures for the settlement of infants' estates; establishing certain rules and standards with respect to the disbursement and expenditure of the income of infants' estates; permitting the invasion of corpus in certain cases; the sale of the personal estate of the infant; providing for petition to the circuit court for permission so to do; requiring the guardian to pay interest to the estate of his infant ward for failure to properly invest the assets of the infant's estate; establishing certain standards with respect to the compounding of interest with respect thereto; establishing certain time limitations for the investment of infants' estates by guardians; the powers of the circuit courts over the assets of infants' estates and of the guardians; establishing certain procedures with respect to the sale of real estate with respect thereto; extending authority of a guardian to settle claims for injuries to an infant ward or to the property of such infant ward and procedures with respect thereto; providing for the release of tort feisor and a permissible form for the release of such person causing injury to such infant or his property; the disbursement of funds of infant wards without authority of the circuit court where sums received in settlement is less than one thousand dollars; providing for the appointment of guardians for mentally retarded or mentally handicapped persons; defining certain terms with respect thereto; applications to the county commission by parents and interested persons, corporations and governmental agencies and by executors of estates of parents when directed by will to make application; providing for consent of parents unless parents cannot be located; providing for powers and duties of guardians for control of the person, estate and moneys paid on behalf of such mentally retarded or handicapped persons; providing for the duration of guardianship until terminated by the county commission; requiring mentally retarded and mentally handicapped persons who are eighteen years of age or older to be present at hearings and providing for certain exceptions thereto;

providing for limited guardianships and standby guardianships; permitting nonprofit corporations to act as guardians, limited guardians and standby guardians of mentally retarded or mentally handicapped persons; giving the state director of health and the county commissions of the state powers, duties and responsibilities with respect thereto; relating to a certain licensure and certain compensation for certain corporations that are guardians; providing for appeals to circuit courts from orders of county commissions appointing and qualifying guardians and fiduciaries; providing for the transfer of bonds or other securities issued by this state or any political subdivision thereof which are owned by nonresident decedents or standing in the name of such nonresident decedents; the transfer of certain other securities issued by corporations or banks created by this state or having their principal place of business therein standing in the name of nonresident decedents; requiring the publication of notice with respect to such transfers; the transfer of property of nonresident infants or insane persons to foreign guardians or committees; procedure and notice relating thereto; procedure for the sale of real estate of nonresident infants, insane persons and beneficiaries of trusts; the disposition of the proceeds of such sale to foreign guardians, committees or trustees; providing for petitions to the circuit court for permission to transfer such property or proceeds; providing for the notice of the filing of such petition; providing for certain evidence to be required with respect to any orders directing such transfer; providing procedures for the transfer of assets in the hands of resident trusts belonging to nonresident beneficiaries; the petitions, notice and evidence required with respect to such transfers; the authority of the court to direct the sale of such property; the payment of the proceeds of such sale to nonresident fiduciaries and the discharge of resident trustees upon the completion of such transfer; the power of the circuit court to act in vacation of the term with respect to such transfers; provisions with respect to powers of the clerk of the county commission in the vacation of the county commission; providing for report by the county clerk to the county commission with respect to certain matters; the hearing required with respect to such reports; confirmation of certain actions of the circuit clerk or fiduciary supervisor taken during the vacation of the county commission and objections thereto; payment of certain costs with respect to hearings had on such

objections; the powers and duties of the clerks of the county commissions in counties having separate tribunals for police and fiscal affairs or purposes in lieu of county commissions; the function of such clerk in such counties; granting authority to certain persons to act as clerk of the county commission in such counties in all matters in which the clerk of the county commission has personal interest; the authority of the clerk of the county commission in such counties to impanel juries to settle questions of fact; requiring such clerks to maintain certain records and order books as are currently required to be kept by county commissions; establishing a time when clerks of such counties are required to perform certain tasks as are required to be performed by the clerks of the county commissions of the other several counties; establishing procedures of the circuit court for the substitution of trustees; establishing the powers of such substitute trustees; providing for the appointment of ancillary trustee under certain circumstances; procedures for the appointment of substitute trustee upon proper motion; providing that a remaining trustee or personal representative of such remaining trustee may execute a trust where more than one trustee was originally appointed; establishing the power and responsibility of a substituted or remaining trustee; provisions relating to the settlement of accounts of such guardians and for the removal of such persons for the failure to make such settlements; providing for maximum limits of compensation for such guardians; requiring the investment of the funds of the estate of any minor or mentally incapacitated person for whom a guardian was appointed; provisions relating to the support of persons who may be dependent upon the ward for whom such guardian was appointed; requiring that certain copies of public records are to be provided to the government of the United States or its agencies at no cost when required with respect to such ward; the commitment of certain person for treatment and care to the veteran's administration or any other agency of the United States government; the procedures with respect thereto; providing for the discharge of the guardian or committee when the ward has attained his majority or has been otherwise declared competent; providing for certain rules of construction with respect to the provisions of chapter forty-four; providing certain penalties with respect to noncompliance with various provisions of said chapter; establishing a time for the provisions of said chapter to become operative and for certain rules of construction prior to said provisions becoming

operative; providing for certain rules of procedure with respect to the settlement of tort claims of infants and the duty of fiduciary commissioners with respect thereto; and the compensation of such commissioners.

Be it enacted by the Legislature of West Virginia:

That section seven, article seven, chapter seven; section thirty-three, article five, chapter twenty-eight; sections three, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen, article thirteen, chapter thirty-eight; sections fourteen and twenty-three, article one; sections one, two, three, four, five, seven, eight, thirteen, fourteen, fifteen, sixteen, sixteen-a, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-four, twenty-four-a, twenty-five, twenty-six and twenty-seven, article two; sections one, two, three, four, five, six and seven, article three; article four; article five; sections two and three, article seven; section eight, article eight; sections one-a, five, six and seven, article nine; sections eight and fifteen, article ten; sections eight and nine, article fifteen, chapter forty-four, as amended, be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article three-a; that section four, article ten, chapter fifty-six; and section nine, article one, chapter fifty-nine all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

Chapter

7. County Commissions and Officers.
28. State Correctional and Penal Institutions.
38. Liens.
44. Administration of Estates and Trusts.
56. Pleading and Practice.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-7. County assistants, deputies and employees; their number and compensation; county budget.

1 The county clerk, circuit clerk, joint clerk of the county
2 commission and circuit court, if any, sheriff, county assessor
3 and prosecuting attorney, by and with the advice and consent
4 of the county commission, may appoint and employ, to assist
5 them in the discharge of their official duties for and during
6 their respective terms of office, assistants, deputies and
7 employees. The county clerk may designate one or more of
8 his assistants as responsible for all probate matters.

9 The county clerk, circuit clerk, joint clerk of the county
10 commission and circuit court, if any, sheriff, county assessor
11 and prosecuting attorney shall, prior to March second of each
12 year, file with the county commission a detailed request for
13 appropriations for anticipated or expected expenditures for
14 their respective offices, including the compensation for their
15 assistants, deputies and employees, for the ensuing fiscal
16 year.

17 Any deputy sheriff who is required to work on a holiday as
18 observed by county employees generally shall be
19 compensated for such time by being given a substitute day
20 off.

21 The county commission shall, prior to March twenty-ninth
22 of each year by order fix the total amount of money to be
23 expended by the county for the ensuing fiscal year, which
24 amount shall include the compensation of county assistants,
25 deputies and employees. Each county commission shall enter
26 its order upon its county commission record.

27 The county clerk, circuit clerk, joint clerk of the county
28 commission and circuit court, if any, sheriff, county assessor
29 and prosecuting attorney shall then fix the compensation of
30 their assistants, deputies and employees based on the total
31 amount of money designated for expenditure by their
32 respective offices by the county commission and the amount
33 so expended shall not exceed the total expenditure
34 designated by the county commission for each office.

35 The county officials, in fixing the individual compensation
36 of their assistants, deputies and employees and the county
37 commission in fixing the total amount of money to be
38 expended by the county, shall give due consideration to the
39 duties, responsibilities and work required of the assistants,
40 deputies and employees and their compensation shall be
41 reasonable and proper.

42 After the county commission has fixed the total amount of
43 money to be expended by the county for the ensuing fiscal
44 year and after each county official has fixed the
45 compensation of each of his assistants, deputies and
46 employees, as provided in this section, each county official
47 shall file prior to June thirtieth, with the clerk of the county
48 commission, a budget statement for the ensuing fiscal year
49 setting forth the name, or the position designation if then
50 vacant, of each of his assistants, deputies and employees, the
51 period of time for which each is employed, or to be employed
52 if the position is then vacant, and his monthly or
53 semimonthly compensation.

54 All budget statements required to be filed by this section
55 shall be verified by an affidavit by the county official making
56 them. Among other things contained in the affidavit shall be
57 the statement that the amounts shown therein are the
58 amounts actually paid or intended to be paid to the assistants,
59 deputies and employees without rebate, and without any
60 agreement, understanding or expectation that any part
61 thereof shall be repaid to him, and that, prior to the time the
62 affidavit is made, nothing has been paid or promised him on
63 that account, and that if he shall thereafter receive any
64 money, or thing of value, on account thereof, he will account
65 for and pay the same to the county. Until the statements
66 required by this section have been filed, no allowance or
67 payments shall be made to any county official or their
68 assistants, deputies and employees.

69 Each county official named in this section shall have the
70 authority to discharge any of his assistants, deputies or
71 employees by filing with the clerk of the county commission
72 a discharge statement specifying the discharge action:
73 *Provided*, That no deputy sheriff appointed pursuant to the
74 provisions of article fourteen, chapter seven of this code, shall
75 be discharged contrary to the provisions of that article.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

§28-5-33. Appointment of committee of convict; bond.

1 When a person is confined in the penitentiary of this or any
2 other state, or of the United States, under sentence for one
3 year or more, or to suffer death, the estate of such convict in

4 this state, if he have any, both real and personal, shall, on the
5 motion of any party interested, be committed by the county
6 commission of the county in which his estate or some part
7 thereof may be, to a person selected by such county
8 commission, who, after giving bond before the county
9 commission in such penalty as it may prescribe, shall have
10 charge and management of such estate until the convict is
11 discharged from confinement or dies; and upon such motion
12 the county commission shall appoint said committee,
13 although the convict has no estate, either real or personal,
14 located in this state. In the event said convict has no such
15 estate, or his estate does not exceed one thousand dollars,
16 reference to a fiduciary commissioner shall not be necessary.
17 All appointments of committees heretofore made and decrees
18 or judgments heretofore awarded by any court of record in
19 this state against or on behalf of any convict shall not be
20 considered invalid for the reason that the convict had no such
21 estate at the time of the appointment of such committee.

CHAPTER 38. LIENS.

ARTICLE 13. ASSIGNMENT BY INSOLVENT FOR THE BENEFIT OF ALL CREDITORS.

§38-13-3. Reference to fiduciary commissioner; appraisers.

1 Upon the qualification of the trustee, the clerk shall refer
2 the estate to a fiduciary commissioner of the county:
3 *Provided*. That in counties where there are two or more such
4 commissioners, such estate shall be referred to such
5 commissioners in rotation; and the clerk shall appoint three
6 disinterested appraisers to appraise all the property
7 belonging to the estate and, within seven days after their
8 appointment, they shall make to the fiduciary commissioner
9 a report thereof in writing duly sworn to.

§38-13-4. Trustee to file schedule; substitute trustee.

1 Within ten days after the recordation of an assignment,
2 conveyance or transfer the trustee shall cause to be made and
3 filed with the clerk of the county commission of the county
4 where the same is recorded a schedule containing:

5 (1) The name, occupation, place of residence and place of
6 business of the debtor;

7 (2) A full and true account of all creditors of the debtor,
8 stating the last-known place of residence of each, if known, or
9 if unknown, the fact to be stated; the sum owing to each, with

10 the true cause and consideration thereof; and a full statement
11 of any existing security for the payment of the same;

12 (3) A full and true inventory of all the debtor's estate at the
13 date of the assignment, both real and personal, in law and in
14 equity, with the liens and encumbrances existing thereon.
15 The trustee shall verify the schedule so made by him to the
16 effect that the same is in all respects just and true to the best
17 of his knowledge and belief, and shall state the sources of his
18 information and the grounds of his belief. The trustee shall at
19 the same time file a duplicate of the said schedule with the
20 fiduciary commissioner to whom the estate has been referred.
21 In case said trustee shall be unable to make and file such
22 schedule, within ten days, the fiduciary commissioner may,
23 upon application under oath, showing such inability, allow
24 him such further time as shall be necessary, not exceeding
25 thirty days. If the trustee fails to make and file such schedule
26 within said ten days or such further time as may be allowed,
27 the fiduciary commissioner shall require, by order, the
28 trustee forthwith to appear before him, and show cause why
29 he should not be removed, and, if good cause be not shown,
30 such trustee shall be removed and a meeting of the creditors
31 shall be called by the fiduciary commissioner, at which
32 meeting a substitute trustee shall be elected. Any person
33 interested in the trust estate may apply for such order and
34 demand such removal.

§38-13-5. Notice by trustee to creditors; publication and mailing.

1 Within ten days after the filing of the schedule the trustee
2 shall cause to be published a notice reading substantially as
3 follows:

4 "To the Creditors of:
5 Take notice that a general assignment for the benefit of
6 creditors was made by the above-named debtor to
7, Trustee, onand that said assignment
8 has been duly recorded in the office of the Clerk of the
9 County Commission ofCounty.

10 All persons having claims against the said debtor are
11 hereby notified that the same shall be presented to the
12 undersigned trustee on or before The estate has
13 been referred to, fiduciary commissioner, and
14 the first meeting of the creditors will be held in his office at
15, inCounty, West Virginia, on

16 , ato'clockM. Dated this
17 day of

18 (Signed)....., Trustee

19 (Address of Trustee)"

20 Said notice shall be published as a Class II legal
21 advertisement in compliance with the provisions of article
22 three, chapter fifty-nine of this code, and the publication area
23 for such publication shall be the county in which the
24 assignment, conveyance or transfer was recorded.

25 A copy of said notice shall be mailed by the trustee on or
26 before the date of the first publication thereof to every
27 creditor whose name appears in the schedule or of whom the
28 trustee has notice, to the assignor and to the fiduciary
29 commissioner and an affidavit evidencing such mailing and
30 publication shall be filed by the trustee with the fiduciary
31 commissioner.

§38-13-6. Filing and proof of claims.

1 The trustee shall specify in the notice a date on or before
2 which claims shall be presented to him which date shall not
3 be less than thirty days nor more than sixty days after the
4 date of the first publication of the notice, and no claim filed
5 with the trustee after the date specified in the notice shall be
6 recognized or allowed, except that if a surplus remain after
7 the payment of the claims presented on or before the date
8 specified such surplus shall be applied to the payment of the
9 claims presented after that date. Claims of creditors shall be
10 itemized, accompanied by proper vouchers, and verified by
11 the affidavit of the creditor or his duly authorized agent,
12 stating the character of the claim, whether open account,
13 note, bond, bill, writing obligatory, judgment, decree or other
14 evidence of debt, and the amount thereof, and from what date
15 and on what items interest runs and at what percent per
16 annum, and stating further that the claim is just and true, and
17 that the creditor, or any prior owner of the claim, if such there
18 was, has not received any part of the money stated to be due,
19 or any security or satisfaction for the same, except what is
20 credited. The vouchers for a judgment or decree shall be an
21 abstract thereof: for a specialty, bond, note, bill of exchange,
22 writing obligatory, or other instrument, shall be the
23 instrument itself, or a true copy thereof, verified by the
24 fiduciary commissioner, or proof of the same in case the
25 instrument be lost: and for an open account, an itemized copy

26 of the account. A surety may prove a claim of a creditor which
27 he has secured when such creditor fails or refuses to do so.
28 Every claim so itemized, so accompanied by proper vouchers,
29 and so verified, shall be taken to be proved and shall be
30 allowed unless, before the trustee shall make up his report of
31 claims, the assignor or a creditor or any party in interest shall
32 file before the trustee a counter-affidavit denying the claim in
33 whole or in part; and when such counter-affidavit is so filed
34 the trustee shall at once refer the claim to the fiduciary
35 commissioner who shall at the request of the claimant fix a
36 time and place for hearing evidence of and against such claim
37 and give reasonable notice of such time and place to the
38 claimant and the party objecting. All hearings on disputed
39 claims shall be completed within seven days after the last day
40 on which claims may be presented to the trustee, unless for
41 good cause shown the fiduciary commissioner extends the
42 time for such hearings.

§38-13-8. First meeting of creditors; substitute trustee.

1 The fiduciary commissioner shall preside over the first
2 meeting of the creditors which shall be held not less than ten
3 nor more than twenty days after the date of the first
4 publication of the notice thereof by the trustee. The assignor
5 and the trustee shall attend the meeting, and either or both of
6 them may be publicly examined at the meeting at the
7 instance of any creditor. The creditors shall at the meeting
8 take such steps as may be pertinent and necessary for the
9 promotion of the best interests of the estate, and the meeting
10 may be adjourned from time to time if the creditors see fit. If a
11 majority in number and amount of all the unsecured creditors
12 of the assignor, including those absent as well as those
13 present, desire that the trustee named in the assignment shall
14 not serve, at the first meeting of the creditors such a majority
15 may elect a substitute trustee who shall have all the rights,
16 powers and duties conferred upon the trustee named in the
17 assignment. The substitute trustee shall qualify by taking the
18 oath and giving a proper bond before the clerk, and a copy of
19 the order appointing the substitute trustee shall be recorded
20 in each county in which the assignment is recorded. Creditors
21 may be represented at meetings by their agents, employees,
22 or attorneys, duly authorized in writing.

§38-13-9. Sales by trustee; creditors may prescribe manner and terms; powers of fiduciary commissioner; compromising claims; continuing operation of business.

1 At the first meeting of creditors a majority in number and
2 amount of the creditors present may prescribe in what
3 manner and on what terms the property belonging to the
4 estate shall be sold, and the trustee shall not sell, or otherwise
5 dispose of, any property belonging to the estate prior to the
6 first meeting of the creditors, unless expressly authorized to
7 do so by the fiduciary commissioner after good cause therefor
8 has been shown. The trustee shall not sell, or otherwise
9 dispose of, the property belonging to the estate for less than
10 seventy-five percent of its appraised value without the
11 approval of the fiduciary commissioner. The trustee may
12 compromise or compound any claim or debt belonging to the
13 estate with the approval of the fiduciary commissioner. All
14 sales by the trustee shall be made at public auction, unless
15 otherwise ordered by the fiduciary commissioner or
16 authorized by the creditors. The trustees shall give at least ten
17 days' notice by mail to all of the creditors of the time and
18 place of sale of any property belonging to the estate of the
19 value of five hundred dollars, or more, and shall advertise the
20 sale as a Class II legal advertisement in compliance with the
21 provisions of article three, chapter fifty-nine of this code, and
22 the publication area for such publication shall be the county.
23 Such notice and advertisement may be waived by the
24 creditors at their first meeting. Upon application to the
25 fiduciary commissioner, and for good cause shown, the
26 trustee may be authorized to sell any portion of the estate at
27 private sale, in which case he shall keep an accurate record of
28 each article sold, the price received therefor and to whom
29 sold, which account he shall file with the fiduciary
30 commissioner. Upon application by the trustee or a creditor
31 setting forth that a part or the whole of the estate is
32 perishable, the nature and location of such perishable
33 property, and that there will be loss if the same is not sold
34 immediately, the fiduciary commissioner, if satisfied, of the
35 facts stated and that the sale is required in the interests of the
36 estate, may order the same to be sold without notice or with
37 such notice as he may direct. Upon application by the trustee
38 or a creditor setting forth that it is for the best interest of the
39 estate that the trustee continue to operate the business, the

40 fiduciary commissioner may authorize the trustee to operate
41 the business until the first meeting of the creditors, at which
42 meeting a majority in number and amount of the creditors
43 present shall determine whether such operation is to be
44 continued thereafter.

§38-13-10. Trustee's report to fiduciary commissioner; notice to creditors of filing and second meeting.

1 Within ten days after the last day on which claims may be
2 presented to him the trustee shall file with the fiduciary
3 commissioner a report showing the names of the creditors
4 whose claims have not been contested and who have filed
5 proper proofs of claims, and the amounts thereof; the names
6 of the creditors whose claims have been contested, and the
7 amounts thereof; the disposition he has made of the property
8 belonging to the estate; the costs and expenses he has
9 incurred; the amount of money he has on hand and the name
10 of the bank in which it is deposited; the property of the estate
11 not disposed of and his plans for disposing of the same. The
12 trustee shall attach to said report all proofs of claims,
13 vouchers, exhibits, accounts, writings, affidavits and
14 counter-affidavits which have been filed with him. The
15 trustee shall at once notify each creditor who has presented a
16 claim that the report has been filed, and that a meeting of the
17 creditors will be held before the fiduciary commissioner on a
18 date specified in the notice, which date shall not be less than
19 five days after the notice is mailed nor more than ten days
20 after the report is filed.

§38-13-11. Report by fiduciary commissioner; appeal from decision; allowance of expenses and fees; directions to trustee; dividends; closing trusteeship.

1 At the meeting of the creditors held following the filing of
2 the trustee's report the fiduciary commissioner shall file a
3 report showing how much, if anything, he has allowed on
4 each of the disputed claims. Any party interested may, within
5 ten days thereafter, appeal from the decision of the fiduciary
6 commissioner to the circuit court of the county without any
7 formal bill of exceptions, and the appeal shall be tried and
8 heard in the circuit court, or before the judge thereof in
9 vacation, on the record made before the fiduciary
10 commissioner. At the same meeting the fiduciary
11 commissioner shall approve such expenditures, costs and

12 expenses as he may find necessary and proper in the
13 administration of the estate; shall direct the payment of
14 proper fees and fiduciary commissions; shall direct the
15 trustee to distribute the funds in his hands belonging to
16 secured creditors; and shall direct the trustee to pay a
17 dividend of an equal percent on all allowed claims, except
18 such as have priority or are secured. A secured creditor whose
19 claim is in excess of the security held may share in such
20 dividend on such excess only. The trustee shall not pay such
21 dividend until the time has expired within which an appeal
22 may be taken from the decision of the fiduciary
23 commissioner on a disputed claim, and if any such appeal is
24 pending the trustee shall retain in his hands sufficient money
25 to pay the same dividend thereon, should the claim be
26 allowed on appeal, and shall distribute the remainder to the
27 creditors entitled thereto. After paying any dividend the
28 trustee shall file with the fiduciary commissioner a copy of a
29 dividend sheet showing to whom the dividend was paid. If all
30 of the property belonging to the estate has not been disposed
31 of at the time of said meeting, the trustee shall from time to
32 time make further reports to the fiduciary commissioner, and
33 the fiduciary commissioner may direct the trustee to pay
34 further costs, expenses, fees and dividends. Dividends which
35 are unclaimed for six months shall be distributed among the
36 remaining creditors whose claims have been allowed. After
37 the trustee has disposed of all the property belonging to the
38 estate, and has paid out all of the funds which have come into
39 his hands, he shall without delay make a final report in
40 duplicate to the fiduciary commissioner showing all his
41 receipts and disbursements, and if the fiduciary
42 commissioner finds the same correct and approves it, the
43 fiduciary commissioner shall enter an order discharging the
44 trustee, a copy of which order the fiduciary commissioner
45 shall furnish to the surety on the bond of the trustee, and the
46 fiduciary commissioner shall transmit a copy of said order
47 and a copy of the final report of the trustee to the clerk of the
48 county commission to be filed.

**§38-13-12. Powers, duties and qualifications of trustee; substitute
for unqualified, removed, deceased or disabled
trustee.**

1 It shall be the duty of the trustee to collect and reduce to
2 money the property belonging to the estate; to keep all funds

3 belonging to the estate on deposit in a sound bank; to report
4 promptly to the creditors any claims presented to him which
5 are not provable or are incorrect or false so that
6 counter-affidavits may be filed thereto; to file the reports and
7 give the notices herein provided for; to close up the estate as
8 expeditiously as possible; to furnish such information
9 concerning the estate as may be requested by parties in
10 interest; to keep regular accounts; to pay dividends as often
11 as is compatible with the best interests of the estate. The
12 trustee shall, as to all property transferred by the assignment,
13 be deemed vested with all the rights, remedies and powers of
14 a creditor holding a lien thereon by legal or equitable
15 proceedings. The trustee shall be a resident of West Virginia,
16 and shall not occupy the position of relative, creditor,
17 attorney, agent or employee to the assignor, nor an officer of
18 the assignor, if the assignor be a corporation, and if an
19 assignment, conveyance or transfer be made to such person
20 it shall not for that reason be void, but shall be deemed to be
21 for the benefit of all the creditors of the assignor, and the
22 clerk, at the request of any party in interest, may refer the
23 estate to a fiduciary commissioner who shall proceed to call a
24 meeting of the creditors, at which meeting a majority in
25 number and amount of the creditors present shall elect a
26 substitute trustee. Upon the petition of one or more creditors
27 showing misconduct or incompetency of the trustee, or on
28 the petition of the trustee himself, showing sufficient reason
29 therefor, and after due notice of not less than five days to the
30 assignor, trustee, the surety on the bond of the trustee, and
31 the creditors whose claims have been filed with the trustee,
32 the fiduciary commissioner may, after hearing the parties in
33 interest, remove or discharge the trustee; and in that event a
34 majority in number and amount of the creditors present shall
35 elect a substitute trustee. If the trustee shall die or become
36 unable to act the fiduciary commissioner shall call a meeting
37 of the creditors whose claims have been filed with the trustee,
38 after notice of not less than five days, and a majority in
39 number and amount of the creditors present at the hearing
40 shall elect a substitute trustee.

§38-13-13. Powers and duties of fiduciary commissioner.

1 Fiduciary commissioners shall have power to preside over
2 all meetings of creditors; to preside over all examinations of
3 the assignor or trustee; to allow and disallow all claims
4 presented to them for determination; to administer oaths to

5 witnesses; to issue subpoenas for the attendance of any
6 person for examination; to examine accounts filed by trustees
7 hereunder, to hear and determine any objections thereto, and
8 to surcharge any trustee for any moneys improperly
9 expended or for which the trustee shall have failed to
10 account; to authorize the business of the assignor to be
11 conducted for limited periods by the trustee if necessary in
12 the best interests of the estate; to reopen estates whenever it
13 appears that they have been closed before being fully
14 administered; to authorize a trustee to bring an action, which
15 he is hereby empowered to maintain, against any person who
16 has received, taken, or in any manner interfered with the
17 estate, property or effects of the debtor, in fraud of his
18 creditors, and which might have been avoided by a creditor of
19 the assignor, and the trustee may recover the property so
20 transferred or its value; to require or allow any inventory or
21 schedule filed to be corrected or amended, and require and
22 compel from time to time supplemental inventories or
23 schedules to be made and filed; to determine the excess of the
24 claims of secured creditors over and above the value of the
25 securities held by them; to require the trustee to render and
26 file the accounts and reports herein provided for; to authorize
27 and approve the payment of costs, expenses, fees and
28 commissions; to declare dividends; to discharge the trustee
29 and his surety after the trustee has properly completed the
30 performance of his duties; to authorize the appointment of an
31 attorney for the trustee if necessary in the best interests of the
32 estate.

§38-13-14. Duties of assignor.

1 The assignor shall comply with all lawful orders of the
2 fiduciary commissioner, examine the correctness of all claims
3 presented against the estate if ordered by the fiduciary
4 commissioner so to do, and if any are incorrect or false notify
5 the trustee thereof immediately; deliver to the trustee all his
6 books, papers and records; execute and deliver such papers
7 relating to the estate as shall be ordered by the fiduciary
8 commissioner; execute and deliver to the trustee proper
9 transfers of all his property outside the state of West Virginia;
10 attend the first meeting of the creditors; and submit to an
11 examination under oath concerning the conduct of his
12 business, the cause of his inability to pay his debts, his
13 dealings with his creditors and other persons, the amount,
14 kind and whereabouts of his property, and all matters which

15 may affect the administration and settlement of his estate, but
16 no testimony given by him shall be offered in evidence
17 against him in any criminal proceedings. The books and
18 papers of the assignor shall at all times be subject to the
19 inspection and examination of any creditor.

§38-13-15. Fiduciary commissioner to certify to circuit court disobedience of order, etc.; punishment for contempt by court.

1 The fiduciary commissioner shall certify the facts to the
2 circuit court of the county if any person shall disobey or resist
3 any order, process or writ which may be issued, or misbe-
4 have during any hearing, or neglect to produce, having
5 been ordered to do so, any pertinent documents, or refuse to
6 appear, take the oath, or be examined according to law, after
7 having been subpoenaed. Upon the filing of such certificate
8 by any fiduciary commissioner the judge shall in a summary
9 manner hear the evidence of the acts complained of, and, if it
10 is such as to warrant him in so doing, he may punish such
11 person in the same manner and to the same extent as for a
12 contempt committed before the court.

§38-13-16. Expenses and fees of trustee, fiduciary commissioner, appraisers and attorneys for trustee.

1 Trustees shall be allowed their reasonable and necessary
2 disbursements for the costs and expenses and shall receive
3 for their services commissions of all moneys disbursed or
4 turned over by them to any person, including lienholders and
5 secured creditors, which commissions shall be ten percent on
6 the first fifteen hundred dollars or less, five percent on
7 moneys in excess of fifteen hundred dollars and less than ten
8 thousand dollars, three percent on moneys in excess of ten
9 thousand dollars and less than twenty-five thousand dollars,
10 and two percent on moneys in excess of twenty-five thousand
11 dollars, or such additional compensation as a majority in
12 number and amount of the creditors present at the meeting
13 provided for in section ten of this article, or at a subsequent
14 meeting held for the purpose of fixing compensations, shall
15 allow, but the compensation shall in no case be less than fifty
16 dollars. Fiduciary commissioners shall be allowed their
17 reasonable and necessary disbursements for costs and
18 expenses and shall receive for their services such
19 compensation as the court shall from time to time prescribe.
20 The fiduciary commissioner shall indicate, in writing, the

21 compensation he believes he is entitled to receive for services
22 performed. Appraisers shall receive for their services a fair
23 and reasonable allowance which shall be fixed by the
24 fiduciary commissioner upon a petition therefor showing the
25 amount of time spent by the appraisers in the performance of
26 their duties. Attorneys for the trustee shall receive for their
27 service a fair and reasonable allowance which shall be fixed
28 by the fiduciary commissioner upon petition showing the
29 service rendered by them.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

Article

1. Personal Representatives.
2. Proof and Allowance of Claims Against Estates of Decedents.
3. Fiduciary Commissioners; Powers and Duties.
- 3A. Optional Procedure for Proof and Allowance of Claims Against Estates and Decedents; County Option.
4. Accounting by Fiduciaries.
5. General Provisions as to Fiduciaries.
7. Resignation of Fiduciaries and Procedure Upon Resignation.
8. Real Estate of Decedents.
9. Persons Presumed to be Dead and Their Estates.
10. Guardians and Wards Generally.
15. Veteran's Guardianship and Commitment.

ARTICLE 1. PERSONAL REPRESENTATIVES.

- §44-1-14. Appraisal of estates in triplicate; disposition; authority of appraisers to act throughout the state; hiring of experts.
- §44-1-23. Actions for goods carried away, waste, or damage to estate of or by decedent.

§44-1-14. Appraisal of estates in triplicate; disposition; authority of appraisers to act throughout the state; hiring of experts.

1 The real and personal estate of every deceased person, or in
2 which such deceased person had an interest at the time of his
3 death, shall be appraised as follows: The commission by
4 whose order any person is authorized to act as personal
5 representative, or the fiduciary supervisor thereof, shall,
6 upon the qualification of such personal representative and at
7 the time thereof appoint not less than three nor more than
8 five appraisers, any three of whom may act, in the county in
9 which the will of the deceased is probated or administration
10 is granted upon his estate, and a like number in every other
11 county in which there may be any real or personal estate of

12 the deceased: *Provided*, That at the request of the personal
13 representative the appraisers appointed in the county in
14 which the will of the deceased is probated or administration
15 is granted upon his estate shall have the authority to act in
16 any county in the state in which there may be any real or
17 personal estate of the deceased and the commission or
18 fiduciary supervisor shall so designate in the order of
19 appointment, and, in such event, it shall be unnecessary to
20 appoint appraisers in every other county in which there may
21 be any real or personal estate of the deceased. Such
22 appraisers, after first taking an oath for the purpose, shall list
23 and appraise at its real and actual value all the real estate and
24 all the tangible property of every description owned by the
25 deceased at the time of his death including, but not limited to,
26 all real estate and tangible property in which the decedent
27 had an interest as joint tenant or otherwise or in which any
28 beneficial interest passes to another person by reason of the
29 death of such decedent whose estate is being so appraised
30 and irrespective of whether such real estate or tangible
31 property is subject to administration and located in each
32 county or the counties, as the case may be, and they shall also
33 list and appraise at its real and actual value all his intangible
34 property of every description, including moneys, credits,
35 investments, annuities (other than those annuities which are
36 exempt from taxation under the provisions of subsection (g),
37 section one, article eleven, chapter eleven of this code), life
38 insurance policies (irrespective of whether such policies are
39 payable to named beneficiaries or in trust or otherwise),
40 judgments and decrees for moneys, notes, bonds, accounts
41 and all other evidences of debt, whether owing to him by
42 persons or corporations in or out of the state, and the number
43 and value, including both the par value, if any, and the actual
44 value, of any shares of capital stock owned by him in any
45 corporation, and every other item of intangible property of
46 whatsoever nature or kind, including all intangible property
47 in which the decedent had an interest as joint tenant or
48 otherwise or in which any beneficial interest passes to
49 another by reason of the death of such decedent, and
50 irrespective of whether such intangible property is subject to
51 administration and whether located in this state or elsewhere.
52 Any real estate or interest therein so appraised shall be
53 identified with particularity and description, shall identify
54 the source of title in the decedent and the location of such

55 realty for purposes of real property ad valorem taxation. Such
56 appraisers shall designate such intangible property as good,
57 bad or doubtful as to them may appear to be correct, and by
58 whom owing and when payable, and from what time such of
59 them as are interest-bearing bear interest. Every note, bond or
60 evidence of debt shall have endorsed thereon the word
61 "appraised," under which each acting appraiser shall sign his
62 name. No judgment shall be rendered by any of the courts of
63 the state upon such note, bond or evidence of debt unless and
64 until the same shall be first shown to have been listed by the
65 appraisers. Any note, bond or evidence of debt which bears
66 the endorsement by the appraisers, as above required, shall
67 need no further proof that the same was listed. In addition to
68 all other information required by law, the appraisal shall
69 contain and include a questionnaire designed and formulated
70 by the tax commissioner which is designed for the purpose of
71 examining the personal representative to determine that he
72 has made a thorough and proper search and investigation as
73 to the existence and value of each and every kind and specie
74 of property required to be included within, and subject to
75 appraisal by, the provisions of this or any other section of
76 this code, which said questionnaire shall be completed and
77 answered upon the oath or adjuration of each such appraiser
78 and the personal representative or fiduciary.

79 The several appraisements, lists and questionnaire
80 aforesaid shall be executed in triplicate and shall be signed by
81 the appraisers who made the same, and be approved by the
82 personal representative, and be forthwith returned to the
83 fiduciary supervisor. Such supervisor shall inspect such
84 appraisements, lists and questionnaire, see that the same are
85 in proper form, and that all property, if any, suggested by the
86 questionnaire is included within the appraisal, and,
87 within ten days after they are received and approved by him,
88 deliver two copies of the same to the clerk of the county
89 commission, who shall record the same, with the certificate of
90 approval of the supervisor, and mail one copy of the same to
91 the tax commissioner of West Virginia. The date of return of
92 an appraisal shall be entered by the clerk of the county
93 commission in his record of fiduciaries. Every such
94 appraisal and list shall be prima facie evidence of the
95 value of the property embraced therein, and that the personal
96 estate embraced therein which is subject to administration

97 came to the hands of the personal representative. Such
98 appraisers shall each receive a fee of not less than one dollar
99 nor more than one hundred dollars per day, to be fixed by
100 such supervisor in accordance with the amount of the estate
101 and the work involved in making the appraisal, and their
102 actual expenses necessarily incurred in making such
103 appraisal, and such fees and expenses and the
104 supervisor's approval thereof shall be noted in the fiduciary
105 supervisor's certificate. No person shall be permitted by any
106 means whatsoever to avoid the appraisal and listing of
107 his estate and of all property, real, tangible and intangible, of
108 whatsoever nature and kind, in which a beneficial interest
109 passes to another by reason of the death of the decedent and
110 irrespective of whether such property is subject to
111 administration as herein provided, nor shall his personal
112 representative be permitted to do so. Any personal
113 representative who fails, refuses or declines to comply with
114 the provisions of this section shall be guilty of a
115 misdemeanor, and, upon conviction thereof, shall be fined
116 not less than twenty-five dollars nor more than five hundred
117 dollars.

118 Every personal representative shall have authority to retain
119 or hire the services of such expert or experts as may be
120 deemed appropriate to assist and advise the appraisers in and
121 about their duties in appropriately and accurately appraising
122 all or any part of the assets or property to be appraised
123 according to the provisions of this section. Such expert or
124 experts so retained or hired shall be compensated a
125 reasonable sum by the personal representative from the
126 assets coming into his hands or of which he is embraced,
127 which compensation and the reasonableness thereof shall be
128 subject to review and approval by the county commission,
129 upon the recommendation of the fiduciary supervisor.

**§44-1-23. Actions for goods carried away, waste or damage to
estate of or by decedent.**

- 1 A civil action may be maintained by or against a personal
- 2 representative for the taking or carrying away of any goods,
- 3 or for the waste or destruction of, or damage to, any estate of
- 4 or by his decedent.

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST
ESTATES OF DECEDENTS.**

- §44-2-1 Reference of decedents' estates; proceedings thereon.
- §44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.
- §44-2-3. Fiduciary commissioner to certify to publication of notice.
- §44-2-4. Mailing of notice to creditors, distributees and legatees.
- §44-2-5. Claims to be proved by vouchers and affidavits in first instance.
- §44-2-7. Claims may be presented before publication of notice.
- §44-2-8. Proof of contingent or unliquidated claims.
- §44-2-13. Effect of presenting claim as to statute of limitations.
- §44-2-14. Advance payment of certain claims.
- §44-2-15. Personal representative not precluded from commencing action or suit; set-off in such actions or suits.
- §44-2-16. Fiduciary commissioner to report on claims of creditors, assets and shares of distributees and legatees.
- §44-2-16a. Apportionment of federal estate taxes; fiduciary to deduct taxes from shares of beneficiaries.
- §44-2-17. How contingent and unliquidated claims and claims not matured may be provided for.
- §44-2-18. Exceptions to fiduciary commissioner's report; return of report.
- §44-2-19. Hearing on report and exceptions; appeal; effect of confirmation.
- §44-2-22. Creditors to be paid in order of classification; when classes paid ratably.
- §44-2-23. When personal representative not liable for funds distributed.
- §44-2-24. When claims and legacies may be paid and estate distributed.
- §44-2-24a. Accounting for money not disposable at time of settlement; subsequent distribution of such money.
- §44-2-25. When personal representative not compelled to make distribution.
- §44-2-26. When claims not presented and proved barred of recovery from personal representative.
- §44-2-27. When distributees and legatees may be sued on claims; extent of liability; costs.

§44-2-1. Reference of decedents' estates; proceedings thereon.

- 1 (a) Upon the return of the appraisal by the personal
- 2 representative, to the county clerk, the estate of his
- 3 decedent shall, by order of the county commission to be
- 4 then made, be referred to a fiduciary commissioner for proof
- 5 and determination of debts and claims, establishment of their
- 6 priority, determination of the amount of the respective shares
- 7 of the legatees and distributees, and any other matter
- 8 necessary and proper for the settlement of the estate:
- 9 *Provided*, That in counties where there are two or more such
- 10 commissioners, the estates of decedents shall be referred to
- 11 such commissioners in rotation, in order that, so far as
- 12 possible, there may be an equal division of the work:
- 13 *Provided, however*, That if the personal representative shall
- 14 deliver to the clerk an appraisal of the assets of the estate
- 15 showing their value to be twenty-five thousand dollars or less,
- 16 exclusive of property held by the decedent and another

17 person or other persons as joint tenants with rights of
 18 survivorship, the clerk shall record said appraisalment and
 19 publish a notice as set forth herein. The personal
 20 representative shall, within two months from the date of
 21 recordation of the appraisalment in such case, make report to
 22 the clerk of his receipts, disbursements and distribution, and
 23 shall make affidavit that all claims against the estate, for
 24 expenses of administration, taxes and debts of the decedent,
 25 have been paid in full; the clerk shall be entitled to collect and
 26 receive a fee of ten dollars for recording such report and
 27 affidavit, and for publication of the notice hereinafter
 28 provided, said fee to be in lieu of any other fee provided by
 29 law for recording a report of settlement of the accounts of a
 30 decedent's personal representative. It shall be the duty of the
 31 clerk, at least once a month, to cause to be published once a
 32 week for two successive weeks in a newspaper of general
 33 circulation within the county of the administration of the
 34 estate, a notice substantially as follows:

35 NOTICE OF FILING OF ESTATE ACCOUNTS

36 I have before me the accounts of the executor(s) or
 37 administrator(s) of the estates of the following deceased
 38 persons:

- 39
- 40
- 41

42 Any person having a claim against the estate of any such
 43 deceased person, or who has any beneficial interest therein,
 44 may appear before me or the county commission at any time
 45 within thirty days after first publication of this notice, and
 46 request reference of said estate to a commissioner or object to
 47 confirmation of said accounting. In the absence of such
 48 request or objection, the accounting may be approved by the
 49 county commission.

50

51 Clerk of the County Commission
 52 of County, W. Va.

53 If no such request or objection be made to the clerk or to
 54 the county commission, the county commission may confirm
 55 the report of the personal representative, and thereupon the
 56 personal representative and his surety shall be discharged;
 57 but if such objection or request be made, the county
 58 commission may confirm the accounting or may refer the
 59 estate to one of its fiduciary commissioners.

60 (b) If upon the return and recordation of the
 61 appraisement, it shall appear to the clerk that there is only
 62 one beneficiary of the estate and that said beneficiary is
 63 competent at law, there shall be no further administration
 64 upon the estate, and no reference to a fiduciary
 65 commissioner, unless, for due cause, the county commission
 66 shall order further administration and a reference to a
 67 fiduciary commissioner. The bond of the personal
 68 representative and his surety shall be discharged one year
 69 after the date of qualification of the personal representative if
 70 no claim shall have been filed with the county clerk and no
 71 suit shall have been instituted against the personal
 72 representative. The clerk shall publish a notice once a week
 73 for two successive weeks in a newspaper of general
 74 circulation within the county of administration of the estate,
 75 substantially as follows:

76 NOTICE OF UNADMINISTERED ESTATE

77 Notice is hereby given that, there being only one
 78 beneficiary of the estate of the deceased, there will be no
 79 subdivision of said estate unless within ninety days demand
 80 for administration be made by a party in interest or an unpaid
 81 creditor.

82 Dated thisday of,

83

84 Clerk of the County Commission

85 ofCounty, W. Va.

86 The clerk shall charge to the personal representative, and
 87 receive, the reasonable cost of publication of said notice.

88 If no person demands administration and no creditor
 89 appears in response to the notice hereinabove provided,
 90 alienation of the decedent's real estate more than six months
 91 after the date of the notice to a bona fide purchaser for value
 92 without notice of any claim against the estate shall be free of
 93 any lien for taxes or debts of the decedent, notwithstanding
 94 the provisions of section five, article eight, chapter
 95 forty-four of this code.

§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.

1 Each month the fiduciary commissioner shall publish a
 2 notice designating a convenient time and place when and
 3 where claims against the estate or estates referred to him

4 during the previous calendar month may be presented,
 5 examined and allowed. The time so designated by the
 6 fiduciary commissioner shall not be less than two months nor
 7 more than three months from the date of the first publication
 8 of the notice hereinafter set forth. The notice shall be to the
 9 following effect:

10 To the Creditors and Beneficiaries of the Estate(s) of
 11

12 (Naming the decedent or decedents, as the case may be)

13 All persons having claims against the estate(s) of the said
 14,

15 (Naming the decedent or decedents, as the case may be)

16 deceased, whether due, or not, are notified to exhibit same,
 17 with the voucher thereof, legally verified, to the undersigned,
 18 at (designating the place) on or before theday of
 19,; otherwise they may by law be excluded
 20 from all benefit of said estate(s). All beneficiaries of said
 21 estate(s) may appear on or before said day to examine said
 22 claims and otherwise protect their interests.

23 Given under my hand thisday of,
 24

25
 26 Fiduciary Commissioner,
 27 County of

28 Such notice shall be published as a Class II legal
 29 advertisement in compliance with the provisions of article
 30 three, chapter fifty-nine of this code, and the publication area
 31 for such publication shall be the county. The publication of
 32 such notice shall be equivalent to personal service on the
 33 creditors, distributees and legatees, or any of them.

§44-2-3. Fiduciary commissioner to certify to publication of notice.

1 In his report of settlement of the accounts of the personal
 2 representative, to be made as hereafter provided, the
 3 fiduciary commissioner shall certify that the notice required
 4 by section two of this article was published and shall state the
 5 name of the newspaper in which the notice was published
 6 and the dates of publishing.

§44-2-4. Mailing of notice to creditors, distributees and legatees.

1 When the fiduciary commissioner has fixed the time for
 2 presentation of claims, the personal representative shall file
 3 with such fiduciary commissioner a list of the names and

4 post-office addresses of all known creditors of the estate and
5 of all distributees and legatees, to each of whom the fiduciary
6 commissioner shall cause a copy of such notice to be
7 forwarded by United States mail, addressed according to
8 such list. But failure to mail, or to receive, such notice shall
9 not relieve any creditor, distributee or legatee of the duty to
10 present and prove his claim as required by such notice, nor in
11 any way affect the proceedings pursuant to such notice.

§44-2-5. Claims to be proved by vouchers and affidavits in first instance.

1 Every claim against the estate of a decedent shall be
2 itemized, accompanied by proper vouchers, and shall state
3 the character of the claim, whether open account, note, bond,
4 bill, writing obligatory, judgment, decree, or other evidence
5 of debt, and the amount thereof, and from what date and on
6 what items interest runs and at what percent per annum, and
7 stating further that the claim is just and true, and that the
8 creditor, or any prior owner of the claim, if such there was,
9 has not received any part of the money stated to be due, or
10 any security or satisfaction for the same, except what is
11 credited. The voucher for a judgment or decree shall be an
12 abstract thereof; for a specialty, bond, note, bill of exchange,
13 writing obligatory, or other instrument, shall be the
14 instrument itself, or a true copy thereof, or proof of the same
15 in case the instrument be lost; and for an open account, an
16 itemized copy of the account. This section shall not apply to
17 taxes.

§44-2-7. Claims may be presented before publication of notice.

1 Claims against any decedent's estate may be filed with or
2 presented to the fiduciary commissioner to whom the estate
3 has been referred, at any time following the qualification of
4 the personal representative, notwithstanding the notice to
5 creditors shall not have been published previously to such
6 filing or presentation.

§44-2-8. Proof of contingent or unliquidated claims.

1 Whenever at the death of any person there shall be a
2 contingent or unliquidated claim against his estate, or an
3 outstanding bond, recognizance or undertaking upon which
4 the deceased shall have been principal or surety or
5 indemnitor, and on which at the time of his death the liability
6 is still contingent or unliquidated, the claimant or the surety

7 shall have the right to file with the fiduciary commissioner or
8 personal representative, as the case may be, at the time
9 provided for in the notice, proof of his claim in the same
10 manner as other claims, stating in his affidavit the facts upon
11 which such contingent or unliquidated liability is based and
12 the probable amount thereof. When so filed there shall be no
13 distribution of the assets of the estate, except as otherwise
14 provided in this article, without the reservation of sufficient
15 moneys to pay, when the amount is finally determined, such
16 contingent or unliquidated claim, or a proportion thereof
17 equal to what is paid to other creditors of the same class. If
18 such liability becomes fixed before a fiduciary commissioner
19 completes his report, then evidence of the same may be filed
20 with the fiduciary commissioner in lieu of the contingent
21 claim herein provided for, and such claim as fixed shall be a
22 debt of the estate.

§44-2-13. Effect of presenting claim as to statute of limitations.

1 The filing with or presentation to the fiduciary
2 commissioner or to the county clerk of any claim against the
3 estate of a decedent shall, so far as the running of any statute
4 of limitations is involved, have the same effect as the
5 institution of a civil action or suit on such claim.

§44-2-14. Advance payment of certain claims.

1 The fiduciary commissioner may authorize, and the
2 personal representative may make, payment of funeral
3 expenses, claims of physicians and nurses for services
4 rendered during the last illness of the decedent, and accounts
5 of druggists, hospitals and sanitariums for articles furnished
6 and services rendered during the same period, to the extent
7 that any of the same are preferred; also of debts due the
8 United States, debts due the state of West Virginia, and taxes,
9 in advance of the determination of other claims.

§44-2-15. Personal representative not precluded from commencing action or suit; setoff in such actions or suits.

1 Nothing in this article contained shall be construed to
2 prevent any personal representative, when he shall think it
3 necessary, from commencing any action or suit against any
4 person, or from prosecuting to final judgment or decree any
5 action or suit commenced by the deceased in his lifetime, if
6 the cause of such action or suit survives, for the recovery of
7 any debt or claim, or from having execution on any judgment

8 or decree. The defendant in any such action or suit shall,
9 notwithstanding he may have already filed his claim before a
10 fiduciary commissioner, set off any claim he may have
11 against the deceased, if proper to be allowed as a setoff; and if
12 final judgment or decree shall be rendered in favor of the
13 defendant, the same shall be certified by the clerk of the court
14 rendering it to the fiduciary commissioner before whom the
15 estate of the deceased is pending, and the amount thereof
16 shall be allowed in the same manner as other claims against
17 such estate filed and proved before the fiduciary
18 commissioner.

**§44-2-16. Fiduciary commissioner to report on claims of
creditors, assets and shares of distributees and
legatees.**

1 After the completion of the hearings for the presentation of
2 claims and for reception of proof for and against disputed
3 claims, but not later than five months from the qualification
4 of the personal representative, the fiduciary commissioner
5 may, and upon motion of any interested person shall, prepare
6 a report of claims against the estate, showing in such report
7 all the claims presented, or exhibited in offset, or certified to
8 the fiduciary commissioner by any court, and stating as to
9 each claim how much was allowed and how much disallowed,
10 together with the final balance, whether in favor of the
11 creditor or the estate. The fiduciary commissioner shall also
12 show in such report what assets are in the hands of the
13 personal representative, and shall designate how the same
14 shall be applied to the payment of debts and claims; also in
15 what order of priority the claims shall be paid and also what
16 sum shall be reserved to pay contingent or unliquidated
17 claims and claims not matured, or a proportion of any such
18 claim equal to what is allowed to other creditors of the same
19 class, when payment of such claims shall become proper.
20 Such report shall also show what persons are entitled to share
21 in the estate as legatees, and as such in what property or
22 amounts; or as distributees, and as such in what proportions.

**§44-2-16a. Apportionment of federal estate taxes; fiduciary to
deduct taxes from shares of beneficiaries.**

1 (1) For the purposes of this section the term "persons
2 interested in the estate" shall include all persons, firms and
3 corporations who may be entitled to receive or who have
4 received any property or interest which is required to be

5 included in the gross estate of a decedent, or any benefit
6 whatsoever with respect to any such property or interest,
7 whether under a will or intestacy, or by reason of any transfer,
8 trust, estate, interest, right, power or relinquishment of
9 power, taxable under any estate tax law of the United States
10 heretofore or hereafter enacted.

11 (2) Whenever it appears upon any settlement of accounts
12 or in any other appropriate action or proceeding, that an
13 executor, administrator, curator or other person acting in a
14 fiduciary capacity, has paid an estate tax levied or assessed
15 under the provisions of any estate tax law of the United States
16 heretofore or hereafter enacted, upon or with respect to any
17 property required to be included in the gross estate of a
18 decedent under the provisions of any such law, the amount of
19 the tax so paid shall be prorated among the persons
20 interested in the estate to whom such property is or may be
21 transferred or to whom any benefit accrues. Such
22 apportionment shall be made in the proportion that the value
23 of the property, interest or benefit of each such person bears
24 to the total value of the property, interests and benefits
25 received by all such persons interested in the estate, except
26 that in making such proration each such person shall have the
27 benefit of any exemptions, deductions and exclusions
28 allowed by such law in respect of such person or the property
29 passing to him; and except that notwithstanding the
30 preceding provisions of this sentence in cases where a trust is
31 created, or other provision made whereby any person is given
32 an interest in income, or an estate for years, or for life, or other
33 temporary interest in any property or fund, the tax on both
34 such temporary interest and on the remainder thereafter shall
35 be charged against and paid out of the corpus of such
36 property or fund without apportionment between remainders
37 and temporary estates.

38 (3) In all cases in which any property required to be
39 included in the gross estate does not come into the possession
40 of the executor, administrator or other fiduciary as such, he
41 shall be entitled, and it shall be his duty, to recover from
42 whomever is in possession, or from the persons interested in
43 the estate, the proportionate amount of such tax payable by
44 the persons interested in the estate with which such persons
45 interested in the estate are chargeable under the provisions of
46 this section.

47 (4) No executor, administrator or other person acting in a

48 fiduciary capacity shall be required to transfer, pay over or
49 distribute any fund or property with respect to which a
50 federal estate tax is imposed until the amount of such tax or
51 taxes due from the devisee, legatee, distributee, or other
52 person to whom such property is transferred, is paid to such
53 fiduciary, or, if the apportionment of tax has not been
54 determined, adequate security is furnished by the transferee
55 for such payment.

56 (5) But it is expressly provided that the foregoing
57 provisions of this section are subject to the following
58 qualification, that none of such provisions shall in any way
59 impair the right or power of any person by will or by written
60 instrument executed inter vivos to make direction for the
61 payment of such estate taxes, and to designate the fund or
62 funds or property out of which such payment shall be made,
63 and in every such case the provisions of the will or of such
64 written instrument executed inter vivos shall be given effect
65 to the same extent as if this section had not been enacted.

66 (6) The provisions of this section shall be applicable to
67 estates of decedents dying after the enactment of this section.

**§44-2-17. How contingent and unliquidated claims and claims
not matured may be provided for.**

1 The fiduciary commissioner in his report on claims shall
2 direct the personal representative to withhold from
3 distribution to beneficiaries sufficient assets to take care of
4 such contingent and unliquidated claims and claims not
5 matured as shall be presented to and proved before the
6 fiduciary commissioner, or a proportion thereof equal to what
7 is paid to other creditors of the same class, and such assets
8 shall be so withheld until such contingent liability becomes
9 fixed, or such unliquidated liability becomes liquidated, or
10 until such claims not matured mature, as the case may be, at
11 which time such assets shall be disbursed or distributed as
12 the fiduciary commissioner in his report may have designated
13 and the circumstances may require. But in any case where
14 there are sufficient assets to pay all liquidated claims against
15 any estate, any legatee or distributee of the estate shall be
16 entitled to be paid his or her share of the full surplus of the
17 estate, after payment of, or provision for, all liquidated
18 claims, both those matured and those not matured has been
19 made, upon such legatee's or distributee's giving to the
20 personal representative a bond, executed by himself or some

21 other person, with sufficient security, to be approved by the
22 county commission, or the clerk thereof during the recess of
23 the commission, conditioned to refund a due proportion of
24 any unliquidated or contingent debts or demands which may
25 afterwards appear against the decedent or become liquidated
26 or have their liability fixed, and of the costs attending their
27 recovery. Such bond shall be filed in the clerk's office where
28 probate of the will or administration of the estate was had,
29 and recorded by such clerk in the record of bonds. After the
30 giving of any such bond or bonds, creditors holding
31 unliquidated or contingent debts and demands shall, as to the
32 estate distributed by virtue of the giving of such bond or
33 bonds, look only to such bond or bonds for the payment of
34 such debts and demands.

§44-2-18. Exceptions to fiduciary commissioner's report; return of report.

1 After preparing a report of claims as hereinafter provided,
2 the fiduciary commissioner shall give notice thereof, either
3 verbally or in writing, delivered personally or by mail, to all
4 parties interested or their attorneys, and hold the report and
5 the evidence taken in connection therewith in his office for
6 ten days for the examination of parties interested. Any party
7 may inspect such report and evidence and file exceptions
8 thereto before said fiduciary commissioner; and the fiduciary
9 commissioner, in all cases, shall return with his report all the
10 evidence taken in connection with any claim listed in such
11 report, and the exceptions, if any, taken to the report, and
12 shall submit such remarks upon the exceptions as he may
13 deem pertinent. After the expiration of such ten days the
14 fiduciary commissioner shall return the report, evidence,
15 exceptions and remarks to the county commission, and until
16 the report is acted upon by the county commission it shall be
17 subject to further exceptions by the same or other parties
18 interested.

§44-2-19. Hearing on report and exceptions; appeal; effect of confirmation.

1 The hearing on the report of claims returned by a fiduciary
2 commissioner shall be had at the first term of the county
3 commission occurring not earlier than ten days after its
4 return. If there be no exceptions to such report it shall be
5 confirmed, but if excepted to, the county commission shall
6 pass upon the exceptions and make its order thereon, without

7 hearing or receiving any new evidence; but if good cause be
8 shown for the introduction of further proof regarding any
9 matter contained in such report, the report shall be referred
10 back to the fiduciary commissioner for the taking of further
11 proof and the making of a supplemental report. An appeal
12 from the decision of such county commission on such report
13 and exceptions and on the supplemental report and
14 exceptions, if there be such supplemental report, may,
15 without any formal bill of exceptions, be taken to the circuit
16 court of the county. The appeal shall be tried and heard in the
17 circuit court, or before the judge thereof in vacation, on the
18 record made before the fiduciary commissioner and on order
19 of the county commission. After the report of the fiduciary
20 commissioner on the claims against the estate of any
21 decedent has been confirmed by the county commission, or
22 the circuit court on appeal, or corrected and confirmed after
23 appeal, the same shall be forever binding and final.

**§44-2-22. Creditors to be paid in order of classification; when
classes paid ratably.**

1 No payment shall be made to creditors of any one class
2 until all those of the preceding class or classes shall be fully
3 paid; and when the assets are not sufficient to pay all the
4 creditors of any one class, the creditors of such class shall be
5 paid ratably; but a personal representative who, after six
6 months from his qualification, pays a debt of his decedent,
7 shall not thereby be personally liable for any debt or demand
8 against the decedent of equal or superior dignity, whether it
9 be of record or not, unless before such payment he shall have
10 notice of such debt or demand by action, suit or presentation
11 thereof to the fiduciary commissioner within the time
12 allowed by law.

**§44-2-23. When personal representative not liable for funds
distributed.**

1 If any personal representative after six months from the
2 qualification of the first executor or administrator of the
3 estate, and after the report of claims, if any, has been made by
4 the fiduciary commissioner and been confirmed by the
5 county commission, and after withholding such funds as the
6 fiduciary commissioner shall direct to meet any contingent
7 and unmatured claims and claims in action or suit, shall pay
8 any legacy given by the will, or distribute any of the estate of
9 his decedent in accordance with the fiduciary commissioner's

10 report as confirmed, if any, or according to law in case of
11 intestacy or according to the will, if any, such personal
12 representative shall not, on account of what is so paid or
13 distributed, be personally liable for any debt or demand
14 against the decedent, whether it be of record or not, unless,
15 within the time fixed for presentation of claims or for suing
16 thereon, such claim was duly presented or action or suit
17 thereon commenced and process served on such personal
18 representative.

§44-2-24. When claims and legacies may be paid and estate distributed.

1 After the report of a fiduciary commissioner, if any, on the
2 claims against the estate of any decedent has been confirmed
3 as aforesaid, or after six months from the time of the
4 qualification of the first executor or administrator shall have
5 elapsed, the personal representative may pay the claims
6 allowed by the fiduciary commissioner against the decedent's
7 estate or certified to him by courts wherein judgments or
8 decrees against the estate have been rendered, according to
9 the order of payment set forth in the fiduciary
10 commissioner's report, or as directed by the fiduciary
11 commissioner, and pay legacies and distribute the surplus
12 among the parties entitled thereto in the amounts and
13 proportions determined by the fiduciary commissioner
14 withholding such sum as such report as confirmed states to
15 be necessary for the payment of any contingent,
16 unliquidated, or disputed claims, or claims not matured, or
17 the proportions of any such equal to what is allowed to other
18 creditors of the same class, and upon the determination from
19 time to time of any such claims further payments and
20 distributions may be made as the circumstances require. If
21 the personal representative shall fail or refuse to pay claims
22 and make distribution within one month following the time
23 when he may legally do so, and no appeal has been taken
24 from the order of confirmation of the report on claims, any
25 party interested may institute a civil action against such
26 personal representative to compel payment and distribution
27 as provided by section twenty-two, article four of this
28 chapter.

§44-2-24a. Accounting for money not disposable at time of settlement; subsequent distribution of such money.

1 Notwithstanding any other provision of law, if an estate is
2 otherwise ready for final settlement and the personal
3 representative holds any sum or sums of money necessary for
4 the payment or distribution of any contingent, unliquidated,
5 unmatured or disputed bequest or claim, which cannot be
6 paid or distributed because the whereabouts of the claimant
7 or distributee are unknown, or cannot be paid or distributed
8 for any other reason, he may, with the consent of the fiduciary
9 commissioner to whom the estate has been referred, pay such
10 sum or sums to the general receiver of the circuit court in the
11 county in which the estate is being administered. Any such
12 payment, together with a receipt therefor, shall be reflected
13 and shown in said fiduciary commissioner's final report.
14 After said report is confirmed by the county commission,
15 such personal representative shall not be personally liable for
16 any such aforesaid bequest or claim.

17 Any person entitled to any funds paid to a general receiver
18 of a circuit court pursuant to the provisions of this section
19 may petition the circuit court in a summary proceeding for an
20 order directing the distribution of such funds. Any person
21 believed to have any claim to or interest in said funds shall be
22 made a party defendant to such petition and shall be given
23 such notice of any hearing thereon as the circuit court may
24 direct. The circuit court shall enter an order directing the
25 distribution of said funds to the person or persons entitled
26 thereto. The costs of said proceedings shall be paid from the
27 funds.

§44-2-25. When personal representative not compelled to make distribution.

1 A personal representative shall not be compelled to pay any
2 legacy given by the will, or make distribution of the estate of
3 his decedent, until after six months from the date of the order
4 conferring authority on the first executor or administrator of
5 such decedent, and not then unless the report of claims
6 against the estate made by the fiduciary commissioner has
7 been confirmed, and no appeal has been taken from the
8 county commission's order of confirmation.

§44-2-26. When claims not presented and proved barred of recovery from personal representative.

1 Every person including the state tax commissioner, having
2 a claim against a deceased person, whether due or not, who
3 has not, after notice to creditors has been published as

4 prescribed in this article, presented his claim on or before the
5 time fixed in such notice, or before that time has not
6 instituted a civil action or suit thereon, shall, notwithstanding
7 the same be not barred by some other statute of limitations
8 that is applicable thereto, be barred from recovering such
9 claim of or from the personal representative, or from
10 thereafter setting off the same against the personal
11 representative in any action or suit whatever; except that if a
12 surplus remain after providing for all claims presented in due
13 time, or on which action or suit shall have been commenced
14 in due time, and such surplus shall not have been distributed
15 by the personal representative to the beneficiaries of the
16 estate, and the claimant prove that he had no actual notice of
17 the publication to creditors nor knowledge of any
18 proceedings before the fiduciary commissioner, such creditor
19 may prove his claim either before the fiduciary commissioner
20 or by action or suit and have the same allowed out of such
21 surplus; and, in order that such late claims if proved may be
22 provided for, the fiduciary commissioner shall reopen his
23 report if the same has not been returned to the county
24 commission, or if returned, shall make and return a sup-
25 plemental report: *Provided*, That, as to real estate, the
26 provisions of subsection (b), section one of this article shall
27 apply.

**§44-2-27. When distributees and legatees may be sued on claims;
extent of liability; costs.**

1 (a) Every creditor who has presented his claim to the
2 fiduciary commissioner before distribution of the surplus by
3 the personal representative, or before that time has not
4 instituted a civil action or suit thereon against the personal
5 representative, may, if not barred by limitation, bring a civil
6 action against the distributees and legatees, jointly or
7 severally, at any time within two years after such distribution.
8 But no distributee or legatee shall be required to pay to
9 creditors suing by virtue of this section a greater sum than the
10 value of what was received by him out of the decedent's
11 estate, nor shall any distributee or legatee be required to pay
12 to any one creditor a greater proportion of such creditor's
13 debt than the value of what was received by such distributee
14 or legatee bears to the total estate distributed. A creditor
15 suing by virtue of this section shall not recover against such
16 distributees and legatees the costs of his civil action.

17 (b) Any creditor of a deceased person upon whose estate
18 there is no administration pursuant to subsection (b), section one
19 of this article, may, if not barred by limitation, bring a civil
20 action against the sole beneficiary at any time within two years
21 after recordation of the appraisal.

ARTICLE 3. FIDUCIARY COMMISSIONERS; POWERS AND DUTIES.

§44-3-1. Fiduciary commissioners.

§44-3-2. Fiduciary commissioners; powers and duties generally.

§44-3-3. Special fiduciary commissioners.

§44-3-4. Matters that will disqualify fiduciary commissioners.

§44-3-5. Disposition by fiduciary commissioner of inventories.

§44-3-6. Fiduciary commissioner to inspect bonds of fiduciaries.

§44-3-7. When county commission to refer controversies to fiduciary commissioner; rules of procedure.

§44-3-1. Fiduciary commissioners.

1 The office previously known as commissioner of accounts
2 is hereby abolished. The office of fiduciary commissioner is
3 hereby created and any reference in this code to a
4 commissioner of accounts shall, after the effective date of this
5 section, mean fiduciary commissioner. Fiduciary
6 commissioners shall be attorneys admitted to the practice of
7 law in this state, or shall meet the qualifications of fiduciary
8 supervisors as set forth in article three-a of this chapter:
9 *Provided*, That persons who are serving as commission-
10 ers of accounts upon the effective date of this article
11 shall be continued in office as fiduciary commissioners
12 for not more than one year from the effective date of this
13 article for the purpose of settling estates not settled on the
14 effective date of this article.

15 The county commission of each county shall appoint not
16 more than four fiduciary commissioners. In counties in which
17 there exists a separate tribunal for police and fiscal purposes,
18 that tribunal shall appoint the fiduciary commissioners. In
19 either case, not more than two of the fiduciary commissioners
20 may be from the same political party.

§44-3-2. Fiduciary commissioners; powers and duties generally.

1 The fiduciary commissioners shall have general
2 supervision of all fiduciary matters that are referred to them,
3 and of the fiduciaries in charge thereof, and shall make all ex
4 parte settlements of the accounts of such fiduciaries.
5 Fiduciary commissioners shall have power to summon and
6 compel the attendance of witnesses, to swear and examine
7 witnesses, take their depositions and certify their testimony,

8 and the costs thereof may be charged or expenses of
9 administration of the estate subject to administration.

§44-3-3. Special fiduciary commissioners.

1 When, from any cause, none of the fiduciary commissioners
2 can act as to any matter or matters which may be passed on
3 under the provisions of this chapter, the county commission
4 or tribunal referred to in section one of this article, may
5 appoint some other person to act as to such matter or matters.
6 That person shall have the power and compensation and
7 perform the duties of a fiduciary commissioner. When any
8 fiduciary commissioner resigns, or is removed, the county
9 commission or tribunal may provide for the completion of the
10 matters previously referred to that commissioner.

§44-3-4. Matters that will disqualify fiduciary commissioner.

1 No person shall perform the duties of a fiduciary
2 commissioner in any matter wherein he will be passing upon
3 his own account or acts; nor, where he will be called to pass
4 upon any account or acts with reference to which he served as
5 attorney or counselor; nor shall he be in any manner
6 interested in the fees or emoluments of any fiduciary whose
7 account or acts are before him for any action required by this
8 chapter; nor shall he be surety on the bond of the fiduciary
9 whose accounts are before him, or agent of, or pecuniarily
10 associated with, another who may be such surety; nor shall he
11 be qualified to act in or pass upon any matter before him in
12 which, were he a judge of the circuit court, and the matter
13 were therein pending, he would for any reason be disqualified
14 to serve. Any person who violates this section shall be guilty
15 of a misdemeanor, and, upon conviction thereof, shall, for
16 each and every violation, be fined not less than fifty nor more
17 than five hundred dollars or imprisoned in the county jail for
18 not more than six months, or punished by both fine and
19 imprisonment at the discretion of the court. Upon conviction
20 he shall also forfeit the office of fiduciary commissioner.

§44-3-5. Disposition by fiduciary commissioner of inventories.

1 The clerk of the county commission shall inspect all
2 appraisements returned to him by fiduciaries, require the
3 same to be executed in quadruplicate and in proper form,
4 and, within ten days after they are respectively approved and
5 recorded by him, deliver one copy thereof to the fiduciary
6 commissioner and mail one copy to the tax commissioner of

7 West Virginia. Any fiduciary commissioner who fails, refuses
8 or declines to comply with the provisions of this section shall
9 be guilty of a misdemeanor and shall be punished for each
10 offense by a fine of not less than twenty-five dollars nor more
11 than five hundred dollars.

§44-3-6. Fiduciary commissioner to inspect bonds of fiduciaries.

1 Each fiduciary commissioner shall, at least once each
2 month, ascertain from the records of the county commission
3 of his county what estates and fiduciary matters have been
4 referred to him by the county commission, or the clerk
5 thereof since the fiduciary commissioner's last inspection of
6 the records. He shall examine, as to each fiduciary, in any
7 such estate or matter, whether the fiduciary has given bond as
8 the law requires, and, if it appears that he has given no bond,
9 or that his bond is defective, or that the surety thereon has
10 removed from the state, died, or become insolvent, or is
11 bound already in too many other bonds, the fiduciary
12 commissioner shall make report thereof to his county
13 commission at its next term. He shall also have the fiduciary
14 summoned to appear at that term to show cause why he
15 should not give such bond as is required by law. At that term
16 the fiduciary shall be required forthwith to give such bond as
17 is required by law, or shall have his authority revoked. Until a
18 fiduciary has fully administered the estate under his charge,
19 and made his final account, the fiduciary commissioner shall
20 annually make inspections of the bonds of that fiduciary, and
21 make reports thereof. He shall issue a summons whenever the
22 circumstances require, and the commission shall make an
23 order as may be warranted by the facts then determined. An
24 appeal from the order of the county commission shall lie to
25 the circuit court of the county. An appeal may be taken on
26 request of the fiduciary or of the fiduciary commissioner if
27 applied for before the end of the term of the county
28 commission at which the order was made. When an appeal is
29 taken, the clerk of the county commission shall certify all
30 papers in the matter, including a copy of the bond, to the
31 clerk of the circuit court, where the same shall be docketed
32 and proceeded with as other appeals from the county
33 commission.

**§44-3-7. When county commission to refer controversies to
fiduciary commissioner; rules of procedure.**

1 The county commission, whenever any controversy arises

2 in connection with the probate of any will, or with the
3 appointment and qualification of personal representatives,
4 guardians, committees or curators, or with the settlement of
5 the accounts of any fiduciary, may, of its own motion, or on
6 the motion of any party thereto, and shall, on the joint
7 demand of the parties then appearing of record to the
8 proceeding, refer the matter to a fiduciary commissioner to
9 hear proof on the same, to make findings thereon, and to
10 advise the commission on the law governing the decision of
11 the matter. Any party may except to the commissioner's
12 finding of fact and law, and the commission shall hear the
13 case on the commissioner's report and the exceptions thereto,
14 without taking any additional evidence. In hearing and
15 reporting on any such matter the fiduciary commissioner
16 shall be governed as to procedure by the law and practice, so
17 far as is applicable, governing commissioners in chancery.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.

- §44-3A-1. County commission to order type of system; findings required; certain counties required to adopt system herein.
- §44-3A-2. Nature of office of fiduciary supervisor and fiduciary commissioner; duties of county commission with respect to orders and findings of such supervisor or commissioner.
- §44-3A-3. Office of fiduciary supervisor created; general powers; qualifications; tests for qualifications; training program; salary; bonds; violations.
- §44-3A-4. Notice of claim; settlement in certain cases.
- §44-3A-5. Reference to fiduciary commissioner; exceptions and limitations.
- §44-3A-6. Claims to be proved by vouchers and affidavits in first instance.
- §44-3A-7. Claims to be proved; objections to claims; hearings; funeral expenses.
- §44-3A-8. Claims may be presented before publication of notice.
- §44-3A-9. Proof of contingent or unliquidated claims.
- §44-3A-10. Continuances until all claims and objections passed on.
- §44-3A-11. Personal representative to exhibit offsets to claims.
- §44-3A-12. How heir or devisee may protect himself against lien on property.
- §44-3A-13. No claim barred by statute of limitations to be allowed.
- §44-3A-14. Effect of presenting claim as to statute of limitations.
- §44-3A-15. Advance payment of certain claims.
- §44-3A-16. Personal representative not precluded from commencing action or suit; setoff in such actions or suits.
- §44-3A-17. Fiduciary commissioner to report on claims of creditors; report by fiduciary supervisor; assets and shares of distributees and legatees.
- §44-3A-18. Apportionment of federal estate taxes; fiduciary to deduct taxes from shares of beneficiaries.

- §44-3A-19. Summary settlement before fiduciary supervisor.
- §44-3A-20. How contingent and unliquidated claims and claims not matured may be provided for.
- §44-3A-21. Exceptions to fiduciary supervisor's or fiduciary commissioner's report: return of report.
- §44-3A-22. Hearing on report and exceptions; appeal; effect of confirmation.
- §44-3A-23. Exceptions to report of fiduciary supervisor or fiduciary commissioner where no previous hearing was had; reference.
- §44-3A-24. Reports of delinquent filings.
- §44-3A-25. Report of claims to be recorded.
- §44-3A-26. Order in which debts of decedent to be paid.
- §44-3A-27. Creditors to be paid in order of classifications; when classes paid ratably.
- §44-3A-28. When personal representative not liable for funds distributed.
- §44-3A-29. When claims and legacies may be paid and estate distributed.
- §44-3A-30. Accounting for money not disposable at time of settlement; subsequent distribution of such money.
- §44-3A-31. When personal representative not compelled to make distribution.
- §44-3A-32. When claims not presented and proved barred of recovery from personal representative.
- §44-3A-33. When distributees and legatees may be sued on claims; extent of liability; costs.
- §44-3A-34. When enforcement of lien to secure claim barred.
- §44-3A-35. Fiduciary commissioners.
- §44-3A-36. Fiduciary commissioners; powers and duties generally.
- §44-3A-37. Special fiduciary commissioners; continuance of present references; compensation.
- §44-3A-38. Matters that will disqualify fiduciary commissioners.
- §44-3A-39. Disposition by fiduciary commissioner of inventories and accounts of sales.
- §44-3A-40. Fiduciary commissioners to inspect bonds of fiduciaries.
- §44-3A-41. When county commission to refer controversies to fiduciary commissioner; rules of procedure.
- §44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary commissioner; disposition of fees.
- §44-3A-43. County fiduciary fund.
- §44-3A-44. Rules applicable to fiduciary supervisors and fiduciary commissioners; exceptions as to certain counties.

§44-3A-1. County commission to order type of system; findings required; certain counties required to adopt system herein.

- 1 (a) If the county commission shall fail to act as required in
- 2 subsection (b) of this section, this article shall take effect in
- 3 that county sixty days after the effective date of this article.
- 4 (b) If within the sixty-day period, the county commission
- 5 makes a preliminary determination, by order entered of
- 6 record, to proceed without the provisions of this article, the
- 7 commission shall hold a public hearing as described in this
- 8 section.

9 (c) The preliminary determination by the county
10 commission shall include a finding, that shall include, but not
11 be limited to, the following considerations:

12 (1) The relatively expeditious and efficient administration
13 and settlement of estates;

14 (2) The relative cost and convenience to the public and to
15 the estates;

16 (3) Whether the fees provided under article three-a would
17 be insufficient to fund the salary and expenses of a fiduciary
18 supervisor as described in article three-a of this chapter;

19 (4) Whether the county commission and the public
20 interest is served by the availability of the unsupervised
21 administration of estates having sole beneficiaries based
22 upon the local needs of the county;

23 (5) The availability of physical facilities necessary for the
24 administration of this article.

25 (d) The public hearing shall be held by the county
26 commission within thirty days of the preliminary
27 determination. The commission or tribunal shall cause to be
28 published at least two weeks in advance of this hearing a
29 Class II-0 legal advertisement, as provided in section two,
30 article three, chapter fifty-nine of this code, setting forth the
31 reason for the hearing and the time, place and date thereof;
32 and the fact that the county commission has determined to
33 proceed without the provision of this article, and that the
34 preliminary determination, and the findings therein, can be
35 reviewed and inspected at the office of the county
36 commission.

37 (e) Within ten days of the hearing, the county commission
38 shall make a final order either confirming or vacating its
39 preliminary determination, which final order shall be based
40 upon information and facts, the comments of the public, and
41 all other available information.

42 (f) The findings and orders of the county commission
43 made hereunder shall be reviewable by the circuit court of
44 that county in accordance with the writ of certiorari provided
45 for in article three, chapter fifty-three of the code.

46 (g) *Provided, however,* That, notwithstanding the
47 provisions of this section, a county commission in any county
48 in this state in which the number of estates settled within the
49 calendar year immediately preceding the effective date of this
50 article exceeds one thousand, shall proceed under this article.

§44-3A-2. Nature of office of fiduciary supervisor and fiduciary commissioner; duties of county commission with respect to orders and findings of such supervisor or commissioner.

1 Except as may be provided in article thirteen of this
2 chapter, the office of fiduciary supervisor and of fiduciary
3 commissioner shall not be construed to vest judicial power in
4 the holder or holders thereof. Such offices are created to aid
5 and assist the county commission in the proper and
6 expeditious performance of the duties of such commissions
7 with respect to the administration of estates and trusts and
8 every order or finding of any fiduciary supervisor or fiduciary
9 commissioner shall be subject to confirmation and approval
10 of the county commission, and be considered for
11 confirmation at the next regular or special session of the
12 commission and be promptly confirmed or, if not confirmed,
13 a date set for hearing thereon. Every order of the fiduciary
14 supervisor or fiduciary commissioner shall remain in effect
15 while awaiting confirmation by the county commission
16 unless the commission provides an alternative means of
17 effectuating the purpose or purposes of the order by
18 providing a lawful alternative thereto. Every fiduciary
19 supervisor and fiduciary commissioner shall have the power
20 to sign and issue process directed to the various parties in any
21 proceeding before them and may summon witnesses,
22 administer oaths and take testimony with respect thereto as
23 may be required to carry out the purposes of this chapter, but
24 they shall apply to the county commission or to the circuit
25 court, as may be appropriate and lawful for any order to
26 compel obedience to any such process or order issued by any
27 such fiduciary supervisor or fiduciary commissioner or to
28 compel the obedience with any of the provisions of this
29 chapter.

§44-3A-3. Office of fiduciary supervisor created; general powers; qualifications; tests for qualifications; training program; salary; bond; violations.

1 (a) There is hereby created within the county commission
2 an office, designated the fiduciary supervisor, who shall be
3 appointed by order of the commission and whose office, with
4 the consent of the clerk of the county commission, shall be
5 housed within the office of such clerk or shall be housed in
6 such other office as the commission may designate. Such

7 fiduciary supervisor shall at the local option of each such
8 commission, be either a part-time or a full-time employee as
9 may be required by the county commission and shall receive
10 such salary as may be fixed by order of the county
11 commission.

12 (b) The fiduciary supervisor shall have general
13 supervision of all fiduciary matters and of the fiduciaries or
14 personal representatives thereof and of all fiduciary
15 commissioners and of all matters referred to such
16 commissioners and shall make all ex parte settlements of the
17 accounts of such fiduciaries except as to those matters
18 referred to fiduciary commissioners for settlement.

19 (c) The county commission shall determine that the
20 person to be appointed as fiduciary supervisor is fully
21 qualified by education or experience, or both, to perform the
22 duties assigned to such office by this chapter or other
23 provisions of this code. Such person shall have the requisite
24 knowledge of the legal issues raised and problems presented
25 by any of the proceedings had and documents filed pursuant
26 to the chapter, the procedures required with respect thereto,
27 the rights of all parties and interested persons with respect to
28 such procedures and the duties to be performed in examining
29 and approving the several and various papers and documents
30 presented to the fiduciary supervisor. The state tax
31 commissioner shall design and supervise a test to be given to
32 all persons selected or appointed as fiduciary supervisor who
33 are not licensed to practice law in this state, which test shall
34 include such matters as the tax commissioner deems
35 appropriate to determine the proficiency, experience,
36 knowledge and skill to perform all of the duties imposed
37 upon or to be imposed upon fiduciary supervisors generally.
38 Such test shall be administered under the authority of the
39 state tax commissioner by such person or persons as he may
40 designate either at the county wherein the fiduciary
41 supervisor is to serve or at such other place as the tax
42 commissioner may designate. The results of the test given to
43 any person or persons shall be kept confidential except as to
44 those persons who have completed the same to the
45 satisfaction of the tax commissioner and except as to those
46 persons who may desire their individual test results to be
47 made public. Each county commission shall be notified as to
48 the names of those persons who have satisfactorily completed
49 such test. The tax commissioner shall provide for the

50 uniformity of the test to be given and for grading and
51 evaluating the results thereof.

52 The tax commissioner shall at least annually conduct a
53 training program for fiduciary supervisors who are not
54 licensed to practice law in this state. The training program
55 shall be conducted at such times and places and consist of
56 such subjects as the tax commissioner may determine. All
57 fiduciary supervisors who are not licensed to practice law
58 shall be required to attend such training programs and those
59 supervisors as are so licensed may attend.

60 (d) The fiduciary supervisor shall give bond with good
61 security to be approved by the county commission in an
62 amount equal to the amount posted by the clerk of the county
63 commission in the county wherein such fiduciary supervisor
64 is to serve.

65 (e) Neither the fiduciary supervisor nor any person to
66 whom the duties of fiduciary supervisor have been delegated,
67 in whole or in part (excluding fiduciary commissioners) shall
68 engage in the practice of law, for compensation or otherwise,
69 with respect to the administration of any estate or trust
70 wherein the fiduciary thereof has qualified in his county or
71 with respect to any proceedings before him or which are or
72 may be referred to a fiduciary commissioner in his county.
73 Nor shall a fiduciary commissioner or special fiduciary
74 commissioner engage in the practice of law with respect to
75 matters referred to him as such commissioner. Any fiduciary
76 supervisor or person to whom any of the functions or duties
77 of the fiduciary supervisor have been delegated or fiduciary
78 commissioner or special fiduciary commissioner who so
79 engages in the practice of law contrary to the limited
80 prohibitions of this section, shall be removed from his office
81 or employment and, in addition thereto, shall be guilty of a
82 misdemeanor, and, upon conviction thereof, shall be fined one
83 thousand dollars.

§44-3A-4. Notice of claim; settlement in certain cases.

1 The fiduciary supervisor shall at least once a month as a
2 Class II legal advertisement in compliance with the
3 provisions of article three, chapter fifty-nine of this code,
4 cause to be published in a newspaper of general circulation
5 within the county wherein letters of administration have been
6 granted, a notice substantially as follows:

7 NOTICE OF FILING OF ESTATE ACCOUNTS

8 To the Creditors and Beneficiaries of the within named
9 deceased persons:

10 I have before me the estates of the following deceased
11 persons and the accounts of the fiduciaries of their respective
12 estates:

13 Name of Decedent:

14 Name of Fiduciary:

15 Address:

16 Name of Decedent:

17 Name of Fiduciary:

18 Address:

19 Name of Decedent:

20 Name of Fiduciary:

21 Address:

22 All persons having claims against the estate(s) of any of the
23 above-named deceased persons whether due or not, are
24 notified to exhibit the same with vouchers thereof, legally
25 verified, to the fiduciary of such deceased person as shown
26 herein within seventy-five days of the first publication hereof
27 or not later than the day of; or if
28 not so exhibited to such fiduciary by that date to exhibit the
29 same at the office of the undersigned fiduciary supervisor at
30 the address shown below within one hundred twenty days of
31 the first publication of this notice or not later than the
32 day of,; otherwise any
33 or all such claims may by law be excluded from all benefits of
34 said estate(s). All beneficiaries of said estate(s) may appear
35 either before the above-named fiduciary by the date first
36 above shown or thereafter before the undersigned fiduciary
37 supervisor by the date last above shown to examine said
38 claims and otherwise protect their respective interests.

39 Given under my hand thisday of,
40

41
42
43County, W. Va.

Fiduciary Supervisor

44 All such claims are to be filed with the appropriate
45 fiduciary at the address shown in such notice within
46 seventy-five days of the date of the first publication of such
47 notice or with the fiduciary supervisor within one hundred
48 twenty days of such date.

49 Subject to the provisions of section five of this article, at the

50 end of the one hundred twenty-day period set forth in such
51 notice, the fiduciary supervisor may proceed with
52 supervision of all estates referred to him for proof and
53 determination of debts and claims, establishment of their
54 priority, determination of the amount of the respective shares
55 of the legatees and distributees and any and all other matter
56 or matters necessary and proper for the settlement of the
57 estate, including, but not limited to, his recommendations
58 concerning the approval of the fees of any fiduciary
59 commissioner to whom the estate may have been referred,
60 determination that inheritance taxes, if any, occasioned by
61 the death of the decedent or returnable by reason thereof
62 have been returned upon such estate and such taxes have
63 been paid or such payment provided for and whether a
64 release therefor has been issued by the proper authority, all
65 matters required by section nineteen of this article and all
66 other matters deemed proper by him.

§44-3A-5. Reference to fiduciary commissioner; exceptions and limitations.

1 When the personal representative shall deliver to the
2 fiduciary supervisor, the appraisal required by section
3 fourteen, article one of this chapter, and is notified as to the
4 completeness thereof, the fiduciary supervisor shall, unless
5 otherwise ordered by the county commission, proceed to
6 receive claims and proceed to supervise settlement of the
7 estate.

8 The county commission shall not remove the estate from
9 supervision by the fiduciary supervisor and no reference to a
10 fiduciary commissioner shall be made if the appraisal,
11 properly completed, shows the total value of all assets
12 included in the estate which are subject to administration
13 (exclusive of real property, unless the will, if any, requires
14 administration thereof) to be twenty-five thousand dollars or
15 less: *Provided*, That if a dispute arises as to a matter of law or
16 fact, then the matter may be referred to a fiduciary
17 commissioner for the sole purpose of taking evidence as to
18 making a recommendation as to the disputed facts and
19 applicable law in such dispute.

20 The county commission shall not refer any estate to a
21 fiduciary commissioner:

22 (a) If the personal representative is also the sole
23 beneficiary of the estate; nor

24 (b) If the surviving spouse is the sole beneficiary of the
25 estate unless the spouse requests such reference; nor

26 (c) (1) If all the beneficiaries of the estate advise the
27 fiduciary supervisor by verified writing that no dispute is
28 likely to arise with respect to the administration of the estate;
29 and (2) it appears to the county commission or to the
30 fiduciary supervisor thereof that there are ample assets in the
31 estate to satisfy all claims of creditors and others against the
32 estate and that proper distribution thereof will be made,
33 including the payment of all taxes due thereon; and (3) if the
34 personal representative agrees thereto; nor

35 (d) If the county commission or fiduciary supervisor,
36 subject to the approval of the county commission, finds that
37 there are ample assets in the estate to satisfy all claims of
38 creditors and others against the estate and that proper
39 distribution thereof will be made including, but not limited
40 to, the payment of all taxes due thereon and that no disputed
41 question of law or fact has arisen or is likely to arise.

42 The commission shall, before making any reference to a
43 fiduciary commissioner, find by its order that none of the
44 prohibitions contained in this section obtains: *Provided*, That
45 in any case in which a reference would otherwise be
46 prohibited, the commission may refer a matter for the sole
47 purpose of resolving a disputed question of law or fact or
48 may, if the matter can be resolved expeditiously, permit the
49 fiduciary supervisor to conduct the necessary proceedings
50 and to prepare a recommendation on such disputed question.

51 In the event reference is made because of the failure to meet
52 any of the conditions in the preceding paragraph which
53 preclude reference to a fiduciary commissioner, such
54 reference may be made generally or for the sole purpose of
55 determining those matters in dispute. In any event, such
56 reference shall be withdrawn at any time upon the settlement
57 or determination or resolution of the reason or reasons giving
58 rise to such reference or at any other time deemed
59 appropriate by the county commission or by the fiduciary
60 supervisor, subject to the approval of the county commission.
61 If no such reference is made and it is later found that a
62 dispute or other condition has arisen which makes reference to
63 a fiduciary commissioner necessary, then reference to a
64 fiduciary commissioner may be made, either generally or for
65 the settlement, determination or resolution of the dispute or
66 condition and shall, in any event, be later withdrawn at any

67 time required by this section or deemed appropriate by the
68 fiduciary supervisor with the approval of the county
69 commission.

70 In counties where there are two or more such fiduciary
71 commissioners, the estates of decedents shall be referred to
72 such commissioners in rotation, in order that, so far as
73 possible, there may be an equal division of the work.

§44-3A-6. Claims to be proved by vouchers and affidavits in first instance.

1 Every claim against the estate of a decedent shall be
2 itemized, accompanied by a proper voucher stating the character
3 of the claim, whether open account, note, bond, bill, writing
4 obligatory, judgment, decree, or other evidence of debt, and the
5 amount thereof, and from what date and on what items interest
6 runs and at what percent per annum, and stating further that the
7 claim is just and true, and that the creditor, or any prior owner of
8 the claim, if such there was, has not received any part of the money
9 stated to be due, or any security or satisfaction for the same, except
10 what is credited. The vouchers for a judgment or decree shall be an
11 abstract thereof; for a specialty, bond, note, bill of exchange,
12 writing obligatory, or other instrument, shall be the instrument
13 itself, or a true copy thereof, or proof of the same in case the
14 instrument be lost; and for an open account, an itemized copy of the
15 account. This section shall not apply to taxes.

§44-3A-7. Claims to be proved; objections to claims; hearings; funeral expenses.

1 Every claim so itemized, so accompanied by proper
2 vouchers, and so verified, shall be taken to be proved, and
3 shall be allowed, unless before the fiduciary supervisor shall
4 make up his report of claims, the personal representative or a
5 distributee, or a legatee, or, in the case of estates that appear
6 to be insolvent, a creditor, shall file before such clerk a
7 counter affidavit, denying the claim in whole or in part. When
8 said counter affidavit is so filed the fiduciary supervisor shall
9 forthwith refer the matter to a fiduciary commissioner, the
10 provisions of section five of this article notwithstanding, who
11 shall within ten days of the receipt of the reference fix a time
12 and place for hearing evidence for and against such claim and
13 give reasonable notice of such time and place to the claimant,
14 the party objecting, and the personal representative. If such

15 fiduciary commissioner, having held such hearing, does not
16 allow any such claim, the claimant shall pay the expenses of
17 having the testimony adduced at such hearing recorded
18 and/or transcribed. The commissioner, in the exercise of his
19 sound discretion, may require that the claimant post a bond
20 or other security sufficient to pay the estimated cost of having
21 such testimony recorded and transcribed as a condition
22 precedent to holding such hearing. If such claim, having been
23 disallowed by the commissioner, subsequently shall be
24 allowed as a claim against the estate, the claimant shall be
25 entitled to recover from the estate the expenses so paid.
26 Claims for funeral expenses shall be made and determined in
27 the same manner as any other claims. If such estate is referred
28 to a fiduciary commissioner for the sole purpose of
29 determining the allowance of a claim and for no other
30 purpose, the order of reference to such commissioner shall be
31 withdrawn upon receipt of the commissioner's report with
32 respect thereto. If such estate in its entirety be referred to
33 such fiduciary commissioner then such commissioner shall
34 retain general supervision of the matter until such time as he
35 would otherwise be relieved of the same as provided in
36 section four of this article.

§44-3A-8. Claims may be presented before publication of notice.

1 Claims against any decedent's estate may be filed with or
2 presented to the fiduciary supervisor, at any time following
3 the qualification of the personal representative,
4 notwithstanding the notice to creditors shall not have been
5 published previously to such filing or presentation.

§44-3A-9. Proof of contingent or unliquidated claims.

1 Whenever at the death of any person there shall be a
2 contingent or unliquidated claim against his estate, or an
3 outstanding bond, recognizance or undertaking upon which
4 the deceased shall have been principal or surety or
5 indemnitor, and on which at the time of his death the liability
6 is still contingent or unliquidated, the claimant or the surety
7 shall have the right to file with the fiduciary supervisor at the
8 time provided for in the notice, proof of his claim in the same
9 manner as other claims, stating in his affidavit the facts upon
10 which such contingent or unliquidated liability is based and
11 the probable amount thereof. When so filed there shall be no
12 distribution of the assets of the estate, except as otherwise
13 provided in this article, without the reservation of sufficient

14 moneys to pay, when the amount is finally determined, such
15 contingent or unliquidated claim, or a proportion thereof
16 equal to what is paid to other creditors of the same class. If
17 such liability becomes fixed before the fiduciary supervisor
18 or fiduciary commissioner, as may be, completes his report,
19 then evidence of the same may be filed with such clerk or
20 commissioner in lieu of the contingent claim herein provided
21 for, and such claim as fixed shall be a debt of the estate.

§44-3A-10. Continuances until all claims and objections passed on.

1 The fiduciary supervisor may adjourn from time to time the
2 hearing for the presentation of claims or the fiduciary
3 commissioner may likewise adjourn from time to time the
4 hearings for proof of disputed claims until all the presented
5 claims and the objections to any claims, as the case may be,
6 shall be fully heard and passed on.

§44-3A-11. Personal representative to exhibit offsets to claims.

1 When a creditor against whom the deceased had any claim
2 or claims shall present a claim the personal representative
3 may exhibit any offset, if the same be such as has survived,
4 that he may have to such claim, and the fiduciary supervisor
5 or fiduciary commissioner, as may be, shall ascertain and
6 allow the balance against or in favor of the estate.

§44-3A-12. How heir or devisee may protect himself against lien on property.

1 Any heir or devisee entitled to have any lien on the real
2 estate that descended or was devised to him discharged out of
3 the personal estate, or any legatee entitled to have a lien on
4 specific personalty discharged out of the other personalty,
5 may, if the creditor holding any such lien fails to present and
6 prove his claim, present and prove such claim, and have the
7 same allowed or provided for, within the same time, to the
8 same extent, and by the same means as such creditor.

§44-3A-13. No claim barred by statute of limitations to be allowed.

1 No claim barred by any statute of limitations shall be
2 allowed against the estate of a decedent.

§44-3A-14. Effect of presenting claim as to statute of limitations.

1 The filing or presentation of any claim against the estate of
2 a decedent shall, so far as the running of any statute of

3 limitations is involved, have the same effect as the institution
4 of action on such claim.

§44-3A-15. Advance payment of certain claims.

1 The fiduciary supervisor or fiduciary commissioner to
2 whom the matter has been generally referred may authorize,
3 and the personal representative may make, payment of
4 funeral expenses, claims of physicians and nurses for services
5 rendered during the last illness of the decedent, and accounts
6 of druggists, hospitals and sanitariums for articles furnished
7 and services rendered during the same period, to the extent
8 that any of the same are preferred; also of debts due the
9 United States, debts due the state of West Virginia, and taxes,
10 in advance of the determination of other claims.

**§44-3A-16. Personal representative not precluded from
commencing action or suit; setoff in such actions
or suits.**

1 Nothing in this article contained shall be construed to
2 prevent any personal representative, when he shall think it
3 necessary, from commencing any action against any person,
4 or from prosecuting to final judgment any action commenced
5 by the deceased in his lifetime, if the cause of such action
6 survives, for the recovery of any debt or claim, or from having
7 execution on any judgment. The defendant in any such action
8 shall, notwithstanding he may have already filed his claim
9 before the fiduciary supervisor, set off by way of
10 counterclaim any claim he may have against the deceased, if
11 proper to be allowed as a counterclaim; and if final judgment
12 shall be rendered in favor of the defendant, the same shall be
13 certified by the clerk of the court rendering it to the fiduciary
14 supervisor or fiduciary commissioner before whom the estate
15 of the deceased is pending, and the amount thereof shall be
16 allowed in the same manner as other claims against such
17 estate filed and proved before such clerk or commissioner.

**§44-3A-17. Fiduciary commissioner to report on claims of
creditors; report by fiduciary supervisor; assets
and shares of distributees and legatees.**

1 If an estate has been referred generally to a fiduciary
2 commissioner, after the presentation of all claims and after
3 the completion of the hearings for the proof for and against
4 any disputed claims, but not later than ten months from the
5 qualification of the personal representative, the

6 commissioner shall prepare a report of all claims, disputed or
7 otherwise, against the estate, showing in such report all such
8 claims presented, disputed, exhibited in offset, or certified to
9 the commissioner by the fiduciary supervisor or by any court,
10 and stating as to each claim how much was allowed and how
11 much disallowed, together with the final balance, whether in
12 favor of the creditor or the estate. The commissioner shall
13 also show in such report what assets are in the hands of the
14 personal representative, and shall designate how the same
15 shall be applied to the payment of debts and claims; also in
16 what order of priority the claims shall be paid and also what
17 sum shall be reserved to pay contingent or unliquidated
18 claims and claims not matured, or a proportion of any such
19 equal to what is allowed to other creditors of the same class,
20 when payment of such claims shall become proper. In the
21 event the estate is not referred to any such fiduciary
22 commissioner, then a report shall be prepared by the
23 fiduciary supervisor which shall contain all such information
24 as is herein required to be included in the report filed by such
25 commissioner. In lieu of a formal report of claims, the
26 fiduciary supervisor or fiduciary commissioner may prepare
27 an abbreviated or condensed report which summarizes the
28 status of claims and the entitlements of the legatees or
29 beneficiaries and identifies other matters that require
30 completion in the particular estate before the estate is closed.
31 Any report or abbreviated report, whether by the fiduciary
32 supervisor or fiduciary commissioner, shall show what
33 persons are entitled to share in the estate as legatees, and as
34 such in what property or amounts; or as distributees, and as
35 such in what proportions.

§44-3A-18. Apportionment of federal estate taxes; fiduciary to deduct taxes from shares of beneficiaries.

1 (a) For the purposes of this section the term "persons
2 interested in the estate" shall include all persons, firms and
3 corporations who may be entitled to receive or who have
4 received any property or interest which is required to be
5 included in the gross estate of a decedent, or any benefit
6 whatsoever with respect to any such property or interest,
7 whether under a will or intestacy, or by reason of any transfer,
8 trust, estate, interest, right, power or relinquishment of
9 power, taxable under any estate tax law of the United States
10 heretofore or hereafter enacted.

11 (b) Whenever it appears upon any settlement of accounts
12 or in any other appropriate action or proceeding, that an
13 executor, administrator, curator, trustee or other person
14 acting in a fiduciary capacity, has paid an estate tax levied or
15 assessed under the provisions of any estate tax law of the
16 United States heretofore or hereafter enacted, upon or with
17 respect to any property required to be included in the gross
18 estate of a decedent under the provisions of any such law, the
19 amount of the tax so paid shall be prorated among the
20 persons interested in the estate to whom such property is or
21 may be transferred or to whom any benefit accrues. Such
22 apportionment shall be made in the proportion that the value
23 of the property, interest or benefit of each such person bears
24 to the total value of the property, interests and benefits
25 received by all such persons interested in the estate, except
26 that in making such proration each such person shall have the
27 benefit of any exemptions, deductions and exclusions
28 allowed by such law in respect of such person or the property
29 passing to him; and except that notwithstanding the
30 preceding provisions of this sentence in cases where a trust is
31 created, or other provision made whereby any person is given
32 an interest in income, or an estate for years, or for life, or other
33 temporary interest in any property or fund, the tax on both
34 such temporary interest and on the remainder thereafter shall
35 be charged against and paid out of the corpus of such
36 property or fund without apportionment between remainders
37 and temporary estates.

38 (c) In all cases in which any property required to be
39 included in the gross estate does not come into the possession
40 of the executor, administrator or other fiduciary as such, he
41 shall be entitled, and it shall be his duty, to recover from
42 whomever is in possession, or from the persons interested in
43 the estate, the proportionate amount of such tax payable by
44 the persons interested in the estate with which such persons
45 interested in the estate are chargeable under the provisions of
46 this section.

47 (d) No executor, administrator or other person acting in a
48 fiduciary capacity shall be required to transfer, pay over or
49 distribute any fund or property with respect to which a
50 federal estate tax is imposed until the amount of such tax or
51 taxes due from the devisee, legatee, distributee or other
52 person to whom such property is transferred, is paid to such
53 fiduciary, or, if the apportionment of tax has not been

54 determined, adequate security is furnished by the transferee
55 for such payment.

56 (e) But it is expressly provided that the foregoing
57 provisions of this section are subject to the following
58 qualification, that none of such provisions shall in any way
59 impair the right or power of any person by will or by written
60 instrument executed inter vivos to make direction for the
61 payment of such estate taxes, and to designate the fund or
62 funds or property out of which such payment shall be made,
63 and in every such case the provisions of the will or of such
64 written instrument executed inter vivos shall be given effect
65 to the same extent as if this section had not been enacted.

66 (f) The provisions of this section shall be applicable to
67 estates of decedents dying after the enactment of this section.

§44-3A-19. Summary settlement before fiduciary supervisor.

1 (a) At any time after the expiration of the period for filing
2 claims, the fiduciary supervisor may proceed with summary
3 settlement under this section if the estate has not been
4 referred to a fiduciary commissioner or if the estate, having
5 been referred to a fiduciary commissioner generally or for a
6 specific reason, has been withdrawn and placed before the
7 fiduciary supervisor for settlement.

8 The fiduciary supervisor shall require that the personal
9 representative, or the personal representative may on his own
10 motion, timely file a proposed settlement which shall include:

11 (1) Proof of payment of all claims filed against the estate or
12 proof of such payment has been provided for;

13 (2) Verification under oath that the personal
14 representative, after exercise of due diligence, knows of no
15 other claims against the estate;

16 (3) Verification and accounting of any income received by
17 the personal representative from the benefit of the estate;

18 (4) Provisions for the payment of all taxes due from the
19 estate or proof that all such taxes have been paid;

20 (5) A proposed plan of distribution; and

21 (6) Any and all other information deemed appropriate by
22 the fiduciary supervisor.

23 (b) The provisions of this section to the contrary
24 notwithstanding, any claim paid by the personal
25 representative to any creditor or beneficiary within such one
26 hundred twenty days, shall not abrogate in any way, the
27 liability of the personal representative under the provisions of

28 sections twenty-six, twenty-seven or twenty-eight of this
29 article.

30 (c) At the time such proposed settlement is filed, or prior
31 thereto, the personal representative shall prepare and furnish
32 to the fiduciary supervisor, and such supervisor shall review,
33 a return of all inheritance taxes due the state, pursuant to
34 article eleven, chapter eleven of this code, by reason of the
35 death of the decedent, who shall approve any proper return
36 filed with him.

37 Such supervisor shall compare the proposed settlement
38 with any proper inheritance tax return and with the
39 appraisement and any and all other documents deemed
40 appropriate by the supervisor in order to investigate the
41 propriety of such proposed settlement.

42 (d) The supervisor may, if he deems it appropriate, reject
43 such settlement and give notice in writing to the personal
44 representative of the matters disapproved and the reasons
45 therefor and fix a time, no later than forty-five days after the
46 date of such notice, for the personal representative to amend
47 the proposed settlement. The personal representative may,
48 within the time specified by the supervisor, amend the
49 settlement, otherwise satisfy the supervisor of the propriety
50 of all or part of such proposed settlement, or insist on the
51 propriety thereof, with or without amendment thereof.

52 (e) The supervisor shall, after he is satisfied as to the
53 propriety of the settlement or, after the period set by him for
54 amendment thereof has expired, prepare a report of his
55 recommendations to the county commission with respect
56 thereto, and his findings and determinations, which shall
57 include his findings with respect to:

58 (1) A proper appraisement has been filed which conforms
59 to the requirements of section fourteen, article one of this
60 chapter;

61 (2) The claims of creditors have been paid or have been
62 properly provided for in proper order of preference and
63 proportions;

64 (3) A proper inheritance tax return has been made and the
65 taxes due thereon paid or that payment has been provided
66 for;

67 (4) Any real property in this state owned by the decedent
68 at the time of his death has been properly transferred upon
69 the books of the assessor or that the assessor has been
70 notified of the facts and circumstances sufficient to cause the

71 transfer to be noted upon the books of the assessor;

72 (5) A proper distribution to the parties entitled thereto has
73 been proposed by the personal representative of the estate;

74 (6) Minors and other persons under disability who own or
75 are entitled to an interest in the estate are or have been
76 protected; and

77 (7) Any other matter or matters deemed pertinent by the
78 fiduciary supervisor.

79 (f) The fiduciary supervisor shall give notice of such
80 proposed settlement and findings to the state tax
81 commissioner, all creditors whose claims have not been fully
82 paid or otherwise satisfied and all beneficiaries which notice
83 shall include a copy of the proposed settlement and shall
84 advise that the subject estate shall be settled accordingly
85 thereto thirty days following the date of such notice. In
86 addition, on the first Monday of the next month, the
87 supervisor shall publish as a Class I-0 legal advertisement, a
88 notice that the accounts of the personal representative are
89 before him for approval.

90 Such notice shall be divided into two section: Settlements
91 approved and settlements not approved and notice of the date
92 and time that the names shall be presented to the county
93 commission, which date shall not be more than fifteen days
94 after such publication. Such advertisement shall be sufficient
95 if substantially as follows:

96 NOTICE OF PROPOSED SETTLEMENT OF ESTATES

97 To the Creditors and Beneficiaries of the within named
98 deceased persons:

99 I have before me the proposed final settlements of the
100 estates of the following deceased persons, which shall be
101 presented to the county commission of
102 County, at the Courthouse thereof, in the City of
103, on the day of,
104 at ...o'clock,M., which settlements have been
105 presented to me by the fiduciary of such estates and which
106 proposed settlements I have either approved or have not
107 approved as indicated below:

108 APPROVED

109
110 Name(s) of Decedent:
111
112

113 NOT APPROVED

114 Name(s) of Decedent:

115

116

117 Any person having any interest in the estate of any such
118 deceased person, may appear before the county commission
119 at the time and place hereinabove specified and thereupon
120 protect his interests as they may appear or else may be
121 forever thereafter barred from asserting such interests.

122 Given under my hand this day of,,
123

124 Fiduciary Supervisor

125County, W. Va.

126 (g) Any person may examine such proposed settlement in
127 the office of the fiduciary supervisor and file objection
128 thereto at or prior to the time set by such notice for
129 presentation thereof to the county commission. The
130 commission shall proceed to hear the presentation of such
131 proposed settlement and findings and hear interested parties,
132 if any appear, and approve, modify and approve, or refuse to
133 approve such proposed settlement and the findings of the
134 fiduciary supervisor. Alternatively, the commission may refer
135 the cause to a fiduciary commissioner generally for
136 supervision or for the purpose of the resolution of any
137 disputed matter.

138 (h) If no dispute or objection to the proposed settlement
139 has arisen, the fiduciary supervisor shall direct the personal
140 representative to conclude the affairs of the estate as outlined
141 in the proposed settlement or amended proposed settlement.
142 Upon receipt by such supervisor of evidence to his
143 satisfaction that all claims, including claims of beneficiaries
144 have been satisfied and that all taxes have been paid, he shall
145 submit his report of the proposed or amended proposed
146 settlement to the county commission for ratification,
147 confirmation and approval as otherwise provided by law.

§44-3A-20. How contingent and unliquidated claims and claims not matured may be provided for.

1 The fiduciary supervisor or fiduciary commissioner, as may
2 be, in his report on claims shall direct the personal
3 representative to withhold from distribution to beneficiaries
4 sufficient assets to take care of such contingent and
5 unliquidated claims and claims not matured as shall be

6 presented and proved or a proportion thereof equal to what is
7 paid to other creditors of the same class, and such assets shall
8 be so withheld until such contingent liability becomes fixed,
9 or such unliquidated liability becomes liquidated, or until
10 such claim not matured matures, as the case may be, at which
11 time such assets shall be disbursed or distributed as the
12 fiduciary supervisor or fiduciary commissioner in his report
13 may have designated and the circumstances may require. But
14 in any case where there are sufficient assets to pay all
15 liquidated claims against any estate, any legatee or
16 distributee of the estate shall be entitled to be paid his or her
17 share of the full surplus of the estate, after payment of, or
18 provision for, all liquidated claims, both those matured and
19 those not matured has been made, upon such legatee's or
20 distributee's giving to the personal representative a bond,
21 executed by himself or some other person, with sufficient
22 security, to be approved by the county commission, or the
23 fiduciary supervisor thereof during any recess thereof,
24 conditioned to refund a due proportion of any unliquidated or
25 contingent debts or demands which may afterwards appear
26 against the decedent or become liquidated or have their
27 liability fixed, and of the costs attending their recovery. Such
28 bond shall be filed in the office of the clerk of the county
29 commission where probate of the will or administration of the
30 estate was had, and recorded by such clerk in the record of
31 bonds. After the giving of any such bond or bonds, creditors
32 holding unliquidated or contingent debts and demands shall,
33 as to the estate distributed by virtue of the giving of such
34 bond or bonds, look only to such bond or bonds for the
35 payment of such debts and demands.

§44-3A-21. Exceptions to fiduciary supervisor's or fiduciary commissioner's report; return of report.

1 After preparing his report of claims the fiduciary supervisor
2 or the fiduciary commissioner, as may be, shall give notice
3 thereof, in writing, delivered personally or by mail, to all
4 parties interested or their attorneys, and hold the report and
5 the evidence taken in connection therewith in his office for
6 ten days for the examination of or by all parties interested.
7 Any party may inspect such report and evidence and file
8 exceptions thereto before said supervisor or commissioner;
9 and such supervisor or commissioner, in all cases, shall
10 return with his report all the evidence taken in connection

11 with any claim listed in such report, and the exceptions, if
12 any, taken to the report, and shall submit such remarks upon
13 the exceptions as he may deem pertinent. Such report shall
14 include the same findings as are required to be made by the
15 provisions of section nineteen of this article. After the
16 expiration of such ten days such supervisor or commissioner
17 shall return the report, evidence, exceptions and remarks to
18 the county commission, and until the report is acted upon by
19 the commission it shall be subject to further exceptions by
20 the same or other parties interested.

§44-3A-22. Hearing on report and exceptions; appeal; effect of confirmation.

1 A hearing on the report of claims returned by the fiduciary
2 supervisor or fiduciary commissioner shall be had at the first
3 term of the county commission occurring not earlier than ten
4 days after its return. If there be no exceptions to such report it
5 shall be confirmed, but if excepted to the commission shall
6 pass upon the exceptions and make its order thereon, without
7 hearing or receiving any new evidence, but if good cause be
8 shown for the introduction of further proof regarding any
9 matter contained in such report, the report shall be referred
10 back to the fiduciary commissioner for the taking of further
11 proof and the making of a supplemental report. An appeal
12 from the decision of such county commission on such report
13 and exceptions and on the supplemental report and
14 exceptions, if there be such supplemental report, may,
15 without any formal bill of exceptions, be taken to the circuit
16 court of the county. The appeal shall be tried and heard in the
17 circuit court, or before the judge thereof in vacation, on the
18 record made before the commissioner and the county
19 commission. After the report of the commissioner on the
20 claims against the estate of any decedent has been confirmed
21 by the county commission, or the circuit court on appeal, or
22 corrected and confirmed after appeal, the same shall be
23 forever binding and final.

§44-3A-23. Exceptions to report of fiduciary supervisor or fiduciary commissioner where no previous hearing was had; reference.

1 In all cases wherein exception has been taken to the report
2 of claims returned by the fiduciary supervisor, the
3 commission at the time of the hearing provided for in section
4 twenty-two of this article shall refer the matter to a fiduciary

5 commissioner for the taking of evidence upon the matter or
6 matters excepted to. Such commissioner shall within ten
7 days of the receipt of the reference fix a time and place for the
8 hearing and taking of evidence upon the matter or matters
9 excepted to and shall give reasonable notice of the time and
10 place of such hearing to all persons interested therein. Such
11 commissioner shall make his report as in other cases and if
12 exception be taken to such commissioner's report the
13 commission may proceed as provided in section twenty of
14 this article to pass upon such exceptions and make its order
15 thereon without hearing or receiving any new evidence
16 unless good cause be shown with the introduction of further
17 proof in which case the matter shall be referred back to the
18 commissioner for the taking of further evidence and the
19 making of a supplemental report and appeal from the
20 decision of the commission shall be in the manner provided
21 for in said section twenty-two.

22 If an exception be taken to a report of a fiduciary
23 commissioner wherein no evidence had been previously
24 taken, the matter shall be rereferred to such commissioner
25 who shall proceed thereon as provided for in section
26 twenty-two of this article. It shall be the duty of the fiduciary
27 supervisor to compel timely compliance with the provision of
28 this chapter, including any continuances granted with
29 respect to any matter. Any such continuance which would
30 extend any time limitation imposed by law beyond its lawful
31 limit shall not be granted. The fiduciary supervisor or
32 fiduciary commissioner may petition the circuit court to
33 compel compliance with any of the provisions of this chapter.

§44-3A-24. Reports of delinquent filings.

1 On the last day of January and July of each year every
2 fiduciary commissioner and special fiduciary commissioner
3 shall file with the fiduciary supervisor a list of all estates
4 referred to him since the effective date of this section, either
5 generally or for a limited purpose in which any appraisement
6 or other document required to be filed with him in a specified
7 time has not been timely filed, stating the document whose
8 filing is delinquent and the date the same was due to be filed:
9 *Provided*, That the commissioner shall omit from such list
10 any estate and any document for whose filing a proper
11 continuance has been granted.

12 On the fifth day of January and July of each year the

13 fiduciary supervisor shall file with the county commission a
14 like list of estates referred to him since the effective date of
15 this section in which the filing of any paper is delinquent, and
16 embrace therein the lists required to be filed with him on the
17 first day of such month by the various commissioners. In the
18 report filed the fifth day of July of each year the fiduciary
19 supervisor shall further include in the report a list of all
20 estates referred to him since the effective date of this section
21 which have not been duly closed and in which no progress, or
22 in his opinion, unsatisfactory progress, has been made toward
23 settlement, for any cause, within the preceding twelve
24 months.

25 The county commission, after consultation with the
26 fiduciary supervisor shall take care to require prompt
27 disposition of all matters and causes reported to it by the
28 semiannual reports required herein.

29 In addition, the fiduciary supervisor and the fiduciary
30 commissioners, shall be empowered, and where appropriate,
31 shall on their own motion, petition the circuit court to compel
32 compliance with the provisions of this chapter, in the same
33 manner and to the same extent heretofore provided in the
34 case of commissioners of accounts, or by any other proper
35 proceeding.

§44-3A-25. Report of claims to be recorded.

1 The report of claims, and the supplemental report of claims,
2 if there be one, when confirmed by the county commission,
3 shall be recorded by the clerk of the county commission in his
4 office.

§44-3A-26. Order in which debts of decedent to be paid.

1 When the assets of the decedent in the hands of his personal
2 representative, after the payment of charges of
3 administration, are not sufficient for the satisfaction of all
4 demands against him, they shall be applied in the following
5 order:

6 (a) To the payment of funeral expenses, to an amount not
7 exceeding six hundred dollars;

8 (b) To the claims of physicians, not exceeding one
9 hundred dollars, for services rendered during the last illness
10 of the decedent; and accounts of druggists, not exceeding the
11 same amount, for articles furnished during the same period;
12 and claims of professional nurses or other person rendering
13 service as nurse to the decedent, at his request or the request

14 of some member of his immediate family, not exceeding the
15 same amount, for services rendered during the same period;
16 and accounts of hospitals and sanitariums, not exceeding the
17 same amount, for articles furnished and services rendered
18 during the same period;

19 (c) To debts due the United States;

20 (d) To debts due this state;

21 (e) To taxes and levies assessed upon the decedent
22 previous to his death;

23 (f) To debts due as trustee for persons under disabilities,
24 as receiver or commissioner under order of any court of this
25 state, as personal representative, guardian, committee or
26 other fiduciary, where the qualification was in this state;

27 (g) To the balances on any items listed in subdivisions (a)
28 and (b) hereof but only to the extent that they are determined
29 by the fiduciary supervisor or fiduciary commissioner, as
30 may be, to be reasonable in amount and to have been
31 necessarily incurred, and to all other demands except those in
32 the next class;

33 (h) To voluntary obligations.

**§44-3A-27. Creditors to be paid in order of classification; when
classes paid ratably.**

1 Notwithstanding the provisions of section nineteen of this
2 article, no payment shall be made to creditors of any one class
3 until all those of the preceding class or classes shall be fully
4 paid; and when the assets are not sufficient to pay all the
5 creditors of any one class, the creditors of such class shall be
6 paid ratably; but a personal representative who, after twelve
7 months from his qualification, pays a debt of his decedent,
8 shall not thereby be personally liable for any debt or demand
9 against the decedent of equal or superior dignity, whether it
10 be of record or not, unless before such payment he shall have
11 notice of such debt or demand by action, suit or presentation
12 thereof to the commissioner of accounts within the time
13 allowed by law.

**§44-3A-28. When personal representative not liable for funds
distributed.**

1 If any personal representative after one year from the
2 qualification of the first executor or administrator of the
3 estate, and after the report of claims has been made by the
4 probate clerk or probate commissioner, as may be, and been
5 confirmed by the county commission, and after withholding

6 such funds as the fiduciary supervisor or fiduciary
7 commissioner shall direct to meet any contingent and
8 unmatured claims and claims in action or suit, shall pay any
9 legacy given by the will, or distribute any of the estate of his
10 decedent in accordance with the probate clerk's or probate
11 commissioner's report as confirmed, such personal
12 representative shall not, on account of what is so paid or
13 distributed, be personally liable for any debt or demand
14 against the decedent, whether it be of record or not, unless,
15 within the time fixed for presentation of claims under the
16 provisions of sections four and nineteen of this article or for
17 suing thereon, such claim was duly and timely presented or
18 action or suit thereon commenced and process served on
19 such personal representative.

§44-3A-29. When claims and legacies may be paid and estate distributed.

1 After the report of the fiduciary supervisor or the fiduciary
2 commissioner on the claims against the estate of any
3 decedent has been confirmed as aforesaid, and after one year
4 from the time of the qualification of the first executor or
5 administrator shall have elapsed, or four months in the case
6 of settlements made pursuant to section nineteen of this
7 article, the personal representative may pay the claims
8 allowed by the commissioner against the decedent's estate or
9 certified to him by courts wherein judgments or decrees
10 against the estate have been rendered, according to the order
11 of payment set forth in such supervisor's or commissioner's
12 report, and pay legacies and distribute the surplus among the
13 parties entitled thereto in the amounts and proportions
14 determined by such supervisor or commissioner in his report
15 as confirmed, withholding such sum as such report as
16 confirmed states to be necessary for the payment of any
17 contingent, unliquidated or disputed claims, or claims not
18 matured, or the proportions of any such equal to what is
19 allowed to other creditors of the same class, and upon the
20 determination from time to time of any such claims further
21 payments and distributions may be made as the
22 circumstances require. If the personal representative shall
23 fail or refuse to pay claims and make distribution within three
24 months following the time when he may legally do so, and no
25 appeal has been taken from the order of confirmation of the
26 report on claims, any party interested may institute an action

27 against such personal representative to compel payment and
28 distribution as provided by section twenty, article four of this
29 chapter.

30 Any other provisions of this chapter to the contrary
31 notwithstanding, including the provisions of this section,
32 neither a personal representative nor his surety shall be liable
33 for the amount of any claim or distributive share made within
34 the period of a year from the time of qualification if the estate
35 has been finally settled pursuant to the provisions of section
36 nineteen of this article and, notwithstanding any other
37 provision of this chapter, every estate may be settled prior to
38 the expiration of one year if such settlement complies in all
39 respects with the provisions of said section nineteen of this
40 article.

**§44-3A-30. Accounting for money not disposable at time of
settlement; subsequent distribution of such
money.**

1 Notwithstanding any other provision of law, if an estate is
2 otherwise ready for final settlement and the personal
3 representative holds any sum or sums of money necessary for
4 the payment or distribution of any contingent, unliquidated,
5 unmatured or disputed bequest or claim, which cannot be
6 paid or distributed because the whereabouts of the claimant
7 or distributee are unknown, or cannot be paid or distributed
8 for any other reason, he may, with the consent of the fiduciary
9 supervisor or fiduciary commissioner to whom the estate has
10 been referred, pay such sum or sums to the general receiver of
11 the circuit court in the county in which the estate is being
12 administered. Any such payment, together with a receipt
13 therefor, shall be reflected and shown in such supervisor's or
14 commissioner's final report. After said report is confirmed by
15 the county commission, such personal representative shall
16 not be personally liable for any such aforesaid bequest or
17 claim.

18 Any person entitled to any funds paid to a general receiver
19 of a circuit court pursuant to the provisions of this section
20 may petition the circuit court in a summary proceeding for an
21 order directing the distribution of such funds. Any person
22 believed to have any claim to or interest in said funds shall be
23 made a party defendant to such petition and shall be given
24 such notice of any hearing thereon as the circuit court may
25 direct. The circuit court shall enter an order directing the

26 distribution of said funds to the person or persons entitled
27 thereto. The costs of said proceedings shall be paid from the
28 funds.

§44-3A-31. When personal representative not compelled to make distribution.

1 A personal representative shall not be compelled to pay any
2 legacy given by the will, or make distribution of the estate of
3 his decedent, until after a year from the date of the order
4 conferring authority on the first executor or administrator of
5 such decedent, or until four months following such order in
6 the case of settlements made pursuant to section nineteen of
7 this article and not then in either event unless the report of
8 claims against the estate made by the fiduciary supervisor or
9 fiduciary commissioner has been confirmed and no appeal
10 has been taken from the order of confirmation.

§44-3A-32. When claims not presented and proved barred of recovery from personal representative.

1 Every person having a claim against a deceased person,
2 whether due or not, who shall not, when notice to creditors
3 has been published as prescribed in this article, have
4 presented his claim on or before the one hundred twenty-day
5 time period fixed in such notice, or before that time have
6 instituted an action thereon, shall, notwithstanding the same
7 be not barred by some other statute of limitations that is
8 applicable thereto, be barred from recovering such claim of or
9 from the personal representative, or from thereafter setting
10 off the same by way of counterclaim or otherwise against the
11 personal representative in any action whatever; except that if
12 a surplus remain after providing for all claims presented in
13 due time, or on which action shall have been commenced in
14 due time, and such surplus shall not have been distributed by
15 the personal representative to the beneficiaries of the estate,
16 and the claimant prove that he had no actual notice of the
17 publication to creditors nor knowledge of the proceedings
18 before the fiduciary supervisor or fiduciary commissioner,
19 such creditor may prove his claim either before such
20 supervisor or commissioner or by action and have the same
21 allowed out of such surplus; and, in order that such late
22 claims if proved may be provided for, the fiduciary supervisor
23 or fiduciary commissioner shall reopen his report if the same
24 has not been returned to the county commission, or if
25 returned shall make and return a supplemental report.

§44-3A-33. When distributees and legatees may be sued on claims; extent of liability; costs.

1 Every creditor who shall not have presented his claim to the
2 fiduciary or the fiduciary supervisor before distribution of the
3 surplus by the personal representative, or before that time
4 shall not have instituted an action thereon against the
5 personal representative, may, if not barred by limitation,
6 bring his action against the distributees and legatees, jointly
7 or severally, at any time within two years after such
8 distribution. But no distributee or legatee shall be required to
9 pay to creditors suing by virtue of this section a greater sum
10 than the value of what was received by him out of the
11 decedent's estate, nor shall any distributee or legatee be
12 required to pay to any one creditor a greater proportion of
13 such creditor's debt than the value of what was received by
14 such distributee or legatee bears to the total estate
15 distributed. A creditor suing by virtue of this section shall not
16 recover against such distributees and legatees the costs of his
17 action.

§44-3A-34. When enforcement of lien to secure claim barred.

1 When the right to bring an action against distributees and
2 legatees on any claim against the decedent shall become
3 barred, the right to enforce such claim against real estate shall
4 also become barred to the extent that such claim could have
5 been collected out of the personal assets of the decedent. The
6 provisions of this section shall not apply to liens upon real
7 property acquired or created in the lifetime of the decedent,
8 made or created to secure claims due and payable in future
9 installments or at a future date.

§44-3A-35. Fiduciary commissioners.

1 The county commission of each county shall appoint not
2 more than four fiduciary commissioners, except that in
3 counties in which there exists a separate tribunal for police
4 and fiscal purposes, such tribunal shall appoint such
5 commissioners: *Provided*, That the county commission or
6 such separate tribunal shall avoid reference of estates to such
7 commissioners, unless such reference is necessary.

§44-3A-36. Fiduciary commissioners; powers and duties generally.

1 The fiduciary commissioners shall have general or limited
2 supervision, as may be, of all fiduciary matters that are

3 referred to them, and of the fiduciaries in charge thereof, and
4 shall make all ex parte settlements of the accounts of such
5 fiduciaries. Such commissioners shall have power to
6 summon and compel the attendance of witnesses, to swear
7 and examine witnesses, take their depositions and certify
8 their testimony.

§44-3A-37. Special fiduciary commissioners; continuance of present references; compensation.

1 (a) When, from any cause, none of the fiduciary
2 commissioners can act as to any matter or matters which
3 may be passed on under the provisions of this chapter, such
4 commission or tribunal in lieu thereof, may appoint some
5 other person to act as to such matter or matters, and such
6 person shall have the power and compensation and perform
7 the duties of a fiduciary commissioner. And when any
8 fiduciary commissioner resigns, or is removed, such
9 commission or tribunal may provide for the completion of the
10 matters previously referred to such commissioner.

11 (b) Any matters or estates heretofore referred to a
12 commissioner of accounts or special commissioner of
13 accounts shall not be recalled solely by reason of the
14 amendment and reenactment of this chapter. Commissioners
15 of accounts or special commissioners of accounts shall be
16 continued in office as special fiduciary commissioners until
17 all such matters heretofore referred to them shall, in the
18 ordinary course of events, be concluded or until otherwise
19 recalled for cause.

20 (c) All special fiduciary commissioners, whether
21 appointed pursuant to subsection (a) of this section or
22 continued in office pursuant to subsection (b) hereof, shall be
23 subject in all respects to the provisions of this chapter,
24 including, but without limiting the generality hereof, the
25 provisions of section forty-two of this article with respect to
26 fees to be charged.

§44-3A-38. Matters that will disqualify fiduciary commissioners.

1 No person shall perform the duties of a fiduciary
2 commissioner or special fiduciary commissioner in any
3 matter wherein he will be passing upon his own account or
4 acts; nor, where he will be called to pass upon any account or
5 acts with reference to which he served as attorney or
6 counselor; nor shall he be in any manner interested in the fees

7 or emoluments of any fiduciary whose accounts or acts are
8 before him for any action required by this chapter; nor shall
9 he be surety on the bond of the fiduciary whose accounts are
10 before him, or agent of, or pecuniarily associated with,
11 another who may be such surety; nor shall he be qualified to
12 act in or pass upon any matter before him in which, were he a
13 judge of the circuit court and the matter were therein
14 pending, he would for any reason be disqualified to serve.
15 Any person who violates this section shall be guilty of a
16 misdemeanor, and, upon conviction thereof, shall, for each
17 and every violation, be fined not less than fifty nor more than
18 five hundred dollars or imprisoned in the county jail for not
19 more than six months, or punished by both fine and
20 imprisonment at the discretion of the court; and upon such
21 conviction his office shall ipso facto become vacant.

§44-3A-39. Disposition by fiduciary commissioner of inventories and accounts of sales.

1 The fiduciary commissioner shall inspect all inventories
2 and accounts of sales returned to him by the fiduciary
3 supervisor or by fiduciaries, require the same to be executed
4 in triplicate and in proper form, and, within ten days after
5 they are respectively received and approved by him, deliver
6 three copies thereof to the fiduciary supervisor of the county
7 for delivery or to be mailed to those persons or agencies
8 required to have the same by law. Any such commissioner
9 who fails, refuses or declines to comply with the provisions of
10 this section shall be guilty of a misdemeanor and shall be
11 punished for each offense by a fine of not less than
12 twenty-five dollars nor more than five hundred dollars.

§44-3A-40. Fiduciary commissioners to inspect bonds of fiduciaries.

1 Each fiduciary commissioner shall, at least once each
2 month, ascertain from the records of the county commission
3 of his county what estates and fiduciary matters have been
4 referred to him generally by the county commission or the
5 fiduciary supervisor, since such commissioner's last
6 inspection of the records, and examine as to each fiduciary, in
7 any such estate or matter, whether he has given such bond as
8 the law requires. If the matter has been referred to such
9 fiduciary commissioner solely for the purpose of settling a
10 limited dispute as opposed to a general reference, no such
11 examination of the record for the purposes set forth herein

12 need be made by such commissioner. If it appears that the
13 fiduciary has given no bond, or that his bond is defective, or
14 that the surety therein has removed from the state, died, or
15 become insolvent, or is bound already in too many other
16 bonds, the commissioner shall make report thereof to his
17 commission at its next term and at the same time shall have
18 such fiduciary summoned to appear at such term to show
19 cause why he should not give such bond as is required by law.
20 At such term such fiduciary shall be required forthwith to
21 give such bond as is required by law, or shall have his
22 authority revoked. And until a fiduciary has fully
23 administered the estate or trust under his charge, and made
24 his final account, the commissioner shall annually make like
25 inspections of the bonds of such fiduciary, and make like
26 reports thereof and issue like summons whenever facts exist
27 requiring same, and the commission shall make such order as
28 may be warranted by the facts then determined. An appeal
29 from the order of the county commission on any such order
30 shall lie to the circuit court of the county, on request of the
31 fiduciary or of the fiduciary commissioner if applied for
32 before the end of the term of the county commission at which
33 such order was made. When such appeal is taken, the clerk of
34 the county commission shall certify all papers in the matter,
35 including a copy of the bond, to the clerk of the circuit court,
36 where the same shall be docketed and proceeded with as
37 other appeals from the county commission.

38 With respect to estates or matters which have not been
39 referred generally to a fiduciary commissioner, the fiduciary
40 supervisor shall perform all duties required by this section to
41 be performed by the fiduciary commissioner.

**§44-3A-41. When county commission to refer controversies to
fiduciary commissioner; rules of procedure.**

1 The county commission, whenever any controversy arises
2 in connection with the probate of any will, or with the
3 appointment and qualifications of personal representatives,
4 guardians, committees or curators, or with the settlement of
5 the accounts of any fiduciary, may, of its own motion, or on
6 the motion of any party thereto, and shall, on the joint
7 demand of the parties then appearing of record to the
8 proceeding, refer the matter to a fiduciary commissioner, or
9 to a person specifically appointed to act as such
10 commissioner, to hear proof on the same, to make findings

11 thereon, and to advise the commission on the law governing
12 the decision of the matter. Any party may except to such
13 commissioner's findings of fact or law, and the commission
14 shall hear the case on the fiduciary commissioner's report and
15 the exceptions thereto, without taking any additional
16 evidence. In hearing and reporting on any such matter the
17 fiduciary commissioner shall be governed as to procedure by
18 the law and practice, so far as applicable, controlling
19 commissioners in chancery.

**§44-3A-42. Fees to be charged by fiduciary supervisor or
fiduciary commissioner; disposition of fees.**

1 (a) The fiduciary supervisor shall charge and collect at the
2 time of qualification of the fiduciary of a decedent's estate, a
3 fee of forty dollars of which sum, five dollars shall be
4 forwarded to the state tax commissioner. The moneys so
5 forwarded to the state tax commissioner shall be deposited in
6 the office of the treasurer of the state in a special fund,
7 designated "The Inheritance Tax Administration Fund," to
8 be used to defray, in whole or in part, the costs of
9 administration of the taxes imposed by article eleven, chapter
10 eleven of this code in order to facilitate the prompt
11 administration of the provisions imposed by said article. The
12 remaining thirty-five dollars shall be deposited in the county
13 fiduciary fund as provided in section forty-three of this
14 article. Such fee shall be paid to include all services of the
15 fiduciary supervisor for the settlement of every such
16 decedent's estate which is settled pursuant to the provisions
17 of section nineteen of this article. All such fees shall
18 also include the cost of publication of the notice re-
19 quired by section four of this article, and the notice re-
20 quired by section nineteen of this article, but shall not
21 include the cost of any mailings or of the cost of record-
22 ing any documents required to be recorded in the office
23 of the clerk of the county commission by the provisions of
24 this chapter.

25 In the event the fiduciary supervisor is required to examine
26 and prepare a statement of deficiencies, including reasons for
27 disapproving any of the documents required to be filed by the
28 personal representative of any decedent's estate, he shall
29 charge and collect from such personal representative a fee of
30 ten dollars.

31 (b) In addition to the fees set forth in subsection (a) of this

32 section, the fiduciary supervisor shall charge a fee, to be fixed
33 by the county commission in the manner provided in
34 subsection (c) of this section for conducting hearings,
35 granting continuances of hearings, considering evidence, for
36 drafting recommendations with respect to such hearings and
37 for appearing before the county commission with respect
38 thereto and any other matters of an extraordinary nature not
39 normally included within a summary settlement as
40 contemplated by section nineteen of this article.
41 Such fee shall be used to defray the costs imposed by or
42 incidental to any extraordinary demands by or conditions
43 imposed by a fiduciary or imposed by the circumstances of
44 the estate.

45 (c) The fiduciary supervisor or fiduciary commissioner
46 shall prepare a voucher for the county commission, which
47 voucher shall be itemized and shall set forth in detail all of the
48 services performed and the amount charged for such service
49 or services. Such voucher shall also indicate in each instance
50 if the service was actually performed by the fiduciary
51 supervisor or fiduciary commissioner or whether such
52 service was performed by an employee or deputy of such
53 supervisor or commissioner. All vouchers shall reflect the
54 services rendered pursuant to the initial fee charged and
55 collected as provided in subsection (a) of this section and, in
56 addition thereto, shall indicate those services for which
57 charges are to be made over and above that amount. In the
58 case of any service for which a fee is not fixed by this section,
59 or the fee fixed is based on time expended, the voucher shall
60 show the actual time personally expended by the supervisor
61 or commissioner, to the nearest tenth of an hour. All such
62 vouchers shall be verified prior to submission to the county
63 commission for approval. Upon approval of any such
64 voucher, the same shall be charged against the estate to
65 which the same applies. In reviewing any fee charged by
66 either the fiduciary supervisor or a fiduciary commissioner
67 the county commission shall consider the following:

- 68 (1) The time and effort expended;
- 69 (2) The difficulty of the questions raised;
- 70 (3) The skill required to perform properly the services
71 rendered;
- 72 (4) The reasonableness of the fee;
- 73 (5) Any time limitations imposed by the personal
74 representative, any beneficiary or claimant, or by the

75 attendant circumstances; and

76 (6) Any unusual or extraordinary circumstances or
77 demands or conditions imposed by the personal
78 representative, any beneficiary or claimant or by the
79 attendant circumstances. The county commission may
80 approve any such voucher or may reduce the same, as it
81 deems proper, after considering those matters set forth in this
82 subsection. Any such approval shall be by order of the
83 commission and be entered of record by the clerk of the
84 county commission in the fiduciary record book and the
85 general order books of the commission. In no event shall any
86 fee for any service, whether performed by the fiduciary
87 supervisor or the fiduciary commissioner, be fixed, charged
88 or approved which is based upon or with reference to the
89 monetary value of the estate or of the amount in controversy
90 upon any disputed issue or fact of law.

91 (d) For every estate other than a decedent's estate, there
92 shall be charged by the fiduciary supervisor at the time of
93 qualification, a fee of twenty-five dollars, which fee shall
94 include all services performed by the fiduciary supervisor
95 with respect to such estate from the time of qualification of
96 the personal representative thereof until and including the
97 filing of the first annual settlement. For each additional or
98 subsequent annual or triennial settlement, the fiduciary
99 supervisor shall charge and collect a fee of ten dollars.

100 (e) The county commission or other tribunal in lieu
101 thereof, shall, by order, establish or fix a schedule of
102 suggested fees or rates of compensation for the guidance of
103 the fiduciary supervisor and any fiduciary commissioner in
104 preparing their respective vouchers for fees other than those
105 fees fixed by any provision of this section or of this chapter. A
106 copy of these fees or rates shall be posted in a conspicuous
107 place in the county courthouse.

§44-3A-43. County fiduciary fund.

1 (a) The county commission, or tribunal in lieu thereof,
2 shall create a special county fund pursuant to the provisions
3 of section nine, article one, chapter seven of this code called
4 the "County Fiduciary Fund." All moneys received by the
5 fiduciary supervisor shall be deposited in said fund and the
6 county commission or tribunal shall pay from said fund all
7 salaries and expenses of the fiduciary supervisor and all other
8 expenses associated with the probate system, exclusive of the

9 fees of fiduciary commissioners or special fiduciary
10 commissioners and exclusive of recording fees which shall be
11 collected by the fiduciary supervisor and paid to the clerk of
12 the county commission. The said commission or tribunal is
13 authorized to transfer any other county funds as may be
14 available to said "County Fiduciary Fund."

15 (b) Every county commission or tribunal in lieu thereof,
16 which shall adopt and use the procedure set forth in this
17 article, shall report to the Legislature on or before the first
18 day of the regular session thereof held in the year one
19 thousand nine hundred eighty-three, and on the first day of
20 every regular session held in the next succeeding three years
21 thereafter, as to the moneys received into or spent from the
22 county fiduciary fund of the county to the date of such report,
23 and of all moneys transferred into said fund and spent from it
24 or by such county commission for probate matters or other
25 matters relating to the administration of estates. The tax
26 commissioner shall prescribe by procedural rule the form and
27 content of such report which shall be in sufficient detail so as
28 to permit the identification of the activity or activities
29 generating the income of such fund and to identify by
30 function and purpose all expenditures with sufficient detail
31 to enable the Legislature to determine the extent to which the
32 probate system and other estate matters are functioning in an
33 efficient and economical manner and the fiscal implications
34 thereof. Such reports shall be filed by each such county
35 commission or tribunal in lieu thereof with the tax
36 commissioner no later than ten days prior to the first day of
37 each said session of the Legislature and the tax commissioner
38 shall thereafter properly collate and file such reports with the
39 clerk of each house of the Legislature on or before the first
40 day of each such regular session.

**§44-3A-44. Rules applicable to fiduciary supervisors and
fiduciary commissioners; exceptions as to
certain counties.**

1 (a) Subject to the provisions of subsection (c) of this
2 section and to the provisions of article thirteen of this
3 chapter, any power, authority or duty conferred upon the
4 clerk of the county commission with respect to the
5 settlement, regulation and supervision of estates in any
6 provision of this article or in any provision of this code is
7 hereby transferred to the fiduciary supervisor created under

8 the provisions of section three, article three-a of this chapter.

9 Whenever by any provision of this article any paper,
10 document or record is required or permitted to be recorded,
11 the fiduciary supervisor shall tender the same to the clerk of
12 the county commission and such clerk of the county
13 commission shall admit the same to record and shall record
14 the same at the expense of the personal representative, and
15 the fiduciary supervisor shall collect such fees as are required
16 by law for the recordation of such documents and all such
17 fees so collected and paid to the clerk of the county
18 commission shall be disposed of and accounted for in the
19 same manner as if such fees had been collected as for the
20 recordation of deeds.

21 (b) Any reference in this code to commissioner of
22 accounts or to fiduciary commissioner or to any power,
23 authority or duty conferred upon a commissioner of accounts
24 is hereby intended to mean and in all respects is conferred
25 upon the fiduciary commissioner created by section
26 thirty-five of this article, and, as to matters permitted by law
27 to be done by the fiduciary supervisor, upon such fiduciary
28 supervisor.

29 (c) Any provision of this article or of article one of this
30 chapter to the contrary notwithstanding, in each county in
31 which there exists a separate tribunal for police and fiscal
32 purposes created under section thirty-four, article VIII of the
33 Constitution of one thousand eight hundred seventy-two, the
34 clerk of the county commission shall have the power and
35 discharge the duties which are by any provision of this
36 chapter conferred upon the fiduciary supervisor or the clerk
37 of the county commission.

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

- §44-4-1. Record of appraisalment.
- §44-4-2. Fiduciaries to exhibit accounts for settlement.
- §44-4-3. Fiduciaries from whom inventories, appraisals or accounts are due when this article effective may be proceeded against.
- §44-4-4. Fiduciaries of small estates may account once in three years.
- §44-4-5. Examination of bonds at time of accounting, and when requested by interested party.
- §44-4-6. Settlement for previous years; objections to account.
- §44-4-7. Failure to account forfeits commissions unless allowed by circuit court or county commission.
- §44-4-8. How accounting compellable by person interested.
- §44-4-9. Publication of list of fiduciaries prior to settlements.
- §44-4-10. Securities and moneys to be exhibited to fiduciary commissioner.

- §44-4-11. Liability for losses or failure to make defense.
- §44-4-12. Compensation and expenses of fiduciaries.
- §44-4-13. Receipt to be given fiduciaries for vouchers.
- §44-4-14. Reports of fiduciary commissioner.
- §44-4-15. Exceptions to report.
- §44-4-16. Filing of report and vouchers.
- §44-4-17. Examination and correction or recommittal of report.
- §44-4-18. Effect of confirmation of report; how made conclusive.
- §44-4-19. Investment of funds may be ordered.
- §44-4-20. Disbursement of balance after settlement; suit to compel disbursement; final report of fiduciary following disbursement.
- §44-4-21. How fiduciary accounts settled in suits to be recorded.

§44-4-1. Record of appraisements.

- 1 Every appraisal returned under this article shall be
- 2 recorded by the clerk of the county commission in
- 3 appropriate books and indexed in the same manner as the
- 4 record of fiduciaries.

§44-4-2. Fiduciaries to exhibit accounts for settlement.

- 1 A statement of all the money which any personal
- 2 representative, guardian, curator or committee, has received,
- 3 become chargeable with or disbursed, within six months
- 4 from the date of his qualification, or within any succeeding
- 5 six-month period, together with the vouchers for such
- 6 disbursements, shall, within two months after the end of
- 7 every such period be exhibited by him before the fiduciary
- 8 commissioner to whom the estate or trust has been referred.
- 9 If any fiduciary fails to make an exhibit, the fiduciary
- 10 commissioner before whom he should make the exhibit shall
- 11 proceed against him in the appropriate circuit court, and the
- 12 court shall impose the same penalties, unless the fiduciary is
- 13 excused for sufficient reason, as are provided in cases where
- 14 fiduciaries fail to return appraisements.

§44-4-3. Fiduciaries from whom inventories, appraisals or accounts are due when this article effective may be proceeded against.

- 1 Any fiduciary who has been appointed or qualified before
- 2 this article takes effect and has not given sufficient bond, nor
- 3 returned any appraisal as required by law, nor has had
- 4 any appraisal made of the estate under his control and
- 5 management, nor has fully and finally accounted, may be
- 6 summoned, by the fiduciary commissioner as the county
- 7 commission may designate, to appear before him to return
- 8 the appraisal or account as may be due from him, or to appear
- 9 before the county commission or clerk and give a sufficient

10 bond, if one has not been given. Any fiduciary who fails to
11 comply with the summons shall be proceeded against in the
12 same manner, and be subject to the same penalties, as this
13 article provides for fiduciaries who fail to return
14 appraisements.

§44-4.4. Fiduciaries of small estates may account once in three years.

1 A fiduciary who is in charge of a trust fund, the principal of
2 which is not distributable until some future time, shall not be
3 compellable by a fiduciary commissioner to make statement
4 of his account, before the time for distribution of principal,
5 oftener than once in every three years, if he shows to the
6 satisfaction of such fiduciary commissioner that the income
7 of the trust fund in his hands does not average annually more
8 than eight hundred dollars; nor shall the fiduciary, in such
9 case, lose his commissions, or suffer any penalties, for failure
10 to account oftener than herein provided for: *Provided*, That
11 upon proper application by an interested party to the county
12 commission or circuit court which appointed the fiduciary,
13 and upon a sufficient and proper showing being made, such
14 county commission or circuit court may order such fiduciary
15 to account at any time.

§44-4.5. Examination of bonds at time of accounting, and when requested by interested party.

1 When any fiduciary, except a sheriff, presents the statement
2 required of him by law before a fiduciary commissioner or
3 before a commissioner in chancery having before him the
4 account of the fiduciary for settlement, the fiduciary
5 commissioner or commissioner in chancery, as the case may
6 be, shall examine whether the fiduciary has given bond as the
7 law requires, and whether the penalty thereof and the sureties
8 thereon are sufficient. The fiduciary commissioner to whom
9 the estate or trust was referred shall, upon the application of
10 any interested person at any time before the statement is
11 presented, and after reasonable notice to the fiduciary,
12 examine any matters, or inquire whether security ought to be
13 required of a fiduciary who may have been allowed to qualify
14 without giving it, or whether, by reason of the incapacity,
15 misconduct or removal of any fiduciary from this state, or for
16 any other cause, it is improper to permit the estate of the
17 decedent, ward, beneficiary, or other person, to remain under
18 his control. The result of every examination and inquiry shall

19 be reported by the fiduciary commissioner to the county
20 commission then having jurisdiction over the fiduciary and
21 his account.

§44-4-6. Settlements for previous years; objections to account.

1 When a fiduciary commissioner has before him for
2 settlement the account of a fiduciary for any year, if there be
3 any time prior to such year for which the fiduciary has not
4 settled, the settlement shall be also for such time; and also if
5 there be any errors or omissions in accounts for any previous
6 years or periods the same shall be corrected in such
7 settlement. Any person who is interested or appears as next
8 friend for another interested in any such account may, before
9 the fiduciary commissioner, insist upon or object to anything
10 which could be insisted upon or objected to by him, or for
11 such other, before a fiduciary commissioner acting under an
12 order of a circuit court for the settlement thereof made in a
13 suit to which he or such other was a party.

**§44-4-7. Failure to account forfeits commissions unless allowed
by circuit court or county commission.**

1 If any such fiduciary fails to present to the fiduciary
2 commissioner, to whom the estate or trust has been referred,
3 a statement of receipts for any year, within two months after
4 its expiration, and though a statement be laid before such
5 fiduciary commissioner, yet if such fiduciary be found
6 chargeable for that year with any money not embraced in
7 such statement, he shall have no compensation for his
8 services during such year, nor commission on such money,
9 unless allowed by the county commission or circuit court.
10 This section shall not apply to a case in which, within two
11 months after the end of any one year, the fiduciary gives to
12 the parties entitled to the money received in such year, a
13 statement of such money, and actually settled therefor with
14 them; nor to a case in which, within such two months after
15 the end of any one year, a fiduciary presents a statement of his
16 receipts within the year before a fiduciary commissioner who
17 may, in a pending suit, have been ordered to settle his
18 account.

§44-4-8. How accounting compellable by person interested.

1 If any fiduciary fails to present to a fiduciary commissioner
2 a statement of his receipts for any year, the county
3 commission shall, upon request made to it, within ten years
4 from the commencement of that year, by any person who is

5 interested as creditor, legatee, distributee, surety of such
6 fiduciary, or otherwise, or who appears as next friend of a
7 person under disability who is so interested, refer the matter
8 to one of the fiduciary commissioners, who shall issue a
9 summons directed to the sheriff or other officer of any
10 county, requiring him to summon the fiduciary to present to
11 the fiduciary commissioner a statement of his receipts and
12 disbursements, accompanied by his vouchers, for that year,
13 and for the time which may have since elapsed. If the same is
14 not, within one month after the service of the summons,
15 presented to the fiduciary commissioner, he shall report the
16 fact to the circuit court of his county, or to the judge thereof in
17 vacation, and the fiduciary shall be proceeded against in like
18 manner, and be subject to the same penalty, as is provided in
19 cases where fiduciaries fail to return inventories of their
20 respective estates.

§44-4-9. Publication of list of fiduciaries prior to settlements.

1 Every fiduciary commissioner shall, on the first Monday of
2 every month, prepare a list of the fiduciaries whose accounts
3 are at the date of such list before him for settlement, except
4 those that may have been mentioned in some previous list. He
5 shall state the names of the fiduciaries, the nature of their
6 accounts, whether they act as personal representative,
7 guardian, curator or committee and the names of their
8 decedents, or of the persons for whom they are guardians,
9 curators or committees. He shall also publish such list each
10 month as a Class II legal advertisement in compliance with
11 the provisions of article three, chapter fifty-nine of this code,
12 and the publication area for such publication shall be the
13 county. The first publication of the list shall be made on said
14 first Monday of the month, or on some following day of the
15 same week. No account of any fiduciary shall be completed
16 by any fiduciary commissioner until it has been mentioned in
17 such a list, nor until the completion of the publication. Any
18 fiduciary commissioner who fails to publish this list shall be
19 fined twenty dollars. The cost of the publication of the list
20 shall be borne by the fiduciary commissioner, but he may
21 charge to, and collect from, each of the fiduciaries in the list
22 his proportionate part of the cost thereof as and when the
23 fiduciary commissioner collects his fees for settling the
24 accounts of the fiduciary.

§44-4-10. Securities and moneys to be exhibited to fiduciary commissioner.

1 In settling the account of any fiduciary, the fiduciary
2 commissioner may require him, or any of them, if there are
3 more than one, to produce, before the completion of the
4 account, any securities or moneys comprised in the account
5 or any documents relating to the investments of the estate,
6 and the fiduciary commissioner shall check the same with the
7 items with which the fiduciary has charged himself, and with
8 the appraisal of the estate or trust. The commissioner in
9 his report shall show what money and securities were so
10 produced before him. In case the fiduciary commissioner
11 finds a shortage of money or securities, he shall cause a rule to
12 be issued against the fiduciary to show cause before the
13 circuit court, or judge thereof in vacation, of the county
14 wherein such fiduciary qualified, why such fiduciary should
15 not be required to replace any moneys or securities that have
16 been improperly applied or disposed of, or the value thereof.
17 The proceedings upon every such rule shall be considered for
18 all purposes to be proceedings in equity, and the orders and
19 decrees therein shall be enforceable accordingly. The court or
20 judge thereof shall have full power to require the fiduciary to
21 replace any moneys, securities or property that have been
22 improperly applied or disposed of, or the value thereof, or to
23 pay or transfer the same or any moneys, securities or
24 property, with which the fiduciary may be charged, into a
25 proper account or otherwise, as the court or judge thereof
26 may order. If the order or decree is not complied with within
27 a time to be fixed by the court, the powers of the fiduciary
28 shall be revoked and annulled, and the court shall so order.
29 The failure of the fiduciary to comply with the order or decree
30 shall also be a breach of the fiduciary's bond.

§44-4-11. Liability for losses or failure to make defense.

1 If any personal representative, guardian, curator or
2 committee shall, by his negligence or improper conduct, lose
3 any debt or other money, he shall be charged with the
4 principal of what is so lost and interest thereon in like manner
5 as if he had received such principal. And if any personal
6 representative, guardian, curator or committee shall pay any
7 debt, the recovery of which could be prevented by reason of
8 illegality of consideration, or lapse of time, or otherwise,
9 when he knows, or by the exercise of due diligence could

10 ascertain, the facts by which the same could be so prevented,
11 no credit shall be allowed him therefor.

§44-4-12. Compensation and expenses of fiduciaries.

1 The fiduciary commissioner in stating and settling the
2 account shall allow the fiduciary any reasonable expenses
3 incurred by him as such; and also, except in cases in which it
4 is otherwise provided, a reasonable compensation in the form
5 of a commission on receipts or otherwise. Any executor,
6 administrator, guardian, committee, assignee, receiver,
7 special fiduciary commissioner, or other fiduciary, required
8 by law, or by the order of any court or judge, to give a bond or
9 obligation as such, may include, as a part of the lawful
10 expense of executing his duties, such reasonable sum paid a
11 company, authorized under the laws of this state so to do, for
12 becoming his surety on such bond or obligation, as may be
13 allowed by the court in which, or the fiduciary commissioner
14 before whom, he is required to account, or a judge of such
15 court, not exceeding, however, one third of one percent per
16 annum on the amount of such bond or obligation.

§44-4-13. Receipt to be given fiduciaries for vouchers.

1 Any fiduciary commissioner or commissioner in chancery,
2 having before him the accounts of a fiduciary for settlement,
3 shall, on request, execute and deliver to such fiduciary a
4 receipt for all vouchers filed with him. That receipt, if such
5 vouchers be afterwards lost or destroyed, shall, in any suit or
6 proceeding against such fiduciary, be evidence of the delivery
7 to the fiduciary commissioner of the vouchers therein
8 mentioned.

§44-4-14. Reports of fiduciary commissioner.

1 Every account stated under this article shall be reported
2 with any matters specially stated, deemed pertinent by the
3 fiduciary commissioner, or which may be required by any
4 person interested to be so stated.

§44-4-15. Exceptions to report.

1 Upon completion of such report of settlement of account
2 the fiduciary commissioner shall give notice thereof, either
3 verbally or in writing, delivered personally or by mail, to all
4 parties interested or their attorneys, and hold the report,
5 vouchers and any evidence taken in connection with the
6 report, in his office for ten days, during which time any

7 person interested may inspect the same and file exceptions
8 thereto.

§44-4-16. Filing of report and vouchers.

1 The fiduciary commissioner shall file the report in the
2 office of the court by which he is appointed, as soon as
3 practicable after the expiration of such ten days; and with his
4 report he shall return all evidence taken before him and such
5 exceptions, with such remarks as he may see fit to make, and
6 such of the vouchers as any person interested may desire him
7 to return, or as he may deem proper.

§44-4-17. Examination and correction or recommittal of report.

1 The county commission, at its first regular term occurring
2 not less than ten days after the report has been filed in the
3 office of its clerk, shall examine the same, with the evidence
4 and such exceptions to the report as may be filed at any time
5 before such examination. It shall correct any errors which
6 shall appear from the exceptions, and any appearing on the
7 face of the account, whether excepted to or not; and to this
8 end may commit the report to the same, or to another
9 fiduciary commissioner, as often as the county commission
10 sees cause; or it may confirm the report in whole or in a
11 qualified manner. The county commission, and the circuit
12 court, if there be appeal from the county commission in any
13 such matter, shall hear no new evidence, but, if good cause
14 therefore be shown, the commission may recommit the report
15 for the taking of further evidence and further report. The
16 clerk shall, in a book kept for the purpose, record every report
17 which may be confirmed, and at the foot of it the order of
18 confirmation. The evidence and any exceptions shall remain
19 on file in the clerk's office, but any voucher returned with the
20 report or remaining with the fiduciary commissioner at the
21 time of such confirmation, and not wanted for any further
22 matter of inquiry before him, shall be returned by him to the
23 party who filed the same.

§44-4-18. Effect of confirmation of report; how made conclusive.

1 The report, to the extent to which it may be so confirmed by
2 the county commission, or confirmed on appeal by the circuit
3 court, shall be taken to be correct, and shall be binding and
4 conclusive upon creditors of a decedent's estate, and binding
5 and conclusive upon every beneficiary of the estate who has
6 had notice that the report has been laid before the fiduciary

7 commissioner for settlement, or upon completion of the
8 report was notified by the fiduciary commissioner of its
9 completion and that the same would remain in his office ten
10 days subject to inspection and exception. Such notices to any
11 creditor or beneficiary who is under disability shall be given
12 by personal service on the guardian or committee of such
13 person. Where the report is that of a guardian, committee or
14 curator, the notice shall be served personally on the infant,
15 ward or beneficiary and on the person or persons having his
16 custody, or upon the guardian ad litem of such infant, ward or
17 beneficiary that may be appointed for the purpose by the
18 county commission.

§44-4-19. Investment of funds may be ordered.

1 When it appears by a report made as aforesaid or a special
2 report of the fiduciary commissioner that money is in the
3 hands of such fiduciary, the county commission, before
4 which the report comes, may order the same to be invested or
5 loaned as provided in article six of this chapter.

**§44-4-20. Disbursement of balance after settlement; suit to
compel disbursement; final report of fiduciary
following disbursement.**

1 When a county commission has confirmed, either in whole
2 or in a qualified manner, a report of the accounts of any
3 personal representative, guardian, curator, committee as
4 aforesaid, the county commission may order payment of what
5 appears due on the accounts to such persons as would be
6 entitled to recover the same by a suit in equity. If the order is
7 not complied with, any person interested may bring a suit in
8 chancery in the circuit court of the county wherein such order
9 was made, to compel compliance therewith. In such suit the
10 commission's order shall be taken as prima facie correct, and
11 there shall be a decree according to the order except so far as
12 it may appear upon proper pleadings and proof to be
13 erroneous. If any fiduciary makes any payment in accordance
14 with the order of the county commission more than three
15 months after the order was made, and before suit has been
16 commenced under this section, the payment shall not be
17 disturbed nor shall the fiduciary be in anywise liable with
18 respect thereto. And when the personal representative,
19 guardian, curator or committee or other fiduciary has fully
20 paid out all the funds in his hands he shall within ninety days
21 thereafter, or at the first term of the commission thereafter,

22 make a final, full and detailed report to the commission of
23 such payments, and file therewith the vouchers for such
24 disbursements; and when the commission, upon examination
25 of such report and vouchers, ascertains the same to be
26 correct, it shall approve and confirm such report and order
27 the same to be recorded. The clerk of the commission
28 shall record every such report which may be so confirmed,
29 and at the foot of it the order of confirmation. It shall be the
30 duty of the fiduciary commissioner who made the report in
31 this section first mentioned, to require that the fiduciary
32 renders, in proper form, the final report herein required, and,
33 in case of the failure of the fiduciary to render a final report,
34 he shall be proceeded against in the same manner, and be
35 subject to the same penalties, as a fiduciary who fails to
36 return an inventory or to lay his accounts before a fiduciary
37 commissioner for settlement.

§44-4-21. How fiduciary accounts settled in suits to be recorded.

1 When the account of any fiduciary is settled in a suit, it shall
2 be the duty of the clerk of the court in which such suit is,
3 within ten days after the close of the term of court at which
4 the final decree in such suit is entered, to certify, to the clerk
5 of the county commission wherein such fiduciary qualified,
6 such account so far as the same has been confirmed, with a
7 memorandum at the foot thereof stating the style of the suit
8 and the date of the final decree, rendered in such suit. The
9 clerk receiving such account and memorandum so certified
10 shall record the same in the same book in which the accounts
11 settled before a fiduciary commissioner are recorded, and
12 after recordation the original account and memorandum shall
13 be returned to the clerk from whom the same were certified
14 and transmitted. If in any proceedings subsequent to such
15 final decree, by appeal or otherwise, the account is reformed
16 or altered, the reformed or altered account shall in like
17 manner be certified and recorded, together with a
18 memorandum stating the style of the suit and the date of the
19 decree of confirmation. The fees for making the certification
20 and for recording shall be paid as the court in which the suit
21 is, or the judge thereof, shall direct. Any clerk failing to
22 comply with this section shall be subject to the same
23 penalties as clerks of the county commission who fail to keep
24 a list of fiduciaries.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

- §44-5-1. List of fiduciaries.
- §44-5-2. Fiduciary records of circuit court to be deposited in county clerk's office.
- §44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.
- §44-5-4. Who not to be accepted as surety on fiduciary's bond.
- §44-5-5. When additional or new bond may be required of a fiduciary, or his authority be revoked.
- §44-5-6. Jurisdiction of court on revocation of fiduciary's authority.
- §44-5-7. Authority of fiduciaries to compound and compromise liabilities due to or from them.
- §44-5-8. How transfer of securities to successor compelled.
- §44-5-9. Costs in proceedings to compel fiduciaries to comply with law.
- §44-5-10. Powers of clerk of county commission in certain counties.
- §44-5-11. Designation of testamentary trustee as beneficiary of insurance.
- §44-5-12. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements.

§44-5-1. List of fiduciaries.

1 The clerk of the county commission of each county shall
2 keep a record, to be known as the "Record of Fiduciaries," in
3 which he shall enter, in separate columns, first, the name of
4 every fiduciary authorized to act as such by such county
5 commission or clerk thereof; secondly, the name of the
6 decedent for whose estate he is personal representative or
7 curator; thirdly, the names of the distributees of such estate,
8 showing their relation to the decedent; fourthly, the name of
9 the living person or persons for whom he is guardian, curator,
10 committee or trustee; fifthly, the penalty of his bond; sixthly,
11 the names of his sureties; seventhly, the date of the order
12 conferring his authority, and a reference to the book and page
13 where entered; eighthly, the date of any order revoking his
14 authority, and a reference to the book and page where
15 entered; ninthly, the date of the return of every inventory and
16 appraisement of the estate; tenthly, the date of the
17 confirmation of each report of settlement of the accounts of
18 such fiduciary; and the clerk shall index such record in the
19 name of the decedent, estate, ward or person represented by
20 such fiduciary. Any clerk failing to make such entry, as to any
21 fiduciary, within ten days after the order conferring or
22 revoking the authority, or the date of the return of such
23 inventory and/or appraisement, or the date of the
24 confirmation of any report of settlement, shall, for every such
25 failure, forfeit twenty dollars.

§44-5-2. Fiduciary records of circuit court to be deposited in county clerk's office.

1 The circuit court of each county shall, as soon as may be
2 after this code becomes effective, direct its clerk to transfer to
3 the office of the clerk of the county commission of its county
4 any wills, records of wills, records of the appointment and
5 qualification of personal representatives, guardians, curators
6 or committees, and records of their oaths, bonds, inventories,
7 appraisements and settlements, heretofore kept in their said
8 courts, and the clerk of the county court shall keep and
9 preserve the same among the other similar records of his
10 office. If the same are not properly and completely indexed
11 when deposited in his office, the county clerk shall make a
12 full and complete index to the same.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

1 Notwithstanding any other provision of law, no person not
2 a resident of this state nor any nonresident banking
3 institution nor any corporation having its principal office or
4 place of business outside this state may be appointed or act as
5 executor, administrator, curator, guardian or committee,
6 except that a testator who is a nonresident of this state at the
7 time of his death may name, and there may be appointed and
8 act, a nonresident as his executor, and except that for the
9 guardian of an infant who is a nonresident of this state there
10 may be appointed and act the same person who is appointed
11 guardian at the domicile of the infant: *Provided*, That
12 whenever the will of a decedent who was a resident of this
13 state at the time of his death, hereinafter in this section
14 referred to as "resident decedent," designates an individual,
15 who is the husband, wife, father, mother, brother, sister,
16 child, grandchild or sole beneficiary of such resident
17 decedent as executor, then such designated individual may
18 qualify and act as executor notwithstanding the fact that he is
19 a nonresident: *Provided, however*, That a nonresident
20 individual or individuals may be appointed as the
21 testamentary guardian of a resident infant if appointed in
22 accordance with the provisions of section one, article twelve
23 of this chapter: *Provided further*, That a nonresident
24 individual may be appointed as administrator of an estate in
25 accordance with the provisions of section four, article one of
26 this chapter and act as such administrator if such individual

27 be the husband, wife, father, mother, brother, sister, child,
28 grandchild or the sole beneficiary of a decedent who was a
29 resident of this state at the time of his death, hereinafter in
30 this section also referred to as a "resident decedent," and if
31 such individual may otherwise qualify as such administrator.
32 Nonresident executors and administrators of resident
33 decedents, and nonresident testamentary guardians shall
34 give bond with corporate surety thereon, qualified to do
35 business in this state, in such penalty as may be fixed
36 pursuant to the provisions of section seven, article one of this
37 chapter, except that such penalty in the case of a nonresident
38 executor shall not be less than (1) double the value of the
39 personal estate and (2) double the value of any real property
40 authorized to be sold under the will or the value of any rents
41 and profits from any real property which the will authorizes
42 the nonresident executor to receive, and except that such
43 penalty in the case of a nonresident administrator shall not be
44 less than double the value of the personal estate. The personal
45 estate of a resident decedent may not be removed from this
46 state until the inventory or appraisal of the resident
47 decedent's estate has been filed and any new or additional
48 bond required to satisfy the penalty specified above in this
49 section has been furnished. The liability of a nonresident
50 executor or administrator and such surety shall be several
51 and a civil action on any such bond may be instituted and
52 maintained against the surety, notwithstanding any other
53 provision of this code to the contrary, even though no civil
54 action has been instituted against the nonresident executor or
55 administrator.

56 When a nonresident qualifies as an executor, administrator
57 or guardian of an infant pursuant to the provisions of this
58 section, he thereby constitutes the clerk of the county
59 commission wherein the will was admitted to probate or
60 wherein he was appointed as administrator, or such clerk's
61 successor in office, his true and lawful attorney-in-fact upon
62 whom may be served all notices and process in any action or
63 proceeding against him as executor, administrator or
64 guardian or with respect to such estate, and such
65 qualification shall be a signification of the executor's,
66 administrator's or guardian's agreement that any notice or
67 process, which is served in the manner hereinafter in this
68 section provided, shall be of the same legal force and validity
69 as though the executor, administrator or guardian were

70 personally served with notice and process within this state.
71 Service shall be made by leaving the original and two copies
72 of any notice or process, together with a fee of five dollars,
73 with the clerk of such county commission. Such clerk shall
74 thereupon endorse upon one copy thereof the day and hour of
75 service and shall file such copy in his office and said service
76 shall constitute personal service upon such nonresident
77 executor, administrator or guardian: *Provided*, That the other
78 copy of such notice or process shall be forthwith sent by
79 registered or certified mail, return receipt requested, deliver
80 to addressee only, by said clerk to the nonresident executor,
81 administrator or guardian at the address last furnished by
82 him to said clerk and either (a) such nonresident executor's,
83 administrator's or guardian's return receipt signed by him or
84 (b) the registered or certified mail bearing thereon the stamp
85 of the post-office department showing that delivery therefor
86 was refused by such nonresident executor, or administrator
87 or guardian is appended to the original notice or process and
88 filed therewith in the office of the clerk of the county
89 commission from which such notice or process was issued.
90 No notice or process may be served on such clerk of the
91 county commission or accepted by him less than twenty days
92 before the return day thereof. The clerk of such county
93 commission shall keep a record in his office of all such
94 notices and process and the day and hour of service thereof.
95 The provision for service of notice or process herein provided
96 is cumulative and nothing herein contained shall be
97 construed as a bar to service by publication where proper or
98 to the service of notice or process in any other lawful mode or
99 manner. The fee of five dollars shall be deposited in the
100 county treasury.

101 If a nonresident testamentary guardian appointed pursuant
102 to this section fails or refuses to file an accounting by this
103 chapter while his ward remains a resident of this state, and
104 the failure continues for two months after the due date, he
105 may, upon notice and hearing, be removed or subjected to
106 any other appropriate order by the county commission, and if
107 his failure or refusal to account continues for six months, he
108 shall be removed as testamentary guardian by the county
109 commission.

110 Any nonresident executor, administrator or guardian who
111 removes from this state the personal estate of a resident
112 decedent or of the infant of a resident decedent without

113 complying with the provisions of this section, the provisions
114 of article eleven, chapter forty-four of this code or any other
115 requirement pertaining to fiduciaries generally, shall be
116 guilty of a misdemeanor, and, upon conviction thereof, shall
117 be punished by a fine of not more than one thousand dollars
118 or by confinement in the county jail for not more than one
119 year, or, in the discretion of the court, by both such fine and
120 imprisonment.

§44-5-4. Who not to be accepted as surety on fiduciary's bond.

1 A judge of the circuit court, member of the county
2 commission, clerk or deputy clerk of the circuit court or
3 county sheriff or deputy sheriff, fiduciary commissioner or an
4 attorney-at-law, shall not be taken as surety in any bond
5 required to be given by any fiduciary. When, for any reason,
6 the provisions of this section are violated in the taking of any
7 bond, the bond so given shall not be void, but upon the
8 discovery of such fact a new bond shall be required of the
9 fiduciary.

**§44-5-5. When additional or new bond may be required of a
fiduciary, or his authority be revoked.**

1 The county commission under whose order, or under the
2 order of whose clerk, any such fiduciary derives his authority,
3 when it appears proper on any report of the clerk or a
4 fiduciary commissioner or a commissioner in chancery, or on
5 evidence adduced before it by any party interested, may, at
6 any time, whether such fiduciary shall or shall not have
7 before given any bond, or whether he shall have given one
8 with or without sureties, order him to give before the
9 commission an additional bond within a prescribed
10 reasonable time, in such penalty, and with or without
11 sureties, as may appear proper; or when any surety on the
12 bond of a fiduciary, or the personal representative of any
13 surety, shall apply therefor, the commission shall order the
14 fiduciary to give before it a new bond within a prescribed
15 reasonable time, in such penalty, and with such sureties, as
16 may appear proper, it may, in either case, if the order be not
17 complied with, or whenever from any cause it appears proper,
18 revoke and annul the powers of such fiduciary. No such order
19 shall be made unless reasonable notice is given to the
20 fiduciary by the clerk or the fiduciary commissioner who
21 made the report, or by the surety or the personal
22 representative of the surety making the application aforesaid,

23 or by the service of a rule or otherwise. No such order of
24 revocation shall invalidate any previous acts of the fiduciary.

§44-5-6. Jurisdiction of court on revocation of fiduciary's authority.

1 After the date of any order revoking and annulling the
2 powers of any fiduciary, the county commission in which he
3 qualified shall exercise such jurisdiction, either by
4 appointing an administrator de bonis non, or a new guardian,
5 or otherwise, as it could have exercised if such fiduciary had
6 died at that date.

§44-5-7. Authority of fiduciaries to compound and compromise liabilities due to or from them.

1 It shall be lawful for any guardian, committee or trustee, to
2 compound and compromise any liability due to or from him,
3 provided that such compounding and compromise be ratified
4 and approved by a court of equity of competent jurisdiction,
5 all parties in interest being before the court by proper
6 process. When such compounding and compromise has been
7 so ratified and approved, it shall be binding on all parties in
8 interest before the court. It shall be lawful for any personal
9 representative to compound and compromise any liability
10 due to or from him, provided that compounding and
11 compromise is ratified and approved by the fiduciary
12 commissioner to whom the estate or trust has been referred,
13 or by a commissioner in chancery when the estate of the
14 decedent is being settled in a chancery suit, and is reported
15 by the fiduciary commissioner to his court. When the report is
16 confirmed, the compounding and compromise shall be
17 binding on all parties to the proceedings.

§44-5-8. How transfer of securities to successor compelled.

1 When any securities for money loaned or invested, or any
2 money, or property of any kind or nature, shall be standing in
3 the name of any fiduciary who shall have died or resigned, or
4 whose powers shall have been revoked, and such fiduciary or
5 his personal representative shall not have transferred such
6 securities, money or property to his successor, the circuit
7 court of the county, or the judge thereof in vacation, in which
8 such fiduciary shall have qualified, upon the petition of such
9 successor, or of any other person interested, may direct such
10 securities, money or property to be transferred to such
11 successor, and may direct the dividends, interest, income or
12 proceeds of such securities, money or property to be received

13 or paid in such manner as such court shall think proper.

§44-5-9. Costs in proceedings to compel fiduciaries to comply with law.

1 The costs of any proceedings, authorized or directed to be
2 brought against any fiduciary to enforce or compel his
3 compliance with the requirements of the law, shall include a
4 reasonable fee to the fiduciary commissioner at whose
5 instance the same are had, and shall be charged and paid as
6 the court may direct. In every case where the fiduciary is in
7 default, without reasonable excuse therefor, the costs shall be
8 adjudged against and paid by the fiduciary personally. In no
9 case shall the costs be adjudged against the fiduciary
10 commissioner unless he instituted the proceedings in bad
11 faith.

§44-5-10. Powers of clerk of county commission in certain counties.

1 In each county in which there exists a separate tribunal for
2 police and fiscal purposes, created under section thirty-four,
3 article VIII of the constitution of one thousand eight hundred
4 seventy-two, the clerk of the county commission shall have the
5 powers and discharge the duties which by this chapter are vested
6 in and imposed upon the county commission.

§44-5-11. Designation of testamentary trustee as beneficiary of insurance.

1 A policy of life insurance may designate as beneficiary a
2 trustee or trustees named or to be named by will, if the
3 designation is made in accordance with the provisions of the
4 policy and the requirements of the insurer. The proceeds of
5 such insurance shall be paid to the trustee or trustees to be
6 held and disposed of under the terms of the will as they exist
7 at the death of the testator; but if no trustee or trustees make
8 claim to the proceeds from the insurance company within one
9 year after the death of the insured, or if satisfactory evidence
10 is furnished the insurance company within such one-year
11 period showing that no trustee can qualify to receive the
12 proceeds, payment shall be made by the insurance company
13 to the executors, administrators or assigns of the insured,
14 unless otherwise provided by agreement with the insurance
15 company during the lifetime of the insured. The proceeds of
16 the insurance as collected by the trustee or trustees shall not
17 be subject to debts of the insured or to inheritance tax to any

18 greater extent than if such proceeds were payable to any
19 other named beneficiary other than the estate of the insured,
20 and shall not be considered as payable to the estate of the
21 insured for any purpose. Such insurance proceeds so held in
22 trust may be commingled with any other assets which may
23 properly come into such trust as provided in the will.
24 Enactment of this section shall not invalidate previous life
25 insurance policy designations naming trustees of trusts
26 established by will.

§44-5-12. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements.

1 (a) Where a will authorizes or directs the fiduciary to
2 satisfy wholly or partly in kind a pecuniary bequest unless
3 the will shall otherwise expressly provide, the assets selected
4 by the fiduciary for that purpose shall be valued at their
5 respective values on the date or dates of their distribution.

6 (b) Whenever a fiduciary under the provisions of a will or
7 other governing instrument is required to satisfy a pecuniary
8 bequest or transfer in trust in favor of the testator's or donor's
9 spouse and is authorized to satisfy such bequest or transfer
10 by selection and distribution of assets in kind, and the will or
11 other governing instrument further provides that the assets to
12 be so distributed shall or may be valued by some standard
13 other than their fair market value on the date of distribution,
14 the fiduciary, unless the will or other governing instrument
15 otherwise specifically directs, shall distribute assets,
16 including cash, fairly representative of appreciation or
17 depreciation in the value of all property available for
18 distribution in satisfaction of such pecuniary bequest or
19 transfer. This section shall not apply to prevent a fiduciary
20 from carrying into effect the provisions of the will or other
21 governing instrument that the fiduciary, in order to
22 implement such a bequest or transfer, must distribute assets,
23 including cash, having an aggregate fair market value at the
24 date or dates of distribution amounting to no less than the
25 amount of the pecuniary bequest or transfer as finally
26 determined for federal estate tax purposes.

27 (c) Any fiduciary having discretionary powers under a will
28 or other governing instrument with respect to the selection of
29 assets to be distributed in satisfaction of a pecuniary bequest
30 or transfer in trust in favor of the testator's or donor's spouse,

31 shall be authorized to enter into agreements with the
32 commissioner of internal revenue of the United States of
33 America and other taxing authorities requiring the fiduciary
34 to exercise the fiduciary's discretion so that cash and other
35 properties distributed in satisfaction of such bequest or
36 transfer in trust will be fairly representative of the
37 appreciation or depreciation in value of all property then
38 available for distribution in satisfaction of such bequest or
39 transfer in trust and any such agreement heretofore entered
40 into after April one, one thousand nine hundred sixty-four, is
41 hereby validated. Any such fiduciary shall be authorized to
42 enter into any other agreement not in conflict with the
43 express terms of the will or other governing instrument that
44 may be necessary or advisable in order to secure for federal
45 estate tax purposes the appropriate marital deduction
46 available under the internal revenue laws of the United States
47 of America, and to do and perform all acts incident to such
48 purpose.

49 Unless ordered by a court of competent jurisdiction, the
50 bank or trust company operating such common trust fund, as
51 provided for in section six of this article, shall not be required
52 to render an accounting with regard to such fund, before any
53 fiduciary commissioner but it may, by application to the
54 circuit court of the county in which is located the principal
55 place of business of said bank or trust company, secure the
56 approval of an accounting in such condition as the court may
57 fix: *Provided*, That nothing herein shall be interpreted as
58 relieving any fiduciary acquiring, holding or disposing of an
59 interest in any common trust fund from making an
60 accounting as required by law with respect of such interest.

ARTICLE 7. RESIGNATION OF FIDUCIARIES AND PROCEDURE UPON RESIGNATION.

§44-7-2. Copy of petition and summons to be served on fiduciary
commissioner.

§44-7-3. Hearing on petition.

§44-7-2. Copy of petition and summons to be served on fiduciary commissioner.

1 Such fiduciary as is mentioned in the preceding section
2 shall cause to be served, on the fiduciary commissioner
3 whom the county commission shall designate, a copy of his
4 petition and a copy of the summons issued thereon, at least
5 ten days before the return day of the summons. The fiduciary
6 commissioner shall investigate the records of the county

7 commission to see if such fiduciary has rendered such
8 inventories, appraisements and accounts as the law requires,
9 and whether any further accounts should be required of him,
10 and on or before the return day certify the facts relating to
11 such matters to the county commission. For making such
12 investigation and certificate the fiduciary commissioner shall
13 be allowed a fee of not less than one dollar, nor more than ten
14 dollars, as the commission may direct, to be charged and
15 collected as other costs on such petition.

§44-7-3. Hearing on petition.

1 When the summons has been served upon all the parties
2 named and referred to in the petition, and any necessary
3 order of publication has been duly completed, the
4 commission shall, on the day named in the summons, or on
5 some later day to which a continuance may have been taken,
6 proceed to hear the matter. If no objection is made to the
7 resignation of the fiduciary by any person interested in the
8 estate mentioned in the petition, and if the commissioner's
9 certificate shows he has fully and properly rendered all
10 inventories, appraisements and accounts due from him, his
11 resignation may be accepted and entered of record by the
12 commission. But if objection be made by any such person on
13 the ground that the fiduciary has not fully settled and
14 accounted for the estate committed to his care, at the time of
15 filing his petition, or for any other valid reason, or it appears
16 from the commissioner's certificate that an inventory, an
17 appraisal, or an account is due from the fiduciary, the
18 petition and objections or commissioner's certificate shall be
19 referred to the fiduciary commissioner or to some other
20 fiduciary commissioner or to a special commissioner
21 appointed for the purpose, to do and perform such duties, and
22 report upon such matters and things as are stated in the order
23 of reference, and report the same to the commission. The
24 same proceedings shall be had on such order of reference and
25 the report when made as are had in the circuit court in a suit
26 in chancery in that court. If it shall appear to the commission
27 in any such case that the fiduciary has not fully settled and
28 accounted for the estate committed to his charge, or that
29 there is money or other property in his hands, or under his
30 control, not yet paid over or disposed of, such orders as may
31 be necessary and proper for the disposition and safekeeping
32 thereof shall be made by the commission, and when such

33 orders are complied with by the fiduciary, his resignation
 34 may be accepted. His resignation when accepted shall not
 35 affect or impair the liability of the sureties on his official bond
 36 in force at the time of his resignation and the acceptance
 37 thereof, for any default by him in the discharge of his duties
 38 as such fiduciary, remaining unsettled or unsatisfied. The
 39 costs in such cases shall be paid as the court may order.

ARTICLE 8. REAL ESTATE OF DECEDENTS.

§44-8-8. Reference to special commissioner and publication of notice to creditors in such suit.

1 No decree for the distribution of the proceeds of the real
 2 estate of such deceased person among his creditors shall be
 3 made until a reference is made to a commissioner in chancery
 4 to ascertain and report all the liens on the real estate or any
 5 part thereof, the holders of such liens, the amount due to
 6 each, and the priorities thereof, and report made of all general
 7 claims and the priorities of the same, and until a notice to all
 8 creditors to present and prove their claims is published as
 9 hereafter provided. The notice shall be in the following form
 10 or to the following effect:

11 To all creditors of AB, deceased,
 12 including those holding liens by judgment or otherwise on
 13 his real estate, or any part thereof.

14 In pursuance of a decree of thecourt, of the
 15 county of, made in a cause therein pending, to
 16 subject the real estate of the said ABto
 17 the payment of his debts, including those which are liens on
 18 such real estate, or any part of it, you are hereby required to
 19 present your claims to the undersigned for adjudication, at
 20 (designating place) on or before theday of
 21; otherwise you may by law be excluded from all
 22 benefit of such real estate.

23 Given under my hand thisday of,
 24

25 C..... D.....,
 26 Commissioner in Chancery.

27 Such notice shall be published as a Class II legal
 28 advertisement in compliance with the provisions of article
 29 three, chapter fifty-nine of this code, and the publication area
 30 for such publication shall be the county in which the action is
 31 pending. The court shall designate the newspaper in which
 32 such notice shall be published. The court may direct such

33 other notice to be given as it may deem proper. Such
34 publication of such notice shall be equivalent to personal
35 service thereof on all creditors, including those holding liens
36 on such real estate, unless the court shall in the order
37 directing publication otherwise order. Any creditor who may
38 have filed his claim before a fiduciary commissioner may
39 withdraw the same and the proof thereof made before such
40 commissioner, and may file such claim and proof before the
41 commissioner in chancery, and the commissioner in
42 chancery shall, unless there be objection by any party to the
43 suit, accept such proof for what the same may legally show.
44 No other publication to creditors than the one provided by
45 this section shall be necessary, and when any notice of the
46 reference is required by law or by the court to be published,
47 the notice of the reference shall be included in the above
48 notice, so that there may be but one publication.

**ARTICLE 9. PERSONS PRESUMED TO BE DEAD AND THEIR
ESTATES.**

- §44-9-1a. When person in military service presumed to be dead; ad-
ministration of estate; when spouse may remarry.
§44-9-5. Evidence on such application; record thereof.
§44-9-6. Order declaring presumption established; probate of will;
letters testamentary or of administration; their effect.
§44-9-7. Powers of clerk of county commission.

**§44-9-1a. When person in military service presumed to be dead;
admininstration of estate; when spouse may
remarry.**

1 Presumptive findings of death of any person engaged in
2 any service or activity of, or employment by the United States
3 in connection with or with respect to any hostilities in which
4 the United States is engaged, whether war be formally
5 declared or otherwise, by an official or officer of the United
6 States, who is authorized to make such presumptive findings
7 by any act of Congress, shall create a presumption of the
8 death of such person in the state of West Virginia.
9 Proceedings under section three of this article may be
10 commenced at any time after such finding is made.

11 No administrator, executor or personal representative of
12 any person who is presumed to be dead under this section
13 shall make final distribution of the assets of any such person
14 until the expiration of three years after the date of the making
15 of such presumptive findings by persons authorized to do so
16 by the provisions of this section: *Provided*, That assets in the

17 estate of any such person, which are exempt from attachment
18 by creditors, including moneys paid by the United States of
19 such nature, and other assets of any such estate which would
20 otherwise be available for support of the wife, children and
21 other dependents of such person, if he were alive, after
22 allowance for debts and costs of administration, may be paid
23 by the personal representative for the support of the wife and
24 children and the dependents of such person upon order of the
25 circuit court of the county which has jurisdiction in probate
26 proceedings until such time as distribution may be made or
27 administration terminated, and such sums shall be treated for
28 all purposes of law as expenditures legally chargeable against
29 such person, as if he were living to the time a final
30 presumption of death becomes effective in this state. In case
31 any such person presumed to be dead as a result of a finding,
32 as aforesaid, is not heard from as provided in section one of
33 this article, for a period of three years after making of such
34 presumption, the presumption provided in section one of this
35 article shall become effective to permit final distribution of
36 his estate.

37 No surviving spouse of any person who is presumed to be
38 dead under this section shall marry another until after the
39 expiration of two years following the finding aforesaid, unless
40 proceedings for divorce were commenced by such spouse or
41 the missing person prior to the date such presumptive finding
42 was made by an official of the United States; and after such
43 two-year period the surviving spouse shall be free to remarry,
44 or at any time unless the other spouse be heard from prior to
45 the actual date of remarriage.

§44-9-5. Evidence on such application; record thereof.

1 At the hearing in either of the cases provided for in the
2 preceding two sections, the county commission shall receive
3 all legal evidence as may be offered, for the purpose of
4 ascertaining whether the presumption of death is established;
5 or it may refer the matter to a fiduciary commissioner to take
6 such evidence, and report his findings thereon. No person
7 shall be disqualified as a witness by reason of relationship to
8 the supposed decedent or interests in his estate. All the
9 evidence shall be reduced to writing and preserved in the files
10 of the commission with the record of the case.

§44-9-6. Order declaring presumption established; probate of will; letters testamentary or of administration; their effect.

1 If the commission is satisfied, upon the hearing or from the
2 report of the fiduciary commissioner, that the legal
3 presumption of death is established, the commission shall so
4 declare by order, and shall then proceed to hear, and to grant,
5 if proper, the application for probate of the will of such
6 supposed decedent, if such there be, and to grant letters
7 testamentary or of administration, as the case may require, to
8 the party entitled thereto, who shall qualify and give bond as
9 in cases of persons known to be dead. The probate of any
10 such will and such letters, until revoked, and all acts done in
11 pursuance thereof and in reliance thereupon, shall be as valid
12 as if the supposed decedent were in fact dead.

§44-9-7. Powers of clerk of county commission.

1 The clerk of any county commission during the recess of
2 the regular sessions of the county commission may exercise
3 the same powers as are herein conferred upon such
4 commission.

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-8. Disbursements and expenditures by guardians from income and corpus of estates of infant wards.

§44-10-15. Disbursements of funds of infant wards.

§44-10-8. Disbursements and expenditures by guardians from income and corpus of estates of infant wards.

1 No disbursements, beyond the annual income of the ward's
2 estate, shall be allowed to any guardian where the deed or
3 will, under which the estate is derived, does not authorize it,
4 unless the same shall have been authorized by the circuit
5 court of the county in which the guardian was appointed or
6 qualified. Any guardian, who may desire to spend more than
7 the annual income of his ward's estate for any purpose, shall
8 file in such circuit court a petition, verified by his oath,
9 setting forth the reasons why it is necessary to make such
10 expenditures, to which petition the ward shall be made
11 defendant. The court shall appoint a guardian ad litem for the
12 ward, who shall answer such petition, be present at the
13 hearing, and represent the infant. Five days' notice shall be
14 given to the defendant before such petition can be heard. At
15 the hearing the evidence may be taken orally, and the court, if

16 satisfied that such expenditure would be judicious and
17 proper, may grant the prayer of the petition. Such petition
18 may be filed and heard before the judge of such court in
19 vacation as well as in term time. In the settlement of the
20 guardian's accounts no credit shall be allowed him by the
21 fiduciary commissioner or the court for expenditures for his
22 ward, except for expenditures of the annual income of his
23 ward's estate and for expenditures of such amounts of the
24 principal of the ward's personal estate as are authorized by
25 the court as provided by this section: *Provided*, That if the
26 personal estate in the hands of the guardian does not exceed
27 in amount the sum of three thousand dollars, disbursement
28 may be made by the guardian from the corpus of such
29 personal estate for the ward's maintenance and education,
30 after first securing the written approval so to do of and from
31 the fiduciary commissioner to whom the settlement of the
32 ward's estate was referred.

§44-10-15. Disbursement of funds of infant wards.

1 In any such settlement, pursuant to the next preceding
2 section, wherein the amount paid the guardian does not
3 exceed the sum of one thousand dollars, the court or judge
4 approving the settlement may, in its or his discretion,
5 dispense with, or withdraw a reference to a fiduciary
6 commissioner, authorize the disbursement of the fund so
7 created by the settlement and may discharge the guardian
8 and the surety on his bond. In all such cases a certified copy
9 of the order of the court or judge, as the case may be, shall be
10 recorded in the office of the clerk of the county commission
11 wherein the guardian was appointed.

ARTICLE 15. VETERAN'S GUARDIANSHIP AND COMMITMENT.

§44-15-8. Settlement of accounts.

§44-15-9. Failure to make settlement.

§44-15-8. Settlement of accounts.

1 Every guardian, who shall receive on account of his ward
2 any moneys from the government of the United States or any
3 agency thereof, shall file with a fiduciary commissioner
4 annually, on the anniversary date of the appointment, or
5 within thirty days thereafter, in addition to such other
6 accounts as may be required, a full, true and accurate
7 account under oath of all moneys so received by him, of all
8 disbursements thereof, and showing the balance thereof in

9 his hands at the date of such account and how invested:
10 *Provided*, That in cases where the income received by the
11 committee or guardian does not average annually more than
12 eight hundred dollars, the committee or guardian may make
13 his report of account to the commissioner once in every three
14 years. The fiduciary commissioner shall send a true copy of
15 each such account to the office of the bureau or other agency
16 of the government having jurisdiction over the area in which
17 the court is located and from which payments are made. The
18 fiduciary commissioner shall fix a time and place for the
19 hearing on such account not less than fifteen nor more than
20 thirty days from the date of filing the same, and notice thereof
21 shall be given by the fiduciary commissioner to the aforesaid
22 bureau or other agency of the government not less than
23 fifteen days prior to the date fixed for the hearing. Notice of
24 such hearing shall in like manner be given to the guardian.

§44-15-9. Failure to make settlement.

1 If any guardian shall fail to file any account of the money
2 received by him from the bureau or other agency of the
3 government on account of his ward within thirty days after
4 such account is required by either the fiduciary
5 commissioner or the bureau or other agency of the
6 government, or shall fail to furnish the bureau or other
7 agency of the government a copy of his accounts as required
8 by this article, such failure shall be grounds for a removal.

CHAPTER 56. PLEADING AND PRACTICE.

**ARTICLE 10. MISCELLANEOUS PROVISIONS RELATING TO
PROCEDURE.**

**§56-10-4. Compromise of actions and suits in behalf of infants
and insane persons and disbursement of funds
arising therefrom.**

1 In any action or suit wherein an infant or insane person is a
2 party, the court in which the same is pending, or the judge
3 thereof in vacation, shall have the power to approve and
4 confirm a compromise of the matters in controversy on behalf
5 of such infant or insane person, if such compromise shall be
6 deemed to be to the best interest of the infant or insane
7 person. Such approval or confirmation shall never be granted
8 except upon written application therefor by the guardian,
9 committee, curator or next friend of the infant or insane
10 person, setting forth under oath all the facts of the case and

11 the reasons why such compromise is deemed to be for the
12 best interest of the infant or insane person. And the court or
13 judge, before approving such compromise, shall, in order to
14 determine whether to approve or disapprove the
15 compromise, hear the testimony of witnesses relating to the
16 subject matter of the compromise and cause said testimony to
17 be reduced to writing and filed with the papers in the case.
18 The court or judge, upon approving and confirming such
19 compromise, shall enter judgement or decree accordingly.
20 Such judgment or decree shall bind the respective parties
21 thereto, including such infant or insane person, with like
22 force and effect, and shall be subject to review, modification
23 or reversal to the same extent only, as if it were a consent
24 judgment or decree, entered under similar circumstances, in
25 a case in which all the parties were adults and sane. In any
26 such compromise wherein the amount paid to the guardian or
27 committee does not exceed the sum of ten thousand dollars,
28 the court or judge approving and confirming the compromise
29 and entering judgment or decree thereon may, in its or his
30 discretion, dispense with or withdraw a reference to a
31 fiduciary commissioner as to said compromise, authorize the
32 disbursement of the fund so created by the compromise and
33 may discharge the guardian or committee and the surety on
34 his bond as to the proceeding then pending in the circuit
35 court, and in all such cases a certified copy of the order of the
36 court or judge, as the case may be, shall be recorded in the
37 office of the clerk of the county commission wherein the
38 guardian or committee was appointed.

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

ARTICLE 1. FEES AND ALLOWANCES.

**§59-1-9. Compensation of fiduciary commissioners; procedure
for approving.**

1 The county commission shall promulgate by order a
2 schedule of fees or a rate of compensation for the guidance of
3 fiduciary commissioners, based upon the actual time spent
4 and actual services rendered, or both a schedule and a rate of
5 compensation as the commissioners may deem appropriate:
6 *Provided*, That no fee may be based solely upon the amount
7 of the estate. A copy of these fees or rates shall be posted in a
8 conspicuous place in the county courthouse.

9 The fiduciary commissioner shall submit to the
10 commission an itemized statement of services rendered and
11 time expended in the settling of every estate, along with a
12 statement of fees charged therefor. The county commission
13 shall review all fees charged by a fiduciary commissioner, and
14 shall approve, disapprove or modify the fee as it may deem
15 appropriate. In reviewing any fee the county commission
16 shall consider the following: (1) The time and labor expended;
17 (2) the difficulty of the questions raised; (3) the skill required
18 to perform properly the services rendered; (4) the customary
19 fee for like work; and (5) any time limitations imposed by the
20 personal representative, any beneficiary, or by the attendant
21 circumstances.

CHAPTER 65

(Com. Sub. for S. B. 131—By Mr. Steptoe)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter forty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dower and the release of dower interest in real estate which the owner has contracted to sell; and providing for institution of civil action for such release when spouse of owner is unable to execute a release or if the owner has used due diligence to ascertain the residence or whereabouts of his or her spouse, without effect.

Be it enacted by the Legislature of West Virginia:

That section six, article one, chapter forty-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. DOWER.

§43-1-6. Proceedings for release of dower in real estate which owner has contracted to sell.

1 If the owner of real estate contracts to sell the same,

2 and the spouse of such owner refuses to release his or her
3 dower interest therein, or is unable to execute a release,
4 or if the owner has used due diligence to ascertain the
5 residence or whereabouts of his or her spouse, without
6 effect, the owner or the person contracting to purchase
7 may institute a civil action for the purpose of causing the
8 dower interest to be released and the contract consum-
9 mated. The court on the hearing may, in its discretion,
10 and if satisfied that the contract of sale was made in good
11 faith and without design to force such spouse to part with
12 his or her dower interest, approve the sale and price, and
13 cause to be paid to such spouse such gross sum, computed
14 according to the method provided in article two of this
15 chapter, as shall represent the present value of his or her
16 inchoate dower right: *Provided*, That in any action in
17 which it is alleged that the owner has used due diligence
18 to ascertain the residence or whereabouts of the spouse
19 and such spouse does not make an appearance therein, if
20 the court shall award the relief sought, it shall make in-
21 quiry regarding such due diligence, the sufficiency of
22 process, and the return of process served and make such
23 findings with respect thereto as affirmatively show en-
24 titlement to the relief granted. Upon payment of such
25 sum to the spouse of the owner, the court shall order a
26 release of the dower interest by such spouse, or if he or she
27 fails or refuses to execute the release, then the release
28 shall be executed by a special commissioner appointed
29 by the court for the purpose, which release shall be
30 effectual to pass title to the purchaser free of such right
31 of dower.

CHAPTER 66

(S. B. 270—By Mr. Colombo)

[Passed March 6, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article three-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority

of fire departments; delineating authority of fire officers in charge of fire fighting and fire control; providing that person in command at fire scene may take and preserve certain property and for the return thereof; providing for court proceeding for restitution; relating to conducting an investigation to determine cause of fire; prohibiting person from attacking, hindering or obstructing fire fighters or emergency equipment; providing criminal penalties; and providing that nothing in this article shall be construed to prevent law-enforcement officials from controlling traffic or otherwise maintaining order at the scene of a fire.

Be it enacted by the Legislature of West Virginia:

That article three-a, 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 3A. AUTHORITY OF FIRE DEPARTMENTS.

§29-3A-1. Authority of fire officers in charge of fire, service call or other emergency.

§29-3A-2. Person in command at fire scene may take and preserve certain property; restitution.

§29-3A-3. Conducting investigation to determine cause of fire.

§29-3A-4. Person attacking or hindering or obstructing fire fighter or emergency equipment; penalties.

§29-3A-1. Authority of fire officers in charge of fire, service call or other emergency.

1 While any fire department recognized or approved
2 by the West Virginia state fire commission is responding
3 to, operating at or returning from a fire, fire hazard,
4 service call or other emergency, the fire chief, any
5 other elected or appointed fire line officer, or any
6 member serving in the capacity of appointed fire line of-
7 ficer in charge, except on industrial property where
8 trained industrial fire-fighting personnel are present, shall
9 have the authority:

10 (1) Of controlling and directing fire fighting and fire
11 control activities at such scene;

12 (2) To order any person or persons to leave any build-

13 ing or place in the vicinity of such scene for the purpose
14 of protecting such persons from injury;

15 (3) To blockade any public highway, street or private
16 right-of-way temporarily while at such scene;

17 (4) To enter the building, structure, enclosure or
18 other property of any person or persons at any time of
19 the day or night, without liability, while operating at
20 such scene;

21 (5) To enter any building, including private dwell-
22 ings, or upon any premises where a fire is in progress,
23 or where there is reasonable cause to believe a fire is
24 in progress, for the purpose of extinguishing the fire;

25 (6) To enter any building, including private dwellings,
26 or premises near the scene of the fire for the purpose
27 of protecting the building or premises or for the purpose
28 of extinguishing the fire which is in progress in another
29 building or premises;

30 (7) To inspect for preplanning, all buildings, struc-
31 tures or other places in their fire district, excepting,
32 however, the interior of a private dwelling, with the
33 consent of the owner or occupant, where any combustible
34 materials, including wastepaper, rags, shavings, waste,
35 leather, rubber, crates, boxes, barrels, rubbish or other
36 combustible material that is or may become dangerous
37 as a fire menace to such building or buildings, structure
38 or other places has been allowed to accumulate or where
39 such chief or his designated representative has reason to
40 believe that such material of a combustible nature has
41 accumulated or is liable to be accumulated;

42 (8) To direct the removal or destroying of any fence,
43 house, motor vehicle or other thing which may reason-
44 ably be determined to be necessary to be pulled down or
45 destroyed, to prevent the further spread of the fire;

46 (9) To request and be supplied with additional
47 materials such as sand, treatments, chemicals, etc., and

48 special equipment when dealing with an accident on a
49 public highway or railroad right-of-way when it is
50 deemed a necessity to prevent the further spread of the
51 fire or hazardous condition, the cost of which to be borne
52 by the owner of the instrumentality which caused the fire
53 or hazardous condition; and

54 (10) To order disengagement or discouplement of any
55 convoy, caravan or train of vehicles, craft or railway
56 cars if deemed a necessity in the interest of safety of
57 persons or property.

§29-3A-2. Person in command at fire scene may take and preserve certain property; restitution.

1 The chief of any fire department or company or any
2 other elected or appointed fire line officer, the fire chief
3 or any member serving in the capacity of appointed fire
4 line officer in charge of fire fighters at the scene of any
5 fire is authorized and empowered to take and preserve
6 any property which indicates that the fire was intention-
7 ally set. Any person whose property is so held may
8 petition the circuit court of the county within which the
9 property was taken for return of the property, and the
10 court may order restitution upon such conditions as are
11 appropriate for the preservation of evidence, including
12 requiring the posting of bond.

§29-3A-3. Conducting investigation to determine cause of fire.

1 To determine the cause of any fire, the chief of any
2 fire department or company or other authorized fire
3 fighter may enter the scene of such fire within a forty-
4 eight-hour period after such fire has been extinguished.

5 If there is evidence that a fire was of incendiary
6 origin, the fire chief or other authorized fire fighter
7 may control who may enter the scene of such fire by
8 posting no trespassing signs at such scene for a period of
9 forty-eight hours after such fire has been extinguished.

10 During the period that the scene of a fire is posted
11 against trespassing, no person shall enter such scene,
12 except that an owner, lessee or any other person having

13 personal property at such scene may enter at any time
14 after such scene has been declared safe by authorized
15 fire department or company officials to recover or
16 salvage personal property if said owner, lessee or person
17 is accompanied by or is granted permission to enter such
18 scene by an authorized fire department or company of-
19 ficial.

**§29-3A-4. Person attacking or hindering or obstructing fire
fighter or emergency equipment; penalties.**

1 It shall be unlawful, while any fire department or
2 company or fire fighter is in the process of answering
3 an alarm of fire or extinguishing a fire or returning to
4 station, for any person to:

5 (1) Attack any fire fighter or fire-fighting equipment
6 or emergency vehicles with any firearms, knives, fire
7 bombs or any object endangering life or property; or

8 (2) Intentionally hinder any fire fighter in the per-
9 formance of his duties or intentionally obstruct any
10 fire-fighting equipment or emergency vehicle.

11 Any person violating the provisions of this section is
12 guilty of a felony, and, upon conviction thereof, shall
13 be imprisoned in the penitentiary not less than one nor
14 more than ten years, or, in the discretion of the court,
15 be confined in the county jail not more than one year
16 or fined not more than five hundred dollars, or both fined
17 and imprisoned.

18 Any person willfully violating any of the provisions of
19 section one or three of this article is guilty of a mis-
20 demeanor, and, upon conviction thereof, shall be fined
21 not less than one hundred dollars nor more than five
22 hundred dollars: *Provided*, That nothing in this article
23 shall be construed to prevent law-enforcement officials
24 from controlling traffic and otherwise maintaining order
25 at the scene of a fire.

CHAPTER 67

(Com. Sub. for S. B. 387—By Mr. Colombo)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, eight, ten, eleven, twelve, thirteen and fourteen, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to redefining the maximum rate of pay for persons employed to assist in detecting or extinguishing certain fires; removing the requirement for a specific annual appropriation for certain types of forest fire control; revising the hours for restricted burning; reducing the restrictions upon the director for effecting woods closure or a ban on burning; requiring railroad companies to perform certain fire prevention duties and imposing an assessment for noncompliance thereof; authorizing the recovery of certain costs incurred by the state in fighting fires from persons negligently causing fires; redefining forest lands; and renaming certain federal financial assistance legislation.

Be it enacted by the Legislature of West Virginia:

That sections four, five, eight, ten, eleven, twelve, thirteen and fourteen, article three, 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 3. FORESTS AND WILDLIFE AREAS.

- §20-3-4. Authority and duties of director and others as to forest fires; expenditures for forest fire control.
- §20-3-5. Forest fire seasons; permits for fires; prohibited fires; closure of forests.
- §20-3-8. Duty of railroad company to protect against fires.
- §20-3-10. Spark arresters for sawmills, etc.; risk and hazard reduction to protect against fires.
- §20-3-11. Recovery of costs incurred in fighting fires.
- §20-3-12. Timberland and forest land defined.
- §20-3-13. Director authorized to secure federal cooperation; annual appropriation.
- §20-3-14. Financial assistance from owners of forest lands; expenditures by director.

§20-3-4. Authority and duties of director and others as to forest fires; expenditures for forest fire control.

- 1 Upon receiving notice of any fire which is injuring or

2 endangering forest land within the state, the director, the state
3 forester, or their duly authorized representative, shall employ
4 all necessary means to confine, extinguish or suppress the
5 fire. For these purposes such persons and their employees
6 shall, under the general supervision of the director, have the
7 right and authority to enter upon public or private lands, to
8 destroy fences thereon, to plow such lands, and in case of
9 extreme emergency, to set backfires thereon. The state
10 forester and any duly authorized representative may, under
11 the general supervision of the director, employ persons to
12 detect fires which may injure or endanger forest land, and
13 may likewise summon or employ persons to assist in
14 extinguishing such fires, who shall be paid for the actual time
15 so employed, at a rate per hour to be determined by the
16 director: *Provided*, That the rate per hour shall not exceed
17 the rate per hour paid for any comparable labor or skills by
18 the department of natural resources. Any person so summoned
19 who shall fail or refuse to assist in extinguishing any such fire
20 shall, unless such failure or refusal to assist is due to physical in-
21 ability, be guilty of a misdemeanor.

22 Expenditures for detecting, confining, extinguishing or
23 suppressing fires described in this section shall be charged
24 against the state. The state forester or his agent shall render to
25 the director, as soon as practicable, a sworn statement with
26 the names of all persons who were summoned or employed to
27 assist in fighting such fires, the time so spent by each, as well
28 as the names of persons who furnished equipment,
29 subsistence or supplies, or transportation therefor, and the
30 amount of money due each for such services, subsistence,
31 supplies or transportation. Requisitions shall be issued and
32 payment of the sums due shall be made in the same manner
33 as is provided for the making of other expenditures by the
34 director.

**§20-3-5. Forest fire seasons; permits for fires; prohibited fires;
closure of forests.**

1 The periods of each year between March first and May
2 thirty-first, inclusive, and October first and December
3 thirty-first, inclusive, are hereby designated as forest fire
4 seasons. No person shall during any such fire season, except
5 between the hours of five o'clock p.m. and ten o'clock a.m.
6 prevailing time, set on fire or cause to be set on fire any
7 forest land, or any grass, grain, stubble, slash, debris, or other

8 inflammable materials. Any fire set during this time shall be
9 extinguished prior to 10:00 a.m. prevailing time. Such
10 prohibition of fires between ten o'clock a.m. and five o'clock
11 p.m. prevailing time shall not be construed to include (1)
12 small fires set for the purpose of food preparation, or
13 providing light or warmth around which all grass, brush,
14 stubble, or other debris has been removed for a distance of
15 ten feet from the fire, and (2) burning which may be
16 conducted at any time when the ground surrounding the
17 burning site is covered by one inch or more of snow. Any
18 person who sets or causes to be set any fire permitted by this
19 section shall not leave such fire unattended for any period of
20 time.

21 The director or his designated appointees or employees
22 may issue permits authorizing fires prohibited by the
23 preceding paragraph. Such permits may be granted on such
24 conditions and for such periods of time as the director deems
25 necessary to prevent danger from fire to life or property, and
26 noncompliance with any term of the permit shall be a
27 violation of this section. Any permit which was obtained
28 through willful misrepresentation shall be invalid. All permit
29 holders shall take all necessary and adequate precautions to
30 confine and control any fire permitted by the authorization;
31 failure to take such action shall be a violation of this section
32 and shall be justification for the director or his duly
33 authorized representative to cancel the permit.

34 When the director considers it necessary to prevent danger
35 from fire to life or property, he may, with the prior approval of
36 the governor, prohibit the starting of and require the
37 extinguishment of any fire in any area designated by the
38 director, and such action may include any fire for which a
39 permit has been issued under the preceding paragraph. In
40 addition, if so deemed necessary, the director may, with the
41 prior approval of the governor, designate any forest area as a
42 danger area and prohibit entry thereon or use thereof except
43 for the purposes and on the conditions he designates. The
44 director by proclamation shall establish such areas and
45 designate which fires are prohibited therein; and if a danger
46 area is established, he shall announce the purposes for which
47 and conditions under which entry thereon or use thereof may
48 be made. Action hereunder may be taken by the director at
49 any time during the year. Notice of any proclamation
50 hereunder shall be furnished to newspapers, radio stations

51 and television stations which serve the area designated. The
52 proclamation shall not be effective until twenty-four hours
53 after it is proclaimed. Any proclamation hereunder shall
54 remain in force until the director, with the approval of the
55 governor, by order terminates it. The order shall designate the
56 time of termination, and notice of any such order shall be
57 furnished to each newspaper, radio station and television
58 station which received a copy of the proclamation. Any
59 person who starts or fails to extinguish a fire so prohibited or
60 enters or uses a danger area otherwise than permitted shall be
61 guilty of a violation of this section.

§20-3-8. Duty of railroad company to protect against fires.

1 Every railroad company or other company operating a
2 steam, diesel or other type of locomotive shall clear, for a
3 slope distance of twenty-five feet from the outside rail, or to
4 the limits of the right-of-way if less than twenty-five feet,
5 hazardous areas as designated by the state forester or his duly
6 authorized representative, at least once a year, of all grass,
7 brush, and other inflammable materials. Any such company
8 that fails to remove said materials from such road or
9 right-of-way shall be assessed by the department of natural
10 resources five hundred dollars for each mile of road or
11 right-of-way which is not maintained in accordance with this
12 section. Any revenue derived from this section shall be
13 deposited in the state treasury and credited to the department
14 of natural resources and shall be used and paid out, upon
15 order of the director, for forest fire prevention activities
16 within the department of natural resources.

17 Each such company shall employ sufficient personnel to
18 promptly put out fires on such road or right-of-way at times
19 when such land is in a dry and dangerous fire condition. Each
20 such company shall provide internal combustion engines of
21 motive power other than steam used in road service, if not
22 equipped with exhaust driven centrifugal turbocharger, shall
23 have installed integral with the exhaust gas system, a
24 spark-arresting device of a type certified according to the
25 recommended practices of the association of American
26 railroads and approved by the director so as to give the best
27 practical protection against the escape of fire and sparks from
28 the exhausts thereof.

29 No such company, or any employee thereof, shall deposit,
30 cast, or discharge fire coals or ashes or any other material
31 capable of igniting fires on that part of its road or right-of-way

32 which passes through forest land, or lands subject to fire from
33 any cause, unless the fire therein is immediately
34 extinguished. No such company, or employee thereof, shall
35 place a lighted fusee along such roads or rights-of-way in such
36 a manner as will cause the same to ignite inflammable
37 substances which may cause fire to spread to forest land. In
38 case of any uncontrolled or unguarded fire on such part of its
39 road or right-of-way, the company shall use all practicable
40 means to extinguish it even when the fire spreads to the
41 property of another. Engineers, conductors, trainmen, or
42 other persons who, while working for such companies,
43 discover or know of any fire on, along or near such part of the
44 road or right-of-way of their employer, shall report the same
45 as soon as possible to the state forester or his duly authorized
46 representative. Unless otherwise provided for by law, any
47 such company, or any officer or employee thereof, violating
48 any provision of this section, shall be guilty of a
49 misdemeanor.

§20-3-10. Spark arresters for sawmills, etc.; risk and hazard reduction to protect against fires.

1 No person, firm or corporation shall use or operate on land
2 subject to fire by any cause, a sawmill, a power shovel, or an
3 engine or machine capable of throwing sparks, unless the
4 equipment is provided with an approved spark arrester.
5 Escape of fire from such equipment shall be prima facie
6 evidence that such appliance was not maintained properly in
7 compliance with this section.

8 Any person, firm or corporation owning any land and
9 knowing of inflammable waste disposal on said land, and any
10 person, firm or corporation using any land for the purpose of
11 inflammable waste disposal, shall remove annually all grass,
12 brush, debris and other inflammable material adjacent to
13 such disposal areas to provide adequate protection to prevent
14 the escape of fire to adjacent lands. Escape of fire from any
15 such disposal area shall be prima facie evidence that this
16 section had not been complied with.

17 Any person, firm or corporation violating any provision of
18 this section shall be guilty of a misdemeanor.

§20-3-11. Recovery of costs incurred in fighting fires.

1 The director shall, in the name of the state, recover from the
2 person or persons, firms or corporations whose negligence or
3 whose violation of any provision of this article caused any

4 fire at any time on grass or forest land, the amount expended
5 by the state for the personal services of persons especially
6 employed under the provisions of section four of this article
7 to control, confine, extinguish or suppress such fire, and the
8 costs associated therewith, including payment for the
9 personal services rendered by full-time state department of
10 natural resources employees, operating costs of state
11 equipment used and costs related thereto in controlling,
12 confining, extinguishing or suppressing such fire. Such
13 recovery shall not bar an action for damages by any other
14 person.

15 Any such fire which was caused by a trespasser or by a
16 person who was upon the property without the consent of the
17 owner shall not be deemed caused by the negligence of the
18 owner; but the owner shall use all practical means to confine,
19 extinguish or suppress any such fire on his land even though
20 it was caused by any such person. If he fails to do so, after
21 becoming aware of such fire, the director shall, in the name of
22 the state, recover from him amounts expended by the state
23 for the personal services of persons especially employed
24 under the provisions of section four of this article to control,
25 confine, extinguish or suppress such fire and the costs
26 associated therewith, including payment for the personal
27 services rendered by full-time state department of natural
28 resources employees, operating costs of state equipment used
29 and costs related thereto in controlling, confining,
30 extinguishing or suppressing such fire.

§20-3-12. Timberland and forest land defined.

1 For the purpose of this chapter, any land shall be
2 considered timberland or forest land which has enough
3 timber standing or down to constitute, in the judgment of the
4 department, a fire menace to itself or adjoining lands:
5 *Provided*, that nothing in this section contained shall be
6 construed to include lands under cultivation or in grass,
7 unless a fire thereon would imperil such lands or adjoining
8 lands.

**§20-3-13. Director authorized to secure federal cooperation;
annual appropriation.**

1 The director may do all things required to meet the
2 conditions and requirements of the federal government in
3 securing federal cooperation under the provisions of the
4 Weeks Law and the Cooperative Forestry Assistance Act of

5 1978, and any other law amendatory thereof or supplemental
6 thereto, for the purpose of the prevention and control of
7 forest fires and the advancement of forestry practices.

§20-3-14. Financial assistance from owners of forest lands; expenditures by director.

1 The director may cooperate with the owners of forest lands
2 and receive financial assistance from them for forestry
3 purposes and do any and all things necessary therefor,
4 including the establishment and maintenance of patrol
5 and lookout stations: *Provided*, That the director shall
6 expend for forestry purposes, and for no other purpose, such
7 moneys as shall be appropriated therefor by the state, and
8 such moneys as may be recovered from persons giving origin
9 to grass or forest fires, and such moneys as may be received
10 from the federal government by appropriation under the
11 Weeks Law, the Cooperative Forestry Assistance Act of 1978
12 and any reference to the Clarke-McNary Law or otherwise.

CHAPTER 68

(Com. Sub. for H. B. 1130—By Mr. Givens)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing county, municipality or combined boards of health to charge for permits and licenses and to retain and utilize such funds collected for the provision of public health services.

Be it enacted by the Legislature of West Virginia:

That section six, article two-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 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL HEALTH AGENCIES.**§16-2A-6. Levy for payment of county, municipal, combined boards of health; collection, receipt and disposition of funds by local boards of health.**

1 The county commission of any county or the governing body
2 of any municipality in which a county or municipal health
3 officer is appointed pursuant to the provisions of this article,
4 shall have the power and authority to provide funds for the
5 payment of such health officer and the expenses of his ad-
6 ministration, and for that purpose may levy a county or
7 municipal tax, as the case may be, of not exceeding three
8 cents on each one hundred dollars' assessed valuation of the
9 taxable property in such county or municipality according to
10 the last assessment thereof.

11 Any county or municipality may, whether it has exercised
12 the power to lay the special levy hereinbefore provided for
13 or not, appropriate and expend money from the county or
14 municipal general fund for public health purposes and to pay
15 the expenses of operation and administration of a county or
16 municipal board of health and the public health facilities
17 operated thereby or in conjunction therewith.

18 Any county or municipality in which there is a board of
19 health created and maintained pursuant to the provisions of
20 this article, may accept, receive and receipt for money or
21 property from any federal, state or local governmental agency,
22 or from any public or private source, to be used for public
23 health purposes, or for the establishment or construction of
24 public health facilities. The state department of health is
25 hereby authorized and empowered to pay over and contribute
26 to any board of health created and maintained pursuant to
27 the provisions of this article such sum or sums of money as
28 may be available from funds included in appropriations made
29 for the state department of health for such purpose. The
30 amount of any such payment or contribution by the state
31 department of health to any such local board of health shall
32 be determined in accordance with regulations established by
33 the state board of health. Such regulations shall provide a
34 fixed formula for determining the amount of any payment or

35 contribution, and this formula shall be uniformly applied in
36 determining the amount of any payment or contribution to
37 any such local board.

38 Notwithstanding any other provision of this chapter, any
39 county, municipal or combined board of health, whether creat-
40 ed and maintained pursuant to the provisions of this article or
41 article two of this chapter, may assess and charge fees for per-
42 mits and licenses for the provision of public health services:
43 *Provided*, That no such fees may be assessed or charged pur-
44 suant to the provisions of this section for permits and licenses
45 required for agricultural activities. Such fees shall be estab-
46 lished by regulation promulgated in accordance with the pro-
47 visions of chapter twenty-nine-a of the code, by the state board
48 of health.

49 All moneys accepted by any county, municipality or com-
50 bined board of health shall be deposited in the county or
51 municipal treasury, and unless otherwise prescribed by the
52 authority from which the money is received, shall be kept in
53 separate funds, designated according to the purposes for
54 which the money was made available, and held by the county
55 or municipality in trust for such purposes: *Provided*, That
56 nothing contained in this section shall be construed to con-
57 flict with the provisions of section fifteen, article one, chapter
58 sixteen of this code.

59 Expenditures from the county or municipal public health
60 funds established under this article shall be paid out by the
61 county or municipal treasurer upon submission of vouchers
62 approved by the county or municipal board of health and
63 signed by the county or municipal health officer.

CHAPTER 69

(S. B. 80—By Mr. Galperin)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter sixteen 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 vital statistics; providing for examination of newborn infants for physical and mental impairments; requiring registration of such information and information of previously undiagnosed impairments in minors with state registrar; providing for form to be supplied by state registrar; providing for confidentiality of such information; and providing exceptions whenever parental consent is given.

Be it enacted by the Legislature of West Virginia:

That article five, 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 twelve-a, to read as follows:

ARTICLE 5. VITAL STATISTICS.

§16-5-12a. Registration of infants born with congenital physical and mental impairments; requiring physician or midwife to check for defects, including visual impairments; registration of minors with previously undiagnosed impairments; form to be provided by state registrar; confidentiality; exceptions; parental consent.

1 When a live birth occurs, the physician or midwife in
2 attendance at, or present immediately after, the birth shall
3 examine the infant for any congenital physical or mental
4 impairment, including visual impairment. If any such im-
5 pairment is found in an infant, and/or if any such impair-
6 ment is found in any subsequent examination of any
7 minor which has not been previously diagnosed, the ex-
8 amining physician, midwife, or other health care provider
9 licensed under chapter thirty of the code shall within
10 thirty days of the examination make a report of the
11 diagnosis to the state registrar of vital statistics on forms
12 provided by the state registrar of vital statistics. The
13 report shall include the name of the child, the name or
14 names of the parents or parent or guardian and a de-
15 scription of the impairment.

16 The information received by the state registrar pur-

17 suant to this section pertaining to the identity of the
18 persons named shall be kept confidential: *Provided*, That
19 if consent of the parents, or if only one parent exists,
20 of the parent, or of the guardian is obtained, the registrar
21 may provide such information to the department of
22 health, the department of welfare, the department of
23 education, the division of vocational rehabilitation and
24 the school for the deaf and the blind so that such infor-
25 mation can be utilized to provide assistance or services
26 for the benefit of the child.

CHAPTER 70

(S. B. 466—By Mr. Wise)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state registrar of vital statistics; increasing the maximum fee allowed to be charged for certified copies of certificates or records and searches; and authorizing certain portion of fee to be deposited in special account.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. VITAL STATISTICS.

§16-5-28. Fees for copies and searches.

- 1 (a) The state director of the department of health
- 2 shall prescribe the fees, if any, to be charged and
- 3 collected by the state registrar of vital statistics, for
- 4 certified copies of certificates or records, not to exceed

5 five dollars per copy, or for a search of the files or records
6 when no copy is made: *Provided*, That the state registrar
7 shall, upon request of any parent or guardian, supply
8 without fee a certificate limited to a statement as to the
9 date of birth of any child when the same shall be neces-
10 sary for admission to school, or for the purpose of secur-
11 ing employment: *Provided, however*, That the state regis-
12 trar may furnish certified copies of birth and death
13 records to the state welfare department, and to organized
14 charities. free of charge, when such certificates are needed
15 in presenting claims to the federal government, or to
16 the state department of welfare, and an accurate record
17 shall be made of all such certificates so furnished.

18 (b) After the first day of July, one thousand nine hun-
19 dred eighty-two, and subject to the provisions set forth
20 in section two, article two, chapter twelve of this code,
21 there is established in the state treasury a separate ac-
22 count which shall be designated "the vital statistics
23 account."

24 The director of health shall promptly deposit two fifths
25 of all fees received under the provisions of this section to
26 the vital statistics account. The director of health shall
27 promptly deposit three fifths of all fees received under
28 the provisions of this section to the general revenue fund
29 account.

30 The director of health is authorized to expend the
31 moneys deposited in the vital statistics account in ac-
32 cordance with the laws of this state as is necessary to
33 implement this article. The Legislature shall appropriate
34 all moneys in the vital statistics account as part of the
35 annual state budget beginning with the fiscal year one
36 thousand nine hundred eighty-three—eighty-four.

37 The director shall make an annual report to the Legis-
38 lature on the vital statistics account, including the pre-
39 vious fiscal year's expenditures and projected expendi-
40 tures for the next fiscal year.

CHAPTER 71

(Com. Sub. for H. B. 1403—By Mr. Blackwell and Mr. Ketchum)

[Passed March 9, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to hospitals and similar institutions; and requiring these institutions to supply any patient, upon request, with one specifically itemized statement of charges assessed to the patient at the institution.

Be it enacted by the Legislature of West Virginia:

That article five-b, 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 nine, to read as follows:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-9. Hospitals and similar institutions required to supply patients, upon request, with one specifically itemized statement of charges assessed to patient, at no cost to patient.

1 Any hospital, or other similar institution, required to be
2 licensed under this article, upon request, shall supply to any
3 patient who has received services from the hospital, whether
4 on an inpatient or outpatient basis, one itemized statement
5 which describes with specificity the exact service or medica-
6 tion for which a charge is assessed to the patient at the
7 institution, at no additional cost to the patient. In the event
8 of the death of any such patient, a relative or guardian may
9 make such request and shall receive such statement at no
10 additional cost.

CHAPTER 72

(Com. Sub. for H. B. 1921—By Mr. Tompkins and Mr. Tucker)

[Passed March 12, 1982; 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-d, relating to coordinating delivery of public and private continuum of care services within this state; setting forth the legislative intent; definitions; creating state policy board for continuum of care for elderly, disabled and terminally ill including representatives from public and private providers and consumers; providing for meetings and election of officers; allowing the commissioner of the state department of welfare, and the directors of the state departments of health, commission on aging, division of vocational rehabilitation and the insurance commissioner to designate employees to carry out work of board; delineating the board's purposes; directing the board to establish and promote a comprehensive program for terminally ill; directing the board to evaluate the program and report to Legislature; authorizing application and acceptance of funds for implementation of the program; promulgation of rules and regulations; requiring insurance carriers to make available supplemental insurance to cover the whole continuum of care; and providing for pilot project for single point of entry and care management for continuum of care for elderly.

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-d, to read as follows:

ARTICLE 5D. COORDINATION OF CONTINUUM OF CARE SERVICES FOR ELDERLY, IMPAIRED AND TERMINALLY ILL.

- §16-5D-1. Legislative intent.
- §16-5D-2. Definitions.
- §16-5D-3. Creation and composition of continuum of care board.

- §16-5D-4. Quorum; officers; meetings; designation of employees to carry out work of board.
- §16-5D-5. Purposes of board.
- §16-5D-6. Availability of hospice care program.
- §16-5D-7. Program evaluation; consultation.
- §16-5D-8. Application for federal aid and other grant assistance; acceptance of funds.
- §16-5D-9. Rules and regulations.
- §16-5D-10. Insurance.
- §16-5D-11. Pilot project for single point of entry and case management.

§16-5D-1. Legislative Intent.

1 The Legislature hereby declares it to be the policy of this
2 state to establish, encourage and promote the availability and
3 delivery of continuum of care services within the state and its
4 communities to the elderly, disabled, terminally ill and their
5 families.

6 It is the further intention of the Legislature that within
7 the system of continuum of care particular attention be given
8 to establishing, encouraging and promoting a system of care
9 that provides alternatives and personal freedom for the termi-
10 nally ill and their families. The Legislature further intends that
11 the terminally ill and their families have access to, and receive,
12 a comprehensive and coordinated program of home and in-
13 patient care which treats the patient and family as a unit, pro-
14 viding palliative and supportive care to meet the special needs
15 arising out of the physical, psychological, spiritual, social and
16 economic stresses experienced during the final stages of illness
17 and the period of bereavement.

18 The Legislature recognizes the present problems involved in
19 the delivery of such continuum of care services to the elderly,
20 disabled, terminally ill and their families and intends to pro-
21 vide for coordinated effort, among the West Virginia depart-
22 ment of health, West Virginia department of welfare, the
23 West Virginia commission on aging and the West Virginia
24 division of vocational rehabilitation as well as other public and
25 private and other providers of such continuum of care ser-
26 vices, in order to achieve for the integration of the delivery of
27 those services at both the state and local levels so as to ensure
28 maximum availability of such services in all communities of
29 this state.

§16-5D-2. Definitions.

1 As used in this article:

2 (1) "Case management" means assessing individually a
3 client or beneficiary's situation and identifying the services
4 necessary to meet those needs, including, but not limited to,
5 procurement of services such as counseling, providing informa-
6 tion to link the person needing help to available community
7 and institutional services and coordinating an assessment of a
8 client's service and medical or other needs, developing a ser-
9 vice plan with the cooperation of the client and family, which
10 includes objectives to meet the client's service needs, specified
11 services to meet those objectives and identifies available ser-
12 vices; arranging for implementation of the service plan, in-
13 cluding service delivery arrangements with the client, and pro-
14 viding for appointments and transportation thereto; develop-
15 ing a process for monitoring the service or component of ser-
16 vice a client receives; evaluating the impact of services and
17 their components on the client; developing a feedback mecha-
18 nism to the provider, to the community and to the board which
19 identifies the need for the development of new services and
20 the expansion or elimination of existing services, including
21 documentation in the service plan of gaps or barriers between
22 client service needs and effective available providers; and as-
23 suring continuity of care for the client and the monitoring of
24 changes in the client's service needs, to ensure that services
25 are provided in an appropriate manner and to identify and cor-
26 rect problems within the service system that prevent the client
27 from receiving needed services.

28 (2) "Hospice" means a coordinated program of home and
29 inpatient care provided directly or through an agreement under
30 the direction of an identifiable hospice administration which
31 provides palliative and supportive medical and other health
32 services to terminally ill patients and their families. Hospice
33 utilizes a medically directed interdisciplinary team. A hospice
34 program of care provides care to meet the physical, psycholo-
35 gical, social, spiritual and other special needs which are ex-
36 perience during the final stages of illness, and during dying
37 and bereavement.

38 (3) "Interdisciplinary team" means the patient and the pa-
39 tient's family, the attending physician and the following hospice
40 personnel: Physician, nurse, social worker, clergy and trained
41 volunteer. Providers of special services, such as mental health,
42 pharmaceutical and any other appropriate allied health ser-
43 vices may also be included on the team as the needs of the
44 patient dictate.

45 (4) "Palliative care" means treatment directed at controll-
46 ing pain, relieving other symptoms, and focusing on the special
47 needs of the patient and family as they experience the stress of
48 the dying process, rather than treatment designed for investi-
49 gation and intervention for the purpose of cure or prolongation
50 of life.

51 (5) "Provider" means any public or private agency or indi-
52 vidual which offers continuum of care services to the elderly,
53 disabled or terminally ill.

54 (6) "Continuum of care" means a system of services such
55 as nursing, medical and other health and social services avail-
56 able to an individual in an appropriate setting over an extend-
57 ed period of time as a result of such individuals changing
58 health status.

59 (7) "Disabled" means a person who has temporary or per-
60 manent impairments which cause him to need or who is likely,
61 in the foreseeable future, to need services within the continuum
62 of care.

§16-5D-3. Creation and composition of continuum of care board.

1 There is hereby created a state continuum of care board
2 for the elderly, disabled and terminally ill, hereinafter re-
3 ferred to as the board. The board shall consist of the com-
4 missioner of the West Virginia department of welfare, the
5 director of the West Virginia department of health, the direc-
6 tor of the West Virginia commission on aging, the insurance
7 commissioner of West Virginia and the director of the West
8 Virginia division of vocational rehabilitation or their respec-
9 tive designees.

10 In addition, such commissioners and directors shall at their
11 discretion appoint not less than four, nor more than six addi-

12 tional members to the board. In appointing such additional
13 members, the commissioners and directors shall appoint in
14 equal numbers individuals representing private providers of
15 continuum of care services and individuals representing con-
16 sumers of continuum of care services. Of the individuals re-
17 presenting providers, at least one shall be a registered profes-
18 sional nurse and at least one shall be a physician licensed to
19 practice medicine in this state who regularly treats long-term
20 care patients. Of the individuals representing consumers, at
21 least one shall be an immediate relative of a continuum of care
22 patient at the time of his or her appointment. Such additional
23 members shall serve at the will and pleasure of the commis-
24 sioners and directors on the board.

§16-5D-4. Quorum; officers; meetings; designation of employees to carry out work of board.

1 A majority of the board shall constitute a quorum for trans-
2 action of business. The board shall elect a chairman and such
3 other officers as it shall deem necessary. Board meetings shall
4 be held upon call of the chairman or a majority of its members.

5 The commissioner of the department of welfare, director
6 of the department of health, the director of the commission on
7 aging, the insurance commissioner and the director of the di-
8 vision of vocational rehabilitation shall have authority to desig-
9 nate employees within their respective departments as in their
10 judgment may be necessary to carry out the work of the board,
11 assisted by such representatives of private providers as the
12 board may determine necessary or advisable.

§16-5D-5. Purposes of board.

1 (a) The board shall:

2 (1) Establish standards for coordination of delivery of ser-
3 vices to the elderly, disabled and terminally ill by public and
4 private providers of both the state and local levels; and

5 (2) Establish standards and procedures for case manage-
6 ment at the local level expressly recognizing the aid of the
7 independent community based providers, to ensure availability,
8 coordination and delivery of services to the intended bene-
9 ficiaries thereof.

- 10 (b) In addition, the board shall take action to carry out the
11 following purposes:
- 12 (1) To ensure the implementation of the established stan-
13 dards and to regularly evaluate such implementation;
- 14 (2) To ensure that public funds are used to direct care to
15 those determined to be most in need of services;
- 16 (3) To ensure that each prospective beneficiary receive a
17 comprehensive and individual assessment of services needed;
- 18 (4) To ensure that each prospective beneficiary be made
19 aware of the spectrum of services available, including, but not
20 limited to, the least restrictive environment;
- 21 (5) To ensure that a comprehensive plan of care be de-
22 veloped for each beneficiary of the providers;
- 23 (6) To ensure the creation, and to promote the availability
24 of an alternative form of care for the terminally ill known as
25 "hospice care" providing a comprehensive and coordinated
26 program of home and inpatient care for terminally ill;
- 27 (7) To constantly monitor the formulation and implemen-
28 tation of the delivery of services to the elderly, disabled and
29 terminally ill;
- 30 (8) To document the community based long-term care
31 services currently available to elderly, disabled and termi-
32 nally ill;
- 33 (9) To identify the number of elderly, disabled and termi-
34 nally ill in this state who are currently at risk of institutional-
35 ization;
- 36 (10) To identify informal supports provided by the families
37 and friends of elderly, disabled and terminally ill persons and
38 suggest methods for maintaining and expanding those supports;
- 39 (11) To design and effectuate a system of comprehensive,
40 coordinated care using a full range of health and social services
41 without gaps or duplication according to the needs of each
42 beneficiary through individual assessment and case manage-
43 ment; and

44 (12) To educate the general public with regard to con-
45 tinuum of care in an effort to attract volunteers.

§16-5D-6. Availability of hospice care program.

1 The board shall, consistent with the continuum of care
2 concept and within the limits of federal and private funding
3 therefor, establish, promote and make available within this
4 state a comprehensive hospice care program for the treat-
5 ment of physical, emotional and mental symptoms of terminal
6 illness. Such program shall encourage and provide funds for the
7 formation of community based hospice programs which in-
8 clude interdisciplinary teams for coordinating home care and
9 inpatient services. Where possible, the community based hos-
10 pice programs shall utilize the existing resources of physicians,
11 nurses, social workers, clergy, physical therapists and facilities
12 to create the interdisciplinary approach consistent with the
13 hospice care concept.

§16-5D-7. Program evaluation; consultation.

1 The board shall conduct an evaluation of the hospice care
2 program and report its findings and recommendations to the
3 governor and Legislature no later than the first day of July,
4 one thousand nine hundred eighty-four. Such evaluation shall
5 include, but not be limited to, an assessment of the following:

6 (1) The quality and cost effectiveness of use of layperson
7 volunteers for hospice care, hospice care compared to tradi-
8 tional care for the terminally ill and institutional compared to
9 in-home hospice care;

10 (2) The current and projected demand for hospice care
11 and need for construction of hospice facilities or the use of
12 existing facilities;

13 (3) The current statutory provisions which regulate the
14 manufacture, distribution and dispensing of controlled sub-
15 stances; and

16 (4) The need to provide alternative means of financially
17 assisting terminally ill patients who are not able to afford
18 such services.

§16-5D-8. Application for federal aid and other grant assistance; acceptance of funds.

1 The board shall, to the maximum extent possible, apply for
2 any available federal health care funding and grant programs
3 and any other assistance provided by any private or national
4 health care agency or organization, and make such funds avail-
5 able to qualified private community based hospice programs,
6 provided such programs meet the standards established by the
7 board under the provisions of this article. The board may ac-
8 cept gifts, grants and bequests of funds from individuals,
9 foundations, corporations and other organizations for use in
10 implementing the provisions of this article.

§16-5D-9. Rules and regulations.

1 The board, in collaboration with governmental and inde-
2 pendent community based delivery level personnel, shall prom-
3 ulgate rules and regulations pursuant to the provisions of chap-
4 ter twenty-nine-a of this code to effectuate the purposes of
5 this article.

§16-5D-10. Insurance.

1 Not later than the first day of July, one thousand nine
2 hundred eighty-three, every insurance carrier who shall offer
3 for sale in this state any policy of health or accident and sick-
4 ness insurance, shall make available for purchase at a reason-
5 able rate supplemental insurance coverage for continuum of
6 care services.

§16-5D-11. Pilot project for single point of entry and case management.

1 Within the limits of available funds and by use of existing
2 staff and agencies, both public and private, the board shall
3 establish in a county of its choice within this state a program
4 within the continuum of care system for the elderly which in-
5 corporates a single focal point for entry into the system and
6 case management.

7 Within the county so chosen, the board shall enter into an
8 agreement with a public or private provider charging such
9 provider with the responsibility of formulating, directing and

10 administering such program consistent within the guidelines
11 established by the board and the purposes of this article.

12 The provider charged with such responsibilities shall report
13 regularly to the board regarding the progress of such program,
14 and the board shall continually monitor same. Additionally,
15 the board shall submit a comprehensive report on the feasi-
16 bility of establishing a similar statewide program for the entire
17 continuum of care to the governor and the Legislature no later
18 than the first day of July, one thousand nine hundred eighty-
19 four.

CHAPTER 73

(H. B. 2035—By Mr. Knight and Mr. Steptoe)

[Passed March 12, 1982; 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-g, relating to requiring the proceedings of the governing bodies of nonprofit and local governmental hospitals to be open to the public.

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-g, to read as follows:

ARTICLE 5G. OPEN HOSPITAL PROCEEDINGS:

§16-5G-1. Declaration of legislative policy.

§16-5G-2. Open proceedings.

§16-5G-1. Declaration of legislative policy.

1 The Legislature hereby finds and declares that hospitals
2 owned or operated by nonprofit corporations, nonprofit asso-
3 ciations or local governmental units are relied on by the
4 citizens of this state for services essential to their health and
5 well-being. The Legislature further finds and declares that

6 public funds from various sources and by various means con-
7 tribute significantly to the revenues and operations of such
8 institutions. Therefore, it is in the best interest of the people
9 of this state for all proceedings of the boards of directors or
10 other governing bodies of such hospitals to be conducted in
11 an open and public manner so that the people can remain
12 informed of the decisions and decision making processes af-
13 fecting the health services on which they so vitally depend and
14 which they help support through tax exemptions, public fund-
15 ing and other means.

§16-5G-2. Open proceedings.

1 Every board of directors or other governing body of any
2 hospital owned or operated by a nonprofit corporation, non-
3 profit association or local governmental unit shall be open to
4 the public in the same manner and to the same extent as re-
5 quired of public bodies in article nine-a, chapter six of this
6 code.

CHAPTER 74

(Com. Sub. for H. B. 1997—By Mr. Schifano)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to the powers of public service districts generally; and limiting the right of such public service districts to foreclose upon the premises served by such districts.

Be it enacted by the Legislature of West Virginia:

That article thirteen-a, 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 nine-a, to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWER-AGE AND GAS SERVICES.**§16-13A-9a. Limitations with respect to foreclosure.**

1 No public service district shall foreclose upon the premises
2 served by such district for delinquent fees, rates or charges
3 for which a lien is authorized by sections nine or nineteen of
4 this article except through the bringing and maintenance of a
5 civil action for such purpose brought in the circuit court of the
6 county wherein the district lies. In every such action, the
7 court shall be required to make a finding based upon the
8 evidence and facts presented that the district prior to the
9 bringing of such action had exhausted all other remedies for
10 the collection of debts with respect to such delinquencies. In
11 no event shall foreclosure procedures be instituted by any such
12 district or on its behalf unless such delinquency had been in
13 existence or continued for a period of two years from the
14 date of the first such delinquency for which foreclosure is
15 being sought.

CHAPTER 75

(S. B. 72—By Mr. Wise)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article twenty-two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the detection and control of phenylketonuria and hypothyroidism in newborn children; adding galactosemia.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. DETECTION AND CONTROL OF PHENYLKETONURIA, GALACTOSEMIA, AND HYPOTHYROIDISM IN NEWBORN CHILDREN.

§16-22-1. Findings.

§16-22-2. Program to combat mental retardation; rules and regulations; facilities for making tests.

§16-22-3. Tests for phenylketonuria; galactosemia and hypothyroidism; reports; assistance to afflicted children.

§16-22-1. Findings.

1 The Legislature finds that phenylketonuria, galactos-
2 emia and hypothyroidism, genetic defects affecting body
3 metabolism, are usually associated with mental retarda-
4 tion. Laboratory tests are readily available to aid in the
5 detection of these diseases and the hazards to health of
6 those suffering thereof may be lessened or prevented by
7 early detection and treatment. Damage from these
8 diseases, if untreated in the early months of life, is
9 usually rapid and not appreciably affected by treatment.

§16-22-2. Program to combat mental retardation; rules and regulations; facilities for making tests.

1 The state department of health is hereby authorized to
2 establish and carry out a program designed to combat
3 mental retardation in our state's population due to phenyl-
4 ketonuria, galactosemia and hypothyroidism, and may
5 adopt reasonable rules and regulations necessary to carry
6 out such a program. The department of health shall
7 establish and maintain facilities at its state hygienic
8 laboratory for testing specimens for the detection of
9 phenylketonuria, galactosemia and hypothyroidism.
10 Tests shall be made by such laboratory of specimens upon
11 request by physicians, hospital medical personnel and
12 other individuals attending newborn infants. The state
13 department of health is authorized to establish additional
14 laboratories throughout the state to perform tests for the
15 detection of phenylketonuria, galactosemia and hypothy-
16 roidism.

§16-22-3. Tests for phenylketonuria, galactosemia and hypothyroidism; reports; assistance to afflicted children.

1 The physician attending a newborn child or any person

2 attending a newborn child not under the care of a phy-
3 sician shall cause to be made a test for phenylketonuria,
4 galactosemia and hypothyroidism approved by the state
5 department of health. Any test found positive for phenyl-
6 ketonuria, galactosemia or hypothyroidism shall be
7 promptly reported to the state department of health by
8 the director of the laboratory performing such test.

9 The state department of health, in cooperation with
10 other state departments and agencies, and with attending
11 physicians, is authorized to provide medical, dietary and
12 related assistance to children determined to be afflicted
13 with phenylketonuria, galactosemia or hypothyroidism.

CHAPTER 76

(H. B. 1368—By Mr. Stephens and Mr. Moore)

[Passed February 26, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section one-b, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one of said article two, relating to legal holidays, official acts or court proceedings, designation of Martin Luther King's birthday as a legal holiday.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1. Legal holidays; official acts or court proceedings.

1 The following days shall be regarded, treated and observed
2 as legal holidays, viz: The first day of January, commonly
3 called "New Year's Day"; on and after the fifteenth day of
4 January, one thousand nine hundred eighty-three, the fifteenth
5 day of January, commonly called "Martin Luther King's

6 Birthday"; the twelfth day of February, commonly called
7 "Lincoln's Birthday"; the third Monday of February, com-
8 monly called "Washington's Birthday"; the last Monday in
9 May, commonly called "Memorial Day"; the twentieth day
10 of June, commonly called "West Virginia Day"; the fourth
11 day of July, commonly called "Independence Day"; the first
12 Monday of September, commonly called "Labor Day"; the
13 second Monday of October, commonly called "Columbus
14 Day"; the eleventh day of November, hereafter referred to
15 as "Veterans Day"; the fourth Thursday of November, com-
16 monly called "Thanksgiving Day"; the twenty-fifth day of
17 December, commonly called "Christmas Day"; any national,
18 state or other election day throughout the district or munici-
19 pality wherein the election is held; and all days which may
20 be appointed or recommended by the governor of this state,
21 or the president of the United States, as days of thanksgiving,
22 or for the general cessation of business; and when any of
23 these days or dates falls on a Sunday, then the succeeding
24 Monday shall be regarded, treated and observed as the legal
25 holiday.

26 When the return day of any summons or other court pro-
27 ceeding or any notice or time fixed for holding any court
28 or doing any official act shall fall on any of these holidays,
29 the next ensuing day which is not a Saturday, Sunday or legal
30 holiday shall be taken as meant and intended: *Provided*, That
31 nothing herein contained shall increase nor diminish the
32 legal school holidays provided for in section two, article five,
33 chapter eighteen-a of this code.

CHAPTER 77

(Com. Sub. for S. B. 473—By Mr. Staggers and Mr. Steptoe)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-three, chapter nineteen 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 pari-mutuel wagering on interstate and intrastate horse and dog racing at racetracks operated by licensed racing associations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12a. Pari-mutuel wagering on interstate and intrastate horse and dog racing.

1 (1) Notwithstanding any other provisions of this code,
2 a racing association licensed in this state to conduct race
3 meetings may, with the consent of the racing commission,
4 contract with any legal wagering entity in this or any
5 other state to accept wagers on any race or races con-
6 ducted by such legal wagering entity. Such wagering
7 shall be conducted within the confines of such licensee's
8 racetrack unless the wager becomes part of the host rac-
9 ing association's pari-mutuel pool.

10 (2) Such horse association shall retain a basic commis-
11 sion not to exceed seventeen and twenty-five one-hun-
12 dredths percent of all money wagered, plus an additional
13 amount equal to one and seventy-five one-hundredths per-
14 cent of the amount wagered each day on all multiple
15 wagers determined by a combination of two winning
16 horses, including, but not limited to, the daily double,
17 quinella and perfecta or plus an additional amount equal
18 to seven and seventy-five one-hundredths percent of the
19 amount wagered each day on all trifecta wagers or
20 any other multiple wager which involves a single betting
21 interest on three or more horses. Breakage shall be cal-
22 culated and distributed in the manner provided by sub-
23 section (c), section nine of this article.

24 (3) The commission deducted by any licensee from the
25 pari-mutuel pools on dog racing shall not exceed sixteen
26 and one-fourth percent of the total of such pari-mutuel
27 pools for the day.

28 (4) The association shall pay each day a pari-mutuel
29 pools tax calculated under the provisions of section ten
30 of this article.

31 (5) After deducting the pari-mutuel pools tax required
32 by subsection (4) of this section, and the amount required
33 to be paid under the terms of the contract with the legal
34 wagering entity of this or another state and the cost of
35 transmission, the horse racing association shall make a
36 deposit equal to fifty percent of the remainder into the
37 purse fund established under the provisions of subdivision
38 (b) (1), section nine of this article.

39 (6) All of the provisions of the "Federal Interstate
40 Horse Racing Act of 1978," also known as Public Law 95-
41 515, section 3001-3007 of Title 15, U. S. Code, shall be in-
42 structive as the intent of this section.

43 (7) For the purposes of this section the words "legal
44 wagering entity" shall be limited to any person engaged
45 in horse racing or dog racing pursuant to a license or
46 other permission granted by the state in which such per-
47 son's racetrack is situated and conducting race meetings,
48 with a pari-mutuel wagering system permitted under that
49 state's laws and in which the participants are wagering
50 with each other and not the operator.

CHAPTER 78

(S. B. 547—By Mr. Staggers and Mr. Steptoe)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to horse and dog racing; disposition of money from unredeemed pari-mutuel tickets at horse and dog race meetings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

**PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF
OUTSTANDING AND UNREDEEMED PARI-MUTUEL TICKETS;
IRREDEEMABLE TICKETS; AWARDS.**

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; awards to resident owners, etc., of winning horses and dogs.

1 (a) All moneys held by any licensee for the payment
2 of outstanding and unredeemed pari-mutuel tickets, if
3 not claimed within ninety days after the close of the
4 horse or dog race meeting in connection with which the
5 tickets were issued, shall be turned over by the licensee
6 to the racing commission within fifteen days after the
7 expiration of such ninety-day period, and the licensee
8 shall give such information as the racing commission
9 may require concerning such outstanding and unredeem-
10 ed tickets. All such moneys shall be deposited by the
11 racing commission in a banking institution of its choice
12 in a special account to be known as "West Virginia Rac-
13 ing Commission Special Account—Unredeemed Pari-
14 mutuel Tickets." Notice of the amount, date and place
15 of such deposit shall be given by the racing commission,
16 in writing, to the state treasurer. The racing commis-
17 sion shall then cause to be published a notice to the
18 holders of such outstanding and unredeemed pari-mutuel
19 tickets, notifying them to present such tickets for pay-
20 ment at the principal office of the racing commission
21 within ninety days from the date of the publication of
22 such notice. Such notice shall be published within fifteen
23 days following the receipt of said moneys by the com-
24 mission from the licensee as a Class I legal advertise-
25 ment in compliance with the provisions of article three,
26 chapter fifty-nine of this code, and the publication area

27 for such publication shall be the county in which such
28 horse or dog race meeting was held.

29 (b) Any such pari-mutuel tickets that shall not be
30 presented for payment within ninety days from the date
31 of the publication of the notice shall thereafter be ir-
32 redeemable, and the moneys theretofore held for the
33 redemption of such pari-mutuel tickets shall become the
34 property of the racing commission, and shall be expended
35 as follows:

36 (1) To the owner of the winning horse in any horse
37 race at a horse race meeting held or conducted by any
38 licensee, provided that the owner of such horse is at the
39 time of such horse race a bona fide resident of this state,
40 a sum equal to ten percent of the purse won by such
41 horse. The commission may require proof that the owner
42 was, at the time of the race, a bona fide resident of this
43 state. Upon proof by the owner that he filed a personal
44 income tax return in this state for the previous two years
45 and that he owned real or personal property in this state
46 and paid taxes in this state on said property for the two
47 previous years, he shall be presumed to be a bona fide
48 resident of this state; and

49 (2) To the breeder (that is, the owner of the mare)
50 of the winning horse in any horse race at a horse race
51 meeting held or conducted by any licensee, provided that
52 the mare foaled in this state, a sum equal to ten percent
53 of the purse won by such horse; and

54 (3) To the owner of the stallion which sired the win-
55 ning horse in any horse race at a horse race meeting
56 held or conducted by any licensee, provided that the
57 mare which foaled such winning horse was served by a
58 stallion standing and registered in this state, a sum equal
59 to ten percent of the purse won by such horse; and

60 (4) When the moneys in the special account, known
61 as the "West Virginia Racing Commission Special Ac-
62 count—Unredeemed Pari-mutuel Tickets" will more than
63 satisfy the requirements of subdivisions (1), (2) and
64 (3), subsection (b) of this section, the West Virginia

65 racing commission shall have the authority to expend the
66 excess moneys from unredeemed horse racing pari-
67 mutuel tickets as purse money in any race conditioned
68 exclusively for West Virginia bred or sired horses, and
69 to expend the excess moneys from unredeemed dog rac-
70 ing pari-mutuel tickets in supplementing purses and
71 establishing dog racing handicaps at the dog tracks.

72 (c) Nothing contained in this article shall prohibit
73 one person from qualifying for all or more than one of
74 the aforesaid.

75 (d) The cost of publication of the notice provided for
76 in this section shall be paid from the funds in the hands
77 of the state treasurer collected from the pari-mutuel
78 pools tax provided for in section ten of this article, when
79 not otherwise provided in the budget; but no such costs
80 shall be paid unless an itemized account thereof, under
81 oath, be first filed with the state auditor.

CHAPTER 79

(S. B. 548—By Mr. Stagers and Mr. Steptoe)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-three, chapter nineteen 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 establishment of a bonus race fund for West Virginia bred or sired horses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-13a. West Virginia bonus race fund.

1 An association licensed by the West Virginia racing

2 commission to conduct horse race meetings may establish
3 at its track a special fund to be known as the "Bonus
4 Race Fund," in the manner hereinafter provided by this
5 section.

6 The fund shall be established only if written approval
7 is given by the duly authorized representative of a
8 majority of the owners and trainers who hold the permit
9 required by section eight of this article at the horse race-
10 track and by the authorized agent of the association.

11 The association shall deposit each day, into the fund
12 hereby established, an amount equal to one tenth of one
13 percent of the total daily pari-mutuel pool or pools, which
14 sum shall be appropriated from the special purse fund
15 established in subsection (b) (1), section nine of this
16 article. In addition thereto, the association shall, from
17 the commission retained by the association under the
18 provisions of said section nine of this article, deposit
19 into the "Bonus Race Fund" the following sums: Each
20 day an amount equal to four one-hundredths of one per-
21 cent of the total daily pari-mutuel pool during the fiscal
22 year beginning the first day of July, one thousand nine
23 hundred eighty-two and each year thereafter; an addi-
24 tional three one-hundredths of one percent of the total
25 daily pari-mutuel pools for the fiscal year beginning the
26 first day of July, one thousand nine hundred eighty-three
27 and each year thereafter; and an additional three one-
28 hundredths of one percent of the total daily pari-mutuel
29 pools for the fiscal year beginning the first day of July,
30 one thousand nine hundred eighty-four and each year
31 thereafter.

32 To be eligible to participate in purses to be paid from
33 the proceeds of this fund, each horse must be registered
34 with the West Virginia thoroughbred breeders associa-
35 tion. To qualify for such registration the said horse must
36 have been foaled in the state of West Virginia or sired
37 by a stallion standing in the state of West Virginia or
38 both foaled in West Virginia and sired by a stallion
39 standing in West Virginia.

40 (a) A horse is bred where it is foaled. The breeder is
41 the owner of the dam at the time of foaling.

42 (b) Any owner or breeder may appeal from the refusal
43 of the West Virginia thoroughbred breeders association
44 to register a horse under this rule to the West Virginia
45 racing commission, and the decision of the commission
46 shall be final.

47 (c) To be considered a West Virginia stallion, it is
48 required that he be in the state of West Virginia for at
49 least one full breeding season, commonly understood to
50 be the first six months of a year, or if the stallion is
51 brought in subsequent to the start of the breeding sea-
52 son, he must be approved as a West Virginia stallion by
53 the West Virginia thoroughbred breeders association.

54 At each horse racetrack at which such fund is created,
55 the funds shall be administered by a committee comprised
56 of the following members: Two elected members of the
57 West Virginia thoroughbred breeders association, one
58 elected member of the local horsemen's benevolent protec-
59 tive association, the general manager of the local track
60 or his representative and a member of the West Virginia
61 racing commission or someone designated by the racing
62 commission.

63 The powers and authority of the racing commission
64 established under the provisions of section six of this
65 article are extended to supervision of the fund created by
66 this section and to the promulgation of reasonable rules
67 and regulations for implementing and making effective
68 the provisions of this section.

CHAPTER 80

(H. B. 1026—By Mr. Farley and Mr. Albright)

[Passed January 29, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to restricting the exercise of the right of eminent domain by the West Virginia housing development fund; setting forth

required allegations and proof in condemnation proceedings; prohibiting the taking of land used for agricultural production; and providing that should the acreage limitation be unconstitutional or invalid, the powers of eminent domain shall not be exercised.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. RIGHT OF EMINENT DOMAIN.

§54-1-5a. Restrictions as to the exercise of the right of eminent domain by the West Virginia housing development fund.

1 (1) The West Virginia housing development fund, in exer-
2 cising the power of eminent domain as provided for in section
3 six, article eighteen, chapter thirty-one of this code, shall
4 allege and prove, and the trier of fact shall find, in addition
5 to other requirements of the law, the following:

6 (a) That resort is had to condemnation proceedings only
7 after all other reasonable alternatives for acquisition of the
8 site in question have been explored and found impractical;

9 (b) That the housing sought to be developed on the site in
10 question is necessitated by circumstances existing in the local
11 community or area where the site is located as follows:

12 (i) An extreme shortage of land suitable for housing exists
13 in the local community or area and that no practical alterna-
14 tive site is available for purchase by negotiation;

15 (ii) A serious shortage of housing exists in the local com-
16 munity or area, as evidenced by an insufficient number of
17 housing units, by low vacancy rates, or by a high proportion
18 of substandard or overcrowded housing;

19 (iii) An open, active and free market for adequate housing
20 does not exist in the local community or area;

21 (iv) The real property which is the subject of the proposed
22 condemnation proceeding is not a part of, or contiguous to, the
23 owner's principal residence or the curtilage thereof; and

24 (v) The owner of the real property which is the subject of
25 the condemnation proceeding is seized of title to the surface of
26 five thousand acres of land or more within this state, without
27 reduction for any lease, license or easement to which the estate
28 may be subject: *Provided*, That any portion of the five
29 thousand acres or more of land which is being used or
30 operated in the production of agricultural products by the
31 owner or his lessee (under a bona fide written lease executed
32 and delivered prior to the institution of a proceeding in
33 condemnation subject to the restriction provided in this
34 section) shall not be taken by condemnation under the pro-
35 visions of this section. In the case of a corporate owner, the
36 court shall aggregate the holdings of the corporation, the
37 holdings of other corporate bodies which have legally en-
38 forceable control of a majority of the shares of the corporate
39 owner, and the holdings of other corporate bodies which have
40 a majority of their shares subject to the legally enforceable
41 control of the corporate owner. Such aggregate holdings shall
42 be used to determine whether the corporate owner owns five
43 thousand acres of land or more within this state.

44 (2) If, for any reason, the provisions of subdivision (b),
45 subsection (1) of this section are held unconstitutional or in-
46 valid, then upon the finding of such unconstitutionality or
47 invalidity, the West Virginia housing development fund shall
48 not exercise the powers of eminent domain provided for in
49 section six, article eighteen, chapter thirty-one of this code.

CHAPTER 81

(S. B. 337—By Mr. Colombo and Mr. Gainer)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to natural resources; definitions; and defining "bona fide resident tenant or lessee," "wild boar" and "sauger."

Be it enacted by the Legislature of West Virginia:

That section two, 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.

§20-1-2. Definitions.

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

3 "Agency" means any branch, department or unit of the
4 state government, however designated or constituted.

5 "Alien" means any person not a citizen of the United States.

6 "Bag limit" or "creel limit" means the maximum number of
7 wildlife which may be taken, caught, killed or possessed by
8 any licensee.

9 "Board" means the water resources board of the
10 department of natural resources.

11 "Bona fide resident tenant or lessee" means a person who
12 permanently resides on the land.

13 "Citizen" means any native born citizen of the United
14 States, and foreign-born persons who have procured their
15 final naturalization papers.

16 "Closed season" means the time or period during which it
17 shall be unlawful to take any wildlife as specified and limited
18 by the provisions of this chapter.

19 "Commission" means the natural resources commission.

20 "Commissioner" means a member of the advisory
21 commission of the natural resources commission.

22 "Director" means the director of the department of natural
23 resources.

24 "Fishing" or "to fish" means the taking, by any means, of
25 fish, minnows, frogs, or other amphibians, aquatic turtles,
26 and other forms of aquatic life used as fish bait.

27 "Fur-bearing animals" shall include (a) the mink, (b) the
28 weasel, (c) the muskrat, (d) the beaver, (e) the opossum, (f) the
29 skunk, and civet cat, commonly called polecat, (g) the otter,
30 (h) the red fox, (i) the gray fox, (j) the wildcat, bobcat or bay
31 lynx, (k) the raccoon and (l) the fisher.

32 "Game" means game animals, game birds and game fish as
33 herein defined.

34 "Game animals" shall include (a) the elk, (b) the deer, (c) the
35 cottontail rabbits and hares, (d) the fox squirrels, commonly

36 called red squirrels, and gray squirrels, and all their color
37 phases—red, gray, black or albino, (e) the raccoon, (f) the
38 black bear and (g) the wild boar.

39 "Game birds" shall include (a) the Anatidae, commonly
40 known as swan, geese, brants and river and sea ducks, (b) the
41 Rallidae, commonly known as rails, sora, coots, mudhens,
42 and gallinales, (c) the Limicolae, commonly known as
43 shorebirds, plover, snipe, woodcock, sandpipers, yellow legs,
44 and curlews, (d) the Galli, commonly known as wild turkey,
45 grouse, pheasants, quails and partridges (both native and
46 foreign species), and (e) the Columbidae, commonly known
47 as doves and the Icteridae, commonly known as blackbirds,
48 redwings and grackle.

49 "Game fish" shall include (a) brook trout, (b) brown trout,
50 (c) rainbow trout, (d) golden rainbow trout, (e) Kokanee
51 salmon, (f) largemouth bass, (g) smallmouth bass, (h)
52 Kentucky or spotted bass, (i) striped bass, (j) pickerel, (k)
53 muskellunge, (l) walleye pike, or pike perch, (m) northern
54 pike, (n) rock bass, (o) white bass, (p) white and black crappie,
55 (q) all sunfish, (r) channel and flathead catfish and (s) sauger.

56 "Hunt" means to pursue, chase, catch or take any wild birds
57 or wild animals.

58 "Lands" means land, waters, and all other appurtenances
59 connected therewith.

60 "Migratory birds" means any migratory game or nongame
61 birds included in the terms of conventions between the
62 United States and Great Britain and between the United
63 States and United Mexican States, known as the "Migratory
64 Bird Treaty Act," for the protection of migratory birds and
65 game mammals concluded, respectively, August sixteen, one
66 thousand nine hundred sixteen, and February seven, one
67 thousand nine hundred thirty-six.

68 "Nonresident" means any person who is a citizen of the
69 United States and who has not been a domiciled resident of
70 the state of West Virginia for a period of thirty consecutive
71 days immediately prior to the date of his application for a
72 license or permit except any full-time student of any college
73 or university of this state, even though he be paying a
74 nonresident tuition.

75 "Open season" means the time during which the various
76 species of wildlife may be legally caught, taken, killed or
77 chased in a specified manner, and shall include both the first

78 and the last day of the season or period designated by the
79 director.

80 "Person," except as otherwise defined elsewhere in this
81 chapter, means the plural "persons," and shall include
82 individuals, partnerships, corporations, or other legal entity.

83 "Preserve" means all duly licensed private game farmlands,
84 or private plants, ponds or areas, where hunting or fishing is
85 permitted under special licenses or seasons other than the
86 regular public hunting or fishing seasons.

87 "Protected birds" means all wild birds not included within
88 the definition of "game birds" and "unprotected birds."

89 "Resident" means any person who is a citizen of the United
90 States and who has been a domiciled resident of the state of
91 West Virginia for a period of thirty consecutive days or more
92 immediately prior to the date of his application for a license or
93 permit: *Provided*, That a member of the armed forces of the
94 United States who is stationed beyond the territorial limits of
95 this state, but who was a resident of this state at the time of
96 his entry into such service, and any full-time student of any
97 college or university of this state, even though he be paying a
98 nonresident tuition, shall be considered a resident under the
99 provisions of this chapter.

100 "Roadside menagerie" means any place of business, other
101 than commercial game farm, commercial fish preserve, place
102 or pond, where any wild bird, game bird, unprotected bird,
103 game animal or fur-bearing animal is kept in confinement for
104 the attraction and amusement of the people for commercial
105 purposes.

106 "Take" means to hunt, shoot, pursue, lure, kill, destroy,
107 catch, capture, keep in captivity, gig, spear, trap, ensnare,
108 wound or injure any wildlife, or attempt to do so.

109 "Unprotected birds" shall include (a) the English sparrow,
110 (b) the European starling, (c) the cowbird, and (d) the crow.

111 "Wild animals" means all mammals native to the state of
112 West Virginia occurring either in a natural state or in
113 captivity, except house mice or rats.

114 "Wild birds" shall include all birds other than (a) domestic
115 poultry—chickens, ducks, geese, guinea fowl, peafowls and
116 turkeys, (b) psittacidae, commonly called parrots and
117 parakeets, and (c) other foreign cage birds such as the
118 common canary, exotic finches and ring dove. All wild birds,
119 either (a) those occurring in a natural state in West Virginia or
120 (b) those imported foreign game birds, such as waterfowl,

121 pheasants, partridges, quail and grouse, regardless of how
122 long raised or held in captivity, shall remain wild birds under
123 the meaning of this chapter.

124 "Wildlife" means wild birds, wild animals, game and
125 fur-bearing animals, fish (including minnows), frogs and
126 other amphibians, aquatic turtles and all forms of aquatic life
127 used as fish bait, whether dead or alive.

128 "Wildlife refuge" means any land set aside by action of the
129 director as an inviolate refuge or sanctuary for the protection
130 of designated forms of wildlife.

CHAPTER 82

(H. B. 1411—By Mr. Ballouz)

[Passed March 11, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to wildlife resources; and to replacement fees for wildlife and forfeiture procedures.

Be it enacted by the Legislature of West Virginia:

That section five-a, 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.

§20-2-5a. Forfeiture by person causing injury, death or destruction of game or protected species of animal; replacement values thereof; forfeiture procedures.

1 Any person who is convicted of violating any criminal law
2 of this state and the violation causes or results in the injury,
3 death or destruction of game, as defined in section two,
4 article one of this chapter, or a protected species of animal,
5 in addition to any other penalty to which he is subject, shall
6 forfeit the cost of replacing such game or protected species

7 of animal to the state. For such purpose, replacement values
8 for game and protected species of animals are as follows:

9 (1) For each game fish or each fish of a protected species
10 taken illegally other than by pollution kill, five dollars for
11 each pound and any fraction thereof;

12 (2) For each bear, elk or eagle, five hundred dollars;

13 (3) For each deer or raven, two hundred dollars;

14 (4) For each wild turkey, hawk or owl, one hundred
15 dollars;

16 (5) For each beaver, otter or mink, twenty-five dollars;

17 (6) For each muskrat, raccoon, skunk or fox, fifteen dol-
18 lars;

19 (7) For each rabbit, squirrel, opossum, duck, quail, wood-
20 cock, grouse or pheasant, ten dollars; and

21 (8) For each wild boar, two hundred dollars; and

22 (9) For any other game or protected species of animal,
23 ten dollars each.

24 The court upon convicting such person shall order him to
25 forfeit to the state the proper amount based on the values
26 set forth herein for the game or protected species of animal
27 the injury, death or destruction of which he caused or which
28 resulted from his criminal act. If two or more defendants
29 are convicted for the same violation causing, or resulting
30 in, the injury, death or destruction of game or protected
31 species of animal, the forfeiture shall be declared against
32 them jointly and equally. The forfeiture shall be paid by
33 the person so convicted and ordered to pay the forfeiture
34 within the time prescribed by the court, but not exceeding
35 sixty days. In each instance, the court shall pay such
36 forfeiture to the state treasury where it shall be credited
37 to the department of natural resources to be used only for
38 the replacement, habitat management or enforcement pro-
39 grams for injured, killed or destroyed game or protected species
40 of animal.

CHAPTER 83

(Com. Sub. for S. B. 439—By Mr. Colombo, original sponsor)

[Passed March 8, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the restriction that the director of the department of natural resources shall not issue permits for the transportation and importation of foxes and fishers.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.

§20-2-13. Importation of wildlife; certification and inspection of imported wildlife.

1 No person shall transport into or have in his possession
2 within this state any live wildlife or viable eggs thereof
3 from without the state, except as authorized by an impor-
4 tation permit issued by the director: *Provided*, That the
5 director shall not be authorized to issue a permit to any
6 person to transport into this state any coyotes (*Canis*
7 *latrans*). The director may issue at his discretion such
8 permit as he is authorized to issue, fix the terms thereof
9 and revoke it at his pleasure.

10 Importers of fish or viable eggs of the family salmon-
11 diae (trout, char, salmon) shall furnish a statement from
12 a recognized fish pathologist certifying the source to be
13 free of whirling disease, infectious pancreatic necrosis,
14 viral hemorrhagic septicemia or other diseases which may
15 threaten fish stocks within the state.

16 Importers of wildlife species shall furnish disease free
17 certification from pathologists, or veterinarians, as the
18 director deems necessary to protect native populations.

19 All imported wildlife shall be subject to inspection by
20 authorized agents of the department and such inspections
21 may include biological examinations and the removal of a
22 reasonable sample of fish or eggs for such purposes.

23 Any person violating any of the provisions of this
24 section concerning coyotes shall be guilty of a misdemea-
25 nor, and, upon conviction thereof, shall for each offense
26 be fined not less than one hundred nor more than three
27 hundred dollars, or confined in jail not less than ten nor
28 more than one hundred days, or be both fined and im-
29 prisoned within the limitations aforesaid.

CHAPTER 84

(S. B. 425—By Mr. Colombo)

[Passed March 2, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the killing of deer and other wildlife that are causing damages to crops, fruit trees or nurseries; procedure for issuance of permits or other authorization.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-15. Permit to kill deer or other wildlife causing damage to cultivated crops, fruit trees or commercial nurseries.

1 (a) Whenever it shall be found that deer or other wildlife
2 are causing damage to cultivated crops, fruit trees or
3 commercial nurseries, the owner or lessee of the lands on
4 which such damage is done may report such finding to the
5 conservation officer or biologist of the county in which such
6 lands are located or to the director. The director shall then

- 7 investigate the reported damage and if found substantial shall
8 issue a permit to the owner or lessee to kill one or more deer
9 or other wildlife in the manner prescribed by the director.
10 (b) In addition to the foregoing, the director shall establish
11 procedures for the issuance of permits or other authorization
12 necessary to control deer or other wildlife causing property
13 damage.

CHAPTER 85

(H. B. 1406—By Mr. Shiflet and Mr. Ballouz)

[Passed March 8, 1982; in effect January 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact sections forty-three and forty-six, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nonresident hunting and fishing licenses; fees for hunting bears.

Be it enacted by the Legislature of West Virginia:

That sections forty-three and forty-six, 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.

§20-2-43. Class E, Class EE, Class F, Class G and Class H licenses for non-residents.

§20-2-46. Class L nonresident statewide bow and arrow hunting and fishing license; Class LL nonresident state-wide bow and arrow bear hunting license.

§20-2-43. **Class E, Class EE, Class F, Class G and Class H licenses for nonresidents.**

- 1 A Class E license shall be a nonresident hunting license
2 and shall entitle the licensee to hunt all game in all counties
3 of the state, except when other licenses or permits are re-
4 quired. It shall be issued only to citizens of the United States
5 and to unnaturalized persons who possess the permit referred

6 to in section twenty-nine of this article who are not residents
7 of this state. The fee therefor shall be fifty dollars.

8 A Class EE license shall be a nonresident bear hunting
9 license and shall entitle the licensee to hunt bear in all
10 counties of the state on and after the first day of July, one
11 thousand nine hundred eighty-two. It shall be issued only
12 to citizens of the United States and to unnaturalized persons
13 who possess the permit referred to in section twenty-nine
14 of this article who are not residents of this state. The fee
15 therefor shall be one hundred dollars.

16 A Class F license shall be a nonresident fishing license
17 and shall entitle the licensee to fish for all fish, except trout,
18 in all counties of the state. It shall be issued only to citizens
19 of the United States and to unnaturalized persons who possess
20 the permit referred to in section twenty-nine of this article
21 who are not residents of this state. The fee therefor shall
22 be twenty dollars.

23 Trout fishing is not permitted with a Class F license
24 unless such license has affixed thereto an appropriate trout
25 stamp as prescribed by the department of natural resources.

26 A Class G license shall be a family fishing license and
27 shall entitle the licensee and members of his family to fish
28 within the territorial limits of state parks and state forests
29 and in the waters of streams bounding same, for a distance
30 of not to exceed one hundred yards from the exterior boundary
31 of any state park or state forest, for a period not to exceed one
32 week. It may be issued to any adult resident or nonresident
33 who is temporarily residing in any state park or forest as tenant
34 or lessee of the state. The fee therefor shall be six dollars for
35 the head of the family, plus one dollar additional for each
36 member of his family to whom the privileges of such license
37 are extended. Class G licenses may be issued in such manner
38 and under such regulations as the director may see fit to
39 prescribe.

40 Trout fishing is not permitted with a Class G license
41 unless such license has affixed thereto an appropriate trout
42 stamp as prescribed by the department of natural resources.

43 The trout stamp must be affixed to the license of the head of
44 the family only.

45 A Class H license shall be a nonresident small game hunting
46 license and shall entitle the licensee to hunt small game in all
47 counties of the state for a period of six days beginning with the
48 date it is issued. It shall be issued only to citizens of the United
49 States who are not residents of this state. The fee therefor shall
50 be ten dollars. As used in this section, "small game" means all
51 game except bear, deer, wild turkey and wild boar.

**§20-2-46. Class L nonresident statewide bow and arrow hunting
and fishing license; Class LL nonresident state-wide
bow and arrow bear hunting license.**

1 A Class L license shall be a nonresident bow and arrow
2 hunting and fishing license and shall entitle the licensee to
3 employ a long bow and arrow in taking game, fish and frogs
4 in all counties of the state. It shall be issued only to citizens
5 of the United States who are not residents of this state. The
6 fee therefor shall be fifteen dollars.

7 A Class LL license shall be a nonresident bow and arrow
8 bear hunting license and shall entitle the licensee to employ
9 a long bow in hunting bear in all counties of the state. It
10 shall be issued only to citizens of the United States who are
11 nonresidents of this state. The fee therefor shall be one
12 hundred dollars.

CHAPTER 86

(Com. Sub. for S. B. 352—By Mr. Colombo)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-six-b, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to not allowing holders of only Class O resident and nonresident

trout fishing license to hold a Class N special deer hunting license; and relating to Class N license season.

Be it enacted by the Legislature of West Virginia:

That section forty-six-b, 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.

§20-2-46b. 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 one antlerless deer of either sex during
4 the Class N license season: *Provided*, That if a hunter
5 kills a buck deer during the regular deer hunting season,
6 he shall also be permitted to hunt for and kill one antler-
7 less deer during Class N license season if he has applied
8 for and has had issued to him a Class N license. Only
9 one Class N license may be acquired during any calendar
10 year in which the Class N license season is held, and the
11 Class N license can be used only by the applicant. No
12 person receiving a Class N license for any given
13 Class N license season may receive a Class N license for
14 the next consecutive Class N license season. In order to
15 implement this restriction the director shall cause the
16 names and social security numbers of those persons
17 receiving licenses to be recorded in the department's
18 records. The fee for a Class N license is eight dollars:
19 *Provided, however*, That the director may issue a Class
20 N license to a person who received a Class N license the
21 preceding year if there are not sufficient applications
22 received from persons who did not receive a Class N
23 license the preceding year to meet the purpose for which
24 Class N licenses are issued.

25 The Class N license may be issued only for the purpose
26 of removing antlerless deer on a post-season basis when
27 the director deems it essential for proper management of
28 wildlife resources. The director shall establish such rules
29 and regulations governing the issuance of such Class N

30 licenses as he deems necessary to limit, on a fair and
31 equitable basis, the number of persons who may hunt for
32 antlerless deer in any county, or any part of a county:
33 *Provided*, That no more than four Class N licenses
34 shall be issued for each deer that the director desires to
35 have killed during the Class N season.

36 When the director deems it essential that Class N
37 license season be held in a particular county or part of a
38 county, that season shall be set by the natural resources
39 commission as provided for in section seventeen, article
40 one of this chapter.

41 Bona fide resident landowners or their resident chil-
42 dren, bona fide resident tenants of such land, and any
43 bona fide resident stockholder of resident corporations
44 which are formed for the primary purpose of hunting or
45 fishing and which are the fee simple owners of no less
46 than one thousand acres of land upon which such antler-
47 less deer may be hunted are not required to have a Class
48 N license in their possession while hunting antlerless
49 deer on their own land during the Class N license season.

50 A Class N license may be issued only to a resident of
51 this state who holds a valid Class A, Class AB or Class Q
52 license issued for the current calendar year or a resident
53 of West Virginia who is not required to obtain a license
54 or permit to hunt as provided in section twenty-eight,
55 article two of this chapter, except that this requirement
56 shall not apply to persons under the age of fifteen. The
57 director shall require proof of age before issuing a Class
58 N license, and such license shall contain a space for
59 recording the number of the valid Class A, Class AB or
60 Class Q license.

61 Notwithstanding any provision of this code to the
62 contrary, no Class N license shall be issued for a county
63 or a part of a county unless, during the regular deer
64 hunting season in the previous year, two bucks have been
65 killed per square mile of deer range in that county or part
66 of the county in which the hunt is held, and the director
67 deems the holding of the Class N season necessary.

CHAPTER 87

(S. B. 408—By Mr. McGraw, Mr. President)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and seven-a, article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to loans to industrial development agencies for industrial development projects and for industrial subdivision project acquisitions and improvements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-7. Loans to industrial development agencies for industrial development projects.

§31-15-7a. Loans to industrial development agencies for industrial subdivision project acquisitions and improvements.

§31-15-7. Loans to industrial development agencies for industrial development projects.

1 When it has determined upon application of an industrial
2 development agency and upon hearing in the manner
3 hereinafter provided that the establishment or acquisition of
4 a particular industrial development project has accomplished
5 or will accomplish the public purposes of this article, the
6 authority may contract to loan such agency up to one
7 hundred percent of the estimated cost of such project when
8 financed by bonds issued by the authority, or the authority
9 may contract to loan such agency an amount not in excess of
10 fifty percent of the cost or estimated cost of such project, as
11 established, to be established or proposed to be acquired,
12 when the project is not financed by bonds issued by the
13 authority, subject to the following conditions:

14 (a) The West Virginia economic development authority
15 shall make every reasonable effort to ensure that West
16 Virginia firms and West Virginia workers are used in such
17 projects.

18 (b) Industrial development projects to be established or
19 acquired.

20 (1) The authority shall have first determined that the
21 industrial development agency holds funds in an amount
22 equal to or property of a value equal to not less than ten
23 percent of the estimated cost of establishing or acquiring the
24 industrial development project, which funds or property are
25 available for and shall be applied to the establishment or
26 acquisition of the project.

27 (2) The authority shall have also determined that the
28 industrial development agency has obtained from other
29 independent and responsible sources, such as banks and
30 insurance companies, a firm commitment for all other funds
31 over and above the loan of the authority and such funds or
32 property as the agency may hold, necessary for payment of all
33 the estimated cost of establishing or acquiring the industrial
34 development project and that the sum of all these funds is
35 adequate to ensure completion and operation of the industrial
36 development project.

37 (c) Industrial development projects established or
38 acquired with initial authority loan participation.

39 (1) The authority shall have first determined that the
40 industrial development agency has expended funds in an
41 amount equal to, or has applied property of a value equal to,
42 not less than ten percent of the cost of establishing or
43 acquiring the industrial development project.

44 (2) The authority shall have also determined that the
45 industrial development agency obtained from other
46 independent and responsible sources, such as banks and
47 insurance companies, other funds necessary for payment of
48 all the cost of establishing or acquiring the industrial
49 development project and that the industrial development
50 agency participation and these funds have been adequate to
51 ensure completion and operation or acquisition of the
52 industrial development project. The proceeds of any loan
53 made by the authority to the industrial development agency
54 pursuant to this subdivision (c) shall be used only for the
55 establishment or acquisition of industrial development
56 projects in furtherance of the public purposes of this article.

57 The loan of the authority shall be for such period of time
58 and shall bear interest at such rate as the authority
59 determines and it shall be secured by the negotiable
60 promissory note of the industrial development agency and by

61 deed of trust on the industrial development project for which
62 the loan was made or by assignment of any deed of trust and
63 negotiable promissory note and other security taken by the
64 industrial development agency on the industrial
65 development project, such deed of trust and note, assignment
66 of deed of trust, and note and other security to be second and
67 subordinate only to the deed of trust securing the first lien
68 obligation issued to secure the commitment of funds from the
69 independent and responsible sources and used in the
70 financing of the industrial development project.

71 Money loaned by the authority to an industrial
72 development agency shall be withdrawn from the fund and
73 paid over to the agency in such manner as is provided by
74 rules and regulations of the authority.

75 The authority shall deposit all payments of interest on loans
76 and the principal thereof in the fund. When any federal
77 agency participates, the authority may adjust the required
78 ratios of financial participation by the industrial development
79 agency, the source of independent funds and the authority in
80 such manner as to ensure the maximum benefit available to
81 the industrial development agency, the authority, or both, by
82 the participation of the federal agency. When ratios are
83 adjusted as aforesaid, no such adjustment shall be made
84 which shall cause the authority to grant a loan to the
85 industrial development agency in excess of fifty percent of
86 the cost or estimated cost of the industrial development
87 project.

88 Where any federal agency participating in the financing of
89 an industrial development project is not permitted to take as
90 security for such participation a deed of trust or assignment
91 of deed of trust and other security the lien of which is junior
92 to the deed of trust or assignment of deed of trust and other
93 security of the authority, the authority may take as security
94 for its loan to the industrial development agency a deed of
95 trust or assignment of deed of trust and other security junior
96 in lien to that of the federal agency.

§31-15-7a. Loans to industrial development agencies for industrial subdivision project acquisitions and improvements.

1 When it has been determined upon application of an
2 industrial development agency and upon hearing in the
3 manner hereinafter provided that the acquisition or

4 improvement of a particular industrial subdivision project by
5 such agency will accomplish the public purposes of this
6 article, the authority may contract to loan such industrial
7 development agency up to one hundred percent of the
8 estimated cost of such project when financed by bonds issued
9 by the authority or, when the project is not financed by bonds
10 issued by the authority, the authority may contract to loan
11 such industrial development agency an amount not in excess
12 of fifty percent of the cost or estimated cost of such industrial
13 subdivision project acquisition or improvement, except as to
14 shell buildings, in which case the agency may contract to loan
15 an amount not in excess of ninety percent of the cost of such
16 shell building, subject to the following conditions:

17 (1) The authority shall have determined that the industrial
18 development agency has obtained from other independent
19 and responsible sources, such as banks and insurance
20 companies, a firm commitment for all other funds, over and
21 above the loan of the authority, necessary for payment of all
22 the estimated cost of the industrial subdivision project
23 acquisition or improvement and that the sum of all these
24 funds is adequate to ensure completion of the project
25 acquisition or improvement.

26 (2) The authority shall have also determined that the
27 industrial development agency has or proposes to acquire
28 clear and marketable legal title to the industrial subdivision
29 project to be improved or acquired.

30 (3) The industrial development agency shall covenant in
31 writing with the authority that, as long as any loan made by
32 the authority to the agency for the acquisition or
33 improvement of any industrial subdivision project remains
34 unpaid, no portion of such industrial subdivision project shall
35 be sold, leased or otherwise encumbered except for the
36 purpose of establishing an industrial development project on
37 such land by the agency.

38 (4) In the case of a contract to loan more than fifty percent
39 of the cost of a shell building, subject to the maximum
40 limitation of ninety percent as aforesaid, the industrial
41 development agency shall furnish to the authority evidence
42 that such industrial development agency has entered into a
43 contract whereby a responsible buyer or responsible tenant is
44 legally obligated to acquire or lease such shell building. The
45 Legislature finds and declares that it does not believe it
46 would be in the best interest of the state for the authority to

47 contract to loan more than fifty percent of the cost of a shell
48 building, subject to the maximum limitation of ninety
49 percent as aforesaid, unless it is clear that the use to be made
50 of such shell building will result in the employment of a
51 reasonably substantial work force.

52 The loan of the authority shall be for such period of time
53 and shall bear interest at such rate as the authority
54 determines and it shall be secured by the negotiable
55 promissory note of the industrial development agency and by
56 deed of trust on the industrial subdivision project for which
57 the loan was made, such deed of trust to be second and
58 subordinate only to the deed of trust securing the first lien
59 obligation issued to secure the commitment of funds from the
60 independent and responsible sources and used in the
61 financing of the industrial subdivision project acquisition or
62 improvement.

63 The authority may, in its discretion, defer the payment of
64 principal and interest, or principal only, or interest only, upon
65 any loan made to an industrial development agency for any
66 industrial subdivision project acquisition or improvement,
67 such deferment to be for such period as the authority
68 determines, not to exceed five years from the date of the deed
69 of trust securing the loan. If any portion of such industrial
70 subdivision project is sold or leased by the agency prior to the
71 expiration of the five-year period, all deferred installments of
72 the principal of the loan accrued on the date of such sale or
73 lease, or the proportionate part of such deferred principal
74 which the sold or leased portion of the project bears to its
75 total acreage, together with all unpaid interest accrued on the
76 date of such sale or lease, shall, at the option of the authority,
77 become due and payable immediately or subject to
78 renegotiation by either increasing or decreasing the number
79 and amount of each installment of principal and interest,
80 without effecting any change in the amount of principal of the
81 original loan or the rate of interest as originally fixed by the
82 authority in the deed of trust and note.

83 Money loaned by the authority to an industrial
84 development agency shall be withdrawn from the fund and
85 paid over to the agency in such manner as is provided by
86 rules and regulations of the authority.

87 The authority shall deposit all payments of interest on any
88 loans and the principal thereof in the fund.

89 Where any federal agency participating in the financing of

90 industrial subdivision project acquisition or improvement is
91 not permitted to take as security for such participation a deed
92 of trust or assignment of deed of trust and other security the
93 lien of which is junior to the deed of trust or assignment of
94 deed of trust and other security of the authority, the authority
95 may take as security for its loan to the industrial development
96 agency a deed of trust or assignment of deed of trust and
97 other security junior in lien to that of the federal agency.

CHAPTER 88

(Com. Sub. for S. B. 409—By Mr. McGraw, Mr. President)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen-b, relating to the state mortgage and industrial development investment pool; making legislative findings; establishing the pool; providing that the state board of investments provide funds for the pool from workmen's compensation and other accounts, but not from pension accounts; providing for short-term investment of such funds; providing for the release of such funds if not needed; providing that the housing development authority shall make fifty million dollars of such funds available for mortgages on single-family residential housing of up to eighty-five percent of appraised value; providing that the economic development authority make fifty million dollars of pool funds available for business loans; providing for collateral; providing for reversion to the control of the state board of investments if such funds are not needed; providing for interest rates of between ten and twelve percent for mortgages; providing that private institutions may make mortgage loans; providing for crediting of interest earned to the accounts; and providing for procedural rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT INVESTMENT POOL.

- §31-18B-1. Legislative intent.
- §31-18B-2. Establishment of state mortgage and industrial development investment pool; investment of workmen's compensation funds and other funds in such pool; schedule of moneys invested; authority of state board of investments to invest funds from the pool in short-term investments; reversion of control of state board of investments.
- §31-18B-3. Housing development fund to make available state mortgage and industrial development investment pool funds for mortgages on single-family residential units; limitations upon type and size of such mortgages.
- §31-18B-4. West Virginia economic development authority to make available state mortgage and industrial development investment pool funds for investment in industrial development; amount of funds available; interest rate specified.
- §31-18B-5. Reversion to state board of investments of money not used for mortgages.
- §31-18B-6. Interest rate charged by housing development fund; other charges; points.
- §31-18B-7. Term of mortgage loans; renegotiation after the years; promulgation of legislative rules.
- §31-18B-8. Persons eligible for loans from the state mortgage and industrial development investment pool; housing development fund to have sole discretion in determining who is to receive loans; discrimination prohibited.
- §31-18B-9. Housing development fund may contract with private institutions to place and service loans; payment of a portion of interest to such institutions.
- §31-18B-10. Disposition of interest income and repayments of principal.
- §31-18B-11. Procedural rules required.

§31-18B-1. Legislative intent.

- 1 The Legislature finds and declares that:
- 2 (1) The vast majority of West Virginians have pursued a
- 3 goal of owning a home, a center of family life and family
- 4 independence deeply cherished and highly valued.
- 5 (2) In many parts of the state there is a large number of
- 6 single-family residential units that cannot presently be
- 7 marketed because of high interest rates and adverse
- 8 economic conditions.
- 9 (3) In addition, the state and its inhabitants are suffering
- 10 high unemployment and low income because of the
- 11 depressed state of the housing market and because of its
- 12 inability to attract new business. This situation adversely
- 13 affects potential home buyers, home builders, skilled
- 14 craftsmen, realtors and their employees and other citizens.

15 These conditions also reduce state revenues and frustrate the
16 laudable aspirations of many West Virginians to enjoy the
17 pleasures of home ownership and pursue productive
18 employment.

19 (4) By the cooperative efforts of our citizens there is a large
20 pool of resources held in trust by the state for the sole benefit
21 of West Virginians, including funds reserved for workers
22 injured in the course of employment.

23 (5) Some of these funds, particularly the workmen's
24 compensation fund, are invested under the actuarial
25 assumption of a yield less than that of current market
26 investments. Yet the current yield on some of these funds,
27 and particularly the workmen's compensation fund, is lower
28 than the actuarially assumed interest rate, and has been for at
29 least three years.

30 (6) The common good does not require that all of these
31 funds be invested so as to yield the very highest investment
32 return offered in the market, especially when the current rate
33 of market interest is:

34 (a) So high that it stifles the legitimate aspirations and
35 attainable dreams of so many West Virginians and West
36 Virginia businesses; and

37 (b) So high that it encourages the flight of capital
38 accumulated by West Virginians for the benefit of West
39 Virginians to national markets where the only consideration
40 is the highest rate of return.

41 (7) In these circumstances, prudence does not require that
42 the state board of investments seek the highest rate of return
43 on all investments. Rather, prudence requires that in
44 investing federally tax-free funds the state board of
45 investments should seek a rate of return commensurate with
46 its public charter. Furthermore, prudence demands that the
47 board immediately seek fiscally sound investments within
48 the state of West Virginia which offer sound security and
49 directly serve the hopes and aspirations in housing and
50 employment of the inhabitants of this state.

51 (8) The survival and renewal of a vibrant market for single
52 family residential units and the opportunity to attract new
53 businesses to the state is a sound and preferred investment
54 for the resources held in trust by this state for its citizens.
55 Such investments deserve precedence and encouragement,
56 even at the expense of foregoing the highest rate of
57 investment return, an investment return which the tax paying

58 investor might gain in the current market place but which
59 prudence dictates that the state board of investments need not
60 pursue.

61 (9) The success of the undertakings required by this
62 article will be amply demonstrated by: (a) The increased
63 financial stability of the state, (b) the contribution which will
64 occur when the dreams of hundreds of West Virginians are
65 realized, (c) the intrinsic worth of enhancing the cooperative
66 spirit of the inhabitants of this state in employment and
67 housing, and (d) the enhancement of revenue to the state
68 which will be generated by the commerce West Virginia seeks
69 to stimulate. In addition, the rate of return realized by these
70 funds will be at least as high as the actuarial assumptions,
71 and, given the rates of return demonstrated over the past
72 three years, probably higher than the current rate of return.

**§31-18B-2. Establishment of state mortgage and industrial
development investment pool; investment of
workmen's compensation funds and other funds
in such pool; schedule of moneys invested;
authority of state board of investments to invest
funds from the pool in short-term investments;
reversion of control of state board of investments.**

1 (a) There is hereby created and established a "state
2 mortgage and industrial development investment pool" into
3 which moneys shall be paid as provided in this section. The
4 state mortgage and industrial development investment pool
5 shall consist of a portion of the moneys and funds entrusted
6 to the state board of investments by the commissioner of
7 workmen's compensation and other state agencies and
8 organizations, which funds are invested by the state board of
9 investments in long-term securities according to the
10 provisions of this code: *Provided*, That no moneys or funds
11 from any pension plan shall be invested in the state mortgage
12 and industrial development investment pool.

13 (b) Notwithstanding any of the restrictions of section nine,
14 article six, chapter twelve, the state board of investments
15 shall make available from the workmen's compensation
16 funds and other such funds which it invests, moneys for the
17 state mortgage and industrial development investment pool.
18 Such moneys shall be drawn from workmen's compensation
19 funds and other funds except pension funds currently
20 invested by the state board of investments and shall be made
21 available for investment on or before the dates established in

22 subsection (c) of this section: *Provided*, That should the work-
23 men's compensation fund fall below three hundred million
24 dollars, then no further transfers provided in this section shall
25 be granted until the fund again reaches four hundred million
26 dollars.

27 (c) The state board of investments shall make available for
28 investment in the state mortgage and industrial development
29 investment pool the funds identified in subsections (a) and (b)
30 of this section according to the following schedule:

31 (1) On the effective date of this act, twenty-five million
32 dollars of which twenty million dollars is to be deposited in
33 the pool for investment by the housing development fund,
34 and five million dollars is to be deposited in the pool for
35 investment by the economic development authority.

36 (2) On the first day of October, one thousand nine hundred
37 eighty-two, twenty-five million dollars, of which twenty
38 million dollars is to be deposited in the pool for investment by
39 the housing development fund, and five million is to be
40 deposited in the pool for investment by the economic
41 development authority.

42 (3) On the first day of January, one thousand nine hundred
43 eighty-three, twenty-five million dollars, of which ten million
44 dollars is to be deposited in the pool for investment by the
45 housing development fund, and fifteen million dollars is to be
46 deposited in the pool for investment by the economic
47 development authority.

48 (4) On the first day of April, one thousand nine hundred
49 eighty-three, twenty-five million dollars, all of which is to be
50 deposited in the pool for investment by the economic
51 development authority.

52 Investments by the housing development fund are to be
53 made pursuant to the provisions of section three of this
54 article, and by the economic development authority pursuant
55 to section four of this article.

56 (d) The state board of investments may, after committing
57 these funds to the state mortgage and industrial development
58 investment pool, invest the moneys of such pool in any
59 short-term investments as may be deemed to be prudent and
60 proper until such funds are invested by the housing
61 development fund or the West Virginia economic
62 development authority. The income from such short-term
63 investments shall accrue to and be credited to the accounts

64 from which such funds were drawn in proportion to the
65 amount of funds so drawn.

66 (e) The funds invested in the state mortgage and industrial
67 development pool shall be invested solely for the benefit of
68 the accounts from which the funds are drawn in proportion to
69 the amount so drawn. For purposes of crediting of investment
70 returns to the proper account, the state board of investments
71 is to consider the state mortgage and industrial development
72 investment pool as it would any other long-term investment
73 at a fixed rate of return.

74 (f) The housing development fund and the West Virginia
75 economic development authority may release the funds from
76 the state mortgage and industrial development investment
77 pool to the control of the state board of investments if it
78 determines that lower interest rates than those now
79 prevailing require that such funds cannot be competitively
80 invested in first mortgages on residential property or
81 industrial development projects located in the state.

**§31-18B-3. Housing development fund to make available state
mortgage and industrial development investment
pool funds for mortgages on single-family
residential units; limitations upon type and size of
such mortgages.**

1 (a) The housing development fund shall make available at
2 the interest rate specified in section six of this article, one half
3 of the moneys from the state mortgage and industrial
4 development investment pool for investment in mortgages on
5 single-family residential units, twenty-five percent of which
6 shall be designated and restricted, for a period of twelve
7 months, to new and never occupied single-family residential
8 units which shall, if not so used, revert to investments in
9 other nonrestricted mortgages. For the purposes of this
10 article, a single-family residential unit means a detached unit
11 on a separate piece of land used solely for the housing of one
12 family, and only one family, which family owns the dwelling
13 and the land or has a mortgage thereupon, and also includes
14 townhouses or row houses used by a family as a residential
15 dwelling, and owned by the family.

16 (b) Loans made by the housing development fund from
17 the state mortgage and industrial development investment
18 pool are to be made solely for the purpose of purchasing real
19 estate upon which is situate a single-family unit, or for the

20 construction of a single-family residential unit upon real
21 estate by the buyer of such unit to provide housing for only
22 himself and his family, or for the purpose of the payment of a
23 loan theretofore made for the construction of a single-family
24 residential unit, or for the purpose of purchasing real estate
25 upon which is situate a single-family residential unit and
26 making additions or improvements thereto: *Provided*, That
27 none of these loans shall be used to refinance existing loans,
28 except construction loans. Each such loan must be secured
29 by a first mortgage or first deed of trust upon such real
30 property. Such mortgage or deed of trust shall be held by the
31 housing development fund or its assignee.

32 (c) Loans made pursuant to the provisions of this section
33 may not exceed eighty-five percent of the appraised value of
34 the real estate and single-family residential unit: *Provided*,
35 That if the loan is for the purchase of a single-family residential
36 unit for the purpose of making additions and improvements
37 thereto, such loan shall be no more than eighty-five percent of the
38 appraised value of the property including such improvements
39 when made, as estimated by an appraiser retained by the fund.

40 (d) In no event may a loan obtained pursuant to this
41 section be for an amount greater than seventy-five thousand
42 dollars.

43 (e) Mortgage loans made pursuant to the provisions of this
44 section shall be insured for at least twenty percent of the
45 amount of the loan by either an agency of the federal
46 government or a private mortgage insurance company
47 licensed in the state.

**§31-18B-4. West Virginia economic development authority to
make available state mortgage and industrial
development investment pool funds for
investment in industrial development; amount of
funds available; interest rate specified.**

1 (a) The West Virginia economic development authority
2 may use for any investments authorized by sections seven
3 and seven-a, article fifteen, chapter thirty-one of this code up
4 to one half of the funds of the state mortgage and industrial
5 development investment pool: *Provided*, That the economic
6 development authority shall deposit with the treasurer of the
7 state for the credit of the state mortgage and industrial
8 development pool such notes, security interests or bonds
9 issued by the economic development authority evidencing

10 the indebtedness of the authority to the pool: *Provided*,
11 *However*, That such notes, security interests or bonds issued
12 by the authority shall be secured by security equal to or better
13 than the highest rating of at least two or more nationally
14 recognized rating services such as Standard and Poor's, Dun
15 and Bradstreet or Moody's.

16 (b) The interest rate and the maturity dates of the notes,
17 security interests or bonds held by the treasurer for the state
18 mortgage and industrial development investment pool shall be
19 determined by the economic development authority
20 according to the provisions of section eleven, article fifteen,
21 chapter thirty-one of this code: *Provided*, That such interest rate
22 shall not be less than ten percent per annum.

§31-18B-5. Reversion to state board of investments of money not used for mortgages.

1 Should the housing development fund or its agents or the
2 economic development authority fail to loan all or a portion of
3 the funds made available pursuant to section two of this
4 article within one year of the date those funds become a part
5 of the state mortgage and industrial development investment
6 pool, then that portion of the funds not invested shall revert
7 to the exclusive control of the state board of investments and
8 shall no longer be required to be available to the state
9 mortgage and industrial development investment pool:
10 *Provided*, That no part of the pool available for the economic
11 development authority shall revert to the state board of
12 investments until four years after these funds become part of
13 the pool.

§31-18B-6. Interest rate charged by housing development fund; other charges; points.

1 (a) The interest charged for mortgage loans obtained
2 according to the provisions of section three of this article
3 shall not exceed the monthly index of long-term United
4 States government bond yields for the calendar month
5 preceding the date the commitment for such loan is made:
6 *Provided*, That in no event shall the interest rate be more than
7 twelve percent per annum, nor less than ten percent per
8 annum. For the purposes of this section, the monthly index of
9 long-term United States government bond yields means the
10 monthly unweighted average of the daily unweighted average
11 of the closing bid yield quotations in the over-the-counter
12 market for all outstanding United States treasury bond issues

13 which mature twenty years or more from the date the index is
14 calculated, but shall not include such bonds as are
15 redeemable at par for payment of federal estate taxes.

16 (b) The housing development fund may charge such
17 points to the seller of the real estate covered by the first
18 mortgage deed or deed of trust as are necessary to offset costs
19 of making the loan, including, but not limited to, the costs of
20 processing the loan application and the costs of interest
21 charges incurred between the commitment date of the loan
22 and the date the property is actually purchased: *Provided*,
23 That such points charged shall not exceed two points and
24 shall be charged to the seller: *Provided, however*, That the
25 real estate broker shall, from his or her commission, pay an
26 amount equal to one point. The seller shall furnish to the fund
27 satisfactory proof that he or she has not within the two years
28 preceding the contract of the sale offered the house to the
29 buyer for less than the sale price provided in the contract or
30 sale between them. The proceeds from such points paid by
31 the seller and broker to the housing development fund, less
32 actual housing development fund expenses up to one half of
33 one point, and less an amount equal to the first year cost for
34 mortgage insurance required by section three of this article,
35 shall be transmitted to the state board of investments as
36 provided in section ten of this article.

§31-18B-7. Term of mortgage loans; renegotiation after ten years; promulgation of legislative rules.

1 (a) The term of the loans made pursuant to the provisions
2 of this article shall be not less than twenty nor more than
3 thirty years and shall be assumable by a person financially
4 qualified according to the provisions of section eight of this
5 article.

6 (b) The housing development fund may include in the first
7 mortgage agreement or deed of trust a provision which allows
8 it to renegotiate the rate of return after ten years. Such
9 provision may be written to allow the housing development
10 fund to increase the interest rate for the remainder of the loan
11 to the then monthly index of long-term United States
12 government bond yields as defined in section six of this
13 article for the calendar month preceding registration, as
14 defined in section six of this article, plus two percent per
15 annum: *Provided*, That the maximum renegotiated rate may
16 not exceed fourteen percent per annum: *Provided, however*,

17 That if the holder of the mortgage presents evidence that his
18 average gross income for the two years prior to the
19 renegotiation is no more than one sixth greater than his
20 income at the time the loan was made, then the loan shall not
21 be renegotiated.

22 (c) The housing development fund shall propose
23 legislative rules according to the provisions of chapter
24 twenty-nine-a of this code to implement this section.

**§31-18B-8. Persons eligible for loans from the state mortgage
and industrial development investment pool;
housing development fund to have sole discretion
in determining who is to receive loans;
discrimination prohibited.**

1 (a) Any person is entitled to receive a first mortgage or
2 deed of trust from the state mortgage and industrial
3 development investment pool for real estate situated within
4 the boundaries of the state if the person's family income for
5 each of the two years preceding the commitment year is fifty
6 thousand dollars or less: *Provided*, That such person must be
7 purchasing the real estate for use as his or her single-family
8 residential unit as defined in section three of this article:
9 *Provided, however*, That such person is qualified for the loan
10 as provided in this section.

11 (b) The housing development fund shall have sole
12 discretion in determining who is qualified to receive
13 mortgage loans from the state mortgage and industrial
14 development investment pool, subject to the provisions of
15 section fourteen of this article. The housing development
16 fund shall establish by interpretive rule promulgated
17 pursuant to the provisions of chapter twenty-nine-a
18 guidelines for the exercise of this discretion.

19 (c) The housing development fund shall issue mortgage
20 loans to such qualified buyers on the basis of the first of such
21 buyers in the order in which the applications are approved.

22 (d) In view of the uncertain economic conditions
23 prevailing, the fund may propose legislative rules which, if
24 promulgated, suspend all or any of the provisions of this
25 section.

26 (e) The housing development fund shall not discriminate
27 against buyers on the basis of race, sex, national origin,
28 religion or location in the state in which the buyer resides.

§31-18B-9. Housing development fund may contract with private institutions to place and service loans; payment of a portion of interest to such institutions.

1 (a) The housing development fund may contract with
2 private mortgage companies, savings and loan associations,
3 or banks to provide for the placement, origination and
4 servicing of the mortgages described in this article: *Provided*,
5 That such institutions must be licensed to do business in
6 West Virginia and, in the case of a savings and loan, or a bank,
7 must be under the supervision of the department of banking
8 of this state as provided in chapter thirty-one-a of this code or
9 must be a national bank or a federally insured savings and
10 loan. Such institutions shall follow the same restrictions as
11 the housing development fund, and shall act only as the agent
12 for such.

13 (b) Notwithstanding the maximum interest rate specified
14 in section six of this article, the housing development fund is
15 authorized to increase the interest rate, up to one half of one
16 percent over the rate provided in section six if the loan has
17 been placed and serviced by a mortgage company, savings
18 and loan or bank. Such mortgage company, savings and loan
19 or bank shall receive such extra amount as payment for its
20 services.

21 (c) If the housing development fund so determines, one of
22 the points provided for in section six of this article may be
23 paid to the private mortgage company, bank or savings and
24 loan to cover the expense of originating the loan.

§31-18B-10. Disposition of interest income and repayments of principal.

1 (a) The interest received from mortgage payments made
2 pursuant to the provisions of this article shall be transmitted
3 to the state board of investments monthly.

4 (b) Such interest shall be treated by the state board of
5 investments as an investment return, and shall be credited to
6 the workmen's compensation account or other appropriate
7 accounts in the same manner as interest received on other
8 investments.

9 (c) The funds from repayment of principal of mortgage
10 loans shall be reinvested by the housing development fund
11 according to the provisions of section five of this article.
12 Funds which have been repaid to the state mortgage and

13 industrial development investment pool and not reinvested
14 in mortgages within one year shall revert to the sole control of
15 the state board of investments and shall no longer be
16 considered part of the state mortgage and industrial
17 development investment pool.

§31-18B-11. Procedural rules required.

1 The housing development fund may promulgate
2 procedural rules pursuant to chapter twenty-nine-a which
3 describe procedures used to procure a loan pursuant to the
4 provisions of this article and to introduce such forms as may
5 be required.

CHAPTER 89

(Com. Sub. for S. B. 251—By Mr. Heck)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including mine subsidence insurance within the definition of kinds of insurance; and excluding professional bondsmen and certain individuals from the definitions of surety insurance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEFINITIONS.

***§33-1-10. Kinds of insurance defined.**

1 The following definitions of kinds of insurance are not
2 mutually exclusive and, if reasonably adaptable thereto,
3 a particular coverage may be included under one or more
4 of such definitions:

*Clerk's Note: This section was also amended by Com. Sub. for H. B. 1874, now Chapter 90, Acts, 1982, which was passed March 11, 1982.

5 (a) Life insurance—Life insurance is insurance on
6 human lives including endowment benefits, additional
7 benefits in the event of death or dismemberment by acci-
8 dent or accidental means, additional benefits for disa-
9 bility and annuities.

10 (b) Accident and sickness—Accident and sickness in-
11 surance is insurance against bodily injury, disability or
12 death by accident or accidental means, or the expense
13 thereof, or against disability or expense resulting from
14 sickness, and insurance relating thereto.

15 (c) Fire—Fire insurance is insurance on real or per-
16 sonal property of every kind and interest therein, against
17 loss or damage from any or all hazard or cause, and
18 against loss consequential upon such loss or damage, other
19 than noncontractual liability for any such loss or damage.
20 Fire insurance shall also include miscellaneous insurance
21 as defined in paragraph (12), subdivision (e) of this
22 section.

23 (d) Marine—Marine insurance is insurance:

24 (1) Against any and all kinds of loss or damage to
25 vessels, craft, aircraft, cars, automobiles and vehicles of
26 every kind, as well as all goods, freight, cargoes, mer-
27 chandise, effects, disbursements, profits, moneys, bullion,
28 precious stones, securities, choses in action, evidences of
29 debt, valuable papers, bottomry and respondentia interests
30 and all other kinds of property and interests therein, in
31 respect to, appertaining to or in connection with any and
32 all risks or perils of navigation, transit or transportation,
33 including war risks, on or under any seas or other waters,
34 on land (above or below ground), or in the air, or while
35 being assembled, packed, crated, baled, compressed or
36 similarly prepared for shipment or while awaiting the
37 same or during any delays, storage, transshipment or
38 reshipment incident thereto, including marine builders'
39 risks and all personal property floater risks;

40 (2) Against any and all kinds of loss or damage to
41 person or to property in connection with or appertaining
42 to a marine, inland marine, transit or transportation in-

43 surance, including liability for loss of or damage to either,
44 arising out of or in connection with the construction,
45 repair, operation, maintenance or use of the subject mat-
46 ter of such insurance (but not including life insurance or
47 surety bonds nor insurance against loss by reason of
48 bodily injury to the person arising out of the ownership,
49 maintenance or use of automobiles);

50 (3) Against any and all kinds of loss or damage to
51 precious stones, jewels, jewelry, gold, silver and other
52 precious metals, whether used in business or trade or
53 otherwise and whether the same be in course of trans-
54 portation or otherwise;

55 (4) Against any and all kinds of loss or damage to
56 bridges, tunnels and other instrumentalities of transpor-
57 tation and communication (excluding buildings, their
58 furniture and furnishings, fixed contents and supplies held
59 in storage) unless fire, windstorm, sprinkler leakage, hail,
60 explosion, earthquake, riot or civil commotion or any or
61 all of them are the only hazards to be covered;

62 (5) Against any and all kinds of loss or damage to
63 piers, wharves, docks and ships, excluding the risks of
64 fire, windstorm, sprinkler leakage, hail, explosion, earth-
65 quake, riot and civil commotion and each of them;

66 (6) Against any and all kinds of loss or damage to
67 other aids to navigation and transportation, including dry
68 docks and marine railways, dams and appurtenant facili-
69 ties for control of waterways; and

70 (7) Marine protection and indemnity insurance, which
71 is insurance against, or against legal liability of the in-
72 sured for, loss, damage or expense arising out of, or inci-
73 dent to, the ownership, operation, chartering, mainten-
74 ance, use, repair or construction of any vessel, craft or
75 instrumentality in use in ocean or inland waterways,
76 including liability of the insured for personal injury,
77 illness or death or for loss of or damage to the property of
78 another person.

79 (e) Casualty—Casualty insurance includes:

80 (1) Vehicle insurance, which is insurance against loss

81 of or damage to any land vehicle or aircraft or any draft
82 or riding animal or to property while contained therein or
83 thereon or being loaded therein or therefrom, from any
84 hazard or cause, and against any loss, liability or expense
85 resulting from or incident to ownership, maintenance or
86 use of any such vehicle, aircraft or animal; together with
87 insurance against accidental death or accidental injury to
88 individuals, including the named insured, while in, enter-
89 ing, alighting from, adjusting, repairing or cranking, or
90 caused by being struck by any vehicle, aircraft or draft
91 or riding animal, if such insurance is issued as a part of
92 insurance on the vehicle, aircraft or draft or riding ani-
93 mal;

94 (2) Liability insurance, which is insurance against
95 legal liability for the death, injury or disability of any
96 human being, or for damage to property; and provisions
97 for medical, hospital, surgical, disability benefits to in-
98 jured persons and funeral and death benefits to depend-
99 ents, beneficiaries or personal representatives of persons
100 killed, irrespective of legal liability of the insured, when
101 issued as an incidental coverage with or supplemental to
102 liability insurance;

103 (3) Burglary and theft insurance, which is insurance
104 against loss or damage by burglary, theft, larceny, rob-
105 bery, forgery, fraud, vandalism, malicious mischief, con-
106 fiscation, or wrongful conversion, disposal or concealment,
107 or from any attempt at any of the foregoing, including
108 supplemental coverages for medical, hospital, surgical and
109 funeral benefits sustained by the named insured or other
110 person as a result of bodily injury during the commission
111 of a burglary, robbery or theft by another; also insurance
112 against loss of or damage to moneys, coins, bullion, securi-
113 ties, notes, drafts, acceptances, or any other valuable pa-
114 pers and documents, resulting from any cause;

115 (4) Personal property floater insurance, which is in-
116 surance upon personal effects against loss or damage from
117 any cause;

118 (5) Glass insurance, which is insurance against loss or
119 damage to glass, including its lettering, ornamentation
120 and fittings;

121 (6) Boiler and machinery insurance, which is insurance
122 against any liability and loss or damage to property or
123 interest resulting from accidents to or explosion of boil-
124 ers, pipes, pressure containers, machinery or apparatus,
125 and to make inspection of and issue certificates of inspec-
126 tion upon boilers, machinery and apparatus of any kind,
127 whether or not insured;

128 (7) Leakage and fire extinguishing equipment insur-
129 ance, which is insurance against loss or damage to any
130 property or interest caused by the breakage or leakage of
131 sprinklers, hoses, pumps and other fire extinguishing
132 equipment or apparatus, water mains, pipes and contain-
133 ers, or by water entering through leaks or openings in
134 buildings, and insurance against loss or damage to such
135 sprinklers, hoses, pumps and other fire extinguishing
136 equipment or apparatus;

137 (8) Credit insurance, which is insurance against loss or
138 damage resulting from failure of debtors to pay their
139 obligations to the insured. Credit insurance shall include
140 loss of income insurance which is insurance against the
141 failure of a debtor to pay his or her monthly obligation
142 due to involuntary loss of employment. For the purpose
143 of this definition, involuntary loss of employment means
144 unemployment which has occurred as a result of, but not
145 limited to, individual or mass layoffs, general strikes or
146 lockouts;

147 (9) Malpractice insurance, which is insurance against
148 legal liability of the insured, and against loss, damage or
149 expense incidental to a claim of such liability, and in-
150 cluding medical, hospital, surgical and funeral benefits
151 to injured persons, irrespective of legal liability of the
152 insured arising out of the death, injury or disablement of
153 any person, or arising out of damage to the economic
154 interest of any person, as the result of negligence in ren-
155 dering expert, fiduciary or professional service;

156 (10) Entertainment insurance, which is insurance
157 indemnifying the producer of any motion picture, tele-
158 vision, radio, theatrical, sport, spectacle, entertainment or
159 similar production, event or exhibition against loss from

160 interruption, postponement or cancellation thereof due to
161 death, accidental injury or sickness of performers, par-
162 ticipants, directors or other principals;

163 (11) Mine subsidence insurance, as provided for in
164 article thirty of this chapter; and

165 (12) Miscellaneous insurance, which is insurance
166 against any other kind of loss, damage or liability prop-
167 erly a subject of insurance and not within any other kind
168 of insurance as defined in this chapter, if such insurance
169 is not disapproved by the commissioner as being contrary
170 to law or public policy.

171 (f) Surety—Surety insurance includes:

172 (1) Fidelity insurance, which is insurance guaranteeing
173 the fidelity of persons holding positions of public or
174 private trust;

175 (2) Insurance guaranteeing the performance of con-
176 tracts, other than insurance policies, and guaranteeing
177 and executing bonds, undertakings, and contracts of
178 suretyship: *Provided*, That surety insurance does not in-
179 clude the guaranteeing and executing of bonds by pro-
180 fessional bondsmen in criminal cases, or by individuals
181 not in the business of becoming a surety for compensa-
182 tion upon bonds;

183 (3) Insurance indemnifying banks, bankers, brokers,
184 financial or moneyed corporations or associations against
185 loss, resulting from any cause, of bills of exchange, notes,
186 bonds, securities, evidences of debt, deeds, mortgages,
187 warehouse receipts or other valuable papers, documents,
188 money, precious metals and articles made therefrom,
189 jewelry, watches, necklaces, bracelets, gems, precious and
190 semiprecious stones, including any loss while they are
191 being transported in armored motor vehicles or by
192 messenger, but not including any other risks of transpor-
193 tation or navigation, and also insurance against loss or
194 damage to such an insured's premises or to his furnish-
195 ings, fixtures, equipment, safes and vaults therein, caused
196 by burglary, robbery, theft, vandalism or malicious mis-
197 chief, or any attempt to commit such crimes; and

198 (4) Title insurance, which is insurance of owners of
199 property or others having an interest therein, or liens or
200 encumbrances thereon, against loss by encumbrance,
201 defective title, invalidity or adverse claim to title.

CHAPTER 90

(Com. Sub. for H. B. 1874—By Mr. Shingleton and Mr. Riffle)

[Passed March 11, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter thirty-three 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 thirty, all relating to the establishment and maintenance, under the supervision and control of state board of risk and insurance management, of a certain mine subsidence insurance program; requiring insurers in the state to provide certain mine subsidence insurance to their policyholders; providing for the establishment and maintenance of a mine subsidence insurance fund supported by certain insurance premiums and payments and permissive advancement of state moneys; providing findings, purpose and definitions; giving insurers a limited right to refuse to provide said coverage; providing for reinsurance agreements, distribution of premiums, payments of losses, reporting, subrogation and a right of recourse.

Be it enacted by the Legislature of West Virginia:

That section ten, article one, chapter thirty-three 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 thirty, all to read as follows:

Article

- 1. Definitions.**
- 30. Mine Subsidence Insurance.**

ARTICLE 1. DEFINITIONS.***§33-1-10. Kinds of insurance defined.**

1 The following definitions of kinds of insurance are not
2 mutually exclusive and, if reasonably adaptable thereto, a
3 particular coverage may be included under one or more of
4 such definitions:

5 (a) Life Insurance—Life insurance is insurance on human
6 lives including endowment benefits, additional benefits in
7 the event of death or dismemberment by accident or accidental
8 means, additional benefits for disability, and annuities;

9 (b) Accident and Sickness—Accident and sickness in-
10 surance is insurance against bodily injury, disability or death
11 by accident or accidental means, or the expense thereof,
12 or against disability or expense resulting from sickness, and
13 insurance relating thereto;

14 (c) Fire—Fire insurance is insurance on real or personal
15 property of every kind and interest therein, against loss or
16 damage from any or all hazard or cause, and against loss
17 consequential upon such loss or damage, other than noncon-
18 tractual liability for any such loss or damage. Fire insurance
19 shall also include miscellaneous insurance as defined in para-
20 graph (12), subdivision (e) of this section.

21 (d) Marine—Marine insurance is insurance:

22 (1) Against any and all kinds of loss or damage to vessels,
23 craft, aircraft, cars, automobiles and vehicles of every kind,
24 as well as all goods, freight, cargoes, merchandise, effects,
25 disbursements, profits, moneys, bullion, precious stones, secur-
26 ities, choses in action, evidences of debt, valuable papers,
27 bottomry and respondentia interests and all other kinds of
28 property and interests therein, in respect to, appertaining to
29 or in connection with any and all risks or perils of navigation,
30 transit or transportation, including war risks, on or under
31 any seas or other waters, on land (above or below ground),
32 or in the air, or while being assembled, packed, crated, baled,

*Clerk's Note: This section was also amended by Com. Sub. for S. B. 251, now Chapter 89, Acts, 1982, which was passed March 12, 1982.

33 compressed or similarly prepared for shipment or while
34 awaiting the same or during any delays, storage, transship-
35 ment, or reshipment incident thereto, including marine build-
36 ers' risks and all personal property floater risks;

37 (2) Against any and all kinds of loss or damage to per-
38 son or to property in connection with or appertaining to a
39 marine, inland marine, transit or transportation insurance, in-
40 cluding liability for loss of or damage to either, arising out of or
41 in connection with the construction, repair, operation, main-
42 tenance or use of the subject matter of such insurance (but
43 not including life insurance or surety bonds nor insurance
44 against loss by reason of bodily injury to the person arising
45 out of the ownership, maintenance or use of automobiles);

46 (3) Against any and all kinds of loss or damage to
47 precious stones, jewels, jewelry, gold, silver and other precious
48 metals, whether used in business or trade or otherwise and
49 whether the same be in course of transportation or other-
50 wise;

51 (4) Against any and all kinds of loss or damage to bridges,
52 tunnels and other instrumentalities of transportation and
53 communication (excluding buildings, their furniture and fur-
54 nishings, fixed contents and supplies held in storage) unless
55 fire, windstorm, sprinkler leakage, hail, explosion, earthquake,
56 riot or civil commotion or any or all of them are the only
57 hazards to be covered;

58 (5) Against any and all kinds of loss or damage to
59 piers, wharves, docks and ships, excluding the risks of fire,
60 windstorm, sprinkler leakage, hail, explosion, earthquake,
61 riot and civil commotion and each of them;

62 (6) Against any and all kinds of loss or damage to other
63 aids to navigation and transportation, including dry docks and
64 marine railways, dams and appurtenant facilities for control
65 of waterways; and

66 (7) Marine protection and indemnity insurance, which
67 is insurance against, or against legal liability of the insured
68 for, loss, damage or expense arising out of, or incident to,
69 the ownership, operation, chartering, maintenance, use, re-

70 pair or construction of any vessel, craft or instrumentality
71 in use in ocean or inland waterways, including liability of
72 the insured for personal injury, illness or death or for loss
73 of or damage to the property of another person.

74 (e) Casualty—Casualty insurance includes:

75 (1) Vehicle insurance, which is insurance against loss
76 of or damage to any land vehicle or aircraft or any draft or
77 riding animal or to property while contained therein or
78 thereon or being loaded therein or therefrom, from any
79 hazard or cause, and against any loss, liability or expense
80 resulting from or incident to ownership, maintenance or use
81 of any such vehicle, aircraft or animal; together with insur-
82 ance against accidental death or accidental injury to in-
83 dividuals, including the named insured, while in, entering,
84 alighting from, adjusting, repairing or cranking, or caused
85 by being struck by any vehicle, aircraft or draft or riding
86 animal, if such insurance is issued as a part of insurance on
87 the vehicle, aircraft or draft or riding animal;

88 (2) Liability insurance, which is insurance against legal
89 liability for the death, injury or disability of any human
90 being, or for damage to property; and provisions for medical,
91 hospital, surgical, disability benefits to injured persons and
92 funeral and death benefits to dependents, beneficiaries or
93 personal representatives of persons killed, irrespective of legal
94 liability of the insured, when issued as an incidental coverage
95 with or supplemental to liability insurance;

96 (3) Burglary and theft insurance, which is insurance
97 against loss or damage by burglary, theft, larceny, robbery,
98 forgery, fraud, vandalism, malicious mischief, confiscation,
99 or wrongful conversion, disposal or concealment, or from
100 any attempt at any of the foregoing, including supplemental
101 coverages for medical, hospital, surgical and funeral bene-
102 fits sustained by the named insured or other person as a
103 result of bodily injury during the commission of a burglary,
104 robbery or theft by another; also insurance against loss of
105 or damage to moneys, coins, bullion, securities, notes, drafts,
106 acceptances, or any other valuable papers and documents,
107 resulting from any cause;

108 (4) Personal property floater insurance, which is insur-
109 ance upon personal effects against loss or damage from
110 any cause;

111 (5) Glass insurance, which is insurance against loss or
112 damage to glass, including its lettering, ornamentation and
113 fittings;

114 (6) Boiler and machinery insurance, which is insurance
115 against any liability and loss or damage to property or
116 interest resulting from accidents to or explosion of boilers,
117 pipes, pressure containers, machinery or apparatus, and to
118 make inspection of and issue certificates of inspection upon
119 boilers, machinery and apparatus of any kind, whether or
120 not insured;

121 (7) Leakage and fire extinguishing equipment insurance,
122 which is insurance against loss or damage to any property or
123 interest caused by the breakage or leakage of sprinklers,
124 hoses, pumps and other fire extinguishing equipment or
125 apparatus, water mains, pipes and containers, or by water
126 entering through leaks or openings in buildings, and in-
127 surance against loss or damage to such sprinklers, hoses, pumps
128 and other fire extinguishing equipment or apparatus;

129 (8) Credit insurance, which is insurance against loss or
130 damage resulting from failure of debtors to pay their ob-
131 ligations to the insured. Credit insurance shall include loss
132 of income insurance which is insurance against the failure
133 of a debtor to pay his or her monthly obligation due to
134 involuntary loss of employment. For the purpose of this defini-
135 tion, involuntary loss of employment means unemployment
136 which has occurred as a result of, but not limited to, individual
137 or mass layoffs, general strikes or lockouts;

138 (9) Malpractice insurance, which is insurance against legal
139 liability of the insured, and against loss, damage or expense
140 incidental to a claim of such liability, and including medical,
141 hospital, surgical and funeral benefits to injured persons,
142 irrespective of legal liability of the insured, arising out of
143 the death, injury or disablement of any person, or arising
144 out of damage to the economic interest of any person, as

145 the result of negligence in rendering expert, fiduciary or pro-
146 fessional service;

147 (10) Entertainment insurance, which is insurance in-
148 demnifying the producer of any motion picture, television,
149 radio, theatrical, sport, spectacle, entertainment or similar
150 production, event or exhibition against loss from interrup-
151 tion, postponement or cancellation thereof due to death,
152 accidental injury, or sickness of performers, participants, direc-
153 tors or other principals;

154 (11) Mine subsidence insurance, as provided for in article
155 thirty of this chapter; and

156 (12) Miscellaneous insurance, which is insurance against
157 any other kind of loss, damage or liability properly a subject
158 of insurance and not within any other kind of insurance as
159 defined in this chapter, if such insurance is not disapproved
160 by the commissioner as being contrary to law or public
161 policy.

162 (f) Surety—Surety insurance includes:

163 (1) Fidelity insurance, which is insurance guaranteeing the
164 fidelity of persons holding positions of public or private
165 trust;

166 (2) Insurance guaranteeing the performance of contracts,
167 other than insurance policies, and guaranteeing and executing
168 bonds, undertakings and contracts of suretyship: *Provided,*
169 That surety insurance does not include the guaranteeing and
170 executing of bonds by professional bondsmen in criminal
171 cases, or by individuals not in the business of becoming a
172 surety for compensation upon bonds;

173 (3) Insurance indemnifying banks, bankers, brokers, finan-
174 cial or moneyed corporations or associations against loss,
175 resulting from any cause, of bills of exchange, notes, bonds,
176 securities, evidences of debt, deeds, mortgages, warehouse
177 receipts or other valuable papers, documents, money, pre-
178 cious metals and articles made therefrom, jewelry, watches,
179 necklaces, bracelets, gems, precious and semiprecious stones,
180 including any loss while they are being transported in armored
181 motor vehicles or by messenger, but not including any other

182 risks of transportation or navigation, and also insurance
183 against loss or damage to such an insured's premises or to
184 his furnishings, fixtures, equipment, safes and vaults therein,
185 caused by burglary, robbery, theft, vandalism or malicious
186 mischief, or any attempt to commit such crimes; and

187 (4) Title insurance, which is insurance of owners of
188 property or others having an interest therein, or liens or en-
189 cumbrances thereon, against loss by encumbrance, defective
190 title, invalidity or adverse claim to title.

ARTICLE 30. MINE SUBSIDENCE INSURANCE.

§33-30-1. Legislative findings.

§33-30-2. Purpose.

§33-30-3. Definitions.

§33-30-4. Mine subsidence insurance fund.

§33-30-5. State support for mine subsidence insurance fund.

§33-30-6. Mine subsidence coverage; exemption from waivers in writing.

§33-30-7. Limited right of insurers to refuse to provide subsidence coverage.

§33-30-8. Reinsurance agreements.

§33-30-9. Distribution of premium.

§33-30-10. Payment of losses.

§33-30-11. Reporting.

§33-30-12. Right of recourse.

§33-30-13. Subrogation.

§33-30-14. Powers of board.

§33-30-15. Rules and regulations.

§33-30-1. Legislative findings.

1 Mine subsidence in this state has resulted in great loss of
2 home, shelter and property to the citizens of this state to
3 the detriment of the health, safety and welfare of such citizens
4 and programs for the alleviation of such problems constitute
5 the carrying out a public purpose. The Legislature hereby
6 declares that the loss of home, shelter and property constitute
7 a detriment to the safety, health and welfare and constitute
8 a public purpose for which this article is in response and is
9 an attempt to alleviate the public detriment.

§33-30-2. Purpose.

1 The purpose of this article is to make mine subsidence in-
2 surance available in a reasonable and equitable manner to
3 all residents of this state through the office of the state board
4 of risk and insurance management.

§33-30-3. Definitions.

1 As used in this article:

2 (1) "Board" means the state board of risk and insurance
3 management;

4 (2) "Mine subsidence" means loss to a structure caused by
5 lateral or vertical movement, including collapse which results
6 therefrom, of structures from collapse of man-made under-
7 ground coal mines. It does not include loss caused by earth-
8 quake, landslide, volcanic eruption or collapse of storm and
9 sewer drains and rapid transit tunnels;

10 (3) "Mine subsidence insurance fund" or "fund" means the
11 the fund established by this article within the office of the
12 state board of risk and insurance management;

13 (4) "Policy" means a contract of insurance providing mine
14 subsidence insurance;

15 (5) "Premium" means the gross rate charged policyholders
16 for insurance provided by this article; and

17 (6) "Structure" means any dwelling, building or fixture
18 permanently affixed to realty, but does not include land,
19 trees, plants, crops or industrial and commercial buildings.

§33-30-4. Mine subsidence insurance fund.

1 (a) There is hereby established within the office of the
2 state board of risk and insurance management a fund to be
3 known as the "mine subsidence insurance fund." The board
4 shall operate the fund pursuant to this article.

5 (b) The fund shall make available insurance coverage
6 against losses arising out of or due to mine subsidence within
7 this state as to any structure within this state.

8 (c) The moneys in the fund shall be derived from premiums
9 for subsidence insurance collected on behalf of the board
10 pursuant to this article.

11 (d) Premiums for subsidence insurance shall be estab-
12 lished by the board, who shall periodically review the pre-
13 mium level and the experience data applicable to operation
14 of the fund and make changes as required.

15 (e) Premiums shall be established at a rate or within a
16 schedule of rates sufficient to satisfy all foreseeable claims
17 upon the fund during the period of coverage, giving due
18 consideration to relevant loss or claim experience or trends,
19 to cover normal costs of operation of the fund by the
20 board and provide a reasonable reserve fund for unexpected
21 contingencies. Deviation from the premium set by the board
22 shall not be allowed.

§33-30-5. State support for mine subsidence insurance fund.

1 (a) The Legislature may appropriate to the mine subsidence
2 insurance fund or the governor may grant to the fund out of
3 the governor's civil contingency fund an amount not to exceed
4 five hundred thousand dollars to pay claims against the fund
5 occurring prior to the accumulation of sufficient reserve to
6 pay such claims and to provide a reasonable reserve fund
7 for unexpected contingencies. The board shall determine
8 adequacy and reasonableness of the reserve.

9 (b) In the absence of appropriations from the Legislature
10 or grants from the governor's civil contingency fund, the
11 board may advance from its insurance fund sufficient amounts
12 to pay claims against the mine subsidence fund. Any funds
13 advanced by the board shall be repaid to the insurance fund.

§33-30-6. Mine subsidence coverage; exemption from waivers in writing.

1 (a) Beginning the first day of October, one thousand nine
2 hundred eighty-two, every insurance policy issued or renewed
3 insuring on a direct basis a structure located in this state
4 shall include, at a separately stated premium, insurance for
5 loss occurring on or after October first, one thousand nine
6 hundred eighty-two, caused by mine subsidence unless waived
7 in writing by the insured. The premium charged for coverage
8 shall be the same as the premium level set by the board.
9 The loss covered shall be the loss in excess of two percent
10 of the policy's total insured value, but at no time shall the
11 deductible be less than two hundred fifty dollars nor more
12 than five hundred dollars; and total insured value reinsured
13 by the commissioner shall not exceed fifty thousand dollars.

14 (b) The board may designate by regulation or rule certain

15 counties in this state where the insured therein may waive
16 mine subsidence insurance coverage by means other than the
17 writing required by subsection (a) of this section.

§33-30-7. Limited right of insurers to refuse to provide subsidence coverage.

1 An insurer may refuse to provide subsidence coverage (1)
2 on a structure evidencing unrepaired subsidence damage,
3 until necessary repairs are made; or (2) where the insurer
4 has declined, nonrenewed or canceled all coverage under
5 a policy for underwriting reasons unrelated to mine subsidence.

6 Any dispute arising under this section shall be subject to
7 the hearing and appeal provisions of article two of this chapter.

§33-30-8. Reinsurance agreements.

1 All companies authorized to write fire insurance in this
2 state shall enter into a reinsurance agreement with the board
3 in which each insurer agrees to cede to the board one hundred
4 percent, up to fifty thousand dollars, of any subsidence in-
5 surance coverage issued and, in consideration of the ceding
6 commission retained by the insurer, agree to undertake ad-
7 justment of losses, and payment of taxes, and to absorb all
8 other expenses of the insurer necessary for sale of policies and
9 administration of the mine subsidence insurance program.
10 The board shall agree to reimburse insurer from the fund for
11 all amounts paid policyholders for claims resulting from
12 subsidence and shall pay from the fund all costs of administra-
13 tion incurred by the board but an insurer is not required
14 to pay any claim for any loss insured under this article except
15 to the extent that the amount available in the mine subsidence
16 insurance fund, as maintained pursuant to sections four and
17 five of this article, is sufficient to reimburse the insurer for such
18 claim under this section, and without moral obligation.

§33-30-9. Distribution of premium.

1 The proportion of total subsidence insurance premiums col-
2 lected by each insurer which shall be retained by the insurer
3 as a ceding commission shall be fixed by the board. The re-
4 mainder of such premiums shall be remitted by the insurer to

5 the board within forty-five days after the end of each calendar
6 quarter.

§33-30-10. Payment of losses.

1 (a) Pursuant to the reinsurance agreements, authorized by
2 this article, the board shall, within ninety days after receiving
3 the loss report required by section eleven of this article pay the
4 insurer all amounts due out of the fund.

5 (b) No claim of an insured shall be paid by an insurer in
6 respect of a loss covered by mine subsidence insurance prior
7 to February fifteenth, one thousand nine hundred eighty-three.
8 On and after February fifteenth, one thousand nine hundred
9 eighty-three, all claims of insureds shall be paid within one
10 hundred twenty days after proof of loss is presented to an
11 insurer unless otherwise agreed by the insurer and claimant.

§33-30-11. Reporting.

1 Every insurer must report at times designated by the
2 board the amounts of premiums collected and shall report
3 semiannually on dates established by the board an itemized
4 list of all losses paid, including the policy number and loca-
5 tion of structures insured pursuant to this article and reinsured
6 by the commissioner.

§33-30-12. Right of recourse.

1 Except in the case of fraud by an insurer, the board does
2 not have any right of recourse against the insurer and the
3 insurer may settle losses in the customary manner.

4 The board may require an insurer to attempt recovery from
5 a policyholder for the amounts paid to such policyholder if, in
6 the judgment of the board, the policyholder was not entitled to
7 the amounts paid because of fraud or violation of the policy
8 conditions. The costs of such recovery attempt shall be borne
9 equally by the insurer and the board.

10 Any dispute under this section shall be subject to the
11 hearing and appeal provisions of article two of this chapter.

§33-30-13. Subrogation.

1 Each insurer issuing mine subsidence insurance policies in
2 this state has the right of subrogation.

3 The board may exercise the right of subrogation.

4 Every insurer shall include in its semiannual reports an
5 itemized list of all losses in subrogation and shall remit to
6 the board all moneys, less expenses, recovered as the result of
7 subrogation actions.

§33-30-14. Powers of board.

1 The board has the power, duty and responsibility to estab-
2 lish and maintain the fund and supervise in all respects, con-
3 sistent with the provisions of this article, the operation and
4 management of the mine subsidence insurance program estab-
5 lished in this article and to do all things necessary or conve-
6 nient to accomplish the purpose of this article.

§33-30-15. Rules and regulations.

1 The board is authorized to promulgate and adopt such rules
2 and regulations relating to mine subsidence insurance as are
3 necessary to effectuate the provisions of this article. Such
4 rules and regulations shall be promulgated and adopted pur-
5 suant to the provisions of chapter twenty-nine-a of this code.

CHAPTER 91

(H. B. 1616—By Mr. Martin, 35th Dist., and Mr. Farley)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications of applicants for insurance agents, brokers or solicitors licenses; use of a testing service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2. Qualifications.

1 For the protection of the people of West Virginia, the
2 commissioner shall not issue, renew or permit to exist any
3 agent's, broker's or solicitor's license except to an individual
4 who:

5 (a) Is eighteen years of age or more.

6 (b) Is a resident of West Virginia, except that a broker's
7 license shall be issued only to nonresidents, and except for
8 nonresident life and accident and sickness agents as provided
9 in section eight of this article.

10 (c) Is, in the case of an agent applicant, appointed as
11 agent by a licensed insurer for the kind or kinds of insurance
12 for which application is made, subject to issuance of license,
13 or, in the case of a solicitor applicant, appointed as solicitor
14 by a licensed resident agent, subject to issuance of license.

15 (d) Does not intend to use the license principally for
16 the purpose, in the case of life or accident and sickness
17 insurance, of procuring insurance on himself, members of his
18 family or his relatives; or, as to insurance other than life
19 and accident and sickness, upon his property or insurable
20 interests of those of his family or his relatives or those
21 of his employer, employees or firm, or corporation in which
22 he owns a substantial interest; or of the employees of such
23 firm or corporation, or on property or insurable interests
24 for which the applicant or any such relative, employer, firm
25 or corporation is the trustee, bailee or receiver. For the
26 purposes of this provision, a vendor's or lender's interest
27 in property sold or being sold under contract or which is
28 the security for any loan, shall not be deemed to constitute
29 property or an insurable interest of such vendor or lender.

30 (e) Satisfies the commissioner that he is trustworthy and

31 competent. The commissioner may, at his discretion, test
32 the competency of an applicant for a license under this sec-
33 tion by examination. If such examination is required by
34 the commissioner, each examinee shall pay a five-dollar
35 examination fee for each examination to the commissioner
36 who shall deposit said examination fee into the state treasury
37 for the benefit of the state fund, general revenue. The com-
38 missioner may, at his discretion, designate an independent
39 testing service to prepare and administer such examination
40 subject to direction and approval by the commissioner, and
41 examination fees charged by such service shall be paid by
42 the applicant.

CHAPTER 92

(Com. Sub. for H. B. 1793—By Mr. Schifano and Mr. Givens)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, seven and eleven, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve, all relating to hospital service corporations, medical service corporations, dental service corporations; authority to create health service corporations by merger or consolidation; deletion of certain required contract provisions; and authority to create certain subsidiary corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

- §33-24-1. Declaration of policy.
§33-24-2. Definitions.
§33-24-3. Corporations affected by article; eligibility of hospitals, physicians, dentists, chiroprodists-podiatrists and chiropractors.
§33-24-7. Required provisions in contracts made by corporations with hospitals, physicians, dentists and other health agencies.
§33-24-11. Reciprocity with other service plans; payment authorized.
§33-24-12. Creation of subsidiary corporation or corporations.

§33-24-1. Declaration of policy.

1 In view of the desirability of making available to the people
2 of this state increased hospital, medical, dental services and
3 other health services, the declared policy of the Legislature in
4 the enactment of this article is to encourage the organization,
5 promotion and expansion of hospital service corporations,
6 medical service corporations, dental service corporations and
7 health service corporations by exempting them from the pay-
8 ment of all taxes and from the operation of the general insur-
9 ance laws of this state, but at the same time subjecting them
10 to such regulation as may be necessary for the adequate pro-
11 tection of those members of the public who subscribe for the
12 services offered by such corporation.

§33-24-2. Definitions.

- 1 For the purpose of this article:
2 (a) "Corporation" means either a hospital service corpor-
3 ation, a medical service corporation, a dental service corpora-
4 tion or a health service corporation.
5 (b) "Hospital service corporation" means a nonprofit, non-
6 stock corporation, organized in accordance with the provisions
7 of article one, chapter thirty-one of this code, for the sole
8 purpose of contracting with the public and with hospitals and
9 other health agencies for hospital or other health services to
10 be furnished to subscribers under terms of their contract with
11 the corporation, and controlled by a board of directors, not
12 more than twenty percent of whom, or whose spouse, parent,
13 child, brother or sister by blood or marriage, are engaged in

14 the providing of health care and at least eighty percent of
15 whom shall be chosen as representatives of the interests of
16 consumers, elderly persons, organized labor and business sub-
17 scribers.

18 (c) "Hospital service" means only such hospital or other
19 health care, to be provided by hospitals or other health agen-
20 cies, or such payment therefor, as may be specified in the
21 contract made by the subscriber with the corporation.

22 (d) "Medical service corporation" means a nonprofit, non-
23 stock corporation, organized in accordance with the the pro-
24 visions of article one, chapter thirty-one of this code, for the
25 sole purpose of contracting with the public and with duly
26 licensed physicians, duly licensed dentists and duly licensed
27 podiatrists for medical or surgical services and with duly
28 licensed chiropractors and other health agencies for other health
29 services to be furnished to subscribers under terms of their
30 contract with the corporation, and controlled by a board of
31 directors, not more than twenty percent of whom, or whose
32 spouse, parent, child, brother or sister by blood or marriage,
33 are engaged in the providing of health care and at least eighty
34 percent of whom shall be chosen as representatives of the in-
35 terests of consumers, elderly persons, organized labor and
36 business subscribers.

37 (e) "Medical service" means only such medical, surgical, or
38 other health care, to be provided by duly licensed physicians,
39 duly licensed dentists, duly licensed podiatrists or other health
40 agencies and only such health care, to be provided by duly
41 licensed chiropractors, or such payment therefor, as may be
42 specified in the contract made by the subscribed with the
43 corporation.

44 (f) "Dental service corporation" means a nonprofit, non-
45 stock corporation, organized in accordance with the provisions
46 of article one, chapter thirty-one of this code, for the sole
47 purpose of contracting with the public and with duly licensed
48 dentists for dental services to be furnished to subscribers under
49 terms of their contracts with the corporations, and controlled
50 by a board of directors, not more than twenty percent of whom
51 or whose spouse, parent, child, brother or sister by blood or

52 marriage, are engaged in the providing of health care and at
53 least eighty percent of whom shall be chosen as representatives
54 of the interests of consumers, elderly persons, organized labor
55 and business subscribers.

56 (g) "Dental service" means only such dental care, to be
57 provided by duly licensed dentists, duly licensed physicians, or
58 such payment therefor, as may be specified in the contract
59 made by the subscriber with the corporation.

60 (h) "Health service corporation" means a nonprofit, non-
61 stock corporation, organized in accordance with the provisions
62 of article one, chapter thirty-one of this code, for the purpose
63 of contracting with the public and with hospitals and other
64 health agencies for hospital or other health services to be fur-
65 nished to subscribers or for the purpose of contracting with
66 the public and with duly licensed physicians, duly licensed
67 dentists and duly licensed chiropodists-podiatrists for medical
68 or surgical services and with duly licensed chiropractors and
69 other health agencies for other health services or for the pur-
70 pose of contracting with the public and with duly licensed den-
71 tists for dental services to be furnished to subscribers, all under
72 terms of their contract or contracts with the corporation, and
73 controlled by a board of directors, not more than twenty per-
74 cent of whom, or whose spouse, parent, child, brother or sister
75 by blood or marriage, are engaged in the providing of health
76 care and at least eighty percent of whom shall be chosen as
77 representatives of the interests of consumers, elderly persons,
78 organized labor and business subscribers. A hospital service
79 corporation, or hospital service corporations, a medical service
80 corporation, or medical service corporations, or a dental service
81 corporation, or dental service corporations, licensed in accor-
82 dance with the provisions of this article shall be authorized and
83 permitted to merge into or consolidate with other such cor-
84 porations in accordance with the merger or consolidation pro-
85 visions of sections one hundred fifty and one hundred fifty-
86 one, article one, chapter thirty-one of the code, to form a
87 health service corporation: *Provided*, That no such merger or
88 consolidation shall be effectuated unless in advance thereof
89 the plan, agreement and other supporting documents have been
90 filed with and approved in writing by the commissioner. The

91 commissioner shall give such approval within a reasonable
92 time after such filing unless he finds such plan or agreement:

93 (1) Is contrary to law; or

94 (2) Hazardous to the interests of the subscribers of any
95 corporations involved; or

96 (3) Would substantially reduce the security of and service
97 to be rendered to the subscribers of any corporation involved.

98 If the commissioner does not approve any such plan or agree-
99 ment he shall so notify the corporation or corporations in writ-
100 ing specifying his reasons therefor.

101 (i) "Health service" means such hospital, medical, surgical,
102 dental care or other health care to be provided by hospitals
103 or other health agencies, duly licensed physicians, duly licensed
104 dentists, duly licensed podiatrists or other health care, to be
105 provided by duly licensed chiropractors, as the case may be,
106 or such payment therefor, as may be specified in the contract
107 made by the subscriber with the corporation.

108 (j) "Service" means such hospital, medical, dental and
109 other health service as shall be provided under the terms of
110 the contracts issued by the corporation to subscribers.

111 (k) "Commissioner" means the insurance commissioner of
112 West Virginia.

**§33-24-3. Corporations affected by article; eligibility of hospitals,
physicians, dentists, chiropodists-podiatrists and chir-
opractors.**

1 (a) Every such corporation operating within this state shall
2 be subject to the provisions of this article.

3 (b) Every hospital or other health agency in this state
4 meeting the standards prescribed by the board of directors of
5 each such corporation shall be eligible for participation in any
6 hospital service plan, or health service plan, operating in this
7 state. Every duly licensed physician, duly licensed dentist, duly
8 licensed chiropodist-podiatrist, duly licensed chiropractor or
9 other health agency in this state meeting the standards pre-
10 scribed by the board of directors of each such corporation shall

11 be eligible for participation in any medical service plan, or
12 health service plan, operating in this state. Every duly licensed
13 dentist or duly licensed physician in this state meeting the
14 standards prescribed by the board of directors of each such
15 corporation shall be eligible for participation in any dental
16 service plan, or health service plan, operating in this state.
17 The board of directors of every such corporation may also
18 prescribe standards for hospitals, physicians, dentists, chiro-
19 podists-podiatrists, chiropractors and other health agencies lo-
20 cated in states adjoining this state, and all such hospitals,
21 physicians, dentists, chiropodists-podiatrists, chiropractors and
22 other health agencies meeting such standards shall be eligible
23 for participation in such plans.

§33-24-7. Required provisions in contracts made by corporations with hospitals, physicians, dentists and other health agencies.

1 Each contract made by the corporation with participating
2 hospitals, physicians, dentists and other health agencies shall
3 contain the following provisions:

4 (a) That the hospital, physician, dentist or other health
5 agency will render to any subscriber such service as he may
6 be entitled to under the terms and conditions of the contract
7 issued to the subscriber by the corporation.

8 (b) That in submitting bills to the corporation for ser-
9 vices rendered to subscribers under the terms of their contracts,
10 the hospitals, physicians, dentists and other health agencies
11 will make only such charges as are set forth in an agreed
12 schedule of fees to be paid by the corporation.

§33-24-11. Reciprocity with other service plans; payment authorized.

1 Hospital, medical, dental and health service corporations
2 licensed and operating under provisions of this article are here-
3 by authorized to promote and encourage reciprocity with other
4 licensed hospitals, medical, dental and health plans, both
5 within and without the state, in expanding their services to
6 subscribers. In the event that a subscriber to a plan requires
7 emergency hospital, medical, dental or health service, or, in

8 the event that the particular services that he receives are not
9 available through the plan to which he subscribes, such plan
10 is hereby authorized to make payment on behalf of such sub-
11 scriber for such service on a basis not to exceed its schedule
12 of fees to be paid hospitals, physicians or dentists previously
13 approved by the commissioner and on file in his office.

§33-24-12. Creation of subsidiary corporation or corporations.

1 In addition to the other rights given a corporation under the
2 provisions of this article, a health service corporation may,
3 subject to prior approval of the commissioner, create a sub-
4 subsidiary corporation or corporations, either nonprofit corpor-
5 ation or a corporation organized for pecuniary profit, for any
6 lawful business purpose which is related to and promotes the
7 purposes for which hospital, medical, dental and health service
8 corporations are organized: *Provided*, That no subsidiary cor-
9 poration created pursuant to the provisions of this section shall
10 be entitled to the exemptions established by the provisions of
11 this article and all such subsidiary corporations shall be gov-
12 erned by and subject to all other applicable provisions of this
13 code: *Provided, however*, That no such subsidiary corporation
14 shall be entitled to the exemptions provided under section
15 seven of this article.

CHAPTER 93

(S. B. 656—By Mr. Shaw and Mr. Jones)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to public bonded indebtedness; removing interest ceilings on moneys obtained from farmers home administration, housing and urban development and the economic development authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-1a. Exemption from interest rate ceilings.

1 Notwithstanding any other provision in this code to
 2 the contrary, any municipality, county or state agency
 3 shall be free of interest rate restrictions when obtaining
 4 loans from the farmers home administration, housing and
 5 urban development and the economic development
 6 authority where such loans are made from federal moneys
 7 and are made for public projects. It is the intention of
 8 the Legislature that the political subdivisions of this state
 9 take maximum possible advantage of federal programs
 10 and financing alternatives where such would be in the
 11 best interests of this state.

CHAPTER 94

(Com. Sub. for H. B. 1881—By Mr. Harman, 33rd Dist., and Mrs. Goldsmith)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of interpreters for hearing impaired persons generally; establishing the right of a hearing impaired person to have a qualified interpreter assist him in court proceedings; extending such right to administrative hearings and other proceedings; establishing a program to facilitate the use of interpreters in court; providing for a registry of qualified interpreters upon certification by the director of the administrative office of the supreme court of appeals; requiring circuit courts to maintain on file a list of certified interpreters; setting forth the procedure

for utilizing the services of a certified interpreter; providing for the compensation of interpreters; authorizing individuals to seek assistance through circuit clerks or the director of the administrative office of the supreme court of appeals; and providing for interpreters in case of foreign language or other reasons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-7. Interpreters required.

1 (a) In any court proceeding wherein a party or witness
2 cannot readily understand or verbally communicate the Eng-
3 lish language because he is deaf or a deaf mute or be-
4 cause of any other hearing impairment, such person shall
5 have the right to have a qualified interpreter to assist him
6 at every stage of the proceeding. Such right shall also per-
7 tain in any proceeding before administrative boards, com-
8 missions or agencies of this state or any political subdivision
9 or municipality thereof, and in coroners' inquests and grand
10 jury proceedings.

11 (b) The director of the administrative office of the supreme
12 court of appeals shall establish a program to facilitate the
13 use of interpreters in courts of this state and in extrajudicial
14 criminal proceedings as provided for in this section.

15 (1) The director shall prescribe, determine and certify
16 the qualifications of persons who may serve as certified inter-
17 preters in courts of this state in proceedings involving the
18 hearing impaired. Persons certified by the director shall be
19 interpreters certified by the national registry of interpreters
20 for the deaf, or the West Virginia registry of interpreters for
21 the deaf or approved by the chief of services for the deaf and
22 hearing impaired of West Virginia or the West Virginia di-
23 vision of vocational rehabilitation, or shall be such other
24 persons deemed by the director to be qualified by education,
25 training and experience. The director shall maintain a cur-

26 rent master list of all interpreters certified by the director
27 and shall report annually on the frequency of requests for, and
28 the use and effectiveness of, interpreters.

29 (2) Each circuit court shall maintain on file in the office
30 of the clerk of the court a list of all persons who have been
31 certified as oral or manual interpreters for the hearing im-
32 paired by the director of the administrative office of the
33 supreme court of appeals in accordance with the certification
34 program established pursuant to this section.

35 (3) In any criminal or juvenile proceeding, or other pro-
36 ceeding described in section five, article eleven, chapter fifty-
37 one of this code, the judge of the circuit court in which such
38 proceeding is pending, or, if such proceeding is in a magistrate
39 court, then the judge of the circuit court to which such pro-
40 ceeding may be appealed or presented for judicial review, shall,
41 with the assistance of the director of the administrative office
42 of the supreme court of appeals, utilize the services of the
43 most available certified interpreter, or when no certified
44 interpreter is reasonably available, as determined by the judge,
45 the services of an otherwise competent interpreter, if the
46 judge determines on his own motion or on the motion of
47 a party that such party or a witness who may present testi-
48 mony in the proceeding suffers from a hearing impairment
49 so as to inhibit such party's comprehension of the proceed-
50 ings or communication with counsel or the presiding judicial
51 officer, or so as to inhibit such witness' comprehension of
52 questions and the presentation of such testimony. The utiliza-
53 tion of an interpreter shall be appropriate at any stage of
54 the proceeding, judicial or extrajudicial, at which a person
55 would be entitled to representation by an attorney and a
56 waiver of the right to counsel shall not constitute a waiver
57 of the right to an interpreter as provided for by this section.

58 (c) Whenever a qualified interpreter is appointed pursuant
59 to the provisions of subsection (b) of this section, the court
60 shall, at the conclusion of the proceedings or interrogation,
61 by order, fix the compensation of such interpreter. The
62 compensation shall be not less than fifteen dollars per hour,
63 nor more than fifty dollars per day, plus reimbursement for
64 all reasonable and necessary expenses actually incurred in the

65 performance of such duties, but expenses shall not be incurred
66 in excess of the prevailing rate for state employees. In all
67 such cases, the compensation shall be paid by the state auditor
68 from the fund out of which appointed counsel are paid in
69 felony cases. In proceedings before administrative boards,
70 commissions and agencies, the compensation shall be fixed by
71 such board, commission or agency and paid, within the limit
72 of available funds, by such board, commission or agency.

73 (d) In any proceeding described in subdivision (3), sub-
74 section (b) of this section, if the circuit judge does not
75 appoint an interpreter, an individual requiring the services
76 of an interpreter may seek the assistance of the clerk of the
77 circuit court or the director of the administrative office of the
78 supreme court of appeals in obtaining the assistance of a
79 certified interpreter.

80 (e) Whenever an interpreter is necessary in any court
81 proceeding because a witness or party speaks only a foreign
82 language or for any other reason, an interpreter may be
83 sworn truly to interpret.

CHAPTER 95

(Com. Sub. for H. B. 1010—By Mr. Steptoe)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, seven, eight, nine, thirteen, fourteen and sixteen, article five, chapter forty-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 thirteen-b; to amend article five-a of said chapter by adding thereto a new section, designated section six-a; and to amend said chapter forty-nine by adding thereto a new article, designated article five-c, all relating to jurisdiction of circuit courts over persons under eighteen years of age; constitutional guarantees; certain extrajudicial statements by a child not admissible; hearings; tran-

scripts; institution of proceedings by petition; contents of petition; notice to child and parents; notice requirements; taking a child into custody under certain named conditions; detention hearing to be held by judge, juvenile referee or magistrate; constitutional guarantees; preliminary hearing may be held in conjunction with detention hearing, except where detention hearing is by a magistrate; preliminary hearing, time when held; right to counsel; improvement period; methods of disposition; appeal; alternative methods of disposition; authority of the court to order fines, restitution or reparation and participation in public service projects; revocation or denial of driving privileges; financial inability of child; permitting such alternate disposition of juveniles tried as adults; modification of dispositional orders in juvenile courts; providing that precedence be given to appropriate dispositional alternative even though less restrictive alternatives have not been exhausted; providing for reconsideration of sentence of juvenile convicted as an adult; development of comprehensive state plan for pre-disposition detention; time limit; major contents of plan; responsibilities of commissioner of department of welfare pending development of plan; creation of legislative commission on juvenile law; powers and duties; appointment of members; terms; advisory task force; time and place of meetings; officers; assistance of other agencies; and expenses and reimbursement.

Be it enacted by the Legislature of West Virginia:

That sections one, seven, eight, nine, thirteen, fourteen and sixteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article five be further amended by adding thereto a new section, designated section thirteen-b; that article five-a of said chapter be amended by adding thereto a new section, designated section six-a; and that said chapter forty-nine be amended by adding thereto a new article, designated article five-c, all to read as follows:

Article.

- 5. Juvenile Proceedings .**
- 5A. Juvenile Referee System.**
- 5C. Legislative Commission on Juvenile Law.**

ARTICLE 5. JUVENILE PROCEEDINGS.

- §49-5-1. Jurisdiction of circuit courts over persons under eighteen years of age; constitutional guarantees; right to counsel; hearings.
- §49-5-7. Institution of proceedings by petition; notice to child and parents; subpoena.
- §49-5-8. Taking a child into custody; detention hearing; counsel.
- §49-5-9. Preliminary hearing; counsel; improvement period.
- §49-5-13. Disposition; appeal.
- §49-5-13b. Authority of the courts to order fines; revocation of vehicle privileges and restitution.
- §49-5-14. Modification of dispositional orders.
- §49-5-16. Committing children to jail and detention facilities; standards.

§49-5-1. Jurisdiction of circuit courts over persons under eighteen years of age; constitutional guarantees; right to counsel; hearings.

1 (a) The circuit court of the county shall have original
2 jurisdiction in proceedings brought under this article.

3 If during a criminal proceeding against a person in any
4 court, it shall be ascertained or shall appear that the person
5 is under the age of nineteen years and was under the age of
6 eighteen years at the time of the alleged offense, the matter
7 shall be immediately certified to the juvenile jurisdiction of
8 the circuit court, and the circuit court shall assume jurisdiction
9 of the case in the same manner as cases originally instituted
10 in the circuit court by petition: *Provided*, That for violation
11 of a traffic law of West Virginia, magistrate courts shall have
12 concurrent jurisdiction with the circuit court, and persons
13 under the age of eighteen years shall be liable for punishment
14 for violation of such traffic laws in the same manner as adults
15 except that magistrate courts shall have no jurisdiction to
16 impose a sentence of confinement for the violation of traffic
17 laws.

18 As used in this section, "violation of a traffic law of West
19 Virginia" means violation of any law contained in chapters
20 seventeen-a, seventeen-b, seventeen-c and seventeen-d of this
21 code except sections one and two, article four (hit and run)
22 and sections one (negligent homicide), two (driving under in-
23 fluence of alcohol, controlled substances or drugs) and four
24 (reckless driving), article five, chapter seventeen-e of this
25 code.

26 (b) Any child shall be entitled to be admitted to bail or
27 recognizance in the same manner as a person over the age of
28 eighteen years and shall have the protection guaranteed by
29 article III of the constitution of West Virginia.

30 (c) The child shall have the right to be effectively repre-
31 sented by counsel at all stages of proceedings under the pro-
32 visions of this article. If the child, parent or custodian ex-
33 cutes an affidavit showing that he cannot pay for an attorney
34 appointed by the court or referee, the court shall appoint
35 counsel, to be paid as provided for in article twenty-one,
36 chapter twenty-nine of this code.

37 (d) In all proceedings under this article, the child shall
38 be afforded a meaningful opportunity to be heard, including
39 the opportunity to testify and to present and cross-examine
40 witnesses. In all such proceedings the general public shall be
41 excluded except persons whose presence is requested by a
42 child or respondent and other persons the court finds to have
43 a legitimate interest.

44 Except as herein modified, at all adjudicatory hearings, the
45 rules of evidence applicable in criminal cases shall apply,
46 including the rule against written reports based upon hearsay.
47 Unless otherwise specifically provided in this chapter, all
48 procedural rights afforded adults in criminal proceedings shall
49 be applicable. Extrajudicial statements, other than *res gestae*,
50 by a child under fourteen years of age to law-enforcement
51 officials or while in custody, shall not be admissible unless
52 made in the presence of the child's counsel.

53 Extrajudicial statements, other than *res gestae* by a child
54 under sixteen years of age but above the age of thirteen to law-
55 enforcement officers or while in custody, shall not be admis-
56 sible unless made in the presence of the child's counsel or made
57 in the presence of and with the consent of the child's parent
58 or custodian who has been fully informed regarding the child's
59 right to a prompt detention hearing, his right to counsel in-
60 cluding appointed counsel if he cannot afford counsel, and his
61 privilege against self-incrimination. A transcript or recording
62 shall be made of all transfer, adjudicatory and dispositional
63 hearings. At the conclusion of any hearing, the court shall

64 make findings of fact and conclusions of law, and the same
65 shall appear of record.

66 (e) The court reporter shall furnish a transcript of the
67 relevant proceedings to any indigent child who seeks review
68 of any proceeding under this article if an affidavit is filed
69 stating that the child and his parent or custodian are unable
70 to pay therefor.

**§49-5-7. Institution of proceedings by petition; notice to child and
parents; subpoena.**

1 (a) A petition alleging that a child is a delinquent child
2 may be filed by a person who has knowledge of or information
3 concerning the facts alleged. The petition shall be verified
4 by the petitioner, shall set forth the name and address of the
5 child's parents, guardians or custodians known to the peti-
6 tioner unless the petitioner is the natural parent, guardian or
7 custodian and shall be filed in the circuit court in the county
8 where the alleged act of delinquency occurred: *Provided*, That
9 any proceeding under this chapter may be removed, for good
10 cause shown, in accordance with the provisions of section
11 one, article nine, chapter fifty-six of this code. The court may
12 refer the matter to a state department worker or probation
13 officer for preliminary inquiry to determine whether the mat-
14 ter can be resolved informally without the filing of a petition.
15 The petition shall contain specific allegations of the conduct
16 and facts upon which the petition is based, including the
17 approximate time and place of the alleged conduct; a state-
18 ment of the right to have counsel appointed and consult
19 with counsel at every stage of the proceedings; and the relief
20 sought.

21 Upon the filing of the petition, the court shall set a time
22 and place for a preliminary hearing as provided in section
23 nine of this article and may appoint counsel. A copy of the
24 petition and summons may be served upon the respondent
25 child by first class mail or personal service of process. If a
26 child does not appear in response to a summons served by
27 mail, no further proceeding may be held until the child is
28 served a copy of the petition and summons by personal service
29 of process. If such a child fails to appear in response to a

30 summons served in person upon him an order of arrest may
31 be issued by the court for that reason alone.

32 (b) The parents, guardians or custodians shall be named
33 in the petition as respondents, and shall be served with notice
34 of the proceedings in the same manner as provided in sub-
35 section (a) of this section for service upon the child and
36 required to appear with the child at the time and place set
37 for the proceedings unless such respondent cannot be found
38 after diligent search. If any such respondent cannot be found
39 after diligent search, the court may proceed without further
40 requirement of notice: *Provided*, That the court may order
41 service by first class mail to the last known address of such
42 respondent. The respondent shall have fifteen days after the
43 date of mailing to appear or answer.

44 (c) The court or referee may order the issuance of a sub-
45 poena against the person having custody and control of the
46 child to bring the child before the court or referee.

47 (d) When any case of a child charged with the commission
48 of a crime is certified or transferred to the circuit court or
49 brought before the court by warrant pursuant to section two
50 of this article, the court or referee shall forthwith cause the
51 child and his parents, guardians or custodians to be served
52 with a petition, as provided in subsections (a) and (b) of
53 this section. In the event the child is in custody the petition
54 shall be served upon the child within ninety-six hours of
55 the time custody began, or the child shall be released from
56 custody forthwith.

57 (e) The clerk of the court shall promptly notify the state
58 department of all proceedings under this article.

§49-5-8. Taking a child into custody; detention hearing; counsel.

1 (a) In proceedings instituted by the filing of a juvenile
2 petition the circuit court may enter an order directing that a
3 child be taken into custody only if one of the following con-
4 ditions exist: (1) The petition shows that grounds exist for
5 the arrest of an adult in identical circumstances; (2) the
6 health, safety and welfare of the child demand such custody;
7 (3) the child is a fugitive from a lawful custody or commit-

8 ment order of a juvenile court; or (4) the child has a record
9 of willful failure to appear at juvenile proceedings, and
10 custody is necessary to assure his presence before the court.
11 A detention hearing shall be held without delay by the
12 judge, juvenile referee or magistrate authorized to conduct
13 such hearing, and in no event shall the delay exceed the next
14 succeeding judicial day, excluding Saturday, and such child
15 shall be released on recognizance to his parent, guardian or
16 custodian unless findings are made as specified in subsection
17 (d) of this section.

18 (b) Absent a warrant or court order, a child may be taken
19 into custody by a law-enforcement official only if one of the
20 following conditions exist: (1) Grounds exist for the arrest
21 of an adult in identical circumstances; (2) emergency con-
22 ditions exist which in the judgment of the officer pose im-
23 minent danger to the health, safety and welfare of the child;
24 (3) the official has reasonable grounds to believe that the
25 child is a runaway without just cause from the child's par-
26 ents or legal custodian and the health, safety and welfare
27 of the child is endangered; or (4) the child is a fugitive from
28 a lawful custody or commitment order of a juvenile court.
29 Upon taking a child into custody, with or without a warrant or
30 court order, the official shall: (i) Immediately notify the
31 child's parent, custodian or, if the parent or custodian cannot
32 be located, a close relative; (ii) release the child into the
33 custody of his parent or custodian unless the circumstances
34 warrant otherwise; (iii) refer the matter to the prosecuting
35 attorney, state department or probation officer for proceedings
36 under this article; and (iv) if a child is being held in custody
37 absent a warrant or court order, cause a warrant, petition or
38 order, as the case may be, to be immediately issued authoriz-
39 ing the detention of such child.

40 If a child is taken into custody pursuant to subdivision
41 (2) or (3) hereunder the state department shall be im-
42 mediately notified. Any child taken into custody as a run-
43 away shall not be held in custody more than forty-eight hours
44 without a court order, or more than seven days in any event.
45 Such child shall not be confined in any facility wherein persons

46 are being detained for an offense which would be a crime if
47 committed by an adult.

48 (c) In the event that a child is delivered into the custody
49 of a sheriff or director of a detention facility, such sheriff or
50 director shall immediately notify the court or referee. Said
51 sheriff or director shall immediately provide to every child
52 who is delivered into his custody, a written statement explain-
53 ing the child's right to a prompt detention hearing, his right
54 to counsel including appointed counsel if he cannot afford
55 counsel and his privilege against self-incrimination. In all
56 cases when a child is delivered into custody, the child shall
57 be released to his parent, guardian or custodian by the end
58 of the next succeeding judicial day, excluding Saturday, after
59 being delivered into such custody, unless the child has been
60 placed in detention pursuant to subsection (d) of this section.

61 (d) A child in custody must immediately be taken before
62 a referee or judge of the circuit court and in no event shall
63 a delay exceed the next succeeding judicial day: *Provided,*
64 That if there be no judge or referee then available in the
65 county, then such child shall be taken immediately before
66 any magistrate in the county for the sole purpose of holding
67 a detention hearing. The judge, referee or magistrate shall
68 inform the child of his right to remain silent, that any state-
69 ment may be used against him and of his right to counsel,
70 and no interrogation shall be made without the presence of
71 a parent or counsel. If the child or his parent, guardian or
72 custodian has not retained counsel, counsel shall be appointed
73 as soon as practicable. The referee, judge or magistrate shall
74 hear testimony concerning the circumstances for taking the
75 child into custody and the possible need for detention in ac-
76 cordance with section two, article five-a of this chapter. The
77 sole mandatory issue at the detention hearing shall be whether
78 the child shall be detained pending further court proceedings.
79 The court shall, if advisable, and if the health, safety and
80 welfare of the child will not be endangered thereby, release
81 the child on recognizance to his parents, custodians or an
82 appropriate agency; however, if warranted, the court may
83 require bail, except that bail may be denied in any case where
84 bail could be denied if the accused were an adult.

85 The judge of the circuit court or referee may, in conjunction
86 with the detention hearing, conduct a preliminary hearing
87 pursuant to section nine, article five of this chapter: *Provided,*
88 That all parties are prepared to proceed and the child has
89 counsel during such hearing.

§49-5-9. Preliminary hearing; counsel; improvement period.

1 (a) Following the filing of a juvenile petition, unless a
2 preliminary hearing has previously been held in conjunction
3 with a detention hearing with respect to the same charge con-
4 tained in the petition, the circuit court or referee shall hold a
5 preliminary hearing. In the event that the child is in custody,
6 such hearing shall be held within ten days of the time the
7 child is taken into custody unless good cause be shown for
8 a continuance. If no preliminary hearing is held within ten
9 days of the time the child is taken into custody, the child shall
10 be released on recognizance unless the hearing has been con-
11 tinued for good cause. If the judge is in another county in
12 the circuit, the hearing may be conducted in such other county.
13 The preliminary hearing may be waived by the child, upon
14 advice of his counsel. At the hearing, the court or referee
15 shall:

16 (1) If the child is not represented by counsel, inform the
17 child and his parents, guardian or custodian or any other
18 person standing in loco parentis to him of the child's right
19 to be represented at all stages of proceedings under this article
20 and the right to have counsel appointed.

21 (2) Appoint counsel by order entered of record, if counsel
22 has not already been retained, appointed or knowingly waived.

23 (3) Determine after hearing if there is probable cause to
24 believe that the child is a delinquent child. If probable cause
25 is not found, the child shall be released and the proceedings
26 dismissed. If probable cause is found, the case shall proceed
27 to adjudication. At the hearing or as soon thereafter as is
28 practicable, the date for the adjudicatory hearing shall be
29 set to give the child, the child's parents and attorney at least
30 ten days' notice, unless notice is waived by all parties.

31 (4) In lieu of placing the child in a detention facility when

32 bond is not provided, the court may place the child in the
33 temporary custody of the state department pursuant to sec-
34 tion sixteen, article two of this chapter or may place the
35 child in the custody of a probation officer. If the child is
36 detained in custody, the detention shall not continue longer
37 than thirty days without commencement of the adjudicatory
38 hearing unless good cause for a continuance be shown by either
39 party or, if a jury trial be demanded, no longer than the next
40 regular term of said court.

41 (5) Inform the child of the right to demand a jury trial.

42 (b) The child may move to be allowed an improvement
43 period for a period not to exceed one year. If the court
44 is satisfied that the best interest of the child is likely to be
45 served by an improvement period, the court may delay the
46 adjudicatory hearing and allow a noncustodial improvement
47 period upon terms calculated to serve the rehabilitative needs
48 of the child. At the conclusion of the improvement period,
49 the court shall dismiss the proceeding if the terms have been
50 fulfilled; otherwise, the court shall proceed to the adjudicatory
51 stage. A motion for an improvement period shall not be con-
52 strued as an admission or be used as evidence.

§49-5-13. Disposition; appeal.

1 (a) In aid of disposition, the juvenile probation officer or
2 state department worker assigned to the court shall, upon
3 request of the court, make an investigation of the environment
4 of the child and the alternative dispositions possible. The
5 court, upon its own motion, or upon request of counsel, may
6 order a psychological examination of the child. The report
7 of such examination and other investigative and social re-
8 ports shall not be made available to the court until after the
9 adjudicatory hearing. Unless waived, copies of the report
10 shall be provided to counsel for the petitioner and counsel for
11 the child no later than seventy-two hours prior to the dis-
12 positional hearing.

13 (b) Following the adjudication, the court shall conduct
14 the dispositional proceeding, giving all parties an opportunity
15 to be heard. In disposition the court shall not be limited to
16 the relief sought in the petition and shall give precedence to

17 the least restrictive of the following alternatives consistent
18 with the best interests and welfare of the public and the
19 child:

20 (1) Dismiss the petition;

21 (2) Refer the child and the child's parent or custodian to
22 a community agency for needed assistance and dismiss the
23 petition;

24 (3) Upon a finding that the child is in need of extra-
25 parental supervision (A) place the child under the supervision
26 of a probation officer of the court or of the court of the
27 county where the child has its usual place of abode, or other
28 person while leaving the child in custody of his parent or
29 custodian and (B) prescribe a program of treatment or therapy
30 or limit the child's activities under terms which are reasonable
31 and within the child's ability to perform;

32 (4) Upon a finding that a parent or custodian is not will-
33 ing or able to take custody of the child, that a child is not
34 willing to reside in the custody of his parent or custodian, or
35 that a parent or custodian cannot provide the necessary
36 supervision and care of the child, the court may place the
37 child in temporary foster care or temporarily commit the
38 child to the state department or a child welfare agency;

39 (5) Upon a finding that no less restrictive alternative
40 would accomplish the requisite rehabilitation of the child,
41 and upon an adjudication of delinquency pursuant to sub-
42 division (1), section four, article one of this chapter, commit
43 the child to an industrial home or correctional institution for
44 children. Commitments shall not exceed the maximum term
45 for which an adult could have been sentenced for the same
46 offense, with discretion as to discharge to rest with the direc-
47 tor of the institution, who may release the child and return
48 him to the court for further disposition;

49 (6) Upon an adjudication of delinquency pursuant to
50 subsection (3) or (4), section four, article one of this chapter,
51 and upon a finding that the child is so totally unmanageable,
52 ungovernable and antisocial that the child is amenable to no
53 treatment or restraint short of incarceration, commit the child

54 to a rehabilitative facility devoted exclusively to the custody
55 and rehabilitation of children adjudicated delinquent pursuant
56 to said subsection (3) or (4). Commitments shall not exceed
57 the maximum period of one year with discretion as to dis-
58 charge to rest with the director of the institution, who may
59 release the child and return him to the court for further dispo-
60 sition; or

61 (7) After a hearing conducted under the procedures set
62 out in subsections (c) and (d), section four, article five,
63 chapter twenty-seven of the code, commit the child to a mental
64 health facility in accordance with the child's treatment plan;
65 the director may release a child and return him to the court
66 for further disposition.

67 (c) The disposition of the child shall not be affected by
68 the fact that the child demanded a trial by jury or made a
69 plea of denial. Any dispositional order is subject to appeal to
70 the supreme court of appeals.

71 (d) Following disposition, it shall be inquired of the
72 respondent whether or not appeal is desired and the response
73 transcribed; a negative response shall not be construed as a
74 waiver. The evidence shall be transcribed as soon as practic-
75 able and made available to the child or his counsel, if the
76 same is requested for purposes of further proceedings. A
77 judge may grant a stay of execution pending further proceed-
78 ings.

79 (e) Notwithstanding any other provision of this code to
80 the contrary, in the event a child charged with delinquency
81 under this chapter is transferred to adult jurisdiction and
82 there tried and convicted, the court may nevertheless, in lieu
83 of sentencing such person as an adult, make its disposition
84 in accordance with this section.

**§49-5-13b. Authority of the courts to order fines, revocation of
vehicle privileges and restitution.**

1 (a) In addition to the methods of disposition provided in
2 section thirteen of this article, the court may enter an order
3 imposing one or more of the following penalties, conditions
4 and limitations:

5 (1) Impose a fine not to exceed one hundred dollars upon
6 such child.

7 (2) Require the child to make restitution or reparation to
8 the aggrieved party or parties for actual damages or loss caused
9 by the offense for which the child was found to be delinquent.

10 (3) Require the child to participate in a public service
11 project under such conditions as the court prescribes.

12 (4) When the child is fifteen years of age or younger and
13 has been adjudged delinquent, the court may order that the
14 child is not eligible to be issued a junior probationary opera-
15 tor's license or when the child is between the ages of sixteen
16 and eighteen years and has been adjudged delinquent, the
17 court may order that the child is not eligible to operate a
18 motor vehicle in this state, and any junior or probationary
19 operator's license shall be surrendered to the court. Such
20 child's driving privileges shall be suspended for a period not
21 to exceed two years, and the clerk of the court shall notify
22 the commissioner of the department of motor vehicles of such
23 order.

24 (b) Nothing herein stated shall limit the discretion of the
25 court in disposing of a juvenile case: *Provided*, That the juve-
26 nile shall not be denied probation or any other disposition
27 pursuant to this article because the juvenile is financially
28 unable to pay a fine or make restitution or reparation: *Pro-*
29 *vided, however*, That all penalties, conditions and limitations
30 imposed under this section shall be based upon a consideration
31 by the court of the seriousness of the offense, the child's
32 ability to pay, and a program of rehabilitation consistent with
33 the best interests of the child.

34 (c) Notwithstanding any other provisions of this code to
35 the contrary, in the event a child charged with delinquency
36 under this chapter is transferred to adult jurisdiction and
37 there convicted, the court may nevertheless, in lieu of sen-
38 tencing such person as an adult, make its disposition in
39 accordance with this section.

§49-5-14. Modification of dispositional orders.

1 (a) A dispositional order of the court may be modified:

2 (1) Upon the motion of the probation officer, a state de-
3 partment official or prosecuting attorney; or

4 (2) Upon the request of the child or child's parent or cus-
5 todian who alleges a change of circumstances relating to
6 disposition of the child.

7 Upon such a motion or request, the court shall conduct a
8 review proceeding, except that if the last dispositional order
9 was within the previous six months the court may deny a
10 request for review. Notice in writing of a review proceed-
11 ing shall be given to the child, the child's parent or custodian
12 and all counsel not less than seventy-two hours prior to the
13 proceeding. The court shall review the performance of the
14 child, the child's parent or custodian, the child's social worker
15 and other persons providing assistance to the child or child's
16 family. If the motion or request for review of disposition is
17 based upon an alleged violation of a court order, the court
18 may modify the dispositional order to a more restrictive alter-
19 native if it finds clear and convincing proof of substantial
20 violation. In the absence of such proof, the court may decline
21 to modify the dispositional order or may modify the order to
22 one of the less restrictive alternatives set forth in section
23 thirteen of this article. No child shall be required to seek a
24 modification order as provided in this section in order to
25 exercise his right to seek release by habeas corpus.

26 (b) In a hearing for modification of a dispositional order,
27 or in any other dispositional hearing, the court shall give
28 precedence to the least restrictive alternative consistent with
29 the best interests and welfare of the public and the child:
30 *Provided*, That a less restrictive alternative need not be
31 ordered merely because such less restrictive alternative has
32 not been previously utilized with respect to the particular
33 child who is the subject of the proceeding.

**§49-5-16. Committing children to jail and detention facilities;
standards.**

1 (a) A child under eighteen years of age shall not be com-
2 mitted to a jail or police station, except that any child over
3 fourteen years of age who has been committed to an industrial
4 home or correctional institution may be held in the juvenile
5 department of a jail while awaiting transportation to the

6 institution for a period not to exceed ninety-six hours, and
7 a child over fourteen years of age who is charged with a crime
8 which would be a violent felony if committed by an adult,
9 may, upon an order of the circuit court, be housed in a
10 juvenile detention portion of a county facility, but not within
11 sight of adult prisoners. A child charged with or found to be
12 delinquent solely under subdivision (3), (4) or (5), section
13 four, article one of this chapter, shall not be housed in a
14 detention or other facility wherein persons are detained for
15 criminal offenses or for delinquency involving offenses which
16 would be crimes if committed by an adult: *Provided*, That a
17 child who is adjudicated delinquent under subsection (5),
18 section four, article one of this chapter and who has violated
19 an order of probation or contempt order arising out of a
20 proceeding wherein the child was adjudicated delinquent
21 for an offense which would be a crime if committed by an
22 adult may not be housed in a detention or other facility wherein
23 persons are detained who have not been adjudicated delinquent
24 for such offenses.

25 (b) No child who has been convicted of an offense under
26 the adult jurisdiction of the circuit court shall be held in
27 custody in a penitentiary of this state: *Provided*, That
28 such child may be transferred from a secure juvenile facility
29 to a penitentiary after he shall attain the age of eighteen
30 years if, in the judgment of the commissioner of the depart-
31 ment of corrections and the court which committed such
32 child, such transfer is appropriate: *Provided, however*, That
33 any other provision of this code to the contrary notwithstand-
34 ing, prior to such transfer the child shall be returned to the
35 sentencing court for the purpose of reconsideration and
36 modification of the imposed sentence, which shall be based
37 upon a review of all records and relevant information relating
38 to the child's rehabilitation since his conviction under the
39 adult jurisdiction of the court.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

**§49-5A-6a. State plan for predisposition detention of juveniles;
responsibilities of commissioner of welfare until de-
velopment of state plan.**

1 (a) The commissioner of the department of welfare and

2 the legislative commission on juvenile law shall develop a
3 comprehensive plan to establish a unified state system of
4 predispositional detention for juveniles to be submitted to the
5 West Virginia Legislature no later than the first day of
6 January, one thousand nine hundred eighty-three. The plan
7 shall be developed with input from the department of cor-
8 rections, the governor's task force on crime, delinquency and
9 correction and judicial and law-enforcement officials from
10 throughout the state.

11 The plan shall include, but not be limited to, the following:

12 (1) The development of the position of youth services
13 coordinators. These coordinators would operate under the
14 direction of the department of welfare and would serve each
15 judicial district.

16 (2) The development of a coordinated plan for the effec-
17 tive and efficient use of juvenile detention facilities operated
18 by local units of government and the state, including those
19 operated regionally by the department of welfare. Standards
20 and criteria shall be established for the use of detention.
21 Priorities for the utilization of available space and transporta-
22 tion of juveniles to and from detention facilities shall also
23 be established.

24 (3) Recommendations on the use of regional detention
25 centers for detention hearings.

26 (4) Recommendations regarding the use of emergency
27 home shelters and foster homes for temporary detention.

28 (5) Recommendations regarding the use of regional de-
29 tention facilities and charges to counties for such services.

30 (6) An evaluation of the personnel needs and cost of
31 maintaining all facilities and services recommended in the
32 plan.

33 (b) Until the development and implementation of the plan
34 set forth in subsection (a) of this section, the commissioner
35 of the department of welfare shall do the following:

36 (1) Identify and coordinate all programs currently avail-
37 able in local communities for children in need of detention.

38 These programs shall be listed in a central resource directory
39 available for local authorities. This directory shall identify
40 which juveniles are acceptable to each program and the cost
41 of each program. Any program listed which is operated by a
42 county or community must conform to guidelines established
43 by the department of welfare.

44 (2) Develop additional emergency shelters in those com-
45 munities where no such facilities are now in existence, and
46 where there is a demonstrable need for them.

47 (3) Coordinate a transportation assistance program for
48 counties which have significant difficulty transporting youth to
49 detention facilities. Grants will be made on the basis of
50 proposals submitted to the department by local government
51 units demonstrating special needs based on travel distance,
52 youth detention need and lack of local resources despite good
53 faith attempts to establish or utilize local programs. Reim-
54 bursement grants will not exceed forty thousand dollars for
55 fiscal year one thousand nine hundred eighty-two.

ARTICLE 5C. LEGISLATIVE COMMISSION ON JUVENILE LAW.

§49-5C-1. Creation of legislative commission.

§49-5C-2. Powers and duties.

§49-5C-3. Appointment of members; terms.

§49-5C-4. Advisory task force.

§49-5C-5. Time and place of meetings; officers.

§49-5C-6. Assistance of other agencies.

§49-5C-7. Expenses; reimbursement.

§49-5C-1. Creation of legislative commission.

1 There is hereby created the permanent legislative commis-
2 sion on juvenile law to study, review and examine laws relat-
3 ing to juveniles.

§49-5C-2. Powers and duties.

1 The powers and duties of the commission shall include, but
2 not be limited to, the following:

3 (a) Studying the status and effectiveness of the laws relat-
4 ing to juvenile proceedings, the juvenile referee system, and
5 the West Virginia juvenile offender rehabilitation act, and
6 making recommendations as to any changes needed in the
7 system and the ways and means to effect such changes;

8 (b) Making further and more specific recommendations
9 within the scope of the study as to the detention of juvenile
10 offenders, considering both short and long term detention;

11 (c) Consideration of existing juvenile detention facilities
12 and making recommendations, with particular attention to
13 financing, as to the need for updating present facilities and/or
14 creating new facilities and the location of each;

15 (d) Filing of a report to each regular session of the Legis-
16 lature which will include drafts of legislation necessary to
17 effectuate any recommendations; and

18 (e) Maintenance of reference materials concerning juve-
19 nile offenders including, without limitation, information as to
20 laws and systems in other states.

§49-5C-3. Appointment of members; terms.

1 The commission shall consist of:

2 (1) Three members of the Senate to be appointed by the
3 president of the Senate and three members of the House of
4 Delegates to be appointed by the speaker of the House. No
5 more than two of the three members appointed by the presi-
6 dent of the Senate and the speaker of the House, respectively,
7 may be members of the same political party.

8 (2) The commissioner of the department of welfare and
9 the commissioner of corrections, who shall serve as ex officio
10 members.

11 (3) Two persons trained and employed as school guidance
12 counselors, one to be appointed by the president of the Sen-
13 ate and one to be appointed by the speaker of the House.

14 The first appointed members of the commission shall serve
15 for a term expiring on the thirtieth day of June in the year
16 of the next succeeding regular session of the Legislature. At
17 the commencement of such next succeeding regular session
18 and at the commencement of regular sessions every two years
19 thereafter, members of the commission shall be appointed for
20 two-year terms beginning the first day of July in the year of
21 each such regular session. Vacancies on the commission shall
22 be filled for unexpired terms in the same manner as appoint-
23 ments to the commission.

§49-5C-4. Advisory task force.

1 The commission may provide for an advisory task force
2 to aid and assist the commission in the exercise of its powers
3 and duties.

§49-5C-5. Time and place of meetings; officers.

1 The commission shall hold meetings at such times and
2 places as it may designate. It shall be headed by two
3 cochairmen, one to be selected by and from the members
4 appointed from the Senate, and one to be selected by and
5 from the members appointed from the House of Delegates.

§49-5C-6. Assistance of other agencies.

1 The commission may request information from any state
2 officer or agency in order to assist in carrying out the terms
3 of this article, and such officer or agency is authorized and
4 directed to promptly furnish any data requested.

§49-5C-7. Expenses; reimbursement.

1 The members of the commission and its assistants shall be
2 reimbursed for all expenses actually and necessarily incurred
3 in the performance of their duties hereunder from the fund
4 of the joint committee on government and finance. Compen-
5 sation and other expenses of the commission may be paid
6 from the fund of the joint committee on government and
7 finance.

CHAPTER 96

(H. B. 1575—By Mr. Yanni and Mr. Wiedebusch)

[Passed March 8, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article three, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the regulation of operation of steam boilers; fees to be charged for making inspections and issuing permits.

Be it enacted by the Legislature of West Virginia:

That section seven, article three, 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 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-7. Regulation of operation of steam boilers.

1 Any person owning or operating a steam boiler carrying
2 more than fifteen pounds pressure per square inch (except
3 boilers on railroad locomotives subject to inspection under
4 federal laws, portable boilers used for agricultural purposes,
5 boilers on automobiles, boilers of steam fire engines brought
6 into the state for temporary use in times of emergency for the
7 purpose of checking conflagrations, boilers used in private
8 residences which are used solely for residential purposes, any
9 sectional boilers, small portable boilers commonly used in
10 the oil and gas industry about their wells and tool houses,
11 and boilers under the jurisdiction of the United States) in this
12 state shall first obtain a permit to operate a steam boiler
13 from the commissioner of labor, or from an inspector work-
14 ing under his jurisdiction.

15 Applications for permits to operate a steam boiler must
16 be accompanied by a sworn statement made by the owner or
17 operator of such boiler, setting forth the condition of the
18 boiler and its appurtenances at which time, if the facts
19 disclosed by such statement meet the safety requirements
20 established under this article, the commissioner of labor
21 shall issue a temporary permit, which shall be valid until
22 such boiler has been inspected by a boiler inspector autho-
23 rized by the state commissioner of labor; thereupon, if the
24 boiler meets the safety requirements established under this
25 article, the commissioner of labor shall issue an annual
26 permit to operate such steam boiler: *Provided*, That boilers
27 which are insured by an insurance company operating in
28 this state and which are inspected by such insurance com-
29 pany's boiler inspector shall not be subject to inspection by
30 the state department of labor, during any twelve months'
31 period during which an inspection is made by the insurance
32 company's boiler inspector.

33 The commissioner of labor or state boiler inspector shall
34 have the authority to inspect steam boilers in this state.
35 To carry out the provisions of this section, the commissioner
36 of labor shall prescribe rules and regulations under which
37 boilers may be constructed and operated, according to their
38 class. The commissioner of labor shall be authorized to
39 revoke any permit to operate a steam boiler if the rules
40 prescribed by the commissioner of labor, or his authorized
41 representative, are violated or if a condition shall prevail
42 which is hazardous to the life and health of persons operating
43 or employed at or around the boiler. Any person or corpora-
44 tion who shall operate a steam boiler for which a permit is
45 necessary under the provisions of this section, without first
46 obtaining such permit to operate a steam boiler, shall be
47 guilty of a misdemeanor, and, upon conviction thereof, shall
48 be fined not less than one hundred dollars nor more than
49 five hundred dollars. Every day a steam boiler requiring a
50 permit to operate is operated without such permit shall be
51 considered a separate offense.

52 The commissioner may charge such fee as he determines
53 reasonable for the inspection of boilers by the department
54 of labor boiler inspector of the commissioner's authorized
55 boiler inspection agency, for the processing of inspection
56 reports from insurance companies, for issuing annual permits
57 to operate boilers and for commissioning insurance company
58 boiler inspectors. Such fees shall be established by a rule
59 promulgated in accordance with the provisions of chapter
60 twenty-nine-a of this code.

CHAPTER 97

(S. B. 107—By Mr. Ash and Mr. Gilligan)

[Passed February 15, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to repeal article eight, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishment of the commission

on manpower, technology and training; setting procedure for operation; requiring cooperation of state departments; setting forth duties and powers; allowing inspection of records; and requiring reports.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 8. WEST VIRGINIA COMMISSION ON MANPOWER,
TECHNOLOGY AND TRAINING.**

**§1. Repeal of article relating to the commission on manpower,
technology and training.**

1 Article eight, chapter twenty-one of the code of
2 West Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 98

(Com. Sub. for S. B. 312—By Mrs. Chace)

[Passed March 10, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, five and eight, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty-nine by adding thereto a new section, designated section nine, relating to law-enforcement officer training requirements; defining terms; providing for regional training locations; part-time curricula standards for the qualification of officers; credit to be given for classroom hours earned outside law-enforcement training academies; providing an exemption from such requirements for officers who have served for at least seven consecutive years; providing for automatic termination of law-enforcement officers who fail to be certified and prohibiting employment of those officers until they can become certified; providing for requirements for qualifications and training which exceed the minimum requirements of article; requiring law-enforcement officers to be paid wages, tuition and expenses

during training; providing that county and municipal governments may contract to recover training expenses of officers who discontinue employment; and providing for special railroad police to attend law-enforcement training academies under certain conditions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. LAW-ENFORCEMENT OFFICER TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

§30-29-3. Duties of the governor's committee and the subcommittee.

§30-29-5. Certification requirements.

§30-29-8. Agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.

§30-29-9. Special railroad police permitted to attend law-enforcement training academies.

§30-29-1. Definitions.

1 For purposes of this article, unless a different meaning
2 clearly appears in the context:

3 "Approved law-enforcement training academy" means
4 any training facility which is approved and authorized
5 to conduct law-enforcement training as provided in this
6 article;

7 "Chief executive" means the superintendent of the de-
8 partment of public safety; the chief conservation officer,
9 department of natural resources; the sheriff of any West
10 Virginia county; or the chief of any West Virginia muni-
11 cipal law-enforcement agency;

12 "County" means the fifty-five major political subdi-
13 visions of the state;

14 "Exempt rank" means any noncommissioned or com-
15 missioned rank of sergeant or above;

16 “Governor’s committee on crime, delinquency and cor-
17 rection” or “governor’s committee” means the governor’s
18 committee on crime, delinquency and correction estab-
19 lished as a state planning agency pursuant to section one,
20 article nine of chapter fifteen of this code;

21 “Law-enforcement officer” means any duly authorized
22 member of a law-enforcement agency who is authorized
23 to maintain public peace and order, prevent and detect
24 crime, make arrests, and enforce the laws of the state or
25 any county or municipality thereof, other than parking
26 ordinances. As used in this article, the term “law-enforce-
27 ment officer” does not apply to the chief executive of any
28 West Virginia law-enforcement agency or any watchman
29 or college campus security personnel;

30 “Law-enforcement official” means the duly appointed
31 chief administrator of a designated law-enforcement
32 agency or a duly authorized designee;

33 “Municipality” means any incorporated town or city
34 whose boundaries lie within the geographic boundaries
35 of the state;

36 “Subcommittee” or “law-enforcement training subcom-
37 mittee” means the subcommittee of the governor’s com-
38 mittee on crime, delinquency and correction created by
39 section two of this article; and

40 “West Virginia law-enforcement agency” means any
41 duly authorized state, county or municipal organization
42 employing one or more persons whose responsibility is the
43 enforcement of laws of the state or any county or munic-
44 ipality thereof.

**§30-29-3. Duties of the governor’s committee and the subcom-
mittee.**

1 Upon recommendation of the subcommittee, the gov-
2 ernor’s committee shall, by or pursuant to rule or regu-
3 lation:

4 (a) Provide funding for the establishment and support
5 of law-enforcement training academies in the state;

- 6 (b) Establish standards governing the establishment
7 and operation of the law-enforcement training academies,
8 including regional locations throughout the state in order
9 to provide access to each law-enforcement agency in the
10 state in accordance with available funds;
- 11 (c) Establish minimum law-enforcement instructor
12 qualifications;
- 13 (d) Certify qualified law-enforcement instructors;
- 14 (e) Maintain a list of approved law-enforcement in-
15 structors;
- 16 (f) Promulgate standards governing the qualification
17 of law-enforcement officers and the entry level law-
18 enforcement training curricula. These standards shall re-
19 quire satisfactory completion of a minimum of four hun-
20 dred classroom hours, shall provide for credit to be given
21 for relevant classroom hours earned pursuant to training
22 other than training at an established law-enforcement
23 training academy if earned within five years immediately
24 preceding the date of application for certification, and
25 shall provide that the required classroom hours can be ac-
26 cumulated on the basis of a part-time curricula spanning
27 no more than twelve months, or a full-time curricula;
- 28 (g) Establish standards governing in-service law-
29 enforcement officer training curricula and in-service
30 supervisory level training curricula;
- 31 (h) Certify law-enforcement officers, as provided in
32 section five of this article;
- 33 (i) Seek supplemental funding for law-enforcement
34 training academies from sources other than the fees
35 collected pursuant to section four of this article; and
- 36 (j) Submit, on or before the thirtieth day of September
37 of each year, to the governor, and upon request to
38 individual members of the Legislature, a report on its
39 activities during the previous year and an accounting of
40 funds paid into and disbursed from the special revenue
41 account established pursuant to section four of this
42 article.

§30-29-5. Certification requirements.

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

10 (b) Except as provided in subsection (g) below, a per-
11 son who is not certified, or certifiable in one of the man-
12 ners specified in subsections (c) through (e) below, may
13 be conditionally employed as a law-enforcement officer
14 until certified: *Provided*, That, within ninety calendar
15 days of the commencement of employment or the effec-
16 tive date of this article if the person is already employed
17 on the effective date, he or she makes a written applica-
18 tion to attend an approved law-enforcement training
19 academy. The academy shall notify the applicant in writ-
20 ing of the receipt of the application and of the tentative
21 date of the applicant's enrollment. Any applicant who, as
22 the result of extenuating circumstances acceptable to his
23 or her law-enforcement official, is unable to attend the
24 scheduled training program to which he or she was ad-
25 mitted may reapply and shall be admitted to the next
26 regularly scheduled training program. An applicant who
27 satisfactorily completes the program shall, within thirty
28 days of completion, make written application to the
29 governor's committee requesting certification as having
30 met the minimum entry level law-enforcement qualifica-
31 tion and training program requirements. Upon deter-
32 mining that an applicant has met the requirements for
33 certification, the governor's committee shall forward to
34 the applicant documentation of certification. An applicant
35 who fails to complete the training program to which he
36 or she is first admitted, or was admitted upon reapplica-
37 tion may not be certified by the governor's committee.

38 (c) Any person who is employed as a law-enforcement

39 officer on the effective date of this article and is a gradu-
40 ate of the West Virginia basic police training course,
41 the West Virginia department of public safety cadet
42 training program, or other approved law-enforcement
43 training academy, is certifiable as having met the mini-
44 mum entry law-enforcement training program require-
45 ments and is exempt from the requirement of attending
46 a law-enforcement training academy. To receive certifi-
47 cation, the person shall make written application within
48 ninety calendar days of the effective date of this article
49 to the governor's committee requesting certification. The
50 governor's committee shall review the applicant's rele-
51 vant scholastic records and, upon determining that the
52 applicant has met the requirement for certification, shall
53 forward to the applicant documentation of certification.

54 (d) Any person who is employed as a law-enforce-
55 ment officer on the effective date of this article and is not
56 a graduate of the West Virginia basic police training
57 course, the West Virginia department of public safety
58 cadet training program, or other approved law-enforce-
59 ment training academy, is certifiable as having met the
60 minimum entry level law-enforcement training program
61 requirements and is exempt from the requirement of
62 attending a law-enforcement training academy if the per-
63 son has been employed as a law-enforcement officer for a
64 period of not less than seven consecutive years immedi-
65 ately preceding the date of application for certification.
66 To receive certification, the person shall make written ap-
67 plication within ninety calendar days following the effec-
68 tive date of this article to the governor's committee
69 requesting certification. The application shall include
70 notarized statements as to the applicant's years of em-
71 ployment as a law-enforcement officer. The governor's
72 committee shall review the application and, upon deter-
73 mining that the applicant has met the requirements for
74 certification, shall forward to the applicant documenta-
75 tion of certification.

76 (e) Any person who begins employment on or after
77 the effective date of this article as a law-enforcement
78 officer is certifiable as having met the minimum entry

79 level law-enforcement training program requirements
80 and is exempt from attending a law-enforcement training
81 academy if the person has satisfactorily completed a
82 course of instruction in law enforcement equivalent to or
83 exceeding the minimum applicable law-enforcement
84 training curricula promulgated by the governor's com-
85 mittee. To receive certification, the person shall make
86 written application within ninety calendar days following
87 the commencement of employment to the governor's
88 committee requesting certification. The application shall
89 include a notarized statement of the applicant's satisfac-
90 tory completion of the course of instruction in law-en-
91 forcement, a notarized transcript of the applicant's rele-
92 vant scholastic records, and a notarized copy of the cur-
93 riculum of the completed course of instruction. The gov-
94 ernor's committee shall review the application and, if it
95 finds the applicant has met the requirements for certifica-
96 tion, shall forward to the applicant documentation of
97 certification.

98 (f) Any person who is employed as a law-enforcement
99 officer on or after the effective date of this article and
100 fails to be certified shall be automatically terminated and
101 no further emoluments shall be paid to such officer by his
102 employer. Any person terminated shall be entitled to re-
103 apply, as a private citizen, to the subcommittee for train-
104 ing and certification, and upon being certified may again
105 be employed as a law-enforcement officer in this state.

106 (g) Nothing in this article may be construed as pro-
107 hibiting any governing body, civil service commission or
108 chief executive of any West Virginia law-enforcement
109 agency from requiring their law-enforcement officers to
110 meet qualifications and satisfactorily complete a course of
111 law-enforcement instruction which exceeds the minimum
112 entry level law-enforcement qualifications and training
113 curricula promulgated by the governor's committee.

114 (h) The requirement of this section for qualification,
115 training and certification of law-enforcement officers shall
116 not be mandatory during the two years next succeeding
117 the effective date of this article for the law-enforcement

118 officers of a law-enforcement agency which employs a
119 civil service system for its law-enforcement personnel,
120 nor shall such provisions be mandatory during the five
121 years next succeeding the effective date of this article for
122 law-enforcement officers of a law-enforcement agency
123 which does not employ a civil service system for its law-
124 enforcement personnel: *Provided*, That such require-
125 ments shall be mandatory for all such law-enforcement
126 officers until their law-enforcement officials apply for
127 their exemption by submitting a written plan to the
128 governor's committee which will reasonably assure com-
129 pliance of all law-enforcement officers of their agencies
130 within the applicable two-or five-year period of exemp-
131 tion.

132 (i) Any person aggrieved by a decision of the gov-
133 ernor's committee made pursuant to this article may
134 contest such decision in accordance with the provisions
135 of article five, chapter twenty-nine-a of this code.

§30-29-8. Agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.

1 A West Virginia law-enforcement agency shall pay
2 compensation to employees, including, without limita-
3 tion, wages, salaries, benefits, tuition and expenses for
4 the employees' attendance at a law-enforcement training
5 academy. In consideration therefor, the county commis-
6 sion or municipal government may require of its em-
7 ployees by written agreement entered into with each of
8 them in advance of such attendance at a training academy
9 that, if an employee should voluntarily discontinue em-
10 ployment anytime within one year immediately following
11 completion of the training curriculum, he or she shall be
12 obligated to pay to such county commission or municipal
13 government a pro rata portion of the sum of such com-
14 pensation equal to that part of such year which the
15 employee has chosen not to remain in the employ of
16 the county commission or municipal government.

§30-29-9. Special railroad police permitted to attend law-enforcement training academies.

1 Special railroad police officers shall be permitted to
2 attend law-enforcement training academies for law-en-
3 forcement officers: *Provided*, That the railroad companies
4 shall pay a tuition fee in an amount sufficient to pay the
5 entire cost of training each employee who attends an
6 academy, which fee shall in no event be less than forty
7 five dollars per day: *Provided, however*, That special rail-
8 road police officers shall be permitted to attend an acad-
9 emy only as space may be available.

CHAPTER 99

(Com. Sub. for S. B. 263—By Mr. Wise)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to apportionment of the Senate and the House of Delegates; providing a short title; defining the terms "county," "enumeration district," "block," "block numbering area," "census tract" and "magisterial district" for the purposes of apportioning districts; requiring that the clerk of the Senate and the House of Delegates file United States census maps in the office of the secretary of state; dividing the state into seventeen senatorial districts for the purpose of electing thirty-four members of the Senate; dividing the state into forty delegate districts for the purpose of electing one hundred delegates; requiring county commissions to alter the boundary lines of any election precinct that contains territory contained in more than one senatorial district as established hereto, or more than one delegate district as established hereto, so that no election precinct contains territory included in more than one senatorial or delegate district; and providing

that members of the Senate elected in the general elections of one thousand nine hundred seventy-eight and one thousand nine hundred eighty, and that members of the House of Delegates elected in the general election of one thousand nine hundred eighty, as well as any persons appointed to fill a vacancy in the office of member of the Senate or House of Delegates, shall continue to represent their senatorial or delegate district for the term for which each was elected or appointed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-1. Senatorial districts.

§1-2-2. Apportionment of membership of House of Delegates.

§1-2-1. Senatorial districts.

1 (a) This section shall be known and may be cited as
2 "The Senate Redistricting Act of 1982."

3 (b) As used in this section:

4 (1) "County" means the territory comprising a county
5 of this state as such county existed on the first day
6 of January, one thousand nine hundred eighty, notwith-
7 standing any boundary changes thereof made subsequent
8 thereto;

9 (2) "Enumeration district," "block" and "census tract"
10 mean those geographic areas as defined by the bureau of
11 the census of the United States department of commerce
12 for the taking of the one thousand nine hundred eighty
13 census of population and described on census maps pre-
14 pared by the bureau of the census. Such maps are, at the
15 time of this enactment, maintained by the bureau of the
16 census and shall be filed in the office of the secretary of
17 state by the clerk of the Senate not later than the first
18 day of July, one thousand nine hundred eighty-three;

19 (3) "Magisterial district" means the territory compris-

20 ing a magisterial district of this state as reported to and
21 used by the bureau of the census of the United States
22 department of commerce for the taking of the one thou-
23 sand nine hundred eighty census of population and
24 described on census maps prepared by the bureau of the
25 census;

26 (4) "Incumbent senator" means a senator elected at the
27 general election held in the year one thousand nine hun-
28 dred eighty, or at any general election thereafter, with an
29 unexpired term of at least two years in duration;

30 (c) The Legislature recognizes that in dividing the
31 state into senatorial districts, the Legislature is bound
32 not only by the United States Constitution but also by
33 the West Virginia Constitution; that in any instance
34 where the West Virginia Constitution conflicts with the
35 United States Constitution, the United States Constitu-
36 tion must govern and control, as recognized in section
37 one, article I of the West Virginia Constitution; that the
38 United States Constitution, as interpreted by the United
39 States supreme court and other federal courts, requires
40 state legislatures to be apportioned so as to achieve
41 equality of population as near as is practicable, population
42 disparities being permissible where justified by rational
43 state policies; and that the West Virginia Constitution
44 requires two senators to be elected from each senatorial
45 district for terms of four years each, one such senator
46 being elected every two years, with one half of the sena-
47 tors being elected biennially, and requires senatorial dis-
48 tricts to be compact, formed of contiguous territory and
49 bounded by county lines. The Legislature finds and de-
50 clares that it is not possible to divide the state into
51 senatorial districts so as to achieve equality of population
52 as near as is practicable as required by the United States
53 supreme court and other federal courts and at the same
54 time adhere to all of these provisions of the West Virginia
55 Constitution; but that, in an effort to adhere as closely
56 as possible to all of these provisions of the West Virginia
57 Constitution, the Legislature, in dividing the state into
58 senatorial districts, as described and constituted in sub-
59 section (d) hereof, has:

60 (1) Adhered to the equality of population concept,
61 while at the same time recognizing that from the forma-
62 tion of this state in the year one thousand eight hundred
63 sixty-three, each Constitution of West Virginia and the
64 statutes enacted by the Legislature have recognized politi-
65 cal subdivision lines and many functions, policies and
66 programs of government have been implemented along
67 political subdivision lines;

68 (2) Made the senatorial districts as compact as possible,
69 consistent with the equality of population concept;

70 (3) Formed the senatorial districts of "contiguous terri-
71 tory" as that term has been construed and applied by the
72 West Virginia supreme court of appeals;

73 (4) Deviated from the long-established state policy,
74 recognized in (1) above, by crossing county lines only
75 when necessary to ensure that all senatorial districts were
76 formed of contiguous territory or when adherence to
77 county lines produced unacceptable population inequali-
78 ties and only to the extent necessary in order to maintain
79 contiguity of territory and to achieve acceptable equality
80 of population;

81 (5) When crossing county lines, adhered, whenever
82 possible, in furtherance of the long-established state poli-
83 cy, recognized in (1) above, to the boundary lines of
84 magisterial districts, tax districts or municipal corpo-
85 rations; and

86 (6) Also taken into account in crossing county lines, to
87 the extent feasible, the community interests of the people
88 involved.

89 (d) The Senate shall be composed of thirty-four sena-
90 tors, one senator to be elected at the general election to
91 be held in the year one thousand nine hundred eighty-
92 two and biennially thereafter for a four-year term from
93 each of the senatorial districts hereinafter in this sub-
94 section described and constituted as follows:

95 (1) The counties of Brooke and Hancock and the mag-
96 isterial districts of Liberty-Triadelphia and Triadelphia of

97 the county of Ohio, and all of magisterial district Rich-
98 land-Washington except census tract four of the county
99 of Ohio, and census tract nineteen-point-zero-one of the
100 magisterial district of Ritchie-Center-Webster of the
101 county of Ohio shall constitute the first senatorial dis-
102 trict;

103 (2) The counties of Doddridge, Marshall, Ritchie, Tyler
104 and Wetzel and that portion of the county of Ohio not
105 included in the first senatorial district shall constitute
106 the second senatorial district;

107 (3) The counties of Pleasants, Wirt and Wood and the
108 magisterial districts of Sheridan and Center of the county
109 of Calhoun, shall constitute the third senatorial district;

110 (4) The counties of Jackson, Mason, Putnam and Roane
111 and that portion of the county of Calhoun not included in
112 the third senatorial district shall constitute the fourth
113 senatorial district;

114 (5) The county of Cabell and those portions of census
115 tracts fifty-one and fifty-two of the magisterial district of
116 Westmoreland contained within the city of Huntington
117 of the county of Wayne, and that portion of census tract
118 fifty-two of the magisterial district of Westmoreland con-
119 tained within the city of Ceredo of the county of Wayne,
120 and census tract two hundred two of the magisterial
121 district of Ceredo of the county of Wayne, and those por-
122 tions of census tracts two hundred three and two
123 hundred four of the magisterial district of Ceredo
124 contained within the city of Ceredo of the county of
125 Wayne, and that portion of block nine hundred three
126 of census tract two hundred four of the magisterial
127 district of Ceredo not included in the city of Ceredo in
128 the county of Wayne shall constitute the fifth senatorial
129 district;

130 (6) The county of Mingo and that portion of the county
131 of Wayne not included in the fifth or seventh senatorial
132 districts, and that portion of the county of McDowell not
133 included in the tenth senatorial district shall constitute
134 the sixth senatorial district;

135 (7) The counties of Boone, Lincoln and Logan and the
136 magisterial district of Stonewall of the county of Wayne
137 and enumeration districts two hundred, two hundred
138 one, two hundred two, two hundred three, two hun-
139 dred eleven and two hundred twelve within the mag-
140 isterial district of Union of the county of Wayne
141 shall constitute the seventh senatorial district;

142 (8) The county of Kanawha shall constitute the eighth
143 senatorial district;

144 (9) The county of Wyoming and that portion of the
145 county of Raleigh not included in the tenth senatorial
146 district shall constitute the ninth senatorial district;

147 (10) The counties of Mercer, Monroe and Summers
148 and the magisterial districts of Elkhorn and Northfork
149 of the county of McDowell and enumeration districts
150 six hundred twenty-eight and six hundred twenty-
151 nine of the third magisterial district of the county
152 of Raleigh shall constitute the tenth senatorial district;

153 (11) The counties of Clay, Fayette and Greenbrier and
154 the magisterial districts of Jefferson and Grant of the
155 county of Nicholas shall constitute the eleventh senatorial
156 district;

157 (12) The counties of Braxton, Pendleton, Pocahontas,
158 Randolph, Upshur and Webster and that portion of the
159 county of Nicholas not included in the eleventh senatorial
160 district shall constitute the twelfth senatorial dis-
161 trict;

162 (13) The counties of Gilmer, Harrison and Lewis and
163 census tract two hundred twelve and that portion of
164 census tract two hundred eleven not contained with-
165 in the city of Fairmont of the magisterial district of Grant
166 of the county of Marion and those portions of census tract
167 two hundred thirteen contained within the towns of
168 Monongah and Worthington in the magisterial district of
169 Lincoln of the county of Marion shall constitute the
170 thirteenth senatorial district;

171 (14) That portion of the county of Marion not included

172 in the thirteenth senatorial district and that portion of
173 the county of Monongalia not included in the fifteenth
174 senatorial district shall constitute the fourteenth sena-
175 torial district;

176 (15) The counties of Barbour, Grant, Preston, Taylor
177 and Tucker and that portion of the county of Mineral not
178 included in the sixteenth senatorial district and census
179 tracts one hundred eighteen and one hundred nineteen and
180 enumeration districts one thousand twenty-four, one thou-
181 sand twenty-six, one thousand twenty-eight and one-thou-
182 sand twenty-nine all of the eastern magisterial district of
183 the county of Monongalia and census tract one hundred
184 thirteen of the western magisterial district of the county of
185 Monongalia shall constitute the fifteenth senatorial district;

186 (16) The counties of Berkeley, Hampshire, Hardy,
187 Jefferson and Morgan and the magisterial districts of
188 Cabin Run and Welton of the county of Mineral and
189 enumeration districts six hundred fifty and six hun-
190 dred fifty-two of the magisterial district of Frankfort
191 of the county of Mineral shall constitute the sixteenth
192 senatorial district; and

193 (17) The county of Kanawha shall constitute the sev-
194 enteenth senatorial district.

195 (e) The West Virginia Constitution further provides,
196 in section four, article VI thereof, that where a senatorial
197 district is composed of more than one county, both sena-
198 tors for such district shall not be chosen from the same
199 county, a residency dispersal provision which is clear with
200 respect to senatorial districts which follow county lines,
201 as required by such Constitution, but which is not clear
202 in application with respect to senatorial districts which
203 cross county lines. However, in an effort to adhere as
204 closely as possible to the West Virginia Constitution in
205 this regard, the following additional provisions, in fur-
206 therance of the rationale of such residency dispersal pro-
207 vision and to give meaning and effect thereto, are hereby
208 established:

209 (1) With respect to a senatorial district which is com-

210 posed of one or more whole counties and one or more
211 parts of another county or counties, no more than one
212 senator shall be chosen from the same county or part of a
213 county to represent such senatorial district;

214 (2) With respect to a senatorial district which does not
215 contain any whole county but only parts of two or more
216 counties, no more than one senator shall be chosen from
217 the same part to represent such senatorial district; and

218 (3) With respect to superimposed senatorial districts
219 which contain only one whole county, all senators shall
220 be chosen from such county to represent such senatorial
221 districts.

222 (f) Candidates for the Senate shall be nominated as
223 provided in section four, article five, chapter three of this
224 code, except that such candidates shall be nominated in
225 accordance with the residency dispersal provisions speci-
226 fied in section four, article VI of the West Virginia Con-
227 stitution and the additional residency dispersal provisions
228 specified in subsection (e) hereof. Candidates for the
229 Senate shall also be elected in accordance with the resi-
230 dency dispersal provisions specified in said section four,
231 article VI of the West Virginia Constitution and the
232 additional residency dispersal provisions specified in sub-
233 section (e) hereof. In furtherance of the foregoing pro-
234 visions of this subsection (f), no person may file a certifi-
235 cate of candidacy for election from a senatorial district
236 described and constituted in subsection (d) hereof if he
237 resides in the same county and the same such senatorial
238 district wherein also resides an incumbent senator,
239 whether the senatorial district wherein such in-
240 cumbent senator resides was described and consti-
241 tuted by chapter sixty-six, acts of the Legislature,
242 one thousand nine hundred seventy-six, or was
243 described and constituted in subsection (d) hereof. Any
244 vacancy in a nomination shall be filled, any appointment
245 to fill a vacancy in the Senate shall be made, and any
246 candidates in an election to fill a vacancy in the Senate

247 shall be chosen, so as to be consistent with the residency
248 dispersal provisions specified in section four, article VI of
249 the West Virginia Constitution and the additional resi-
250 dency dispersal provisions specified in subsection (e)
251 hereof.

252 (g) Regardless of the changes in senatorial district
253 boundaries made by the provisions of subsection (d)
254 hereof, all senators elected at the general election held in
255 the year one thousand nine hundred seventy-eight and at
256 the general election held in the year one thousand nine
257 hundred eighty shall continue to hold their seats as mem-
258 bers of the Senate for the term, and as representatives
259 of the senatorial district, for which each thereof, respec-
260 tively, was elected. Any appointment made or election
261 held to fill a vacancy in the Senate shall be for the re-
262 mainder of the term, and as a representative of the sena-
263 torial district, for which the vacating senator was elected
264 or appointed, and any such election shall be held in the
265 district as the same was described and constituted at the
266 time the vacating senator was elected or appointed.

267 (h) Notwithstanding the provisions of sections five and
268 seven, article one, chapter three of this code, if an election
269 precinct of this state contains territory included within
270 more than one senatorial district (other than a superim-
271 posed senatorial district), as such senatorial districts are
272 described and constituted by subsection (d) hereof, it
273 shall be the duty of the county commission of the county
274 in which such precinct is located to alter the boundary
275 lines of the county's election precincts prior to the twen-
276 tieth day of April, one thousand nine hundred eighty-two,
277 so that no election precinct contains territory which is
278 included within more than one such senatorial district.

279 (i) The secretary of state may promulgate rules and
280 regulations to implement the provisions of this section,
281 including emergency rules and regulations promulgated
282 pursuant to the provisions of section five, article three,
283 chapter twenty-nine-a of this code.

§1-2-2. Apportionment of membership of House of Delegates.

1 (a) This section shall be known and may be cited as "The
2 House of Delegates Apportionment Act of 1982."

3 (b) As used in this section:

4 (1) "County" means the territory comprising a county of
5 this state as it existed on the first day of January, one
6 thousand nine hundred eighty, notwithstanding any
7 boundary changes made subsequent thereto;

8 (2) "Enumeration district," "block," "block numbering
9 area" and "census tract" mean those geographic areas as
10 defined by the bureau of the census of the United States
11 department of commerce for the taking of the one thousand
12 nine hundred eighty census of population and described on
13 census maps prepared by the bureau of the census. Such
14 maps are, at the time of this enactment, maintained by the
15 bureau of the census and shall be filed in the office of the
16 secretary of state by the clerk of the House of Delegates not
17 later than the first day of July, one thousand nine hundred
18 eighty-three;

19 (3) "Magisterial district" means the territory comprising a
20 magisterial district of this state as it existed on the first day of
21 January, one thousand nine hundred eighty, as defined in the
22 official records of the county commissions of the several
23 counties, notwithstanding any boundary changes made
24 subsequent thereto.

25 (c) If an election precinct in this state, as it exists at the
26 time of passage of this section, includes territory contained in
27 more than one delegate district, as such delegate districts are
28 established by subsection (d) of this section, it shall be the
29 duty of the county commission of the county in which such
30 precinct is located, prior to the first day of April, one
31 thousand nine hundred eighty-two, to alter the boundary
32 lines of its election precincts so that no precinct contains
33 territory included in more than one delegate district.

34 (d) The House of Delegates shall be composed of one
35 hundred members elected from the delegate districts
36 hereinafter described:

37 (1) The county of Hancock (except for census tract two
38 hundred one within the Clay magisterial district) shall
39 constitute the first delegate district and shall elect two
40 delegates;

41 (2) The county of Brooke, census tract two hundred one

42 within the Clay magisterial district of the county of Hancock
43 and all of the Richland-Washington magisterial district of the
44 county of Ohio except for the portion contained within the
45 city of Wheeling shall constitute the second delegate district
46 and shall elect two delegates;

47 (3) That portion of the county of Ohio not contained
48 within the second delegate district and enumeration district
49 two hundred fifty of magisterial district one of the county of
50 Marshall shall constitute the third delegate district and shall
51 elect three delegates;

52 (4) The county of Marshall (except for enumeration
53 district two hundred fifty of magisterial district one) shall
54 constitute the fourth delegate district and shall elect two
55 delegates;

56 (5) The county of Wetzel (except for enumeration district
57 three hundred ninety-one of the Magnolia magisterial district)
58 shall constitute the fifth delegate district and shall elect one
59 delegate;

60 (6) The counties of Doddridge and Tyler, and enumeration
61 district three hundred ninety-one of the Magnolia magisterial
62 district of the county of Wetzel shall constitute the sixth
63 delegate district and shall elect one delegate;

64 (7) The counties of Pleasants and Ritchie shall constitute
65 the seventh delegate district and shall elect one delegate;

66 (8) The county of Wood and the county of Wirt shall
67 constitute the eighth delegate district and shall elect five
68 delegates;

69 (9) The counties of Braxton, Calhoun and Gilmer and the
70 county of Clay (except for the Union magisterial district and
71 enumeration district one hundred four of the Henry
72 magisterial district) shall constitute the ninth delegate district
73 and shall elect two delegates: *Provided*, That not more than
74 one delegate may be nominated, elected or appointed who is a
75 resident of any single county within the ninth delegate
76 district;

77 (10) The county of Roane and that portion of the county
78 of Clay not contained within the ninth delegate district shall
79 constitute the tenth delegate district and shall elect one
80 delegate;

81 (11) The Washington, Grant and Ripley magisterial
82 districts of the county of Jackson, enumeration districts four
83 hundred twenty-six and four hundred twenty-eight of the
84 Ravenswood magisterial district of the county of Jackson,

85 block numbers one hundred one, one hundred two, one
86 hundred three and one hundred four of block numbering area
87 nine thousand nine hundred one within the Ravenswood
88 magisterial district of the county of Jackson, and the Union
89 magisterial district of the county of Mason shall constitute the
90 eleventh delegate district and shall elect one delegate;

91 (12) The county of Putnam, the Carroll magisterial district
92 of the county of Lincoln and those portions of the counties of
93 Jackson and Mason not contained within the eleventh
94 delegate district shall constitute the twelfth delegate district
95 and shall elect four delegates: *Provided*, That not less than
96 one delegate may be nominated, elected or appointed who is a
97 resident of each of those portions of the counties of Mason
98 and Putnam within the twelfth delegate district;

99 (13) The county of Cabell and all of the Westmoreland
100 magisterial district of the county of Wayne except for census
101 tracts two hundred one and two hundred four shall constitute
102 the thirteenth delegate district and shall elect six delegates;

103 (14) The county of Wayne (except for the portions of the
104 Westmoreland magisterial district not contained within
105 census tracts two hundred one and two hundred four) shall
106 constitute the fourteenth delegate district and shall elect two
107 delegates;

108 (15) The county of Mingo shall constitute the fifteenth
109 delegate district and shall elect two delegates;

110 (16) The county of Logan, the county of Lincoln (except
111 for the Carroll magisterial district), the Washington
112 magisterial district of the county of Boone and all of the Scott
113 magisterial district of the county of Boone except for the
114 portion contained within the city of Madison shall constitute
115 the sixteenth delegate district and shall elect four delegates:
116 *Provided*, That not more than three delegates may be
117 nominated, elected or appointed who are residents of any
118 single county within the sixteenth delegate district;

119 (17) That portion of the county of Boone not contained
120 within the sixteenth delegate district shall constitute the
121 seventeenth delegate district and shall elect one delegate;

122 (18) The county of McDowell (except for enumeration
123 districts five hundred eighty-five, five hundred eighty-eight
124 and five hundred eighty-nine of the Browns Creek
125 magisterial district and enumeration districts five hundred
126 ninety, five hundred ninety-three-u and five hundred
127 ninety-four of the Sandy River magisterial district) shall

128 constitute the eighteenth delegate district and shall elect two
129 delegates;

130 (19) That portion of the county of McDowell not contained
131 within the eighteenth delegate district and the county of
132 Wyoming (except for the Barkers Ridge magisterial district)
133 shall constitute the nineteenth delegate district and shall
134 elect two delegates;

135 (20) The county of Mercer and that portion of the county of
136 Wyoming not contained within the nineteenth delegate
137 district shall constitute the twentieth delegate district and
138 shall elect four delegates;

139 (21) The county of Monroe, enumeration district two of the
140 New River magisterial district of the county of Summers and
141 enumeration districts nine, ten, eleven and twelve of the
142 Greenbrier River magisterial district of the county of
143 Summers shall constitute the twenty-first delegate district
144 and shall elect one delegate;

145 (22) The county of Raleigh and that portion of the county
146 of Summers not contained within the twenty-first delegate
147 district shall constitute the twenty-second delegate district
148 and shall elect five delegates: *Provided*, That not more than
149 four delegates may be nominated, elected or appointed who
150 are residents of any county within the twenty-second
151 delegate district;

152 (23) The county of Kanawha shall constitute the
153 twenty-third delegate district and shall elect twelve
154 delegates;

155 (24) The county of Fayette shall constitute the
156 twenty-fourth delegate district and shall elect three delegates;

157 (25) The county of Greenbrier shall constitute the
158 twenty-fifth delegate district and shall elect two delegates;

159 (26) The counties of Nicholas and Webster shall constitute
160 the twenty-sixth delegate district and shall elect two
161 delegates: *Provided*, That not less than one delegate may be
162 nominated, elected or appointed who is a resident of any
163 single county within the twenty-sixth delegate district;

164 (27) The counties of Pocahontas and Randolph shall
165 constitute the twenty-seventh delegate district and shall elect
166 two delegates;

167 (28) The county of Barbour and the county of Upshur shall
168 constitute the twenty-eighth delegate district and shall elect
169 two delegates: *Provided*, That not less than one delegate may
170 be nominated, elected or appointed who is a resident of any

- 171 single county within the twenty-eighth delegate district;
172 (29) The county of Lewis shall constitute the twenty-ninth
173 delegate district and shall elect one delegate;
174 (30) The county of Harrison shall constitute the thirtieth
175 delegate district and shall elect four delegates;
176 (31) The counties of Marion and Taylor shall constitute the
177 thirty-first delegate district and shall elect four delegates:
178 *Provided*, That not less than one delegate may be nominated,
179 elected or appointed who is a resident of any single county
180 within the thirty-first delegate district;
181 (32) The county of Monongalia shall constitute the
182 thirty-second delegate district and shall elect four delegates;
183 (33) The counties of Preston and Tucker shall constitute
184 the thirty-third delegate district and shall elect two delegates;
185 (34) The counties of Grant and Mineral shall constitute the
186 thirty-fourth delegate district and shall elect two delegates:
187 *Provided*, That not less than one delegate may be nominated,
188 elected or appointed who is a resident of any single county
189 within the thirty-fourth delegate district;
190 (35) The counties of Pendleton and Hardy and the Mill
191 Creek magisterial district of the county of Hampshire shall
192 constitute the thirty-fifth delegate district and shall elect one
193 delegate;
194 (36) The county of Hampshire (except for the Mill Creek
195 magisterial district), the Cacapon, Rock Gap and Timber
196 Ridge magisterial districts of the county of Morgan and
197 enumeration districts eighty and eighty-one of the Bath
198 magisterial district of the county of Morgan shall constitute
199 the thirty-sixth delegate district and shall elect one delegate;
200 (37) That portion of the county of Morgan not contained
201 within the thirty-sixth delegate district, the Martinsburg magisterial
202 district of the county of Berkeley, the Hedgesville magisterial
203 district of the county of Berkeley (except for enumeration
204 districts five hundred eighty-three and five hundred
205 eighty-two-t) and block numbers two hundred three, two
206 hundred four, two hundred five, two hundred six, two
207 hundred seven, two hundred eight, two hundred nine, two
208 hundred ten, two hundred eleven, two hundred twelve, two
209 hundred eighteen and two hundred nineteen of block
210 numbering area nine thousand nine hundred three within the
211 Arden magisterial district of the county of Berkeley shall
212 constitute the thirty-seventh delegate district and shall elect
213 one delegate;

214 (38) That portion of the county of Berkeley not contained
215 within the thirty-seventh delegate district (except for the
216 Falling Waters and Opequon magisterial districts) shall
217 constitute the thirty-eighth delegate district and shall elect
218 one delegate;

219 (39) The Opequon and Falling Waters magisterial districts
220 of the county of Berkeley and the Shepherdstown and
221 Middleway magisterial districts of the county of Jefferson
222 shall constitute the thirty-ninth delegate district and shall
223 elect one delegate; and

224 (40) The Charles Town, Kabletown and Harpers Ferry
225 magisterial districts of the county of Jefferson shall
226 constitute the fortieth delegate district and shall elect one
227 delegate.

228 (e) Regardless of the changes in delegate district
229 boundaries made by the provisions of subsection (d) of this
230 section, the delegates elected at the general election held in
231 the year one thousand nine hundred eighty shall continue to
232 hold their offices as members of the House of Delegates for
233 the term, and as representatives of the county or delegate
234 district, for which each thereof, respectively, was elected.
235 Any appointment made prior to the first day of December,
236 one thousand nine hundred eighty-two, to fill a vacancy in the
237 office of a member of the House of Delegates shall be made
238 for the remainder of the term, and as representative of the
239 county or delegate district, for which the vacating delegate
240 was elected or appointed.

CHAPTER 100

(S. B. 22—By Mr. Tonkovich and Mr. Tomblin)

[Passed March 1, 1982; in effect July 1, 1983. Disapproved by the Governor and
repassed notwithstanding his objections.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven; to amend and reenact sections ten and twenty-six, article two, chapter five-a of said code; and to amend and reenact section two, article two, chapter twelve of said code, all

relating to legislative appropriation of federal funds; declaring legislative findings and purpose; defining terms; requiring certain federal funds to be deposited in the state treasury and credited to special fund accounts upon receipt; requiring the governor to itemize in the state budget and the budget bill, by line item, separately, for each spending unit, the amount and purpose of all federal funds received or anticipated, with a reference to the account number, line item and amount of any state funds required for such purpose; requiring federal revenue sharing funds to be itemized in a separate section of the state budget and the budget bill devoted exclusively to such proposed appropriations; prohibiting the expenditure of certain federal funds without specific appropriations by the Legislature; allowing the governor, under specified circumstances, to authorize expenditure of certain federal funds, and to seek the recommendation of the legislative joint committee on government and finance; providing exclusions from this article for certain federal funds; providing that the provisions of this article prevail over any conflicting statutory provisions; specifying date that tentative budget be submitted to governor and copy to legislative auditor; providing copies of tentative budget, upon request, to members of the Legislature; and requiring agency requests to the federal government for personal services funds to include funds for the cost of fringe benefits related to such personal services.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 4. The Legislature.**
- 5A. Department of Finance and Administration.**
- 12. Public Moneys and Securities.**

CHAPTER 4. THE LEGISLATURE.**ARTICLE 11. LEGISLATIVE APPROPRIATION OF FEDERAL FUNDS.**

- §4-11-1. Legislative findings and purpose.
- §4-11-2. Definitions.
- §4-11-3. Receipt of federal funds and required deposit in state treasury.
- §4-11-4. Inclusion of federal funds in state budget and the budget bill.
- §4-11-5. Legislative appropriation authority.
- §4-11-6. Exclusions.
- §4-11-7. Conflict with other statutory provisions.

§4-11-1. Legislative findings and purpose.

1 The Legislature finds and declares that in order to
2 carry out its responsibility for the enactment of all ap-
3 propriations needed for the operation of state govern-
4 ment, the Legislature needs continuous and accurate
5 accounts of the amounts and purposes of all federal
6 funds being requested, received or expended by the
7 various agencies and departments of the state. The
8 Legislature further finds and declares that the increased
9 availability of and reliance on federal financial as-
10 sistance has a substantial impact upon the programs,
11 priorities and fiscal affairs of the state. It is the pur-
12 pose of this article to clarify and specify the role of the
13 Legislature in appropriating federal funds received by
14 the state and in prescribing, by general law, the required
15 form and detail of the itemization and classification of
16 proposed appropriations to assure that state purposes
17 are served and legislative priorities are adhered to by
18 the acceptance and use of such funds.

§4-11-2. Definitions.

1 As used in this article:

2 (1) "Federal funds" means any financial assistance
3 made to a spending unit by the United States government,
4 whether a loan, grant, subsidy, augmentation, reimburse-
5 ment or any other form of such assistance, including
6 "federal-matching funds";

7 (2) "Federal-matching funds" means federal funds of a
8 specified amount or proportion for which a specified out-
9 lay of state contributions, including funds, property or

10 services, are required as a condition for receipt or expend-
11 iture;

12 (3) "Spending unit" means the state of West Virginia
13 and all agencies, offices, departments, divisions, boards,
14 commissions, councils, committees or other entities of the
15 state government for which an appropriation is requested
16 or to which an appropriation is made by the Legislature.
17 "Spending Unit" does not mean any county, city, town-
18 ship, public service district or other political subdivision
19 of the state; and

20 (4) "State-matching funds" means state contributions,
21 including funds, property or services that are required by
22 the federal government, by law or regulation, as a condi-
23 tion for receipt or expenditure of federal funds.

§4-11-3. Receipt of federal funds and required deposit in state treasury.

1 Unless contrary to federal law, all federal funds re-
2 ceived by a spending unit shall be deposited in and
3 credited to special fund accounts as provided by section
4 two, article two, chapter twelve of this code and shall be
5 available for appropriation by the Legislature as part of
6 the state budget.

**§4-11-4. Inclusion of federal funds in state budget and the bud-
get bill.**

1 Pursuant to article one-a, chapter five, and chapter
2 five-a of this code, the governor shall itemize in the state
3 budget and in the budget bill, on a line-item basis,
4 separately, for each spending unit, the amount and pur-
5 pose of all federal funds received or anticipated for
6 expenditure, with a reference to the account number, line
7 item and amount of any state funds required for such
8 purpose: *Provided*, That all federal revenue sharing funds
9 shall be so itemized in a separate section of the state
10 budget and the budget bill devoted exclusively to pro-
11 posed appropriations from the revenue sharing trust fund.

§4-11-5. Legislative appropriation authority.

1 (a) No spending unit may make expenditures of any

2 federal funds, whether such funds are advanced prior to
3 expenditure or as reimbursement, unless such expendi-
4 tures are made pursuant to specific appropriations by the
5 Legislature, except as may be hereinafter provided.

6 (b) To the extent not precluded by the terms and condi-
7 tions under which federal funds are made available to
8 the spending unit by the United States government, the
9 spending unit shall use federal funds in accordance with
10 any purposes, policies or priorities the Legislature may
11 have established for the activity being assisted or for the
12 use of state, federal and other fiscal resources in a par-
13 ticular fiscal year.

14 (c) If the federal funds received by a spending unit
15 for a specific purpose are greater than the amount of
16 such funds contained in the appropriation by the Legis-
17 lature for such purpose, the total appropriation of federal
18 funds and any state-matching funds for such purpose
19 shall remain at the level appropriated, except as herein-
20 after provided.

21 (d) If federal funds become available to the spending
22 unit for expenditure while the Legislature is not in
23 session and the availability of such funds could not rea-
24 sonably have been anticipated and included in the budget
25 approved by the Legislature for the next fiscal year, the
26 treasurer may accept such funds on behalf of the spending
27 unit and the governor may authorize, in writing, the ex-
28 penditure of such funds by the spending unit during that
29 fiscal year as authorized by federal law and pursuant to
30 the provisions of article two of chapter five-a of the code
31 which permits expenditure of amounts in excess of the
32 appropriation upon the filing of a proper expenditure
33 schedule: *Provided*, That the governor may not authorize
34 the expenditure of such funds received for the creation of
35 a new program or for a significant alteration of an exist-
36 ing program. Should a question arise concerning whether
37 such expenditures would constitute a new program or
38 significant alteration of an existing program, while the
39 Legislature is not in session, the governor shall seek the
40 recommendation of the joint committee on government

41 and finance of the Legislature. Upon application to the
42 federal government for such funds and upon receipt
43 of such funds, the governor shall submit to the legis-
44 lative auditor two copies of a statement:

45 (1) Describing the proposed expenditure of such funds
46 in the same manner as it would be described in the state
47 budget; and

48 (2) Explaining why the availability of such federal
49 funds and why the necessity of their expenditure could
50 not have been anticipated in time for such expenditures
51 to have been approved as part of the adopted budget for
52 that particular fiscal year.

§4-11-6. Exclusions.

1 The following are excluded from the provisions of
2 this article:

3 (1) Federal funds received by state institutions of
4 higher education or by students or faculty members of
5 such institutions for instructional or research purposes
6 and federal funds received for student scholarships or
7 grants-in-aid;

8 (2) Federal nondiscretionary pass-through funds which
9 are earmarked in specified amounts or proportions for
10 transmittal to local political subdivisions or to designated
11 classes of organizations and individuals which do not
12 require state-matching funds and do not permit discre-
13 tion in their distribution by the receiving state spending
14 unit;

15 (3) Federal funds made available to the state for costs
16 and damages resulting from natural disasters, civil dis-
17 obedience or other occurrences declared by the governor
18 as a state of emergency; and

19 (4) All federal funds received by the West Virginia
20 department of highways or the West Virginia commis-
21 sioner of highways.

§4-11-7. Conflict with other statutory provisions.

1 If there is any conflict between the provisions of this

2 article and any other provision of this code relating to
3 receiving or expending federal funds, the provisions of
4 this article shall govern and control.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 2. BUDGET DIVISION.

§5A-2-10. Preparation of tentative budget and submission to governor; copies to Legislature.

§5A-2-26. Approval by commissioner of requests for federal aid; copies to legislative auditor; consolidated report of federal funds.

§5A-2-10. Preparation of tentative budget and submission to governor; copies to Legislature.

1 The commissioner shall prepare for the consideration
2 of the governor a tentative budget for the fiscal year
3 next ensuing. The budget shall state actual receipts
4 and expenditures for the fiscal year next preceding,
5 estimated receipts and expenditures for the current
6 fiscal year, recommended expenditures for the current
7 fiscal year as shown in the legislative digest, and it shall
8 state also the requested amounts or estimates for the
9 fiscal year next ensuing with respect to:

10 (1) Appropriations requested by each spending unit
11 and requested general appropriations;

12 (2) The amount of the total of each appropriation to
13 be paid out of collections;

14 (3) Amounts and purposes of appropriations requested
15 other than for spending units of the state;

16 (4) Revenue of each of the funds of the state;

17 (5) A summary statement of requests and revenues
18 showing the amount of an anticipated surplus or deficit;

19 (6) Balances carried forward to the first day of July,
20 from the fiscal year next preceding on all reappropriated
21 accounts from general revenue fund and general school
22 fund;

23 (7) Percentage of increase or decrease by comparison
24 of recommended appropriation for next ensuing year
25 with current fiscal year.

26 On or before the fifth day of December, the commis-
27 sioner shall submit the tentative budgets to the governor.
28 The commissioner shall convey to the governor all ex-
29 planatory and justification statements and statements
30 of personnel requirements of spending units as reported
31 and filed in his office, together with the certification of the
32 state treasurer verifying the condition of the state
33 revenues and the several funds of the state as required
34 to be provided to the commissioner under the provisions
35 of section three, article four, chapter twelve of this
36 code.

37 At the time the commissioner submits the tentative
38 budget to the governor, he shall also submit copies
39 thereof to the president of the Senate, the speaker of
40 the House of Delegates, the legislative auditor and to any
41 member of the Legislature who shall request a copy. At
42 any time thereafter that additional data supplementary
43 to the tentative budget is received by the commissioner,
44 which data or change is not an integral part of the prep-
45 aration of the proposed budget of the governor, the com-
46 missioner shall submit a copy thereof to the legislative
47 auditor.

**§5A-2-26. Approval by commissioner of requests for federal
aid; copies to legislative auditor; consolidated
report of federal funds.**

1 Every agency of the state government when making
2 requests or preparing budgets to be submitted to the
3 federal government for funds, equipment, material or
4 services, the grant or allocation of which is conditioned
5 upon the use of state matching funds, shall have such
6 request or budget approved in writing by the commis-
7 sioner before submitting it to the proper federal author-
8 ity. At the time such agency submits such a request or
9 budget to the commissioner for his approval, it shall send
10 a copy thereof to the legislative auditor. When such fed-
11 eral authority has approved the request or budget, the
12 agency of the state government shall resubmit it to the
13 commissioner for recording before any allotment or en-
14 cumbrance of the federal funds can be made and the

15 commissioner shall send a copy of the federally approved
16 request or budget to the legislative auditor. Whenever
17 any agency of the state government shall receive from
18 any agency of the federal government a grant or alloca-
19 tion of funds which do not require state matching, the
20 state agency shall report to the commissioner and the
21 legislative auditor for their information the amount of the
22 federal funds so granted or allocated.

23 Unless contrary to federal law, any agency of state
24 government, when making requests or preparing budgets
25 to be submitted to the federal government for funds for
26 personal services, shall include in such request or budget
27 the amount of funds necessary to pay for the cost of any
28 fringe benefits related to such personal service. For the
29 purposes of this section, "fringe benefits" means any
30 employment benefit granted by the state which involves
31 state funds, including, but not limited to, contributions to
32 insurance, retirement and social security, and which does
33 not affect the basic rate of pay of an employee.

34 In addition to the other requirements of this section,
35 the commissioner shall, as soon as possible after the end of
36 each fiscal year but no later than the first day of October
37 of each year, submit to the governor and the legislative
38 auditor a consolidated report which shall contain a de-
39 tailed itemization of all federal funds received by the
40 state during the preceding and current fiscal years, as
41 well as those scheduled or anticipated to be received
42 during the next ensuing fiscal year. Such itemization shall
43 show: (a) Each spending unit which has received or is
44 scheduled or expected to receive federal funds in either of
45 such fiscal years, (b) the amount of each separate grant or
46 distribution received or to be received, (c) a brief de-
47 scription of the purpose of every such grant or other dis-
48 tribution, with the name of the federal agency, bureau or
49 department making such grant or distribution: *Provided*,
50 That it shall not be necessary to include in such report an
51 itemization of federal revenue sharing funds deposited in
52 and appropriated from the revenue sharing trust fund, or
53 federal funds received for the benefit of the department of
54 highways and the state road fund.

55 The commissioner is authorized and empowered to ob-
56 tain from the spending units any and all information
57 necessary to prepare such report.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

1 All officials and employees of the state authorized by
2 statute to accept moneys due the state of West Virginia
3 shall keep a daily itemized record of such moneys so re-
4 ceived for deposit in the state treasury and shall deposit
5 within twenty-four hours with the state treasurer all
6 moneys received or collected by them for or on behalf of
7 the state for any purpose whatsoever. The treasurer shall
8 promulgate rules and regulations, in accordance with the
9 provisions of chapter twenty-nine-a of this code govern-
10 ing the procedure for such deposits. When so paid, such
11 moneys shall be credited to the state fund and treated by
12 the auditor and treasurer as part of the general revenue
13 of the state: *Provided*, That all moneys received out of
14 appropriations made by the Congress of the United States
15 shall be carried in special fund accounts, apart from the
16 general revenues of the state, in the state treasury and
17 all such moneys shall not be used for any purpose what-
18 soever unless and until authorized and directed by the
19 Legislature, excepting the following funds which shall be
20 carried in separate accounts:

21 (a) All funds excluded by the provisions of section six,
22 article eleven, chapter four of this code;

23 (b) All funds derived from the sale of farm and dairy
24 products from farms operated by any agency of state
25 government other than the farm management commis-
26 sion;

27 (c) All endowment funds, bequests, donations, execu-
28 tive emergency funds, and death and disability funds;

29 (d) All fees and funds collected at state educational
30 institutions for student activities;

31 (e) All funds derived from collections from dormito-
32 ries, boardinghouses, cafeterias and road camps;

33 (f) All moneys received from counties by institutions
34 for the deaf and blind on account of clothing for indigent
35 pupils;

36 (g) All insurance collected on account of losses by fire
37 and refunds;

38 (h) All funds derived from bookstores and sales of
39 blank paper and stationery, and collections by the chief
40 inspector of public offices;

41 (i) All moneys collected and belonging to the capitol
42 building fund, state road fund, state road sinking funds,
43 general school fund, school fund, state fund (moneys
44 belonging to counties, districts and municipalities), state
45 interest and sinking funds, state compensation funds, the
46 fund maintained by the public service commission for the
47 investigation and supervision of applications and all
48 funds and moneys payable to or received by the natural
49 resources commission of West Virginia;

50 (j) All moneys collected or received under any act of
51 the Legislature providing that funds collected or received
52 thereunder shall be used for specific purposes.

53 All moneys, excepted as aforesaid, shall be paid into
54 the state treasury in the same manner as collections not so
55 excepted, and shall be carried in separate accounts to be
56 used and expended only for the purposes for which the
57 same are authorized to be collected by law. The gross
58 amount collected in all cases shall be paid into the state
59 treasury, and commissions, costs and expenses of collec-
60 tion authorized by general law to be paid out of the gross
61 collection are hereby authorized to be paid out of the
62 moneys collected and paid into the state treasury in the
63 same manner as other payments are made from the state
64 treasury.

65 The official or employee making such deposits in the

66 state treasury shall prepare such deposit lists in such
67 manner and upon such report forms as may be prescribed
68 by the treasurer. The original of this report shall accom-
69 pany the deposit to the treasurer's office. Certified or
70 receipted copies shall be immediately forwarded by the
71 state treasurer to the state auditor and to the commis-
72 sioner of finance and administration, and a copy shall be
73 kept by the official or employee making the report and
74 shall become a part of his permanent record.

CHAPTER 101

(Com. Sub. for H. B. 1340—Mr. Schifano and Mrs. Theiling)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia medical practice act; appointment of members to the West Virginia board of medicine; providing for appointment of one Type A physician assistant member and one additional lay member to the board of medicine.

Be it enacted by the Legislature of West Virginia:

That section five, 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.

§30-3-5. West Virginia board of medicine created; transfer of powers and duties from medical licensing board; appointment and terms of members; vacancies; removal.

1 There is hereby created a medical licensing board to be
2 known as the "West Virginia Board of Medicine." The West
3 Virginia board of medicine shall assume, carry on and succeed
4 to all the duties, rights, powers, obligations and liabilities
5 heretofore belonging to or exercised by the medical licensing
6 board of West Virginia. All the rules and regulations, orders,

7 rulings, licenses, certificates, permits and other acts and under-
8 takings of the medical licensing board of West Virginia as
9 heretofore constituted shall continue as those of the West Vir-
10 ginia board of medicine until they expire or are amended, al-
11 tered or revoked. The board shall be the sole authority for the
12 issuance of licenses to practice medicine and surgery and to
13 practice podiatry and certificates for physician assistants in
14 this state and shall be a regulatory and disciplinary body for
15 the practice of medicine and surgery and the practice of podi-
16 atry and for physician assistants in this state.

17 The board shall consist of fifteen members. One member
18 shall be the state director of health ex officio, with the right
19 to vote as a member of the board. The other fourteen members
20 shall be appointed by the governor, with the advice and con-
21 sent of the Senate. Eight of the members shall be appointed
22 from among individuals holding the degree of doctor of medi-
23 cine and two shall hold the degree of doctor of podiatric medi-
24 cine. One member shall be an individual certified by the board
25 as a Type A physician assistant. Each of these members must
26 be duly licensed or certified to practice his or her profession
27 in this state on the date of appointment and must have been
28 licensed or certified and actively practicing that profession
29 for at least five years immediately preceding the date of ap-
30 pointment. Three lay members shall be appointed to repre-
31 sent health care consumers. Neither the lay members nor any
32 person of the lay members' immediate families shall be a pro-
33 vider of or be employed by a provider of health care services.
34 The state director of health's term shall continue for the per-
35 iod that he or she holds office as state director of health. Each
36 other member of the board shall be appointed to serve a term
37 of five years: *Provided*, That the members of the medical
38 licensing board or board of medicine holding appointments on
39 the effective date of this section shall continue to serve as
40 members of the board of medicine until the expiration of their
41 term unless sooner removed. Each term shall begin on the
42 first day of October of the applicable year, and a member may
43 not be appointed to more than two consecutive full terms on
44 the board.

45 Not more than four physicians, one podiatrist and two lay

46 members appointed by the governor as members of the board
47 shall belong to the same political party. The Type A physician
48 assistant member may not belong to the same political party to
49 which a majority of the lay members belong. A person is not
50 eligible for membership on the board who is a member of any
51 political party executive committee or, with the exception of
52 the state director of health, who holds any public office or pub-
53 lic employment under the federal government or under the
54 government of this state or any political subdivision thereof or
55 who is an appointee or employee of the state board of health.

56 In making appointments to the board, the governor shall, so
57 far as practicable, select the members from different geograph-
58 ical sections of the state. When a vacancy on the board occurs
59 and less than one year remains in the unexpired term, the ap-
60 pointee shall be eligible to serve the remainder of the unex-
61 pired term and two consecutive full terms on the board.

62 No member may be removed from office except for official
63 misconduct, incompetence, neglect of duty or gross immorality:
64 *Provided*, That the expiration or revocation of the profes-
65 sional license or certification of a member of the board shall
66 be cause for removal.

CHAPTER 102

(Com. Sub. for S. B. 143—By Mrs. Spears)

[Passed February 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fifteen, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article one of said chapter; and to amend and reenact article one-e of said chapter, all relating generally to the military forces of the state; providing for a code of military justice with respect thereto; defining certain terms and phrases with respect thereto; providing for the establishment of trials by courts-martial; establishing the jurisdiction of said courts-martial; providing for the dismissal of commissioned officers with approval of the governor; establishing the

territorial applicability of the provisions of said article one-e; providing for the appointment of state judge advocate officers and assistants and defining the duties of such officers and assistants; providing for the apprehension, arrest and custody of persons subject to and in violation of said military code; establishing the authority of civil officers to enforce said code; providing for the imposition of restraint based upon probable cause of persons subject to said code; providing for the issuance of arrest warrants to police officers and establishing procedures for admission to bail of persons arrested pursuant thereto; providing for the confinement of violators in civilian jails; requiring reports upon receiving of prisoners subject to said code by military and civilian personnel; prohibiting punishment prior to trial of persons subject to said code; requiring the deliverance of such persons to civilian authorities in certain cases; establishing disciplinary punishment for minor offenses committed by persons subject to said code without intervention of court-martial and limitations and appeals relating thereto; providing for the classification of courts-martial; establishing the jurisdiction of courts-martial generally; providing for penalties and limitations of special courts-martial and the limitations thereon and the penalties to be imposed thereby; establishing the jurisdiction of summary courts-martial and the limitations thereon and penalties to be imposed thereby; providing for a written record of bad conduct discharge proceedings; requiring the confinement of persons subject to this code in lieu of fines and limitations with respect thereto; authorizing the convening of general, special and summary courts-martial and the limitations with respect thereto and the persons empowered to convene said courts-martial; providing for persons to serve on courts-martial generally and limitations thereon; providing for the appointment of a military judge to preside over special or general courts-martial in lieu of a hearing panel and eligibility therefor and limitations thereon; providing for the employment or appointment of reporters and interpreters; prohibiting the absence of a member of a general or special courts-martial without excuse; providing for the addition of new members and limitations thereon; requiring the specification of charges and the disposition thereof; prohibiting compulsory self-incrimination; providing for the investigation of charges or specifications prior to convening of a general court-martial; providing for and establishing the

rights of accused violators of said code; providing for the timely forwarding of charges to persons exercising general courts-martial jurisdiction and the timely service of charges upon the accused; requiring the establishment of certain trial procedures by the governor; prohibiting the wrongful influencing of the court; the duties of trial and defense counsel in any general or special courts-martial; governing courts-martial sessions generally and continuances thereof and limitations thereon; providing for challenges to military judges and members of general or special courts-martial for cause and providing for one preemptory challenge; establishing a statute of limitations with respect to certain offenses; providing for the attachment of jeopardy; establishing the right of the accused to obtain witnesses and other evidence and the forms of various pleas and limitations with respect thereto; providing for sanctions for refusal to appear and testify; establishing contempt of military courts by military persons and the penalty therefor; allowing the taking of depositions and notice therefor and admissibility into evidence and limitations thereon; providing for admissibility of certain records; establishing voting procedures of courts-martial; reserving rulings on questions and interlocutory matters; providing for instructions to members of courts-martial panel; providing for proceedings before military judge only; providing for conviction, sentences and other matters relating thereto; requiring courts to announce findings and sentences; requiring records of courts-martial proceedings and furnishing such records to accused in certain cases; prohibiting cruel and unusual punishment; establishing maximum limits of punishment; establishing effective date of sentences and places of confinement; providing for execution of confinement; authorizing hard labor; establishing duties of county jail officials with respect to military prisoners; providing for review of courts-martial proceedings; defining errors of law and lesser included offenses; providing reconsideration, revision and rehearing of courts-martial findings; requiring approval of sentences by convening authority; establishing review by board of review; providing for appellate counsel; defining execution, suspension and vacation of sentence; providing for petition for new trial and the remission and suspension of sentences as a result and limitations with respect thereto; establishing restoration of rights, privileges and property of persons convicted and

limitations thereon; defining finality of proceedings, findings and sentences; defining principals and accessories after the fact; providing for the conviction for lesser included offenses; prescribing certain other offenses and the penalties therefor; providing for the establishment of courts of inquiry and the power to convene the same; establishing the composition of such courts and procedures relating thereto; providing for examination and availability of the military code to military personnel; requiring complaints of and redress of wrongs and redress of injuries to property; disposing of fines and penalties; establishing liabilities of public officers for nonexecution of process and penalties therefor; allowing compensation for court members and immunity for actions of a military court; providing reemployment rights for guard members; providing for delegation of authority by the governor; and establishing uniformity of interpretation; and severability of provisions of said article one-e.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Military Forces of the State.
- 1E. Code of Military Justice.

ARTICLE 1. MILITARY FORCES OF THE STATE.

§15-1-1. Definitions.

- 1 When used in articles one, one-a, one-b, one-c, one-d, one-f
- 2 and one-g of this chapter, unless a different meaning is
- 3 plainly required by the context:
- 4 (a) The term "military forces of the state" shall mean the
- 5 organized militia, the state retired list, the honorary militia
- 6 and the state guard, and all other components of the militia of
- 7 the state which may hereafter be organized.
- 8 (b) The term "organized militia" shall mean the West
- 9 Virginia national guard, including the army national guard,
- 10 the air national guard and the inactive national guard, and
- 11 shall be deemed to include any unit, component, element,
- 12 headquarters, staff or cadre thereof, as well as any member or
- 13 members.

14 (c) "Military personnel of the national guard" shall mean
15 all the members of the organized militia.

16 (d) "Military" shall mean army or land, air or air force,
17 navy or naval.

18 (e) The term "service of the state" or "active service of the
19 state" shall mean active military duty in other than a training
20 status in or with a force of the organized militia or with the
21 adjutant general's department, upon orders of the governor.

22 (f) The term "state duty" shall mean duty in a training
23 status or other duty in the interest of the state and the
24 organized militia.

25 (g) The term "service of the United States" or "active
26 service of the United States" shall mean active military duty
27 in the armed forces of the United States except active duty for
28 training purposes.

29 (h) The term "officer" or "commissioned officer" shall be
30 deemed to include warrant officers.

ARTICLE 1E. CODE OF MILITARY JUSTICE.

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PART I. GENERAL PROVISIONS.

§15-1E-1. Short title.

- 1 This article shall be known and may be cited as the "West
- 2 Virginia Code of Military Justice."

§15-1E-2. Definitions.

- 1 The following words and phrases when used in this article
- 2 shall have, unless the context clearly indicates otherwise, the
- 3 meanings given to them in this section:
- 4 (a) "Accuser." A person who signs and swears to charges,
- 5 any person who directs that charges nominally be signed and
- 6 sworn to by another or any person who has an interest other
- 7 than an official interest in the prosecution of the accused.
- 8 (b) "Active state duty." Full-time duty in the active
- 9 military service of the state under an order of the governor, or
- 10 by a superior commissioned officer pursuant to law. It
- 11 includes travel to and from such duty.
- 12 (c) "Adjutant general." The adjutant general of the state of
- 13 West Virginia.

14 (d) "Convening authority." Includes, in addition to the
15 person who convened the court, a commissioned officer
16 commanding for the time being, or a successor in command.

17 (e) "Duty status." Includes any periods of drill, annual
18 field training, active state duty and such other training, and
19 service as may be required under state or federal laws,
20 regulations or orders, and includes travel to and from such
21 duty.

22 (f) "Enemy." Includes, for the purposes of the punitive
23 provisions of this article, not only the organized forces of a
24 hostile nation in time of war but also any hostile body the
25 state military forces may be opposing, such as looters, a riot, a
26 rebellious mob or band of renegades or outlaws.

27 (g) "Enlisted person." A person in an enlisted grade.

28 (h) "Federal service." Periods of active duty other than
29 active state duty, but excludes active duty for training, active
30 duty for periods of less than thirty days, and active duty for
31 the purpose of attending service schools.

32 (i) "Grade." A step or degree, in a graduated scale of office
33 or military rank, that is established and designated as a grade
34 by law or regulation.

35 (j) "May." Is used in a permissive sense. The words "no
36 person may . . ." means that no person is required, authorized
37 or permitted to do the act prescribed.

38 (k) "Military." Any or all of the armed forces.

39 (l) "Military court." A court-martial or a court of inquiry.

40 (m) "Military judge." An official of a general or special
41 court-martial appointed in accordance with section
42 twenty-nine of this article.

43 (n) "Officer." Commissioned or warrant officer.

44 (o) "Rank." The order of precedence among members of
45 the state military forces.

46 (p) "State judge advocate." The commissioned officer
47 responsible for supervising the administration of the military
48 justice in the state military forces. He shall be the military
49 staff judge advocate to the governor.

50 (q) "Superior commissioned officer." A commissioned
51 officer superior in rank and command.

§15-1E-3. Persons subject to article.

1 This article applies to all members of the state military
2 forces who are not in federal service.

§15-1E-4. Jurisdiction to try certain personnel.

- 1 (a) Each person subject to this article discharged from the
2 state military forces who is later charged with having
3 fraudulently obtained his discharge shall be, subject to
4 section forty-six of this article, subject to trial by
5 court-martial on said charge and shall after apprehension be
6 subject to this article while in the custody of the military for
7 such trial. Upon conviction of said charge he shall be subject
8 to trial by court-martial for all offenses under this article
9 committed before the fraudulent discharge.
- 10 (b) No person subject to this article who has deserted from
11 the state military forces shall be relieved from amenability to
12 the jurisdiction of this article by virtue of a separation from
13 any subsequent period of service.

§15-1E-5. Dismissal of commissioned officer.

- 1 (a) Any commissioned officer, subject to this article
2 dismissed by order of the governor, may make a written
3 application for trial by court-martial, setting forth, under
4 oath, that he has been wrongfully dismissed. In such event,
5 the governor, as soon as practicable, shall convene a general
6 court-martial to try such officer on the charges on which he
7 was dismissed. A court-martial so convened shall have
8 jurisdiction to try the dismissed officer on such charge, and
9 he shall be considered to have waived the right to plead any
10 statute of limitations applicable to any offense with which he
11 is charged. The court-martial may, as part of its sentence,
12 adjudge the affirmance of the dismissal, but if the
13 court-martial acquits the accused or if the sentence adjudged,
14 as finally approved or affirmed, does not include dismissal,
15 the adjutant general shall substitute for the dismissal ordered
16 by the governor a form of discharge authorized for
17 administrative issue.
- 18 (b) If the governor fails to convene a general court-martial
19 within six months from the presentation of an application for
20 trial under this section, the adjutant general shall substitute
21 for the dismissal ordered by the governor a form of discharge
22 authorized for administrative issue.

§15-1E-6. Territorial applicability.

- 1 (a) This article applies throughout this state. It also applies
2 to all persons otherwise subject to the article while they are
3 serving outside this state, and while they are going to and
4 returning from such service outside this state, in the same

5 manner and to the same extent as if they were serving inside
6 this state.

7 (b) Courts-martial and courts of inquiry may be convened
8 and held in units of the state military forces while those units
9 are serving outside this state with the same jurisdiction and
10 powers as to persons subject to the article as if the
11 proceedings were held inside this state and persons subject to
12 this article accused of committing offenses outside this state
13 shall be subject to trial and punishment either inside or
14 outside this state.

§15-1E-7. Judge advocates and legal officers.

1 (a) The adjutant general shall appoint a judge advocate
2 officer of the state military forces as state judge advocate. To
3 be eligible for appointment, such officer shall have been a
4 member of the bar of the supreme court of appeals of West
5 Virginia for at least five years, and shall have satisfactorily
6 completed all educational requirements for active military
7 service as a field grade judge advocate general corps officer.

8 (b) The adjutant general may appoint as many assistant
9 state judge advocates as he considers necessary. To be
10 eligible for appointment, assistant state judge advocates must
11 be judge advocate officers of the state military forces and
12 members of the bar of the supreme court of appeals of West
13 Virginia.

14 (c) The state judge advocate or his assistants shall make
15 inspections in the field in supervision of the administration of
16 military justice.

17 (d) Convening authorities shall at all times communicate
18 directly with their staff judge advocates or legal officer in
19 matters relating to the administration of military justice; and
20 the staff judge advocate or legal officer of any command is
21 entitled to communicate directly with the staff judge
22 advocate or legal officer of a superior or subordinate
23 command, or with the state judge advocate.

24 (e) No person who has acted as member, military judge,
25 trial counsel, assistant trial counsel, defense counsel,
26 assistant defense counsel, or investigating officer, or who has
27 been a witness for either the prosecution or defense, in any
28 case may later act as staff judge advocate or legal officer to
29 any reviewing authority upon the same case.

PART II. APPREHENSION AND RESTRAINT.

§15-1E-8. Apprehension.

1 (a) Apprehension is the taking of a person subject to this
2 article into custody.

3 (b) Any person authorized by this article, or by regulations
4 issued under it, may apprehend persons subject to this article
5 upon reasonable belief that an offense under this article has
6 been committed and that the person apprehended committed
7 it.

8 (c) Officers, petty officers and noncommissioned officers
9 have authority to quell quarrels, frays and disorders among per-
10 sons subject to this article and to apprehend persons subject to this
11 article who take part therein.

§15-1E-9. Apprehension of persons absent without leave.

1 Any civil officer having authority to apprehend offenders
2 under the law of the United States or of a state, territory,
3 commonwealth, or possession, or of the District of Columbia,
4 or any military officer subject to this article who has been
5 authorized by the governor by regulations may summarily
6 apprehend any person subject to this article absent without
7 leave from the state military forces and deliver him into the
8 custody of the state military forces.

§15-1E-10. Imposition of restraint.

1 (a) Arrest is the restraint of a person subject to this article
2 by an order, not imposed as a punishment for an offense,
3 directing him to remain within certain specified limits.
4 Confinement is the physical restraint of a person subject to
5 this article.

6 (b) An enlisted person subject to this article may be
7 ordered into arrest or confinement by any officer by an order,
8 oral or written, delivered in person or through other persons
9 subject to this article or through any person authorized by
10 this article to apprehend persons. A commanding officer may
11 authorize officers, petty officers or noncommissioned officers to
12 order enlisted members of his command or subject to his authority
13 into arrest or confinement.

14 (c) An officer subject to this article may be ordered
15 apprehended or into arrest or confinement only by a
16 commanding officer to whose authority he is subject, by an
17 order, oral or written, delivered in person or by another
18 commissioned officer. The authority to order such persons

19 apprehended or into arrest or confinement may not be
20 delegated.

21 (d) No person subject to this article may be ordered
22 apprehended or into arrest or confinement except upon
23 probable cause and written record of the facts and
24 circumstances upon which probable cause was made shall be
25 recorded.

26 (e) This section does not limit the authority of persons
27 authorized to apprehend offenders to secure the custody of an
28 alleged offender until proper authority may be notified.

§15-1E-11. Restraint of persons charged with offenses.

1 (a) Any person subject to this article charged with an
2 offense under this article may be ordered into arrest or
3 confinement. When any person subject to this article is placed
4 in arrest or confinement prior to trial, immediate steps shall
5 be taken to inform him of the specific wrong of which he is
6 accused, to try him, or to dismiss the charges and release him.

7 (b) The convening authority of any court-martial shall
8 have the power to issue warrants of apprehension directed to
9 the sheriff or police officer within the proper county to
10 apprehend persons subject to this article charged with an
11 offense under this article and to deliver such persons into the
12 custody of the state military forces.

13 (c) In cases where the unit of which the accused is a
14 member is not in a status of active state duty or engaged in
15 annual field training, such accused, if apprehended or
16 ordered into confinement prior to or during trial by a military
17 court, may be admitted to bail by the officer exercising
18 special court-martial jurisdiction over him or by a superior
19 commanding officer, or the adjutant general.

§15-1E-12. Confinement in jails.

1 Persons subject to this article confined other than in a
2 military installation, whether before, during or after trial by a
3 military court, shall be confined in municipal, county or state
4 places of confinement.

§15-1E-13. Reports and receiving of prisoners.

1 (a) No provost marshal, commander of a guard, warden,
2 keeper or officer of a municipal, county or state place of
3 confinement may refuse to receive or keep any prisoner
4 subject to this article, committed to his charge, when the

5 committing person furnishes a statement, signed by him, of
6 the offense charged against the prisoner.

7 (b) Every commander of a guard, warden, keeper or of-
8 ficer of a municipal, county or state place of confinement to
9 whose charge a prisoner subject to this article is committed,
10 shall, within twenty-four hours after that commitment, report
11 to the commanding officer of the prisoner, report the name of
12 the prisoner, the offense charged against him, and the name
13 of the person who ordered or authorized the commitment.

§15-1E-14. Punishment prohibited before trial.

1 No person subject to this article, while being held for trial
2 or the result of trial, may be subjected to punishment or
3 penalty other than arrest or confinement upon the charges
4 pending against him, nor shall the arrest or confinement
5 imposed upon him be any more rigorous than the
6 circumstances require to ensure his presence: *Provided*. That
7 such persons may be subject to the same treatment and
8 discipline as persons similarly confined under the authority
9 of the state or any political subdivision thereof.

§15-1E-15. Delivery of offenders to civil authorities.

1 (a) Under such regulations as may be prescribed under this
2 article, a person subject to this article on active state duty,
3 accused of an offense against civil authority, may be
4 delivered, upon request of such civil authority, to such civil
5 authority for trial.

6 (b) When delivery under this section is made to any civil
7 authority of a person undergoing sentence of a court-martial,
8 the delivery, if followed by conviction in a civil tribunal,
9 interrupts the execution of the sentence of the court-martial.
10 The offender, after having answered to the civil authorities
11 for his offense, shall, upon the request of competent military
12 authority, be returned to military custody for the completion
13 of such sentence of the court-martial.

PART III. NONJUDICIAL PUNISHMENT.

§15-1E-16. Commanding officer's nonjudicial punishment.

1 (a) Under such regulations as the governor may prescribe,
2 any commanding officer may, in addition to or in lieu of
3 admonition or reprimand, impose one of the following
4 disciplinary punishments for minor offenses without the
5 intervention of a court-martial:

6 (1) Upon an officer of his command:

7 (i) Withholding of privileges for not more than two
8 consecutive weeks;

9 (ii) Restriction to certain specified limits, with or without
10 suspension from duty, for not more than two consecutive
11 weeks; or

12 (iii) If imposed by the adjutant general, the commanding
13 officer of a division or a wing or a separate brigade or a group
14 or a similar organization, a fine or forfeiture of pay and
15 allowances of not more than one hundred fifty dollars.

16 (2) Upon other military personnel of his command:

17 (i) Withholding of privileges for not more than two
18 consecutive weeks;

19 (ii) Restriction to certain specified limits, with or without
20 suspension from duty, for not more than two consecutive
21 weeks;

22 (iii) Extra duties for not more than fourteen days, which
23 need not be consecutive, and for not more than two hours per
24 day, holidays included;

25 (iv) Reduction to next inferior grade if the grade from
26 which demoted was established by the command or an
27 equivalent or lower command; or

28 (v) If imposed by an officer exercising special
29 court-martial jurisdiction over the offender, a fine or
30 forfeiture of pay and allowances of not more than fifty dollars.

31 (b) The governor may, by regulation, place limitations on
32 the powers granted by this section with respect to the kind
33 and amount of punishment authorized and the categories of
34 commanding officers authorized to exercise those powers.

35 (c) A person punished under this section who considers
36 his punishment unjust or disproportionate to the offense
37 may, through the proper channel, appeal to the next superior
38 authority. The appeal shall be promptly forwarded and
39 decided. The officer who imposes the punishment, his
40 successor in command, and superior authority, may suspend,
41 set aside, or remit any part or amount of the punishment and
42 restore all rights, privileges and property affected.

43 (d) The imposition and enforcement of disciplinary
44 punishment under this section for any act or omission is not a
45 bar to trial by court-martial for a serious crime or offense
46 growing out of the same act or omission, and not properly
47 punishable under this section. The fact that a disciplinary
48 punishment has been enforced may be shown by the accused
49 upon trial, and when so shown shall be considered in

50 determining the measure of punishment to be adjudged in
51 the event of a finding of guilty.

52 (e) Whenever a punishment of forfeiture of pay and
53 allowances is imposed under this section, the forfeiture may
54 apply to pay or allowances accruing on or after the date that
55 punishment is imposed and to any pay and allowances
56 accrued before that date.

57 (f) Punishment may not be imposed upon any member of
58 the state military forces under this section if the member has,
59 before the imposition of such punishment, demanded trial by
60 court-martial in lieu of such punishment.

PART IV. COURTS-MARTIAL JURISDICTION.

§15-1E-17. Courts-martial classified.

1 The three kinds of courts-martial in the state military forces
2 are:

3 (1) General courts-martial, consisting of:

4 (i) A military judge and not less than five members; or

5 (ii) Only a military judge, if before the court is assembled
6 the accused, knowing the identity of the military judge and
7 after consultation with defense counsel, requests in writing a
8 court composed only of a military judge and the military
9 judge approves.

10 (2) Special courts-martial, consisting of:

11 (i) Not less than three members;

12 (ii) A military judge and not less than three members; or

13 (iii) Only a military judge, if one has been detailed to the
14 court, and the accused under the same conditions as those
15 prescribed in paragraph (ii), subdivision (1) so requests.

16 (3) Summary courts-martial, consisting of one
17 commissioned officer.

§15-1E-18. Jurisdiction of courts-martial in general.

1 The army national guard and the air force national guard
2 each have court-martial jurisdiction over all persons subject
3 to this article. The exercise of jurisdiction by the army
4 national guard over air force personnel, or the air force
5 national guard over army personnel shall be in accordance
6 with regulations prescribed by the governor.

§15-1E-19. Jurisdiction of general courts-martial.

1 Subject to section eighteen of this article, general
2 courts-martial have jurisdiction to try persons subject to this
3 article for any offense made punishable by this article and

4 may, under such limitations as the governor may prescribe,
5 adjudge any of the following punishments:

6 (1) A fine of not more than two hundred dollars.

7 (2) Forfeiture of pay and allowances for a period not
8 exceeding six months.

9 (3) A reprimand.

10 (4) Dismissal, dishonorable discharge or bad conduct
11 discharge.

12 (5) Reduction of a noncommissioned officer to any lower
13 enlisted grade.

14 (6) Any combination of these punishments.

§15-1E-20. Jurisdiction of special courts-martial.

1 Subject to section eighteen of this article, special
2 courts-martial shall have jurisdiction to try persons subject to
3 this article, except commissioned officers for any offense
4 made punishable by this article and may, under such
5 limitations as the governor may prescribe, adjudge any of the
6 following punishments:

7 (1) A fine of not more than one hundred dollars.

8 (2) Forfeiture of pay and allowances for a period not
9 exceeding three months.

10 (3) A reprimand.

11 (4) Reduction of a noncommissioned officer to any lower
12 enlisted grade.

13 (5) A bad conduct discharge.

14 (6) Any combination of these punishments.

§15-1E-21. Jurisdiction of summary courts-martial.

1 (a) Subject to section eighteen of this article, summary
2 courts-martial shall have jurisdiction to try enlisted persons
3 subject to this article for any offense made punishable by this
4 article and may, under such limitations as the governor may
5 prescribe, adjudge any of the following punishments:

6 (1) A fine of not more than twenty-five dollars for a single
7 offense.

8 (2) Forfeiture of pay and allowances for a period not
9 exceeding one month.

10 (3) Reduction to the next lower grade.

11 (b) No person with respect to whom summary
12 courts-martial have jurisdiction may be brought to trial
13 before a summary court-martial if he objects thereto. If
14 objection to trial by summary court-martial is made by an

15 accused, trial shall be ordered by special or general
16 court-martial, as may be appropriate.

§15-1E-22. Sentences of dismissal, dishonorable discharge or bad conduct to be approved by the governor.

1 In the state military forces, no sentence of dismissal,
2 dishonorable discharge, or bad conduct discharge shall be
3 executed until it is approved by the governor.

§15-1E-23. Record of bad conduct discharge proceedings.

1 A bad conduct discharge may not be adjudged by any
2 general or special court-martial unless a complete written
3 record of the proceedings and testimony before the court has
4 been made.

§15-1E-24. Confinement instead of fine.

1 In the state military forces, a court-martial may, instead of
2 imposing a fine, sentence to confinement for not more than
3 one day for each dollar of the authorized fine.

PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL.

§15-1E-25. Who may convene general courts-martial.

1 (a) General courts-martial may be convened by any of the
2 following:
3 (1) The governor.
4 (2) The adjutant general.
5 (3) The commanding officer of a division, a separate
6 brigade, or a separate wing.
7 (4) Any other commanding officer in any of the state
8 military forces when empowered by the governor.
9 (b) When any such commanding officer is an accuser, the
10 court shall be convened by superior competent authority, and
11 may in any case be convened by such authority when deemed
12 desirable by such authority.

§15-1E-26. Who may convene special courts-martial.

1 In the state military forces any person authorized to
2 convene a general court-martial, the commanding officer of a
3 garrison, fort, post, camp, station, air base, auxiliary air base,
4 or other place where troops are on duty, or of a brigade,
5 regiment, wing, group, separate battalion, separate squadron,
6 or other detached command, may convene special
7 courts-martial. When any such officer is an accuser, the court
8 shall be convened by superior competent authority and may,

9 in any case, be convened by such authority when deemed
10 advisable by him.

§15-1E-27. Who may convene summary courts-martial.

1 (a) In the state military forces any person authorized to
2 convene a general or special court-martial, the commanding
3 officer of a garrison, fort, post, camp, station, air base,
4 auxiliary air base, or other place where troops are on duty, or
5 of a brigade, regiment, wing, group, separate battalion,
6 separate squadron, or other detached command, may
7 convene a summary court-martial.

8 (b) When only one commissioned officer is present with a
9 command or detachment he shall be the summary
10 court-martial of that command or detachment and shall hear
11 and determine all summary court-martial cases brought
12 before him. Summary courts-martial may, however, be
13 convened in any case by superior competent authority when
14 considered desirable by him.

§15-1E-28. Who may serve on courts-martial.

1 (a) Any commissioned officer of the state military forces is
2 eligible to serve on all courts-martial for the trial of any
3 person who may lawfully be brought before such courts for
4 trial.

5 (b) Any warrant officer of the state military forces is
6 eligible to serve on general and special courts-martial for the
7 trial of any person, other than a commissioned officer, who
8 may lawfully be brought before such courts for trial.

9 (c) (1) Any enlisted person of the state military forces who
10 is not a member of the same unit as the accused is eligible to
11 serve on general and special courts-martial for the trial of any
12 enlisted person who may lawfully be brought before such
13 courts for trial. He shall serve as a member of a court only if,
14 before the convening of the court, the accused personally has
15 requested in writing that enlisted members serve on it. After
16 such a request, the accused may not be tried by a general or
17 special court-martial, the membership of which does not
18 include enlisted persons in a number comprising at least one
19 third of the total membership of the court, unless eligible
20 members cannot be obtained on account of physical
21 conditions or military exigencies. If such members cannot be
22 obtained, the court may be convened and the trial held
23 without them, but the convening authority shall make a

24 detailed written statement, to be appended to the record,
25 stating why they could not be obtained.

26 (2) In this subsection, the word "unit" means any
27 regularly organized body of the state military forces not larger
28 in size than a company, or a corresponding body.

29 (d) (1) No person subject to this article may be tried by a
30 court-martial any member of which is junior to him in rank or
31 grade.

32 (2) When convening a court-martial, the convening
33 authority shall appoint as members thereof such members as,
34 in his opinion, are best qualified for the duty by reason of age,
35 education, training, experience, length of service, and judicial
36 temperament. No member is eligible to serve as a member of
37 a general or special court-martial when he is the accuser or a
38 witness for the prosecution or has acted as investigating
39 officer or as counsel in the same case.

§15-1E-29. Military judge of a general or special court-martial.

1 (a) The authority convening a general or special
2 court-martial shall appoint as military judge thereof a
3 commissioned officer who is a member of the bar of the
4 supreme court of appeals of West Virginia, and who is
5 certified as qualified for such duty by the state judge
6 advocate. No person shall be eligible to act as military judge
7 in a case when he is the accuser or a witness for the
8 prosecution or has acted as investigating officer or as counsel
9 in the same case.

10 (b) The military judge may not consult with the members
11 of the court, other than on the form of the findings as
12 provided in section fifty-four of this article, except in the
13 presence of the accused, trial counsel and defense counsel.
14 He shall not vote with the members of the court.

§15-1E-30. Appointment of trial counsel and defense counsel.

1 (a) For each general and special court-martial the
2 authority convening the court shall appoint trial counsel and
3 defense counsel, and such assistants as he considers
4 appropriate. No person who has acted as investigating officer,
5 military judge or court member in any case shall act
6 subsequently as trial counsel, assistant trial counsel, or unless
7 expressly requested by the accused, as defense counsel or
8 assistant defense counsel in the same case. No person who
9 has acted for the prosecution shall act later in the same case

10 for the defense, nor shall any person who has acted for the
11 defense act later in the same case for the prosecution.

12 (b) Any person who is appointed trial counsel or defense
13 counsel in the case of a general or a special court-martial:

14 (1) Shall be a person who is a member of the bar of the
15 supreme court of appeals of West Virginia.

16 (2) Shall be certified as competent to perform such duties
17 by the state judge advocate.

**§15-1E-31. Appointment or employment of reporters and
interpreters.**

1 Under such regulations as the governor may prescribe, the
2 convening authority of a general or special court-martial or
3 court of inquiry shall appoint or employ qualified court
4 reporters, who shall record the proceedings of and testimony
5 taken before that court. Under like regulations the convening
6 authority of a military court may appoint or employ
7 interpreters who shall interpret for the court.

§15-1E-32. Absent and additional members.

1 (a) No member of a general or special court-martial shall
2 be absent or excused after the court has been assembled for
3 the trial of the accused, except for physical disability or as the
4 result of a challenge or by order of the convening authority
5 for good cause.

6 (b) Whenever a general court-martial is reduced below five
7 members, the trial shall not proceed unless the convening
8 authority appoints new members sufficient in number to
9 provide not less than five members. When such new members
10 have been sworn, the trial may proceed after the recorded
11 evidence previously introduced before the members of the
12 court has been read to the court in the presence of the military
13 judge, the accused, and counsel for both sides.

14 (c) Whenever a special court-martial is reduced below
15 three members, the trial shall not proceed unless the
16 convening authority appoints new members sufficient in
17 number to provide not less than three members. When such
18 new members have been sworn, the trial shall proceed with
19 the new members present as if no evidence has previously
20 been introduced at the trial, unless a verbatim record of the
21 evidence previously introduced before the member of the
22 court or a stipulation thereof is read to the court in the
23 presence of the military judge, if any, the accused, and
24 counsel for both sides.

PART VI. PRETRIAL PROCEDURE.

§15-1E-33. Charges and specifications.

1 (a) Charges and specifications shall be signed by a person
2 subject to this article under oath before a person authorized
3 by this part to administer oaths and shall state:

4 (1) That the signer has personal knowledge of, or has
5 investigated, the matters set forth therein.

6 (2) That they are true in fact to the best of his knowledge
7 and belief.

8 (b) Upon the preferring of charges, the proper authority
9 shall take immediate steps to determine what disposition
10 should be made thereof in the interest of justice and
11 discipline. The person accused shall be informed of the
12 charges against him as soon as practicable.

§15-1E-34. Compulsory self-incrimination prohibited.

1 (a) No person subject to this article shall compel any
2 person to incriminate himself or to answer any question the
3 answer to which may tend to incriminate him.

4 (b) No person subject to this article shall interrogate or
5 request any statement from an accused or a person suspected
6 of an offense without first informing him of the nature of the
7 accusation and fully advising him of his right to be
8 represented by counsel, that he does not have to make any
9 statement regarding the offense of which he is accused or
10 suspected, and that any statement made by him can and will
11 be used as evidence against him in a trial by court-martial, as
12 well as other constitutional safeguards provided for an
13 accused or a person suspected of an offense.

14 (c) No person subject to this article shall compel any
15 person to make a statement or produce evidence before any
16 military tribunal if the statement or evidence is not material
17 to the issue and may tend to degrade him.

18 (d) No statement obtained from any person in violation of
19 this section, or through the use of coercion, unlawful
20 influence, or unlawful inducement shall be received in
21 evidence against him in a trial by court-martial.

§15-1E-35. Investigation.

1 (a) No charge or specification shall be referred to a general
2 court-martial for trial until a thorough and impartial
3 investigation of all the matters set forth therein has been
4 made. This investigation shall include inquiry as to the truth

5 of the matter set forth in the charges, consideration of the
6 form of charges, and a recommendation as to the disposition
7 which should be made of the case in the interest of justice and
8 discipline.

9 (b) The accused shall be advised of the charges against
10 him and of his right to be represented at that investigation by
11 counsel. Upon his own request he shall be represented by
12 civilian counsel if provided by him, or military counsel of his
13 own selection if such counsel is reasonably available, or by
14 counsel appointed by the person exercising general
15 court-martial jurisdiction over the command. At such
16 investigation full opportunity shall be given to the accused to
17 cross-examine witnesses against him if they are available and
18 to present anything he may desire in his own behalf, either in
19 defense or mitigation, and the investigating officer shall
20 examine available witnesses requested by the accused. If the
21 charges are forwarded after such investigation, they shall be
22 accompanied by a statement of the substance of the
23 testimony taken on both sides and a copy thereof shall be
24 given to the accused.

25 (c) If an investigation of the subject matter of an offense
26 has been conducted before the accused is charged with the
27 offense, and if the accused was present at the investigation
28 and afforded the opportunities for representation,
29 cross-examination, and presentation prescribed in subsection
30 (b), no further investigation of that charge is necessary under
31 this section unless it is demanded by the accused after he is
32 informed of the charge. A demand for further investigation
33 entitles the accused to recall witnesses for further
34 cross-examination and to offer any new evidence in his own
35 behalf.

36 (d) The requirements of this section are binding on all
37 persons administering this article.

§15-1E-36. Forwarding of charges.

1 When a person is held for trial by general court-martial, the
2 commanding officer shall, within eight days after the accused
3 is ordered into arrest or confinement, if practicable, forward
4 the charges, together with the investigation and allied papers,
5 to the person exercising general court-martial jurisdiction. If
6 that is not practicable, he shall report in writing to such
7 officer the reasons for delay.

§15-1E-37. Advice of staff judge advocate and reference for trial.

1 (a) Before directing the trial of any charge by general
2 court-martial, the convening authority shall refer it to his staff
3 judge advocate for consideration and advice. The convening
4 authority shall not refer a charge to general court-martial for
5 trial unless he has found that the charge alleges an offense
6 under this article and is warranted by evidence indicated in
7 the report of the investigation.

8 (b) If the charges or specifications are not formally correct
9 or do not conform to the substance of the evidence contained
10 in the report of the investigating officer, formal corrections
11 and such changes in the charges and specifications as are
12 needed to make them conform to the evidence may be made
13 by the convening authority.

§15-1E-38. Service of charges.

1 The trial counsel to whom court-martial charges are
2 referred for trial shall cause to be served upon the accused a
3 copy of the charges upon which trial is to be had. In time of
4 peace, no person shall, against his objection, be brought to
5 trial, or be required to participate by himself or counsel in a
6 session called by the military judge under section forty-two of
7 this article in a general court-martial case within a period of
8 five days after the service of the charges upon him, or in a
9 special court-martial within a period of three days after the
10 service of the charges upon him.

PART VII. TRIAL PROCEDURE.**§15-1E-39. Governor may prescribe rules.**

1 (a) The procedure, including modes of proof, in cases
2 before military courts and other military tribunals may be
3 prescribed by the governor by regulations, which shall apply
4 the principles of law and the rules of evidence generally
5 recognized in the trial of criminal cases in the courts of the
6 state but which shall not be contrary to or inconsistent with
7 this article.

8 (b) All rules and regulations made pursuant to the
9 provisions of this section shall be uniform insofar as
10 practicable among the state military forces.

§15-1E-40. Unlawfully influencing action of court.

1 (a) No authority convening a general, special or summary
2 court-martial nor any other commanding officer, or officer
3 serving on the staff thereof, shall censure, reprimand or

4 admonish the court or any member, military judge or counsel
5 thereof, with respect to the finding or sentence adjudged by
6 the court, or with respect to any other exercise of its or his
7 functions in the conduct of the proceeding. No person subject
8 to this article shall attempt to coerce, or by any unauthorized
9 means, influence, the action of the court-martial or any other
10 military tribunal or any member thereof, in reaching the
11 findings or sentence in any case, or the action of any
12 convening, approving or reviewing authority with respect to his
13 judicial acts.

14 (b) In the preparation of an effectiveness, fitness or
15 efficiency report or any other report or document used in
16 whole or in part for the purpose of determining whether a
17 member of the state military forces is qualified to be
18 advanced, in grade, or in determining the assignment or
19 transfer of a member of the state military forces, no person
20 subject to this article may, in preparing any such report:

21 (1) Consider or evaluate the performance of duty of any
22 such member as a member of a court-martial; or

23 (2) Give a less favorable rating or evaluation of any
24 member of the state military forces because of the zeal with
25 which such member, as counsel, represented any accused
26 before a court-martial.

§15-1E-41. Duties of trial counsel and defense counsel.

1 (a) The trial counsel of a general or special court-martial
2 shall prosecute in the name of the state of West Virginia, and
3 shall, under the direction of the court, prepare the record of
4 the proceedings.

5 (b) The accused has the right to be represented in his
6 defense before a general or special court-martial by civilian
7 counsel if provided by him, or by military counsel of his own
8 selection if reasonably available, or by the defense counsel
9 appointed under section thirty of this article.

10 Should the accused have counsel of his own selection, the
11 defense counsel, and assistant defense counsel, if any, who
12 were appointed, shall, if the accused so desires, act as his
13 associate counsel; otherwise they shall be excused by the
14 military judge or by the president of a court-martial without a
15 military judge.

16 (c) In every court-martial proceeding, the defense counsel
17 may, in the event of conviction, forward for attachment to the
18 record of proceedings a brief of such matters he feels should

19 be considered in behalf of the accused on review, including
20 any objection to the contents of the record which he
21 considers appropriate.

22 (d) An assistant trial counsel of a general court-martial
23 may, under the direction of the trial counsel or when he is
24 qualified to be a trial counsel as required by section thirty of
25 this article, perform any duty imposed by law, regulation, or
26 the custom of the service upon the trial counsel of the court.
27 An assistant trial counsel of a special court-martial may
28 perform any duty of the trial counsel.

29 (e) An assistant defense counsel of a general or special
30 court-martial may, under the direction of the defense counsel
31 or when he is qualified to be the defense counsel as required
32 by section thirty of this article, perform any duty imposed by
33 law, regulations, or the custom of the service upon counsel for
34 the accused.

§15-1E-42. Sessions.

1 (a) At any time after the service of charges which have
2 been referred for trial to a court-martial composed of a
3 military judge and members, the military judge may, subject
4 to section thirty-eight of this article, call the court into session
5 without the presence of the members for the purpose of:

6 (1) Hearing and determining motions raising defenses or
7 objections which are capable of determination without trial of
8 the issues raised by a plea of not guilty;

9 (2) Hearing and ruling upon any matter which may be
10 ruled upon by the military judge under this section, whether
11 or not the matter is appropriate for later consideration or
12 decision by the members of the court;

13 (3) Holding the arraignment and receiving the pleas of the
14 accused; and

15 (4) Performing any other procedural function which may
16 be performed by the military judge under this part or under
17 rules prescribed pursuant to section thirty-nine of this article,
18 and which does not require the presence of the members of
19 the court. In the absence of a military judge, the presiding
20 officer of the court-martial may make such ruling.

21 These proceedings shall be conducted in the presence of
22 the accused, the defense counsel, and the trial counsel and
23 shall be made a part of the record.

24 (b) When the members of a court-martial deliberate or
25 vote, only the members may be present. All other

26 proceedings, including any other consultation of the court
27 with counsel or the military judge, shall be made a part of the
28 record and shall be in the presence of the accused, the
29 defense counsel, the trial counsel, and, in cases in which a
30 military judge has been detailed to the court, the military
31 judge.

§15-1E-43. Continuances.

1 The military judge or a court-martial without a military
2 judge may, for reasonable cause, grant a continuance to any
3 party for such time, and as often, as may appear to be just.

§15-1E-44. Challenges.

1 (a) The military judge and members of a general or special
2 court-martial may be challenged by the accused or the trial
3 counsel for cause stated to the court. The military judge, or if
4 none, the court, shall determine the relevancy and validity of
5 challenges for cause, and shall not receive a challenge to more
6 than one person at a time. Challenges by the trial counsel
7 shall ordinarily be presented and decided before those by the
8 accused are offered.

9 (b) Each accused and the trial counsel is entitled to one
10 peremptory challenge, but the military judge may not be
11 challenged except for cause.

§15-1E-45. Oaths.

1 (a) Before performing their respective duties, military
2 judges, members of general and special courts-martial, trial
3 counsel, assistant trial counsel, defense counsel, assistant
4 defense counsel, reporters and interpreters shall take an oath
5 to perform their duties faithfully. The form of the oath, the
6 time and place of the taking thereof, the manner of recording
7 the same, and whether the oath shall be taken for all cases in
8 which these duties are to be performed or for a particular
9 case, shall be in accordance with regulations prescribed by
10 the governor. These regulations may provide that an oath to
11 perform faithfully duties as a military judge, trial counsel,
12 assistant trial counsel, defense counsel, or assistant defense
13 counsel may be taken at any time by any judge advocate, or
14 other person certified to be qualified or competent for the
15 duty, and if such an oath is taken it need not again be taken at
16 the time the judge advocate or other person is detailed to that
17 duty.

18 (b) Each witness before a military court shall be examined
19 on oath or affirmation.

§15-1E-46. Statute of limitations.

1 (a) A person subject to this article, charged with desertion
2 or absence without leave in time of war or with aiding the
3 enemy or with mutiny may be tried and punished at any time
4 without limitation.

5 (b) Except as otherwise provided in this section, a person
6 subject to this part charged with desertion in time of peace or
7 with the offense punishable under section one hundred
8 eighteen of this article shall not be liable to be tried by
9 court-martial if the offense was committed more than three
10 years before the receipt of sworn charges and specifications
11 by an officer exercising summary court-martial jurisdiction
12 over the command.

13 (c) Except as otherwise provided in this section, a person
14 subject to this article charged with any offense is not liable to
15 be tried by court-martial or punished under section sixteen of
16 this article, if the offense was committed more than two years
17 before the receipt of sworn charges and specifications by an
18 officer exercising summary court-martial jurisdiction over
19 the command or before the imposition of punishment under
20 section sixteen of this article.

21 (d) Periods in which the accused was absent from territory
22 in which the state has the authority to apprehend him or in
23 the custody of civil authorities, or in the hands of the enemy,
24 shall be excluded in computing the period of limitation
25 prescribed in this section.

§15-1E-47. Former jeopardy.

1 (a) No person subject to this article shall, without his
2 consent, be tried a second time for the same offense in a
3 military court convened under this article. Prosecution under
4 this article shall not bar prosecution by civil authorities for a
5 crime or offense growing out of the same act or omission
6 committed in violation of the laws of the civil jurisdiction,
7 unless prohibited by res judicata or double jeopardy.

8 (b) No proceeding in which an accused has been found
9 guilty by a court-martial upon any charge or specification is a
10 trial in the sense of this section until the finding of guilty has
11 become final after review of the case has been fully
12 completed. However, a proceeding which, after the
13 introduction of evidence but before a finding, is dismissed or
14 terminated by the convening authority, or on motion of the
15 prosecution for failure of available evidence or witnesses

16 without any fault of the accused, is a trial in the sense of this
17 section.

§15-1E-48. Pleas of the accused.

1 (a) A plea of not guilty shall be entered in the record, and
2 the court shall proceed as though the accused had pleaded
3 not guilty, if after arraignment before a court-martial:

4 (1) An accused makes an irregular pleading;

5 (2) After a plea of guilty an accused sets up a matter
6 inconsistent with the plea;

7 (3) It appears that an accused has entered a plea of guilty
8 improvidently or through lack of understanding of its
9 meaning or effect; or

10 (4) An accused fails or refuses to plead.

11 (b) With respect to any charge or specification to which a
12 plea of guilty has been made by the accused and accepted by
13 the military judge or by a court-martial without a military
14 judge, a finding of guilty of the charge or specification may be
15 entered immediately without vote. This finding shall
16 constitute the finding of the court unless the plea of guilty is
17 withdrawn prior to announcement of the sentence, in which
18 event the proceedings shall continue as though the accused
19 had pleaded not guilty.

§15-1E-49. Opportunity to obtain witnesses and other evidence.

1 (a) The trial counsel, the defense counsel, and the
2 court-martial shall have equal opportunity to obtain
3 witnesses and other evidence in accordance with such
4 regulations as the governor may prescribe.

5 (b) Process issued in court-martial cases to compel
6 witnesses to appear and testify and to compel the production
7 of other evidence shall be similar to that which the courts of
8 this state having criminal jurisdiction may lawfully issue and
9 shall run to any part of the state and to any other state or
10 territory, district or possession in which the court-martial
11 may be sitting.

§15-1E-50. Refusal to appear or testify.

1 Any person not subject to this article who has been duly
2 subpoenaed to appear as a witness or to produce books and
3 records before a military court or before any military or civil
4 officer designated to take a deposition to be read in evidence
5 before such a court and who willfully neglects or refuses to
6 appear, or refuses to qualify as a witness or to testify or to

7 produce any evidence which that person may have been
8 legally subpoenaed to produce is guilty of an offense against
9 the state and a military court may punish him in the same
10 manner as the civil courts of this state.

§15-1E-51. Contempts.

1 A military court may punish for contempt any member of
2 the national guard who uses any menacing word, sign or
3 gesture in its presence, or who disturbs its proceedings by
4 any riot or disorder. The punishment may not exceed
5 confinement for thirty days or a fine of one hundred dollars,
6 or both. Any person other than a member of the national
7 guard who shall resort to disorderly, contemptuous or
8 insolent behavior in, or use any insulting or indecorous
9 language or expressions to or before, any military court, or
10 any member of either of such courts, in open court, to
11 interrupt the proceedings or to impair the authority of such
12 courts, shall be guilty of a misdemeanor and may be arrested
13 by the order of the president of the court, and at once
14 delivered to the civil authorities; and such person, if found
15 guilty, shall be fined not less than five nor more than fifty
16 dollars, or imprisoned in the county jail not exceeding thirty
17 days, or both fined and imprisoned.

§15-1E-52. Depositions.

1 (a) At any time after charges have been signed, as
2 provided in section thirty-three of this article, any party may
3 take oral or written depositions unless the military judge or
4 court-martial without a military judge hearing the case, or if
5 the case is not being heard, an authority competent to
6 convene a court-martial for the trial of those charges forbids it
7 for good cause. If a deposition is to be taken before charges
8 are referred for trial, such an authority may designate
9 commissioned officers to represent the prosecution and the
10 defense and may authorize those officers to take the
11 deposition of any witness.

12 (b) The party at whose instance a deposition is to be taken
13 shall give to every other party reasonable written notice of the
14 time and place for taking the deposition.

15 (c) Depositions may be taken before and authenticated by
16 any military or civil officer authorized by the laws of the state
17 or by the laws of the place where the deposition is taken to
18 administer oaths.

19 (d) A duly authenticated deposition taken upon
20 reasonable notice to the other parties, so far as otherwise
21 admissible under the rules of evidence, may be read in
22 evidence before any military court or in any proceeding
23 before a court of inquiry, if it appears:

24 (1) That the witness resides or is beyond the state in which
25 the court is ordered to sit, or beyond the distance of one
26 hundred miles from the place of trial or hearing;

27 (2) That the witness by reason of death, age, sickness,
28 bodily infirmity, imprisonment, military necessity,
29 nonamenability to process, or other reasonable cause, is unable or
30 refuses to appear and testify in person at the place of trial or
31 hearing; or

32 (3) That the present whereabouts of the witness is
33 unknown.

§15-1E-53. Admissibility of records of courts of inquiry.

1 (a) The sworn testimony, contained in the duly
2 authenticated record of proceedings of a court of inquiry, of a
3 person whose oral testimony cannot be obtained, may, if
4 otherwise admissible under the rules of evidence, be read in
5 evidence by any party before a court-martial if the accused
6 was a party before the court of inquiry and if the same issue
7 was involved or if the accused consents to the introduction of
8 such evidence.

9 (b) Such testimony may also be read in evidence before a
10 court of inquiry or a military board by either party.

§15-1E-54. Voting and rulings.

1 (a) Voting by members of a general or special
2 court-martial on the findings and on the sentence and by
3 members of a court-martial without a military judge upon
4 questions of challenge shall be by secret written ballot. The
5 junior member of the court shall count the votes. The count
6 shall be checked by the president, who shall forthwith
7 announce the result of the ballot to the members of the court.

8 (b) The military judge and, except for questions of
9 challenge, the presiding officer of a court-martial without a
10 military judge shall rule upon all questions of law and all
11 interlocutory questions arising during the proceedings. Any
12 such ruling made by the military judge upon any question of
13 law or any interlocutory question other than the factual issue
14 of mental responsibility of the accused, or by the presiding
15 officer of a court-martial without a military judge upon any

16 question of law other than a motion for a finding of not guilty,
17 constitutes the ruling of the court.

18 (c) Before a vote is taken on the findings, the military
19 judge or the president of a court-martial without a military
20 judge shall, in the presence of the accused and counsel,
21 instruct the members of the court as to the elements of the
22 offense and charge them:

23 (1) That the accused must be presumed to be innocent
24 until his guilt is established by legal and competent evidence
25 beyond reasonable doubt;

26 (2) That in the case being considered, if there is a
27 reasonable doubt as to the guilt of the accused, the doubt
28 shall be resolved in favor of the accused and he shall be
29 acquitted;

30 (3) That, if there is a reasonable doubt as to the degree of
31 guilt, the finding must be in a lower degree as to which there
32 is no reasonable doubt; and

33 (4) That the burden of proof of establishing the guilt of the
34 accused beyond reasonable doubt is upon the prosecution.

35 (d) Subsections (a), (b) and (c) do not apply to a
36 court-martial composed of a military judge only. The military
37 judge of such a court-martial shall determine all questions of
38 law and fact arising during the proceedings and, if the
39 accused is convicted, adjudge an appropriate sentence. The
40 military judge of such a court-martial shall make a general
41 finding and shall in addition on request find the facts
42 specially. If an opinion or memorandum of decision is filed, it
43 will be sufficient if the findings of fact appear therein.

§15-1E-55. Number of votes required.

1 (a) No person subject to this article shall be convicted of
2 any offense, except as provided in subsection (b), section
3 forty-eight of this article, or by the concurrence of two thirds
4 of the members present at the time the vote is taken.

5 (b) All sentences shall be determined by the concurrence
6 of two thirds of the members present at the time the vote is
7 taken: *Provided*, That whenever two thirds of the court does
8 not consist of an integral number, the next higher number
9 shall be construed to represent two thirds of the court.

10 (c) All other questions to be decided by the members of a
11 general or special court-martial shall be determined by a
12 majority vote but a determination to reconsider a finding of
13 guilty or to reconsider a sentence, with a view toward

14 decreasing it, may be made by any lesser vote which indicates
15 that the reconsideration is not opposed by the number of
16 votes required for that finding or sentence. A tie vote on a
17 challenge disqualifies the member challenged. A tie vote on a
18 motion for a finding of not guilty or on a motion relating to
19 the question of the accused's sanity is a determination against
20 the accused. A tie vote on any other question is a
21 determination in favor of the accused.

§15-1E-56. Court to announce action.

1 Every court-martial shall announce its findings and
2 sentence to the parties as soon as determined.

§15-1E-57. Record of trial.

1 (a) Each general court-martial shall keep a separate record
2 of the proceedings in each case brought before it, and the
3 record shall be authenticated by the signatures of the military
4 judge. If the record cannot be authenticated by the military
5 judge by reason of his death, disability or absence, it shall be
6 authenticated by the signature of the trial counsel or by that
7 of a member if the trial counsel is unable to authenticate it by
8 reason of his death, disability or absence. If the proceedings
9 have resulted in an acquittal of all charges and specifications
10 or in a sentence not including discharge and not in excess of
11 that which may otherwise be adjudged by a special
12 court-martial, the record need not contain a verbatim account
13 of the proceedings and testimony before the court, but shall
14 contain such matters as the governor may by regulation
15 prescribe.

16 (b) Each special and summary courts-martial shall keep a
17 separate record of the proceedings in each case, which record
18 shall contain such matter and shall be authenticated in such
19 manner as the governor may by regulation prescribe.

20 (c) A copy of the record of the proceedings of each general
21 and special court-martial shall be given to the accused as soon
22 as authenticated. If a verbatim record of trial by general
23 court-martial is not required by subsection (a) of this section,
24 but has been made, the accused may buy such a record under
25 such regulations as the governor may prescribe.

PART VIII. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED.

§15-1E-58. Cruel and unusual punishments prohibited.

1 Punishment by flogging, or by branding, or marking or

2 tattooing on the body, or any other cruel or unusual
3 punishment, may not be adjudged by any court-martial or
4 inflicted upon any person subject to this part. The use of
5 irons, single or double, except for the purpose of safe custody,
6 is prohibited.

§15-1E-59. Maximum limits.

1 The punishment which a court-martial may direct for any
2 offense may not exceed such limits as the governor may
3 prescribe for that offense subject to the limits prescribed by
4 this article.

§15-1E-60. Effective date of sentences.

1 (a) Whenever a sentence of a court-martial as lawfully
2 adjudged and approved includes a forfeiture of pay or
3 allowances in addition to confinement not suspended, the
4 forfeiture may apply to pay or allowances accrued before that
5 date.

6 (b) Any period of confinement included in a sentence of a
7 court-martial begins to run from the date the sentence is
8 adjudged by the court-martial but any period of time prior to
9 execution of sentence shall be excluded in computing the
10 service of the term of confinement. Regulations prescribed by
11 the governor may provide that sentences of confinement may
12 not be executed until approved by the designated officers.

13 (c) All other sentences of courts-martial are effective on
14 the date ordered executed.

§15-1E-61. Execution of confinement.

1 (a) A sentence of confinement adjudged by a military
2 court, whether or not the sentence includes discharge or
3 dismissal, and whether or not the discharge or dismissal has
4 been executed, may be carried into execution by confinement
5 in any place of confinement under the control of any of the
6 forces of the state military forces or in any county or state jail,
7 prison or other place of confinement. Persons so confined in a
8 jail or prison are subject to the same discipline and treatment
9 as persons confined or committed to the jail or prison by the
10 courts of this state or of any political subdivision thereof.

11 (b) The omission of the words "hard labor" from any
12 sentence or punishment of a court-martial adjudging
13 confinement does not deprive the authority executing that
14 sentence or punishment of the power to require hard labor as
15 a part of the punishment.

16 (c) The keepers, officers and wardens of county jails or
17 prisons under section twelve of this article shall receive
18 persons ordered into confinement before trial and persons
19 committed to confinement by a military court and shall
20 confine them according to law. Any such keeper may require
21 payment of a reasonable fee for so receiving or confining a
22 person, to be paid upon requisition of the office of the
23 adjutant general after confinement.

PART IX. REVIEW OF COURTS-MARTIAL.

§15-1E-62. Error of law; lesser included offense.

- 1 (a) A finding or sentence of court-martial shall not be held
2 incorrect on the ground of an error of law unless the error
3 materially prejudices the substantial rights of the accused.
- 4 (b) Any reviewing authority with the power to approve or
5 affirm a finding of guilty may approve or affirm so much of
6 the finding as includes a lesser included offense.

§15-1E-63. Initial action on the record.

- 1 After a trial by court-martial the record shall be forwarded
2 to the convening authority, as reviewing authority, and action
3 thereon may be taken by the person who convened the court,
4 a commissioned officer commanding for the time being, in
5 the absence of the convening authority, a successor in
6 command, or by any officer exercising general court-martial
7 jurisdiction.

§15-1E-64. Action on general court-martial records.

- 1 The convening authority shall refer the record of each
2 general court-martial to his staff judge advocate or legal
3 officer who shall submit his written opinion thereon to the
4 convening authority. If there is no qualified staff judge
5 advocate or legal officer available, the state judge advocate
6 shall assign a judge advocate officer for such purpose. If the
7 final action of the court has resulted in an acquittal of all
8 charges and specifications, the opinion shall be limited to
9 questions of jurisdiction.

§15-1E-65. Reconsideration and revision.

- 1 (a) If a specification before a court-martial has been
2 dismissed on motion and the ruling does not amount to a
3 finding of not guilty, the convening authority may return the
4 record to the court for reconsideration of the ruling and any
5 further appropriate action.

6 (b) Where there is an apparent error or omission in the
7 record or where the record shows improper or inconsistent
8 action by a court-martial with respect to a finding or sentence
9 which can be rectified without material prejudice to the
10 substantial rights of the accused, the convening authority
11 may return the record to the court for appropriate action. In
12 no case, however, may the record be returned:

13 (1) For reconsideration of a finding of not guilty of any
14 specification or a ruling which amounts to a finding of not
15 guilty;

16 (2) For reconsideration of a finding of not guilty of any
17 charge, unless the record shows a finding of guilty under a
18 specification laid under that charge, which sufficiently
19 alleges a violation of some section of this article; or

20 (3) For increasing the severity of the sentence unless the
21 sentence prescribed for the offense is mandatory.

§15-1E-66. Rehearings.

1 (a) If the convening authority disapproves the findings
2 and sentence of a court-martial he may, except where there is
3 lack of sufficient evidence in the record to support the
4 findings, order a rehearing, in which case he shall state the
5 reasons for disapproval. If he disapproves the findings and
6 sentence and does not order a rehearing, he shall dismiss the
7 charges.

8 (b) Every rehearing shall take place before a court-martial
9 composed of members not members of the court-martial
10 which first heard the case. Upon such rehearing the accused
11 shall not be tried for any offense of which he was found not
12 guilty by the first court-martial, and no sentence in excess of
13 or more severe than the original sentence may be imposed,
14 unless the sentence is based upon a finding of guilty of an
15 offense not considered upon the merits in the original
16 proceedings, or unless the sentence prescribed for the offense
17 is mandatory.

§15-1E-67. Approval by the convening authority.

1 In acting on the findings and sentence of a court-martial,
2 the convening authority shall approve only such findings of
3 guilty, and the sentence or such part or amount of the
4 sentence, as he finds correct in law and fact and as he in his
5 discretion determines should be approved. Unless he
6 indicates otherwise, approval of the sentence shall constitute
7 approval of the findings and sentence.

§15-1E-68. Disposition of records after review by the convening authority.

1 (a) When the governor has taken final action in a
2 court-martial case in which he is the convening authority,
3 there shall be no further review.

4 (b) When a convening authority other than the governor
5 has taken final action in a general court-martial case, he shall
6 forward the entire record, including his action thereon and
7 the opinion or opinions of the staff judge advocate or legal
8 officer, to the state judge advocate.

9 (c) Where the sentence of a special court-martial as
10 approved by the convening authority includes a bad-conduct
11 discharge, whether or not suspended, the record shall be
12 forwarded to the officer exercising general court-martial
13 jurisdiction over the command to be reviewed in the same
14 manner as a record of trial by a general court-martial. If the
15 sentence as approved by an officer exercising general
16 court-martial jurisdiction includes a bad-conduct discharge,
17 whether or not suspended, the record shall be forwarded to
18 the state judge advocate.

19 (d) All other special and summary court-martial records
20 shall be reviewed by a judge advocate of the army national
21 guard or air national guard and shall be transmitted and
22 disposed of as the adjutant general may prescribe by
23 regulations.

§15-1E-69. Review in the office of the state judge advocate.

1 Every record of trial by general court-martial in which there
2 has been a finding of guilty and a sentence, and every record
3 of trial by special court-martial in which the sentence as
4 approved by an officer exercising general court-martial
5 jurisdiction includes a bad-conduct discharge, shall be
6 examined in the office of the state judge advocate. If the state
7 judge advocate so directs, the record shall be reviewed by a
8 board of review in accordance with section seventy of this
9 article.

§15-1E-70. Review by a board of review.

1 (a) The state judge advocate may constitute one or more
2 boards of review, each composed of not less than three
3 commissioned officers, each of whom shall be a member of
4 the bar of the supreme court of appeals of West Virginia, and
5 one of whom shall be a judge advocate of the army or air
6 national guard.

7 (b) In a case referred to it, the board of review may act only
8 with respect to the findings and sentence as approved by the
9 convening authority. It may affirm only such findings of
10 guilty, and the sentence or such part or amount of the
11 sentence, as it finds correct in law and fact and determines, on
12 the basis of the entire record, and should be approved. In
13 considering the record it shall have authority to weigh the
14 evidence, judge the credibility of witnesses, and determine
15 controverted questions of fact, recognizing that the trial court
16 saw and heard the witnesses.

17 (c) If the board of review sets aside the findings and
18 sentence, it may, except where the setting aside is based on
19 lack of sufficient evidence in the record to support the
20 findings, order a rehearing. If it sets aside the findings and
21 sentence and does not order a rehearing, it shall order that the
22 charges be dismissed.

23 (d) The state judge advocate shall, unless there is to be
24 further action by the governor, instruct the convening
25 authority to take action in accordance with the decision of the
26 board of review. If the board of review has ordered a
27 rehearing but the convening authority finds a rehearing
28 impracticable, he may dismiss the charges.

29 (e) In the event one or more boards of review are
30 constituted in accordance with this section, the state judge
31 advocate shall prescribe uniform rules of procedure for
32 proceedings in and before such board or boards of review.

§15-1E-71. Appellate counsel.

1 Upon review of the record of trial by general court-martial
2 in which there has been a finding of guilty and a sentence and
3 upon review of the record of trial by special court-martial in
4 which the sentence as approved by an officer exercising
5 general court-martial jurisdiction includes a bad-conduct
6 discharge, the accused shall have the right to be represented
7 before the state judge advocate or the board of review, as the
8 case may be, by military counsel if requested by him or by
9 civilian counsel if provided by him. Appellate military
10 counsel shall be a commissioned officer of the state military
11 forces and shall be a member of the bar of the supreme court
12 of appeals of West Virginia.

§15-1E-72. Execution of sentence; suspension of sentence.

1 (a) No sentence extending to the dismissal of a
2 commissioned officer or dishonorable discharge or

3 bad-conduct discharge shall be executed until approved by
4 the governor. He shall approve the sentence or such part,
5 amount, or commuted form of the sentence as he sees fit, and
6 may suspend the execution of the sentence or any part of the
7 sentence, as approved by him.

8 (b) All other court-martial sentences, unless suspended,
9 may be ordered executed by the convening authority when
10 approved by him. The convening authority may suspend the
11 execution of any sentence.

§15-1E-73. Vacation of suspension.

1 (a) Prior to the vacation of the suspension of a special
2 court-martial sentence which as approved includes a
3 bad-conduct discharge, or of any general court-martial
4 sentence, the officer having special court-martial jurisdiction
5 over the probationer shall hold a hearing on the alleged
6 violation of probation. The probationer shall be represented
7 at the hearing by counsel if he so desires.

8 (b) The record of the hearing and the recommendation of
9 the officer having special court-martial jurisdiction shall be
10 forwarded for action to the officer exercising general
11 court-martial jurisdiction. If he vacates the suspension, any
12 unexecuted part of the sentence except a dismissal shall be
13 executed.

14 (c) The suspension of any other sentence may be vacated
15 by any authority competent to convene, for the command in
16 which the accused is serving or assigned, a court of the kind
17 that imposed the sentence.

§15-1E-74. Petition for a new trial.

1 At any time within two years after approval by the
2 convening authority of a court-martial sentence which
3 extends to dismissal, dishonorable discharge or bad-conduct
4 discharge, the accused may petition the governor for a new
5 trial on ground of newly discovered evidence or fraud on the
6 court-martial.

§15-1E-75. Remission and suspension.

1 (a) A convening authority may remit or suspend any part
2 or amount of the unexecuted part of any sentence, including
3 all uncollected forfeitures, other than a sentence approved by
4 the governor.

5 (b) The governor may, for good cause, substitute an
6 administrative form of discharge for a discharge or dismissal
7 executed in accordance with the sentence of a court-martial.

§15-1E-76. Restoration.

1 (a) Under such regulations as the governor may prescribe,
2 all rights, privileges, and property affected by an executed
3 portion of a court-martial sentence which has been set aside
4 or disapproved, except an executed dismissal or discharge,
5 shall be restored unless a new trial or rehearing is ordered and
6 such executed portion is included in a sentence imposed
7 upon a new trial or rehearing.

8 (b) When a previously executed sentence of dishonorable
9 discharge or bad-conduct discharge is not sustained on a new
10 trial, the adjutant general shall substitute therefor a form of
11 discharge authorized for administrative issuance unless the
12 accused is to serve out the remainder of his enlistment.

13 (c) When a previously executed sentence of dismissal is
14 not sustained on a new trial, the adjutant general shall
15 substitute therefor a form of discharge authorized for
16 administrative issue.

§15-1E-77. Finality of proceedings, findings and sentences.

1 The proceedings, findings and sentences of courts-martial
2 as reviewed and approved, as required by this article, and all
3 dismissals and discharges carried into execution under
4 sentences by courts-martial following review and approval, as
5 required by this article, shall be final and conclusive. Orders
6 publishing the proceedings of courts-martial and all action
7 taken pursuant to those proceedings are binding upon all
8 departments, courts, agencies and officers of the state
9 subject only to action upon a petition for a new trial as
10 provided in section seventy-four of this article, and to action
11 by the governor as provided in section seventy-five of this
12 article.

PART X. PUNITIVE SECTIONS.**§15-1E-78. Principals.**

1 Any person subject to this article who:

2 (1) Commits an offense punishable by this article, or aids,
3 abets, counsels, commands or procures its commission; or

4 (2) Causes an act to be done which if directly performed
5 by him would be punishable by this article; is a principal.

§15-1E-79. Accessory after the fact.

1 Any person subject to this article who, knowing that an
2 offense punishable by this article has been committed,
3 receives, comforts or assists the offender in order to hinder or

4 prevent his apprehension, trial or punishment shall be punished as
5 a court-martial may direct.

§15-1E-80. Conviction of lesser included offense.

1 An accused may be found guilty of an offense necessarily
2 included in the offense charged or of an attempt to commit
3 either the offense charged or an offense necessarily included
4 therein.

§15-1E-81. Attempts.

1 (a) An act, done with specific intent to commit an offense
2 under this article, amounting to more than mere preparation
3 and tending even though failing to effect its commission, is an
4 attempt to commit that offense.

5 (b) Any person subject to this article who attempts to
6 commit any offense punishable by this article shall be
7 punished as a court-martial may direct, unless otherwise
8 specifically prescribed.

9 (c) Any person subject to this article may be convicted of
10 an attempt to commit an offense although it appears on the
11 trial that the offense was consummated.

§15-1E-82. Conspiracy.

1 Any person subject to this article who conspires with any
2 other person to commit an offense under this article shall, if
3 one or more of the conspirators does an act to effect the object
4 of the conspiracy, be punished as a court-martial may direct.

§15-1E-83. Solicitation.

1 (a) Any person subject to this article who solicits or
2 advises another or others to desert in violation of section
3 eighty-six of this article, or mutiny in violation of section
4 ninety-five of this article, shall, if the offense solicited or
5 advised is attempted or committed, be punished with the
6 punishment provided for the commission of the offense, but,
7 if the offense solicited or advised is not committed or
8 attempted, he shall be punished as a court-martial may direct.

9 (b) Any person subject to this article who solicits or
10 advises another or others to commit an act of misbehavior
11 before the enemy in violation of section one hundred of this
12 article, or sedition in violation of section ninety-five shall, if
13 the offense solicited or advised is committed, be punished
14 with the punishment provided for the commission of the
15 offense, but, if the offense solicited or advised is not

16 committed, he shall be punished as a court-martial may
17 direct.

§15-1E-84. Fraudulent enlistment, appointment or separation.

1 Any person who:

2 (1) Procures his own enlistment or appointment in the
3 state military forces by knowingly false representation or
4 deliberate concealment as to his qualifications for that
5 enlistment or appointment and receives pay or allowances
6 thereunder; or

7 (2) Procures his own separation from the state military
8 forces by knowingly false representation or deliberate
9 concealment as to his eligibility for that separation; shall be
10 punished as a court-martial may direct.

§15-1E-85. Unlawful enlistment, appointment or separation.

1 Any person subject to this article who effects an enlistment
2 or appointment in or a separation from the state military
3 forces of any person who is known to him to be ineligible for
4 that enlistment, appointment or separation because it is prohibited
5 by law, regulation or order shall be punished as a court-martial
6 may direct.

§15-1E-86. Desertion.

1 (a) Any member of the state military forces who:

2 (1) Without authority goes or remains absent from his unit,
3 organization or place of duty with intent to remain away
4 therefrom permanently;

5 (2) Quits his unit, organization or place of duty with intent
6 to avoid hazardous duty or to shirk important service; or

7 (3) Without being regularly separated from one of the state
8 military forces enlists or accepts an appointment in the same
9 or another one of the state military forces, or in one of the
10 armed forces of the United States, without fully disclosing
11 the fact that he has not been regularly separated; is guilty of
12 desertion.

13 (b) Any commissioned officer of the state military forces
14 who, after tender of his resignation and before notice of its
15 acceptance, quits his post or proper duties without leave and
16 with intent to remain away therefrom permanently is guilty of
17 desertion.

18 (c) Any person found guilty of desertion or attempt to
19 desert shall be punished as a court-martial may direct.

§15-1E-87. Absence without leave.

- 1 Any person subject to this article who, without authority:
- 2 (1) Fails to go to his appointed place of duty at the time
- 3 prescribed;
- 4 (2) Goes from that place; or
- 5 (3) Absents himself or remains absent from his unit,
- 6 organization, or place of duty at which he is required to be at
- 7 the time prescribed; shall be punished as a court-martial may
- 8 direct.

§15-1E-88. Missing movement.

- 1 Any person subject to this article who through neglect or
- 2 design misses the movement of ship, aircraft or unit with which he
- 3 is required in the course of duty to move shall be punished as a
- 4 court-martial may direct.

§15-1E-89. Contempt toward officials.

- 1 Any person subject to this article who uses contemptuous
- 2 words against the president of the United States, vice
- 3 president of the United States, Congress, secretary of
- 4 defense, or a secretary of a department, the governor of the
- 5 state of West Virginia, the West Virginia Legislature or the
- 6 adjutant general of the state of West Virginia, the governor or
- 7 the legislature of any state, territory or other possession of the
- 8 United States in which he is on duty or present shall be
- 9 punished as a court-martial may direct.

§15-1E-90. Disrespect toward superior commissioned officer.

- 1 Any person subject to this article who behaves with
- 2 disrespect toward his superior commissioned officer shall be
- 3 punished as a court-martial may direct.

§15-1E-91. Assaulting or willfully disobeying superior commissioned officer.

- 1 Any person subject to this article who:
- 2 (1) Strikes his superior commissioned officer or draws or
- 3 lifts up any weapon or offers any violence against him while
- 4 he is in the execution of his office; or
- 5 (2) Willfully disobeys a lawful command of his superior
- 6 commissioned officer; shall be punished as a court-martial
- 7 may direct.

§15-1E-92. Insubordinate conduct toward warrant officer, noncommissioned officer.

- 1 Any warrant officer or enlisted member who:

- 2 (1) Strikes or assaults a warrant officer, noncommissioned
3 officer, while that officer is in the execution of his office;
4 (2) Willfully disobeys the lawful order of a warrant officer,
5 noncommissioned officer; or
6 (3) Treats with contempt or is disrespectful in language or
7 deportment toward a warrant officer, noncommissioned
8 officer, while that officer is in the execution of his office; shall
9 be punished as a court-martial may direct.

§15-1E-93. Failure to obey order or regulation.

- 1 Any person subject to this article who:
2 (1) Violates or fails to obey any lawful general order or
3 regulation; or
4 (2) Having knowledge of any other lawful order issued by
5 a member of the state military forces, which it is his duty to
6 obey, fails to obey the order; or
7 (3) Is derelict in the performance of his duties; shall be
8 punished as a court-martial may direct.

§15-1E-94. Cruelty and maltreatment.

- 1 Any person subject to this article who is guilty of cruelty
2 toward, or oppression or maltreatment of, any person subject
3 to his orders shall be punished as a court-martial may direct.

§15-1E-95. Mutiny or sedition.

- 1 (a) Any person subject to this article who:
2 (1) With intent to usurp or override lawful military
3 authority refuses, in concert with any other person, to obey
4 orders or otherwise to do his duty or creates any violence or
5 disturbance is guilty of mutiny;
6 (2) With intent to cause the overthrow or destruction of
7 lawful civil authority, creates, in concert with any other
8 person, revolt, violence, or other disturbance against that
9 authority is guilty of sedition; or
10 (3) Fails to do his utmost to prevent and suppress a mutiny
11 or sedition being committed in his presence, or fails to take all
12 reasonable means to inform his superior commissioned
13 officer or commanding officer of a mutiny or sedition which
14 he knows or has reason to believe is taking place, is guilty of a
15 failure to suppress or report a mutiny or sedition.
16 (b) A person who is found guilty of attempted mutiny,
17 mutiny, sedition, or failure to suppress or report a mutiny or
18 sedition shall be punished as a court-martial may direct.

§15-1E-96. Resistance, breach of arrest, and escape.

1 Any person subject to this article who resists apprehension
2 or breaks arrest or who escapes from custody, restraint or
3 confinement imposed under this part shall be punished as a
4 court-martial may direct.

§15-1E-97. Releasing prisoner without proper authority.

1 Any person subject to this article who, without proper
2 authority, releases any prisoner committed to his charge, or
3 who through neglect or design suffers any such prisoner to
4 escape, shall be punished as a court-martial may direct.

§15-1E-98. Unlawful detention of another.

1 Any person subject to this article who, except as provided
2 by law or regulation, apprehends, arrests, restrains or
3 confines any person shall be punished as a court-martial may
4 direct.

§15-1E-99. Noncompliance with procedural rules.

1 Any person subject to this article who:
2 (1) Is responsible for unnecessary delay in the disposition
3 of any case of a person accused of an offense under this
4 article; or
5 (2) Knowingly and intentionally fails to enforce or comply
6 with any provision of this article regulating the proceedings
7 before, during, or after trial of an accused; shall be punished
8 as a court-martial may direct.

§15-1E-100. Misbehavior before the enemy.

1 Any person subject to this article who before or in the
2 presence of the enemy:
3 (1) Runs away;
4 (2) Shamefully abandons, or surrenders any command,
5 unit, place, or military property which it is his duty to defend;
6 (3) Through disobedience, neglect, or intentional
7 misconduct endangers the safety of any such command, unit,
8 place, or military property;
9 (4) Casts away his arms or ammunition;
10 (5) Is guilty of cowardly conduct;
11 (6) Quits his place of duty to plunder or pillage;
12 (7) Causes false alarms in any command, unit, or place
13 under control of the armed forces of the United States or the
14 state military forces;
15 (8) Willfully fails to do his utmost to encounter, engage,
16 capture or destroy any enemy troops, combatants, vessels, aircraft,

17 or any other thing, which it is his duty so to encounter, engage,
18 capture or destroy; or

19 (9) Does not afford all practicable relief and assistance
20 to any troops, combatants, vessels or aircraft of the armed
21 forces belonging to the United States or their allies, to the
22 state when engaged in battle or in suppressing civil disorders;
23 shall be punished as a court-martial may direct.

§15-1E-101. Subordinate compelling surrender.

1 Any person subject to this article who compels or attempts
2 to compel a commander of any place, vessel, aircraft, or other
3 military property, or of any body of members of the state
4 military forces to give it up to an enemy or to abandon it, or
5 who strikes the colors or flag to an enemy without proper
6 authority, shall be punished as a court-martial may direct.

§15-1E-102. Improper use of countersign.

1 Any person subject to this article who discloses the parole
2 or countersign to any person not entitled to receive it, or who
3 gives to another who is entitled to receive and use the parole
4 or countersign a different parole or countersign from that
5 which, to his knowledge, he was authorized and required to
6 give, shall be punished as a court-martial may direct.

§15-1E-103. Forcing a safeguard.

1 Any person subject to this article who forces a safeguard
2 shall be punished as a court-martial may direct.

§15-1E-104. Captured or abandoned property.

1 (a) *Duty to secure property.*—All persons subject to this
2 article shall secure all public property taken from the enemy
3 for the service of the United States or the state, and shall give
4 notice and turn over to the proper authority without delay all
5 captured or abandoned property in their possession, custody
6 or control.

7 (b) *Offenses defined and punishment.*—Any person
8 subject to this article who:

9 (1) Fails to carry out the duties prescribed in subsection
10 (a);

11 (2) Buys, sells, trades, or in any way deals in or disposes of
12 captured or abandoned property, whereby he receives or
13 expects any profit, benefit or advantage to himself or another
14 directly or indirectly connected with himself; or

15 (3) Engages in looting or pillaging; shall be punished as a
16 court-martial may direct.

§15-1E-105. Aiding the enemy.

- 1 Any person subject to this article who:
- 2 (1) Aids, or attempts to aid, the enemy with arms,
- 3 ammunition, supplies, money, or other things; or
- 4 (2) Without proper authority, knowingly harbors or
- 5 protects or gives intelligence to, or communicates or
- 6 corresponds with or holds any intercourse with the enemy,
- 7 either directly or indirectly; shall be punished as a
- 8 court-martial may direct.

§15-1E-106. Misconduct of a prisoner.

- 1 Any person subject to this article who, while in the hands of
- 2 the enemy:
- 3 (1) For the purpose of securing favorable treatment by his
- 4 captors acts without proper authority in a manner contrary to
- 5 law, custom or regulation, to the detriment of others held by
- 6 the enemy as civilian or military prisoners; or
- 7 (2) While in a position of authority over such persons
- 8 maltreats them without justifiable cause; shall be punished as
- 9 a court-martial may direct.

§15-1E-107. False official statements.

- 1 Any person subject to this article who, with intent to
- 2 deceive, signs any false record, return, regulation, order, or
- 3 other official document, knowing the same to be false, or
- 4 makes any other false official statement knowing the same to
- 5 be false, shall be punished as a court-martial may direct.

§15-1E-108. Loss, damage, destruction or wrongful disposition of military property.

- 1 Any person subject to this article who without proper
- 2 authority:
- 3 (1) Sells or otherwise disposes of;
- 4 (2) Willfully or through neglect damages, destroys or loses;
- 5 or
- 6 (3) Willfully or through neglect suffers to be lost,
- 7 damaged, destroyed, sold, or wrongfully disposed of; any
- 8 military property of the United States or of the state; shall be
- 9 punished as a court-martial may direct.

§15-1E-109. Waste, spoilage or destruction of nonmilitary property.

- 1 Any person subject to this article who, while in a duty
- 2 status, willfully or recklessly wastes, spoils, or otherwise

3 willfully and wrongfully destroys or damages any property
4 other than military property belonging to the United States or
5 of the state shall be punished as a court-martial may direct.

§15-1E-110. Improper hazarding of vessel.

1 (a) *Willful conduct.*—Any person subject to this article
2 who willfully and wrongfully hazards or suffers to be
3 hazarded any vessel of the armed forces of the United States
4 or of the state military forces shall be punished as a
5 court-martial may direct.

6 (b) *Negligent conduct.*—Any person subject to this article
7 who negligently hazards or suffers to be hazarded any vessel
8 of the armed forces of the United States or of the state
9 military forces shall be punished as a court-martial may
10 direct.

§15-1E-111. Drunken or reckless driving.

1 Any person subject to this article who while in a duty status
2 operates any vehicle while drunk, or in a reckless or wanton
3 manner, shall be punished as a court-martial may direct.

§15-1E-112. Drunk on duty, sleeping on post and leaving post before relief.

1 Any person subject to this article who is found drunk on
2 duty or sleeping upon his post, or who leaves his post before
3 he is regularly relieved, shall be punished as a court-martial
4 may direct.

§15-1E-113. Dueling.

1 Any person subject to this article who, while in a duty
2 status, fights or promotes, or is concerned in or connives at
3 fighting a duel, or who, having knowledge of a challenge sent
4 or about to be sent, fails to report the fact promptly to the
5 proper authority, shall be punished as a court-martial may
6 direct.

§15-1E-114. Malingering.

1 Any person subject to this article who for the purpose of
2 avoiding work, duty or service in the state military forces:
3 (1) Feigns illness, physical disablement, mental lapse or
4 derangement; or
5 (2) Intentionally inflicts self-injury; shall be punished as a
6 court-martial may direct.

§15-1E-115. Riot or breach of peace.

1 Any person subject to this article who while in a duty status

- 2 causes or participates in any riot or breach of the peace shall
- 3 be punished as a court-martial may direct.

§15-1E-116. Provoking speeches or gestures.

- 1 Any person subject to this article who while in a duty status
- 2 uses provoking or reproachful words or gestures toward any
- 3 other person subject to this article shall be punished as a
- 4 court-martial may direct.

§15-1E-117. Perjury.

- 1 Any person subject to this article who in a judicial
- 2 proceeding or in a course of justice conducted under this
- 3 article willfully and corruptly gives, upon a lawful oath or in
- 4 any form allowed by law to be substituted for an oath, any
- 5 false testimony material to the issue or matter of inquiry is
- 6 guilty of perjury and shall be punished as a court-martial may
- 7 direct.

§15-1E-118. Frauds against the government.

- 1 Any person subject to this article (1) who, knowing it to be
- 2 false or fraudulent:
 - 3 (i) Makes any claim against the United States, the state, or
 - 4 any officer thereof; or
 - 5 (ii) Presents to any person in the civil or military service
 - 6 thereof, for approval or payment, any claim against the
 - 7 United States, the state, or any officer thereof; or
- 8 (2) Who, for the purpose of obtaining the approval,
- 9 allowance, or payment of any claim against the United States,
- 10 the state, or any officer thereof:
 - 11 (i) Makes or uses any writing or other paper knowing the
 - 12 same to contain any false or fraudulent statements;
 - 13 (ii) Makes any oath to any fact or to any writing or other
 - 14 paper knowing such oath to be false; or
 - 15 (iii) Forges or counterfeits any signature upon any writing
 - 16 or other paper, or uses any such signature knowing the same
 - 17 to be forged or counterfeited; or
- 18 (3) Who, having charge, possession, custody or control of
- 19 any money, or other property of the United States or the state
- 20 of West Virginia, furnished or intended for the armed forces
- 21 of the United States or the state military forces, knowingly
- 22 delivers to any person having authority to receive the same,
- 23 any amount thereof less than that for which he receives a
- 24 certificate or receipt; or

25 (4) Who, being authorized to make or deliver any paper
26 certifying the receipt of any property of the United States or
27 the state of West Virginia, furnished or intended for the
28 armed forces of the United States or the state military forces,
29 makes or delivers to any person such writing without having
30 full knowledge of the truth of the statements therein
31 contained and with intent to defraud the United States or the
32 state; shall, upon conviction, be punished as a court-martial
33 may direct.

§15-1E-119. Larceny and wrongful appropriation.

1 (a) *Offenses defined.*—Any person subject to this article
2 who while in a duty status wrongfully takes, obtains or
3 withholds, by any means whatever, from the possession of
4 the true owner or of any other person, any money, personal
5 property, or article of value of any kind:

6 (1) With intent permanently to deprive or defraud another
7 person of the use and benefit of property or to appropriate the
8 same to his own use or the use of any person other than the
9 true owner, is guilty of wrongful appropriation.

10 (2) With intent temporarily to deprive or defraud another
11 person of the use and benefit of property or to appropriate the
12 same to his own use or the use of any person other than the
13 true owner, is guilty of wrongful appropriation.

14 (b) *Punishment.*—Any person found guilty of larceny or
15 wrongful appropriation shall be punished as a court-martial
16 may direct.

§15-1E-120. Assault.

1 Any person subject to this article who while in a duty status
2 attempts or offers with unlawful force or violence to do bodily
3 harm to another person, whether or not the attempt or offer is
4 consummated, is guilty of assault and shall be punished as a
5 court-martial may direct.

§15-1E-121. Conduct unbecoming an officer and a gentleman.

1 Any commissioned officer who is convicted of conduct
2 unbecoming of an officer and a gentleman shall be punished
3 as a court-martial may direct.

§15-1E-122. General article.

1 Though not specifically mentioned in this article, all
2 disorders and neglects to the prejudice of good order and
3 discipline in the state military forces, and all conduct of a
4 nature to bring discredit upon the state military forces, of

5 which persons subject to this article may be guilty, shall be
6 taken cognizance of by a general, special or summary
7 court-martial, according to the nature and degree of the
8 offense, and shall be punished at the discretion of such court.
9 However, jurisdiction shall not be extended to crimes not
10 included herein, and within the jurisdiction of the civil courts
11 of this state.

§15-1E-123. Embezzlement.

1 Any person subject to this article who shall embezzle,
2 misapply or convert to his own use, without authority, any
3 moneys received by or entrusted to him for disbursement or
4 articles of military equipment shall be punished as a
5 court-martial may direct.

§15-1E-124. Purchasing and receiving military property in pawn.

1 If any person shall knowingly and willfully purchase, or
2 receive in pawn or pledge any military property of the state of
3 West Virginia or of the United States in use by the state of
4 West Virginia, he shall be punished as a court-martial may
5 direct.

PART XI. MISCELLANEOUS PROVISIONS.

§15-1E-125. Courts of inquiry.

1 (a) Courts of inquiry to investigate any matter may be
2 convened by any person authorized to convene a general
3 court-martial or by any other person designated by the
4 governor for that purpose, whether or not the persons
5 involved have requested such an inquiry.
6 (b) A court of inquiry consists of three or more
7 commissioned officers. For each court of inquiry the
8 convening authority shall also appoint counsel for the court.
9 (c) Any person subject to this article whose conduct is
10 subject to inquiry shall be designated as a party. Any person
11 subject to this article or employed in the office of state
12 adjutant general who has a direct interest in the subject of
13 inquiry shall have the right to be designated as a party upon
14 request to the court. Any person designated as a party shall be
15 given due notice and has the right to be present, to be
16 represented by counsel, to cross-examine witnesses, and to
17 introduce evidence.
18 (d) Members of a court of inquiry may be challenged by a
19 party, but only for cause stated to the court.

20 (e) The members, counsel, the reporter, and interpreters of
21 courts of inquiry shall take an oath or affirmation to faithfully
22 perform their duties.

23 (f) Witnesses may be summoned to appear and testify and
24 be examined before courts of inquiry, as provided for
25 courts-martial.

26 (g) Courts of inquiry shall make findings of fact but shall
27 not express opinions or make recommendations unless
28 required to do so by the convening authority.

29 (h) Each court of inquiry shall keep a record of its
30 proceedings, which shall be authenticated by the signatures
31 of the president and counsel for the court and forwarded to
32 the convening authority. In case the record cannot be
33 authenticated by the president, it shall be signed by a
34 member in lieu of the president. In case the record cannot be
35 authenticated by the counsel for the court, it shall be signed
36 by a member in lieu of the counsel.

§15-1E-126. Authority to administer oaths.

1 (a) The following members of the state military forces may
2 administer oaths for the purposes of military administration,
3 including military justice:

4 (1) The state judge advocate and all assistant state judge
5 advocates.

6 (2) All summary courts-martial.

7 (3) All adjutants, assistant adjutants, acting adjutants and
8 personnel adjutants.

9 (4) All staff judge advocates and legal officers.

10 (5) All other persons designated by law or regulation.

11 (b) The following persons in the state military forces shall
12 have authority to administer oaths necessary in the
13 performance of their duties:

14 (1) The president, military judge, trial counsel, and
15 assistant trial counsel for all general and special
16 courts-martial.

17 (2) The president and the counsel for the court of any
18 court of inquiry.

19 (3) All officers designated to take a deposition.

20 (4) All persons detailed to conduct an investigation.

21 (5) All other persons designated by law or regulation.

22 (c) The signature without seal of any such person, together
23 with the title of his office, is prima facie evidence of his
24 authority.

§15-1E-127. Text of article to be available.

1 A complete text of this article and of the regulations
2 prescribed by the governor thereunder shall be made
3 available to any member of the state military forces, upon his
4 request, for his personal examination.

§15-1E-128. Complaints of wrongs.

1 Any member of the state military forces who believes
2 himself wronged by his commanding officer, and who, upon
3 due application to such commander, is refused redress, may
4 complain to any superior commissioned officer, who shall
5 forward the complaint to the officer exercising general
6 court-martial jurisdiction over the officer against whom it is
7 made. That officer shall examine into said complaint and take
8 proper measures for redressing the wrong.

§15-1E-129. Redress of injuries to property.

1 (a) Whenever complaint is made to any commanding
2 officer that willful damage has been done to the property of
3 any person or that his property has been wrongfully taken by
4 members of the state military forces, he may, subject to such
5 regulations as the governor may prescribe, convene a board
6 to investigate the complaint. The board shall consist of from
7 one to three commissioned officers and shall have, for the
8 purpose of such investigation, power to summon witnesses
9 and examine them upon oath or affirmation, to receive
10 depositions or other documentary evidence, and to assess the
11 damages sustained against the responsible parties. The
12 assessment of damages made by such board is subject to the
13 approval of the commanding officer, and in the amount
14 approved by him and may be charged against the pay of the
15 offenders. The order of such commanding officer directing
16 charges herein authorized shall be conclusive, except as
17 provided in subsection (b) on any disbursing officer for the
18 payment by him to the injured parties of the damages so
19 assessed and approved.

20 (b) Any person subject to this article who is accused of
21 causing willful damage to property has the right to be
22 represented by counsel, to summon witnesses in his behalf,
23 and to cross-examine those appearing against him. He has the
24 right of appeal to the next higher commander.

§15-1E-130. Execution of process and sentence.

1 In the state military forces, the processes and sentences of

2 its courts-martial shall be executed by the civil officers
3 prescribed by the laws of this state or by the officers of the
4 state military forces as the circumstances may require. Fees
5 for serving processes provided for in this article shall be the
6 same as prescribed by law for similar processes of a civil
7 nature, and shall upon proper vouchers being filed, be paid
8 by the adjutant general in the usual manner.

§15-1E-131. Disposition of fines and penalties.

1 All fines and penalties imposed and collected through the
2 sentence of courts-martial shall be forwarded to the adjutant
3 general who shall deposit the same in the state treasury, to be
4 credited to the state school fund in the same manner as other
5 fines which accrue to the state.

§15-1E-132. Liability of public officers for nonexecution of process.

1 The neglect or refusal of any sheriff, police officer, jail
2 warden or magistrate to execute any process, or to make
3 proper return of all fines and penalties collected, or to receive
4 in custody any prisoner, shall be deemed a misdemeanor and
5 shall subject the offender to a prosecution by the proper
6 county prosecuting attorney, and to a penalty, upon
7 conviction of each such offense, of five hundred dollars to the
8 use of the state.

§15-1E-133. Compensation of court.

1 Military judges, military counsel and members of
2 courts-martial and courts of inquiry shall be allowed
3 transportation and per diem pay as per military grade for time
4 actually employed in the duties assigned them.
5 Transportation shall be furnished to all prosecutors,
6 prisoners, witnesses, sheriffs, police officers to and from the
7 place or places designated for the meetings of said courts. The
8 per diem pay for civilian witnesses shall be the same as in
9 civil courts of law and for military personnel the amount as
10 provided by law and regulation. The fees of sheriffs for
11 serving the processes provided for in this article shall be the
12 same as prescribed by law for similar processes of a civil
13 nature and shall, upon proper vouchers being filed, be paid
14 by the adjutant general in the usual manner.

§15-1E-134. Immunity for action of military courts.

1 No accused may bring an action or proceeding against the
2 convening authority or a member of a military court or officer

3 or person acting under its authority or reviewing its
4 proceedings because of the approval, imposition or exe-
5 cution of any sentence or the imposition or collection of a
6 fine or penalty, or the execution of any process or mandate of
7 a military court.

§15-1E-135. Entitlement to reemployment rights.

1 Members of the state military forces of this state who are
2 ordered to active state duty by the governor shall, upon being
3 relieved from such duty, be entitled to the same
4 reemployment rights provided by Title 38, Section 2021 of the
5 United States Code on the effective date of this section for
6 persons inducted into the armed forces of the United States.

§15-1E-136. Delegation of authority by the governor.

1 The governor may delegate any authority vested in him
2 under this article, and may provide for the subdelegation of
3 any such authority, except the power given him by sections
4 twenty-one and twenty-two of this article.

§15-1E-137. Uniformity on interpretation.

1 This article shall be so construed as to effectuate its general
2 purpose to make uniform the law of this state, so far as
3 practical, with the law of the United States, especially as
4 embodied in the Uniform Code of Military Justice.

§15-1E-138. Provisions of article severable.

1 Each section of this article and every part thereof is hereby
2 declared to be an independent section or part of a section, and
3 if any section, subsection, sentence, clause or phrase of this
4 article shall for any reason be held unconstitutional, the
5 validity of the remaining phrases, clauses, sentences,
6 subsections and sections of this article shall not be affected
7 thereby.

CHAPTER 103

(H. B. 1694—By Mr. Bumgarner and Mr. Moore)

[Passed March 12, 1982; in effect ninety days from passage. 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, relating to providing the director of the department of mines with the authority to subpoena witnesses and documents in any hearing, investigation or examination of any mine or well.

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. ADMINISTRATION; ENFORCEMENT.

§22-1-4. Director of the department of mines—Powers and duties.

1 The director of the department of mines shall have full
2 charge of the department. He shall have the power and duty
3 to:

4 (1) Supervise and direct the execution and enforcement
5 of the provisions of this chapter.

6 (2) Appoint a deputy director of the department of mines,
7 fix his compensation and prescribe his powers and duties.

8 (3) Employ such assistants, clerks, stenographers and
9 other employees as may be necessary to fully and effectively
10 carry out the provisions of this law and fix their compensation,
11 except as otherwise provided in this article.

12 (4) Employ mine inspectors, and assign them to divisions
13 or districts in accordance with the provisions of section
14 seven of this article as may be necessary to fully and effec-
15 tively carry out the provisions of this law, including the
16 hiring and training of inspectors for the specialized require-
17 ments of surface mining, shaft and slope sinking, and surface
18 installations and to supervise and direct such mine inspectors
19 in the performance of their duties.

20 (5) Suspend, for good cause, any mine inspector without
21 compensation for a period not exceeding thirty days in any
22 calendar year.

23 (6) Prepare report forms to be used by mine inspectors
24 in making their findings, orders and notices, upon inspections
25 made in accordance with this chapter.

26 (7) Hear and determine applications made by mine oper-
27 ators for the annulment or revision of orders made by mine
28 inspectors, and to make inspections of mines, in accordance
29 with the provisions of this article.

30 (8) Cause a properly indexed permanent and public rec-
31 ord to be kept of all inspections made by himself or by
32 mine inspectors.

33 (9) Make annually a full and complete written report of
34 the administration of his department to the governor and the
35 Legislature of the state for the year ending the thirtieth
36 day of June. Such report shall include the number of visits
37 and inspections of mines in the state by mine inspectors,
38 the quantity of coal, coke and other minerals (including oil
39 and gas) produced in the state, the number of men employed,
40 number of mines in operation, statistics with regard to
41 health and safety of persons working in the mines including
42 the causes of injuries and deaths, improvements made, pros-
43 ecutions, the total funds of the department from all sources
44 identifying each source of such funds, the expenditures of
45 the department, the surplus or deficit of the department at
46 the beginning and end of the year, the amount of fines
47 collected, the amount of fines imposed, the value of fines
48 pending, the number and type of violations found, the amount
49 of fines imposed, levied and turned over for collection, the
50 total amount of fines levied but not paid during the prior
51 year, the titles and salaries of all inspectors and other
52 officials of the department, the number of inspections made
53 by each inspector, the number and type of violations found
54 by each inspector: *Provided*, That no inspector shall be
55 identified by name in this report. Such reports shall be filed
56 with the governor and the Legislature on or before the
57 thirty-first day of December of the same year for which it
58 was made, and shall upon proper authority be printed and
59 distributed to interested persons.

60 (10) Call or subpoena witnesses, to administer oaths and
61 to require production of any books, papers, records, or other
62 documents relevant or material to any hearing, investigation
63 or examination of any mine or well permitted by this chapter.
64 Any witness so called or subpoenaed shall receive forty

65 dollars per diem and shall receive mileage at the rate of
66 fifteen cents for each mile actually traveled, which shall be
67 paid out of the state treasury upon a requisition upon the
68 state auditor, properly certified by such witness.

69 (11) Institute civil actions for relief, including permanent
70 or temporary injunctions, restraining orders, or any other
71 appropriate action in the appropriate federal or state court
72 whenever any operator or his agent violates or fails or
73 refuses to comply with any lawful order, notice or decision
74 issued by the director or his representative.

75 (12) Perform all other duties which are expressly im-
76 posed upon him by the provisions of this chapter.

77 (13) Make all records of the department open for in-
78 spection of interested persons and the public.

79 (14) In conjunction with the director of the department
80 of natural resources, adopt programs, regulations and pro-
81 cedures designed to assist the small coal operator with
82 obtaining permits and meeting the environmental protection
83 performance standards for strip and underground coal mining
84 operations within the state. For the purposes of this sub-
85 division, a small coal operator is one who is anticipated to
86 mine less than two hundred thousand tons per year, but the
87 department in determining tonnage shall consider wholly
88 owned subsidiaries to be the same operation as the parent
89 corporation.

CHAPTER 104

(Com. Sub. for S. B. 404—By Mr. Tonkovich)

[Passed March 13, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact sections three and seven, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article two-a by adding thereto two new sections, designated sections four-a and four-b, all relating to the board of coal mine health and safety generally; continuing the board

as heretofore established; establishing the number of members and requiring that they be residents of the state; setting forth the method by which persons are nominated for membership and appointed to the board by the governor; establishing certain qualifications for persons who are appointed as members; requiring appointments to be made with the advice and consent of the Senate; making the director of the department of mines a member of the board; scheduling the expiration of beginning terms of members; providing for the appointment of a health and safety administrator by the governor; setting forth procedures for meetings; providing for the filling of vacancies; defining a quorum; outlining the preliminary procedures to be utilized for the promulgation of rules and regulations; describing the employment term of the health and safety administrator and providing for his qualifications and duties; authorizing the employment of additional employees; setting forth the requirements for compensation of the health and safety administrator and other employees; and allowing for compensation and expenses of board members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. BOARD OF COAL MINE HEALTH AND SAFETY.

- §22-2A-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.
- §22-2A-4a. Preliminary procedures for promulgation of rules and regulations.
- §22-2A-4b. Health and safety administrator; qualifications; duties; employees; compensation.
- §22-2A-7. Compensation and expenses of board members.

§22-2A-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

- 1 (a) The board of coal mine health and safety, heretofore
- 2 established, is continued as provided by this chapter. The
- 3 board shall consist of seven members who shall be residents
- 4 of this state, and who shall be appointed as hereinafter
- 5 specified in this section:

6 (1) The governor shall appoint one member to represent
7 the viewpoint of those operators in this state whose
8 individual aggregate production exceeds one million tons
9 annually and one member to represent the viewpoint of those
10 operators in this state whose individual aggregate production
11 is less than one million tons annually, which tonnage shall
12 include tonnage produced by affiliated, parent and subsidiary
13 companies and tonnage produced by companies which have
14 a common director or directors, shareholder or shareholders,
15 owner or owners. When such members are to be appointed,
16 the governor may request from the major trade association
17 representing operators in this state a list of three nominees for
18 each such position on the board. All such nominees shall be
19 persons with special experience and competence in coal mine
20 health and safety. There shall be submitted with such list a
21 summary of the qualifications of each nominee. If the full lists
22 of nominees are submitted in accordance with the provisions
23 of this subdivision, the governor shall make his appointments
24 from the persons so nominated. For purposes of this
25 subdivision, the major trade association representing
26 operators in this state shall be deemed to be that association
27 which represents operators accounting for over one half of
28 the coal produced in mines in this state in the year prior to the
29 year in which the appointment is to be made.

30 (2) The governor shall appoint two members who can
31 reasonably be expected to represent the viewpoint of the
32 working miners of this state. If the major employee
33 organization representing coal miners in this state is divided
34 into administrative districts, such members shall not be from
35 the same administrative district. The highest ranking official
36 within the major employee organization representing coal
37 miners within this state shall, upon request by the governor,
38 submit a list of three nominees for each such position on the
39 board: *Provided*, That if the major employee organization
40 representing coal miners in this state is divided into
41 administrative districts, and if there are two vacancies to be
42 filled in accordance with the provisions of this subdivision,
43 not more than two persons on each list of three nominees
44 shall be from the same administrative district and at least
45 three districts shall be represented on the two lists submitted,
46 and if there is one vacancy to be filled, no names shall be
47 submitted of persons from the same administrative district
48 already represented on the board. Said nominees shall have a

49 background in coal mine health and safety, and shall at the
50 time of their appointment be employed in a position which
51 involves the protection of health and safety of miners. There
52 shall be submitted with such list a summary of the
53 qualifications of each nominee. If the full lists of nominees
54 are submitted in accordance with the provisions of this
55 subdivision, the governor shall make his appointments from
56 the persons so nominated.

57 (3) The governor shall appoint one public member who is
58 professionally qualified in the field of occupational health
59 and safety and who shall be (A) an employee of the institute of
60 labor studies at West Virginia university or (B) a person who
61 is engaged in or who has broad experience in occupational
62 health and safety from the perspective of the worker. Such
63 nominee shall have technical experience in occupational
64 health and safety or education and experience in such field:
65 *Provided*, That the nominee shall not have been, prior to his
66 appointment to the board, employed by a mining or industrial
67 business entity in a managerial or supervisory position, or
68 shall not have been employed by the major employee
69 organization representing coal miners in this state, or shall
70 not have been a miner.

71 (4) The governor shall appoint one public member who is
72 professionally qualified in the field of occupational health
73 and safety and who shall have a degree in engineering or
74 industrial safety and a minimum of five years' experience in
75 the field of industrial safety engaged in constructing,
76 designing, developing or administering safety programs:
77 *Provided*, That the nominee shall not have been, prior to his
78 appointment to the board, employed by a mining business
79 entity in a managerial or supervisory position or shall not
80 have been employed by the major employee organization
81 representing coal miners in this state, or shall not have been a
82 miner.

83 (5) All appointments made by the governor under the
84 provisions of subdivisions (1), (2), (3) and (4) of this subsection
85 shall be with the advice and consent of the Senate.

86 (6) The seventh member of the board shall be the director
87 of the department of mines who shall serve as chairman of the
88 board. The director shall furnish to the board such secretarial,
89 clerical, technical, research and other services as are deemed
90 necessary to the conduct of the business of the board, not
91 otherwise furnished by the board.

92 (b) The members of the board to be appointed as provided
93 for in subsection (a) of this section shall be so appointed
94 within sixty days following the effective date of this section.
95 Any unexpired term of members of the board under prior
96 enactments of this section shall end upon the appointment of
97 members in accordance with the provisions of this section.
98 Upon the initial appointment of members, the governor shall
99 specify the length of the beginning term which each member
100 shall serve, pursuant to the following formula:

101 (1) With regard to the two members appointed in
102 accordance with the provisions of subdivision (1),
103 subsection (a) of this section, one member shall serve a
104 beginning term of one year, and one member shall serve a
105 beginning term of two years.

106 (2) With regard to the two members appointed in
107 accordance with the provisions of subdivision (2),
108 subsection (a) of this section, one member shall serve a
109 beginning term of one year and one member shall serve a
110 beginning term of two years.

111 (3) The members appointed in accordance with the
112 provisions of subdivisions (3) and (4), subsection (a) of this
113 section shall each be appointed to serve a beginning term of
114 three years.

115 (4) Following the beginning terms provided for in this
116 subsection, members shall be nominated and appointed in
117 the manner provided for in this section and shall serve for a
118 term of three years. Members shall be eligible for
119 reappointment.

120 (c) The governor shall appoint a health and safety
121 administrator in accordance with the provisions of section
122 four-b of this article, who shall certify all official records of
123 the board. The health and safety administrator shall be a
124 full-time officer of the board of coal mine health and safety
125 with the duties provided for in section four-b of this article.
126 The health and safety administrator shall have such
127 education and experience as the governor deems necessary to
128 properly investigate areas of concern to the board in the
129 development of rules and regulations governing mine health
130 and safety. The governor shall appoint as health and safety
131 administrator a person who has an independent and impartial
132 viewpoint on issues involving mine safety. The health and
133 safety administrator shall be a person who has not been,
134 during the two years immediately preceding his

135 appointment, and is not during his term, an officer, trustee,
136 director, substantial shareholder or employee of any coal
137 operator, or an employee or officer of an employee
138 organization, or a spouse of any such person. The health and
139 safety administrator shall have the expertise to draft
140 proposed rules and regulations and shall prepare such rules
141 and regulations as are required by this chapter and on such
142 other areas as will improve coal mine health and safety.

143 (d) The board shall meet at least once during each
144 calendar month, or more often as may be necessary, and at
145 other times upon the call of the chairman, or upon the request
146 of any three members of the board. Under the direction of the
147 board, the health and safety administrator shall prepare an
148 agenda for each board meeting giving priority to the
149 promulgation of rules and regulations as may be required
150 from time to time by this chapter, and as may be required to
151 improve coal mine health and safety. The health and safety
152 administrator shall provide each member of the board with
153 notice of the meeting and the agenda as far in advance of the
154 meeting as practical, but in any event, at least five days prior
155 thereto. No meeting of the board shall be conducted unless
156 said notice and agenda are given to the board members at
157 least five days in advance, as provided herein, except in cases
158 of emergency, as declared by the chairman, in which event
159 members shall be notified of the board meeting and the
160 agenda in a manner to be determined by the chairman:
161 *Provided*, That upon agreement of a majority of the quorum
162 present, any scheduled meeting may be ordered recessed to
163 another day certain without further notice or additional
164 agenda.

165 When proposed rules and regulations are to be finally
166 adopted by the board, copies of such proposed rules and
167 regulations shall be delivered to members not less than five
168 days before the meeting at which such action is to be taken. If
169 not so delivered, any final adoption or rejection of rules and
170 regulations shall be considered on the second day of a
171 meeting of the board held on two consecutive days, except
172 that by the concurrence of at least four members of the board,
173 the board may suspend this rule of procedure and proceed
174 immediately to the consideration of final adoption or
175 rejection of rules and regulations. When a member shall fail to
176 appear at three consecutive meetings of the board or at
177 one half of the meetings held during a one-year period, the

178 health and safety administrator shall notify the member and
179 the governor of such fact. Such member shall be removed by
180 the governor unless good cause for absences is shown.

181 (e) Whenever a vacancy on the board occurs, nominations
182 and appointments shall be made in the manner prescribed in
183 this section: *Provided*, That in the case of an appointment to
184 fill a vacancy, nominations of three persons for each such
185 vacancy shall be requested by and submitted to the governor
186 within thirty days after the vacancy occurs by the major trade
187 association or major employee organization, if any, which
188 nominated the person whose seat on the board is vacant. The
189 vacancy shall be filled by the governor within thirty days of
190 his receipt of the list of nominations.

191 (f) A quorum of the board shall be five members which
192 shall include the director, at least one member representing
193 the viewpoint of operators and at least one member
194 representing the viewpoint of the working miners, and the
195 board may act officially by a majority of those members who
196 are present.

**§22-2A-4a. Preliminary procedures for promulgation of rules
and regulations.**

1 (a) Prior to the posting of proposed rules and regulations
2 as provided for in subsection (c), section four of this article,
3 the board shall observe the preliminary procedure for the
4 development of rules and regulations set forth in this section:

5 (1) During a board meeting or at any time when the board
6 is not meeting, any board member may suggest to the health
7 and safety administrator, or such administrator on his own
8 initiative may develop, subjects for investigation and possible
9 regulation;

10 (2) Upon receipt of a suggestion for investigation, the
11 health and safety administrator shall prepare a report, to be
12 given at the next scheduled board meeting, of the technical
13 evidence available which relates to such suggestion, the staff
14 time required to develop the subject matter, the legal
15 authority of the board to act on the subject matter, including a
16 description of findings of fact and conclusions of law which
17 will be necessary to support any proposed rules and
18 regulations;

19 (3) The board shall by majority vote of those members
20 who are present determine whether the health and safety
21 administrator shall prepare a draft regulation concerning the
22 suggested subject matter;

23 (4) After reviewing the draft regulation, the board shall
24 determine whether the proposed rules and regulations should
25 be posted and made available for comment as provided for in
26 section four of this article;

27 (5) The board shall receive and consider those comments
28 to the proposed rules and regulations as provided for in
29 section four of this article;

30 (6) The board shall direct the health and safety
31 administrator to prepare for the next scheduled board
32 meeting findings of fact and conclusions of law for the
33 proposed rules and regulations, which may incorporate
34 comments received and technical evidence developed, and
35 which are consistent with section four of this article;

36 (7) The board shall adopt or reject or modify the proposed
37 findings of fact and conclusions of law; and

38 (8) The board shall make a final adoption or rejection of
39 the rules and regulations.

40 (b) By the concurrence of at least four members of the
41 board, the board may dispense with the procedure set out in
42 (a) above or any other procedural rule established, except that
43 the board shall in all instances when adopting rules and
44 regulations prepare findings of fact and conclusions of law
45 consistent with this section and section four of this article.

46 (c) Without undue delay, the board shall adopt an order of
47 business for the conduct of meetings which will promote the
48 orderly and efficient consideration of proposed rules and
49 regulations in accordance with the provisions of this section.

**§22-2A-4b. Health and safety administrator; qualifications;
duties; employees; compensation.**

1 (a) The governor shall appoint the health and safety
2 administrator of the board for a term of employment of one
3 year. The health and safety administrator shall be entitled to
4 have his contract of employment renewed on an annual basis
5 except where such renewal is denied for cause: *Provided*,
6 That the governor shall have the power at any time to remove
7 the health and safety administrator for misfeasance,
8 malfeasance or nonfeasance: *Provided, however*, That the
9 board shall have the power to remove the health and safety
10 administrator without cause upon the concurrence of five
11 members of the board.

12 (b) The health and safety administrator shall work at the
13 direction of the board, independently of the director of the

14 department of mines, and shall have such authority and
15 perform such duties as may be required or necessary to
16 effectuate this article.

17 (c) In addition to the health and safety administrator,
18 there shall be such other research employees hired by the
19 health and safety administrator as the board determines to
20 be necessary. The health and safety administrator shall
21 provide supervision and direction to the other research
22 employees of the board in the performance of their duties.

23 (d) The employees of the board shall be compensated at
24 rates determined by the board. The salary of the health and
25 safety administrator shall be fixed by the governor: *Provided*,
26 That the salary of the health and safety administrator shall
27 not be reduced during his annual term of employment or
28 upon the renewal of his contract for an additional term. Such
29 salary shall be fixed for any renewed term at least ninety days
30 before the commencement thereof.

31 (e) The health and safety administrator shall review all
32 coal mining fatalities and major causes of injuries as
33 mandated by section four of this article. An analysis of such
34 fatalities and major causes of injuries shall be prepared for
35 consideration by the board within ninety days of the
36 occurrence of the accident.

37 (f) At the direction of the board, the administrator shall
38 also conduct an annual study of occupational health issues
39 relating to employment in and around coal mines of this state
40 and submit a report to the board with findings and proposals
41 to address the issues raised in such study. The administrator
42 shall be responsible for preparing the annual reports required
43 by subsection (e), section four of this article and section six of this
44 article.

§22-2A-7. Compensation and expenses of board members.

Each member of the board not otherwise employed by the
1 state shall receive one hundred dollars per diem while
2 actually engaged in the performance of the duties of the
3 board. All members shall be reimbursed for all reasonable
4 and necessary expenses actually incurred during the
5 performance of their duties, except that in the event the
6 expenses are paid by a third party, the members shall not be
7 reimbursed by the state. The reimbursement shall be paid out
8 of the state treasury upon a requisition upon the state auditor,
9 properly certified by the director of the department of mines.

10 No employer shall prohibit a member of the board from
11 exercising leave of absence from his place of employment in
12 order to attend a meeting of the board or a meeting of a
13 subcommittee of the board, or to prepare for a meeting of the
14 board, any contract of employment to the contrary
15 notwithstanding.

CHAPTER 105

(Com. Sub. for H. B. 1254—By Mr. Martin, 30th Dist., and Mr. Harman, 32nd Dist.)

[Passed March 13, 1982: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-l, relating to the issuance of permits for the drilling, re-drilling, deepening, fracturing, stimulating, pressuring, converting, combining or physically changing of oil and gas wells; prohibiting the issuance of such permits where royalties are based upon annual flat well royalty systems or any similar provisions for compensation which are less than one eighth of the value or volume of the production of the oil and gas of such wells; legislative findings and declarations with respect thereto; requiring the payment of one-eighth royalty upon the production of such oil and gas; requiring that all leases or other contractual agreements, by which the right to extract, produce or market oil or gas is claimed, be filed with all permit applications, or in the alternative, requiring certain filings to identify the parties and property involved and describe the royalty agreements and place of recordation; providing for the filing of certain affidavits when leases provide for less than one-eighth royalty; granting a cause of action to enforce provisions of this section; and providing for exceptions to and the enforcement of the provisions of said section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OIL AND GAS WELLS.**§22-4-11. Permits not to be issued on flat well royalty leases; legislative findings and declarations; permit requirements.**

1 (a) The Legislature hereby finds and declares:

2 (1) That a significant portion of the oil and gas
3 underlying this state is subject to development pursuant
4 to leases or other continuing contractual agreements where-
5 in the owners of such oil and gas are paid upon a royalty
6 or rental basis known in the industry as the annual flat
7 well royalty basis, in which the royalty is based solely
8 on the existence of a producing well, and thus is not
9 inherently related to the volume of the oil and gas produced
10 or marketed;

11 (2) That continued exploitation of the natural re-
12 sources of this state in exchange for such wholly in-
13 adequate compensation is unfair, oppressive, works an
14 unjust hardship on the owners of the oil and gas in
15 place, and unreasonably deprives the economy of the
16 state of West Virginia of the just benefit of the natural
17 wealth of this state;

18 (3) That a great portion, if not all, of such
19 leases or other continuing contracts based upon or call-
20 ing for an annual flat well royalty, have been in exis-
21 tence for a great many years and were entered into at
22 a time when the techniques by which oil and gas are
23 currently extracted, produced or marketed, were not
24 known or contemplated by the parties, nor was it con-
25 templated by the parties that oil and gas would be re-
26 covered or extracted or produced or marketed from the
27 depths and horizons currently being developed by the well
28 operators;

29 (4) That while being fully cognizant that the pro-
30 visions of section ten, article I of the United States
31 constitution and of section four, article III of the con-
32 stitution of West Virginia, proscribe the enactment of any
33 law impairing the obligation of a contract, the Legis-
34 lature further finds that it is a valid exercise of the

35 police powers of this state and in the interest of the
36 state of West Virginia and in furtherance of the welfare
37 of its citizens, to discourage as far as constitutionally
38 possible the production and marketing of oil and gas
39 located in this state under the type of leases or other con-
40 tinuing contracts described above.

41 (b) In the light of the foregoing findings, the Legislature
42 hereby declares that it is the policy of this state, to the extent
43 possible, to prevent the extraction, production or marketing
44 of oil or gas under a lease or leases or other continuing
45 contract or contracts providing a flat well royalty or any
46 similar provisions for compensation to the owner of the oil
47 and gas in place, which is not inherently related to the volume
48 of oil or gas produced or marketed, and toward these ends,
49 the Legislature further declares that it is the obligation of
50 this state to prohibit the issuance of any permit required by
51 it for the development of oil or gas where the right to develop,
52 extract, produce or market the same is based upon such
53 leases or other continuing contractual agreements.

54 (c) In addition to any requirements contained in this
55 article with respect to the issuance of any permit required
56 for the drilling, redrilling, deepening, fracturing, stimulating,
57 pressuring, converting, combining or physically changing to
58 allow the migration of fluid from one formation to another,
59 no such permit shall be hereafter issued unless the lease
60 or leases or other continuing contract or contracts by which
61 the right to extract, produce or market the oil or gas is
62 filed with the application for such permit. In lieu of filing
63 the lease or leases or other continuing contract or contracts,
64 the applicant for a permit described herein may file the
65 following:

66 (1) A brief description of the tract of land including the
67 district and county wherein the tract is located;

68 (2) The identification of all parties to all leases or other
69 continuing contractual agreements by which the right to ex-
70 tract, produce or market the oil or gas is claimed;

71 (3) The book and page number wherein each such lease
72 or contract by which the right to extract, produce or market
73 the oil or gas is recorded; and

74 (4) A brief description of the royalty provisions of each
75 such lease or contract.

76 (d) Unless the provisions of subsection (e) are met, no
77 such permit shall be hereafter issued for the drilling of a
78 new oil or gas well, or for the redrilling, deepening, fractur-
79 ing, stimulating, pressuring, converting, combining or physical-
80 ly changing to allow the migration of fluid from one forma-
81 tion to another, of an existing oil or gas production well,
82 where or if the right to extract, produce or market the oil
83 or gas is based upon a lease or leases or other continuing
84 contract or contracts providing for flat well royalty or any
85 similar provision for compensation to the owner of the oil or
86 gas in place which is not inherently related to the volume of
87 oil and gas so extracted, produced and marketed.

88 (e) To avoid the permit prohibition of subsection (d)
89 hereof, the applicant may file with such application an
90 affidavit which certifies that the affiant is authorized by the
91 owner of the working interest in the well to state that it
92 shall tender to the owner of the oil or gas in place not less
93 than one eighth of the total amount paid to or received by
94 or allowed to the owner of the working interest at the wellhead
95 for the oil or gas so extracted, produced or marketed before
96 deducting the amount to be paid to or set aside for the owner
97 of the oil or gas in place, on all such oil or gas to be extracted,
98 produced or marketed from the well. If such affidavit be
99 filed with such application, then such application for permit
100 shall be treated as if such lease or leases or other continuing
101 contract or contracts comply with the provisions of this section.

102 (f) The owner of the oil or gas in place shall have a
103 cause of action to enforce his rights established by this
104 section.

105 (g) The provisions of this section shall not affect or apply
106 to any lease or leases or other continuing contract or con-
107 tracts for the underground storage of gas or any well utilized
108 in connection therewith or otherwise subject to the provisions
109 of article seven of this chapter.

110 (h) The administrator shall enforce this requirement ir-
111 respective of whether such lease or other continuing con-

112 tract was executed before or after the effective date of this
113 section.

114 (i) The provisions of this section shall not adversely affect
115 any rights to free gas.

CHAPTER 106

(Com. Sub. for S. B. 288—By Mr. Colombo, Mr. White and Mr. Heck)

[Passed March 13, 1982; in effect April 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact sections three and seven, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, five, six, seven, eight and nine, article two-a; to amend and reenact section five, article three, chapter seventeen-d of said code; and to amend and reenact section thirty-one, article six, and section one, article six-a, chapter thirty-three of said code, all relating to motor vehicle insurance or other security; requirement of minimum level of security for registration and operation of a motor vehicle in this state; application for registration; deleting requirement of certificate of insurance upon application; statement of insurance or proof of security; random sample verification of statements; penalties for providing false information or proof of security; fees; department to refuse registration or certificate of title upon failure of applicant to present statement of insurance or proof of security; security upon motor vehicles; exclusions for certain government vehicles; providing that owners or registrants of periodic use or seasonal motor vehicles may maintain insurance only for the portion of the year in actual use; defining "periodic use or seasonal vehicle"; requiring proof of insurance to be carried in vehicle; defining "proof of insurance"; notice of cancellation or nonrenewal of insurance policy; providing for notice to commissioner of motor vehicles within five days after cancellation or termination of insurance policy and certain exceptions; investigations to include inquiry regarding insurance or security; law-enforcement officer or court to notify commissioner of motor vehicles upon failure of operator to provide proof of security; suspension or

revocation of operator's or chauffeur's license or vehicle registration; notice; hearing; rules and regulations; deleting reference to commissioner of insurance; criminal penalties; making uninsured motorist coverage optional if waived in writing; providing for option to purchase uninsured and underinsured motorists coverage up to limits of liability insurance; commissioner of insurance to review uninsured and underinsured insurance rate structure and report to Legislature; providing for ten days' notice to insured upon cancellation of automobile liability policy for failure of consideration upon initial issuance of policy.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Anti-Theft Provisions.

17D. Motor Vehicle Safety Responsibility Law.

33. Insurance.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTI-THEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATE OF TITLE.

§17A-3-3. Application for registration, statement of insurance or other proof of security to accompany application; criminal penalties; fees; special revolving fund.

§17A-3-7. Grounds for refusing registration or certificate of title.

§17A-3-3. Application for registration; statement of insurance or other proof of security to accompany application; criminal penalties; fees; special revolving fund.

1 Every owner of a vehicle subject to registration

2 hereunder shall make application to the department for the
3 registration thereof upon the appropriate form or forms
4 furnished by the department and every such application shall
5 bear the signature of the owner or his authorized agent,
6 written with pen and ink, and said application shall contain:

7 (1) The name, bona fide residence and mailing address of
8 the owner, the county in which he resides, or business
9 address of the owner if a firm, association or corporation.

10 (2) A description of the vehicle including, insofar as the
11 hereinafter specified data may exist with respect to a given
12 vehicle, the make, model, type of body, the manufacturer's
13 serial or identification number or other number as
14 determined by the commissioner.

15 (3) In the event a motor vehicle is designed, constructed,
16 converted or rebuilt for the transportation of property, the
17 application shall include a statement of its declared gross
18 weight if such motor vehicle is to be used alone, or if such
19 motor vehicle is to be used in combination with other
20 vehicles the application for registration of such motor vehicle
21 shall include a statement of the combined declared gross
22 weight of such motor vehicle and the vehicles to be drawn by
23 such motor vehicle; declared gross weight being the weight
24 declared by the owner to be the actual combined weight of
25 the vehicle or combination of vehicles and load when
26 carrying the maximum load which the owner intends to place
27 thereon; and the application for registration of each such
28 vehicle shall also include a statement of the distance between
29 the first and last axles of that vehicle or combination of
30 vehicles. The declared gross weight stated in the application
31 shall not exceed the permissible gross weight for the axle
32 spacing listed therein as determined by the table of
33 permissible gross weights contained in chapter seventeen-c
34 of this code; and any vehicle registered for a declared gross
35 weight as stated in the application shall be subject to the
36 single-axle load limit set forth in chapter seventeen-c of this
37 code.

38 (4) Each such applicant shall state whether such vehicle is
39 or is not to be used in the public transportation of passengers
40 or property, or both, for compensation, and if so used, or to be
41 used, the applicants shall so certify, and shall, as a condition
42 precedent to the registration of such vehicle, obtain a
43 certificate of convenience, or permit from the public service
44 commission.

45 (5) A statement under penalty of false swearing that
46 liability insurance is in effect within limits which shall be no
47 less than the requirement of section two, article four, chapter
48 seventeen-d of this code, which statement shall contain the
49 name of the applicant's insurer, the name of the agent or
50 agency which issued the policy and the effective date of the
51 policy, and such other information as may be required by the
52 commissioner of motor vehicles, or that the applicant has
53 qualified as a self-insurer meeting the requirements of section
54 two, article six, chapter seventeen-d of the code and that as a
55 self-insurer he has complied with the minimum security
56 requirements as established in section two, article four of said
57 chapter seventeen-d, or that such applicant has submitted
58 bond or other security approved by the commissioner of
59 motor vehicles which shall provide the equivalent of the
60 policy of insurance herein specified, or that the applicant has
61 submitted the required cash or other securities with the state
62 treasurer as set forth in the provisions of section sixteen,
63 article four of said chapter seventeen-d of this code.

64 In the case of a periodic use or seasonal vehicle, as defined
65 in section three, article two-a, chapter seventeen-d, the owner
66 may provide, in lieu of other statements required by this
67 section, a statement, under penalty of false swearing, that
68 liability insurance is in effect during the portion of the year
69 the vehicle is in actual use, within limits which shall be no
70 less than the requirements of section two, article four, chapter
71 seventeen-d of this code, and other information relating to the
72 seasonal use, on a form designed and provided by the
73 department.

74 The department shall periodically select for verification, on
75 a random sample basis, not fewer than one percent of the
76 statements of liability insurance required by this section.
77 When a statement is selected for verification, the department
78 shall forward the information provided on the statement to
79 the listed insurer. The insurer shall notify the department,
80 within thirty calendar days, whether or not the information is
81 correct.

82 The department may select for verification any statement of
83 liability insurance submitted by a person who has previously
84 been convicted of violating the provisions of section three,
85 article two-a, chapter seventeen-d of this code, or whose
86 statements of liability insurance have previously been found
87 to be incorrect. The department may also determine the

88 correctness of information relating to proof of other security
89 satisfying the requirements of this section.

90 If any person making an application required under the
91 provision of this section, therein knowingly provides false
92 information, false proof of security or a false statement of
93 insurance, or if any person, including an applicant's
94 insurance agent, knowingly counsels, advises, aids or abets
95 another in providing false information, false proof of security,
96 or a false statement of insurance in such application, he is
97 guilty of a misdemeanor, and, upon conviction thereof, shall
98 be fined not more than five hundred dollars, or be imprisoned
99 in the county jail for a period not to exceed fifteen days, or
100 both fined and imprisoned, and in addition to such fine or
101 imprisonment shall have his operator's or chauffeur's license
102 and vehicle registration suspended for a period of six months.

103 (6) Such further information as may reasonably be
104 required by the department to enable it to determine whether
105 the vehicle is lawfully entitled to registration.

106 (7) Each such application for registration shall be
107 accompanied by the fees hereafter provided, and an
108 additional fee of one dollar for each motor vehicle for which
109 the applicant seeks registration, such fee to be deposited in a
110 special revolving fund for the operation by the department of
111 its functions established by the provisions of article two-a,
112 chapter seventeen-d of this code.

§17A-3-7. Grounds for refusing registration or certificate of title.

1 The department shall refuse registration or issuance of a
2 certificate of title or any transfer of registration upon any of
3 the following grounds:

4 (1) That the application contains any false or fraudulent
5 statement or that the applicant has failed to furnish required
6 information or reasonable additional information requested
7 by the department or that the applicant is not entitled to the
8 issuance of a certificate of title or registration of the vehicle
9 under this chapter;

10 (2) That the applicant fails to present a statement of
11 insurance or proof of other security as required pursuant to
12 the provisions of section three of this article;

13 (3) That the vehicle is mechanically unfit or unsafe to be
14 operated or moved upon the highways;

15 (4) That the department has reasonable grounds to believe
16 that the vehicle is a stolen or embezzled vehicle or that the

17 granting of registration or the issuance of certificate of title
18 would constitute a fraud against the rightful owner or other
19 person having a valid lien upon such vehicle;

20 (5) That the registration of the vehicle stands suspended
21 or revoked for any reason as provided in the motor vehicle
22 laws of this state;

23 (6) That the required fee has not been paid.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

Article

2A. Security Upon Motor Vehicles.

3. Security Following Accident.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-2. Scope of article.

§17D-2A-3. Required security; exceptions.

§17D-2A-4. Certificate of insurance.

§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.

§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice to department of motor vehicles.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

§17D-2A-8. Rules and regulations.

§17D-2A-9. Criminal penalties.

§17D-2A-2. Scope of article.

1 This article applies to the operation of all motor vehicles
2 required to be registered to have proof of security pursuant to
3 article three, chapter seventeen-a of this code, with the
4 exception of motor vehicles owned by the state, any of its
5 political subdivisions or by the federal government.

§17D-2A-3. Required security; exceptions.

1 Every owner or registrant of a motor vehicle required to be
2 registered and licensed in this state shall maintain security as
3 hereinafter provided in effect continuously throughout the
4 registration or licensing period except in case of a periodic
5 use or seasonal vehicle, in which case the owner or registrant
6 is required to maintain security upon the vehicle only for the
7 portion of the year the vehicle is in actual use. As used in this
8 section, a periodic use or seasonal vehicle means a
9 recreational vehicle, antique motor vehicle, motorcycle or
10 other motor vehicle which is stored part of the year and used
11 seasonally.

12 Every nonresident owner or registrant of a motor vehicle,
13 which is operated upon any road or highway of this state, and
14 which has been physically present within this state for more
15 than thirty days during the preceding three hundred
16 sixty-five days, shall thereafter maintain security as
17 hereinafter provided in effect continuously throughout the
18 period such motor vehicle remains within this state.

19 No person shall knowingly drive or operate upon any road
20 or highway in this state any motor vehicle upon which
21 security is required by the provisions of this article unless
22 such security is in effect.

23 Such security shall be provided by one of the following
24 methods:

25 (a) By an insurance policy delivered or issued for the
26 delivery in this state by an insurance company authorized to
27 issue vehicle liability and property insurance policies in this
28 state within limits which shall be no less than the
29 requirements of section two, article four, and section five,
30 article three, chapter seventeen-d of this code, or

31 (b) By any other method approved by the commissioner of
32 the department of motor vehicles of this state as affording
33 security equivalent to that offered by a policy of insurance,
34 including qualification as a self-insurer under the provisions
35 of section two, article six, chapter seventeen-d, or

36 (c) By depositing with the state treasurer such cash or
37 other securities in the manner set forth in section sixteen,
38 article four, chapter seventeen-d of this code.

39 The requirements of this section apply to every registered
40 and licensed vehicle upon the next application for renewal of
41 license following the effective date of this section: *Provided*,
42 That this article shall not apply to any motor vehicle owned
43 by the state or by a political subdivision of this state, nor to
44 any motor vehicle owned by the federal government.

§17D-2A-4. Certificate of insurance.

1 (a) All insurance carriers transacting insurance in this
2 state shall supply a certificate to the insured or to any person
3 subject to the registration provisions of article three, chapter
4 seventeen-a of this code, certifying that there is in effect a
5 motor vehicle liability policy upon such motor vehicle in
6 accordance with the provisions of article three, chapter
7 seventeen-a of this code. The certificate shall give its effective
8 date and the effective date of the policy and, unless the policy

9 is issued to a person who is not the owner of a motor vehicle,
10 must designate by explicit description, in such detail as the
11 commissioner of the department of motor vehicles shall by
12 rule require all motor vehicles covered and all replacement
13 vehicles of similar classification. The certificate must specify
14 for each vehicle listed therein, that there is a minimum
15 liability insurance coverage not less than the requirements of
16 section two, article four, and section five, article three,
17 chapter seventeen-d of this code.

18 (b) The certificate provided pursuant to the provisions of
19 this section or other proof of insurance shall be carried by the
20 insured in the appropriate vehicle for use as proof of security:
21 *Provided*, That an insured shall not be guilty of a viola-
22 tion of this subsection (b) if he furnishes proof that such
23 insurance was in effect within five days of being cited for not
24 carrying such certificate or other proof in such vehicle. As
25 used in this section, proof of insurance means a certificate of
26 insurance, an insurance policy, or a mechanically reproduced
27 copy of an insurance policy.

**§17D-2A-5. Cancellation of insurance policy; suspension of
registration; minimum policy term.**

1 (a) When a motor vehicle liability insurance policy has
2 been cancelled or terminated, the insurance company shall
3 notify the commissioner of motor vehicles within five days of
4 the effective date of cancellation or termination, unless the
5 insurance company has a statement in writing from the
6 insured that cancellation or termination will not result in the
7 operation of an uninsured vehicle upon the highways of this
8 state.

9 (b) Within fifteen days of receipt of notice of cancellation
10 or termination of insurance from the insurer, the
11 commissioner of motor vehicles shall give notice of pending
12 suspension of motor vehicle registration to the registrant. The
13 commissioner shall then suspend the registration of such
14 motor vehicle, unless the registrant, within twenty days of the
15 date of the mailing of the notice, furnishes the commissioner
16 of motor vehicles a certificate of insurance or other proof of
17 security: *Provided*, That the registrant shall be given notice
18 and afforded an opportunity for hearing and judicial review
19 thereof in accordance with the provisions of subsection (c),
20 section seven of this article.

21 (c) On or before the fifteenth day of January, one thousand

22 nine hundred eighty-three, and on or before the fifteenth day
23 of January, one thousand nine hundred eighty-four, the
24 commissioner of motor vehicles shall report to the
25 Legislature upon proceedings pursuant to this section. The
26 report shall include the total number of notices received from
27 insurers, the total number of notices of pending suspensions
28 issued, and the total number of cases in which cancellation
29 was found to have resulted in a lapse of coverage upon a
30 vehicle operated upon the highways of this state during the
31 prior year.

32 (d) No policy of motor vehicle liability insurance issued or
33 delivered for issuance in this state shall be contracted for a
34 period of less than ninety days: *Provided*, That the insurance
35 commissioner may establish exceptions thereto by rules and
36 regulations to chapter twenty-nine-a.

**§17D-2A-6. Investigation by duly authorized law-enforcement
officer to include inquiry regarding required
security; notice to department of motor vehicles.**

1 At the time of investigation of a motor vehicle accident in
2 this state by the department of public safety or other
3 law-enforcement agency or when a vehicle is stopped by a
4 law-enforcement officer for reasonable cause, the officer of
5 such agency making such investigation shall inquire of the
6 operators of any motor vehicles involved as to the existence
7 upon such vehicle or vehicles of the proof of insurance or
8 other security required by the provisions of this code and
9 upon a finding by such law-enforcement agency, officer or
10 agent thereof that the security required by the provisions of
11 this article is not in effect, as to any such vehicle, he shall
12 notify the department of motor vehicles of such finding
13 within five days if no citation requiring a court appearance is
14 issued. A defendant, who is charged with a traffic offense that
15 requires an appearance in court, shall present the court at the
16 time of his or her appearance or subsequent appearance with
17 proof that the defendant had security at the time of the traffic
18 offense as required by this article. If, as a result of the
19 defendant's failure to show proof, the court determines that
20 the defendant has violated this article, it shall notify the
21 department of motor vehicles within five days.

**§17D-2A-7. Suspension or revocation of license, registration;
reinstatement.**

1 (a) Any owner of a motor vehicle, subject to the provisions

2 of this article, who fails to have the required security in effect
3 at the time such vehicle is being operated upon the roads or
4 highways of this state, shall have his operator's or chauffeur's
5 license suspended by the commissioner of the department of
6 motor vehicles for a period of ninety days and shall have his
7 motor vehicle registration revoked until such time as he shall
8 present to the department of motor vehicles the proof of
9 security required by this article.

10 (b) Any person who knowingly operates a motor vehicle
11 upon the roads or highways of this state, which does not have
12 the security required by the provisions of this article, shall
13 have his operator's or chauffeur's license suspended by the
14 commissioner of the department of motor vehicles for a
15 period of ninety days.

16 (c) No person shall have his operator's or chauffeur's
17 license or motor vehicle registration suspended or revoked
18 under any provisions of this section unless he shall first be
19 given written notice of such suspension or revocation sent by
20 certified mail, at least twenty days prior to the effective date
21 of such suspension or revocation, and upon such person's
22 written request, sent by certified mail, he shall be afforded an
23 opportunity for a hearing thereupon as well as a stay of the
24 commissioner's order of suspension or revocation and an
25 opportunity for judicial review of such hearing as set forth in
26 the provisions of section fifteen, article three, chapter
27 seventeen-d of this code. Upon affirmation of the
28 commissioner's order, the owner or operator, as the case may
29 be, shall surrender such revoked license and/or registration or
30 have the same impounded in the manner set forth in the
31 provisions of section seven, article nine, chapter seventeen-a
32 of the code.

33 (d) Such suspended operator's or chauffeur's license shall
34 be reinstated following the period of suspension upon
35 compliance with the conditions set forth in this article and
36 such revoked motor vehicle registration shall be reissued
37 only upon lawful compliance with the provisions of this
38 article.

§17D-2A-8. Rules and regulations.

1 The commissioner of the department of motor vehicles is,
2 hereby authorized to promulgate such rules and regulations,
3 in accordance with chapter twenty-nine-a of this code, as he
4 deems necessary for the administration, operation and
5 enforcement of the provisions of this article.

§17D-2A-9. Criminal penalties.

1 In addition to any other penalty provided for violation of
2 any provision of this article, any person who violates any
3 provision of this article is guilty of a misdemeanor, and, upon
4 conviction thereof, shall be fined not less than two hundred
5 dollars nor more than five thousand dollars, or imprisoned in
6 the county jail not less than fifteen days nor more than one
7 year, or both fined and imprisoned.

8 The arrest procedures authorized in section four, article
9 nineteen, chapter seventeen-c of this code shall apply to the
10 enforcement of the provisions of this article.

ARTICLE 3. SECURITY FOLLOWING ACCIDENT.**§17D-3-5. Requirements as to policy or bond; criminal penalties.**

1 (a) No policy or bond shall be effective under section four
2 of this article unless issued by an insurance company or
3 surety company authorized to do business in this state,
4 except as provided in subsection (b) of this section, nor unless
5 such policy or bond is subject, if the accident has resulted in
6 bodily injury or death, to a limit, exclusive of interest and
7 costs, of not less than twenty thousand dollars because of
8 bodily injury to or death of one person in any one accident,
9 and, subject to said limit for one person, to a limit of not less
10 than forty thousand dollars because of bodily injury to or
11 death of two or more persons in any one accident, and, if the
12 accident has resulted in injury to, or destruction of property,
13 to a limit of not less than ten thousand dollars because of
14 injury to or destruction of property of others in any one
15 accident.

16 (b) No policy or bond shall be effective under section four
17 of this article with respect to any vehicle which was not
18 registered in this state or was a vehicle which was registered
19 elsewhere than in this state at the effective date of the policy or
20 bond or the most recent renewal thereof, unless the insurance
21 company or surety company issuing such policy or bond is
22 authorized to do business in this state, or if said company is
23 not authorized to do business in this state, unless it shall
24 execute a power of attorney authorizing the commissioner to
25 accept service on its behalf of notice or process in any action
26 upon such policy or bond arising out of such accident.

27 (c) (1) Upon receipt of notice of such accident from the
28 commissioner, the insurance company or surety company
29 named in such notice or the authorized licensed agent or

30 representative of the company shall notify the commissioner
31 in such manner as he may require that coverage was in effect
32 at the time of such accident.

33 (2) Any insurance company, surety company or the agent
34 or representative of such company who provides the
35 notification to the commissioner as required by this
36 subsection, and therein knowingly provides false
37 information, is guilty of a misdemeanor, and, upon conviction
38 thereof, shall be fined not more than five hundred dollars, or
39 be imprisoned in the county jail for a period not to exceed
40 fifteen days, or both fined and imprisoned.

CHAPTER 33. INSURANCE.

Article

6. The Insurance Policy.

6A. Cancellation or Nonrenewal of Automobile Liability Policies.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy; omnibus clause; uninsured and underinsured motorists' coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

1 (a) No policy or contract of bodily injury liability
2 insurance, or of property damage liability insurance, covering
3 liability arising from the ownership, maintenance or use of
4 any motor vehicle, shall be issued or delivered in this state to
5 the owner of such vehicle, or shall be issued or delivered by
6 any insurer licensed in this state upon any motor vehicle for
7 which a certificate of title has been issued by the department
8 of motor vehicles of this state, unless it shall contain a
9 provision insuring the named insured and any other person,
10 except a bailee for hire and any persons specifically excluded
11 by any restrictive endorsement attached to the policy,
12 responsible for the use of or using the motor vehicle with the
13 consent, expressed or implied, of the named insured or his
14 spouse against liability for death or bodily injury sustained,
15 or loss or damage occasioned within the coverage of the
16 policy or contract as a result of negligence in the operation or
17 use of such vehicle by the named insured or by such person:
18 *Provided*, That in any such automobile liability insurance
19 policy or contract, or endorsement thereto, if coverage
20 resulting from the use of a nonowned automobile is
21 conditioned upon the consent of the owner of such motor

22 vehicle, the word "owner" shall be construed to include the
23 custodian of such nonowned motor vehicles.

24 (b) Nor shall any such policy or contract be so issued or
25 delivered unless it shall contain an endorsement or
26 provisions undertaking to pay the insured all sums which he
27 shall be legally entitled to recover as damages from the owner
28 or operator of an uninsured motor vehicle, within limits
29 which shall be no less than the requirements of section two,
30 article four, chapter seventeen-d of the code of West Virginia,
31 as amended from time to time: *Provided*, That such policy or
32 contract shall provide an option to the insured with
33 appropriately adjusted premiums to pay the insured all sums
34 which he shall be legally entitled to recover as damages from
35 the owner or operator of an uninsured motor vehicle up to an
36 amount of one hundred thousand dollars because of bodily
37 injury to or death of one person in any one accident, and,
38 subject to said limit for one person, in the amount of three
39 hundred thousand dollars because of bodily injury to or death
40 of two or more persons in any one accident, and in the
41 amount of fifty thousand dollars because of injury to or
42 destruction of property of others in any one accident, unless
43 the insured waives such coverage in writing; and the writing
44 signed by the insured shall contain the following language:
45 "The commissioner of the department of motor vehicles of
46 the state of West Virginia has determined that there are many
47 operators of motor vehicles from in and out of the state who
48 do not have liability insurance. For this reason uninsured
49 motorist coverage is recommended to each and every West
50 Virginia": *Provided, however*, That such endorsement or
51 provisions may exclude the first three hundred dollars of
52 property damage resulting from the negligence of an
53 uninsured motorist: *Provided further*, That such policy or
54 contract shall provide an option to the insured with
55 appropriately adjusted premiums to pay the insured all sums
56 which he shall legally be entitled to recover as damages from
57 the owner or operator of an uninsured or underinsured motor
58 vehicle up to an amount not less than limits of bodily injury
59 liability insurance and property damage liability insurance
60 purchased by the insured. "Underinsured motor vehicle"
61 means a motor vehicle with respect to the ownership,
62 operation, or use of which there is liability insurance
63 applicable at the time of the accident, but the limits of that
64 insurance are either (i) less than limits the insured carried for

65 underinsured motorists' coverage, or (ii) has been reduced by
66 payments to others injured in the accident to limits less than
67 limits the insured carried for underinsured motorist's cover-
68 age.

69 (c) As used in this section, the term "bodily injury" shall
70 include death resulting therefrom, and the term "named
71 insured" shall mean the person named as such in the
72 declarations of the policy or contract and shall also include
73 such person's spouse if a resident of the same household, and
74 the term "insured" shall mean the named insured, and, while
75 resident of the same household, the spouse of any such
76 named insured, and relatives of either, while in a motor
77 vehicle or otherwise, and any person, except a bailee for hire,
78 who uses, with the consent, expressed or implied, of the
79 named insured, the motor vehicle to which the policy applies
80 or the personal representative of any of the above; and the
81 term "uninsured motor vehicle" shall mean a motor vehicle
82 as to which there is no (i) bodily injury liability insurance and
83 property damage liability insurance both in the amounts
84 specified by section two, article four, chapter seventeen-d, as
85 amended from time to time, or (ii) there is such insurance, but
86 the insurance company writing the same denies coverage
87 thereunder, or (iii) there is no certificate of self-insurance
88 issued in accordance with the provision of section two, article
89 six, chapter seventeen-d of the code of West Virginia. A motor
90 vehicle shall be deemed to be uninsured if the owner or
91 operator thereof be unknown: *Provided*, That recovery under
92 the endorsement or provisions shall be subject to the
93 conditions hereinafter set forth.

94 (d) Any insured intending to rely on the coverage required
95 by subsection (b) of this section shall, if any action be
96 instituted against the owner or operator of an uninsured
97 motor vehicle, cause a copy of the summons and a copy of the
98 complaint to be served upon the insurance company issuing
99 the policy, in the manner prescribed by law, as though such
100 insurance company were a named party defendant; such
101 company shall thereafter have the right to file pleadings and
102 to take other action allowable by law in the name of the
103 owner, or operator, or both, of the uninsured motor vehicle or
104 in its own name.

105 Nothing in this subsection shall prevent such owner or
106 operator from employing counsel of his own choice and

107 taking any action in his own interest in connection with such
108 proceeding.

109 (e) If the owner or operator of any motor vehicle which
110 causes bodily injury or property damage to the insured be
111 unknown, the insured, or someone in his behalf, in order for
112 the insured to recover under the uninsured motorist
113 endorsement or provision, shall:

114 (i) Within twenty-four hours after the insured discover,
115 and being physically able to report the occurrence of such
116 accident, the insured, or someone in his behalf, shall report
117 the accident to a police, peace or judicial officer, or to the
118 commissioner of motor vehicles, unless the accident shall
119 already have been investigated by a police officer; and

120 (ii) Notify the insurance company, within sixty days after
121 such accident, that the insured or his legal representative has
122 a cause or causes of action arising out of such accident for
123 damages against a person or persons whose identity is
124 unknown and setting forth the facts in support thereof; and,
125 upon written request of the insurance company
126 communicated to the insured not later than five days after
127 receipt of such statement, shall make available for inspection
128 the motor vehicle which the insured was occupying at the
129 time of the accident; and

130 (iii) Upon trial establish that the motor vehicle, which
131 caused the bodily injury or property damage, whose operator
132 is unknown, was a "hit and run" motor vehicle, meaning a
133 motor vehicle which causes damage to the property of the
134 insured arising out of physical contact of such motor vehicle
135 therewith, or which causes bodily injury to the insured
136 arising out of physical contact of such motor vehicle with the
137 insured or with a motor vehicle which the insured was
138 occupying at the time of the accident. If the owner or operator
139 of any motor vehicle causing bodily injury or property
140 damage be unknown, an action may be instituted against the
141 unknown defendant as "John Doe," in the county in which
142 the accident took place or in any other county in which such
143 action would be proper under the provisions of article one,
144 chapter fifty-six of this code; service of process may be made
145 by delivery of a copy of the complaint and summons or other
146 pleadings to the clerk of the court in which the action is
147 brought, and service upon the insurance company issuing the
148 policy shall be made as prescribed by law as though such
149 insurance company were a party defendant. The insurance

150 company shall have the right to file pleadings and take other
151 action allowable by law in the name of John Doe.

152 (f) An insurer paying a claim under the endorsement or
153 provisions required by subsection (b) of this section shall be
154 subrogated to the rights of the insured to whom such claim
155 was paid against the person causing such injury, death or
156 damage to the extent that payment was made. The bringing of
157 an action against the unknown owner or operator as John
158 Doe or the conclusion of such an action shall not constitute a
159 bar to the insured, if the identity of the owner or operator who
160 caused the injury or damages complained of, becomes
161 known, from bringing an action against the owner or operator
162 theretofore proceeded against as John Doe. Any recovery
163 against such owner or operator shall be paid to the insurance
164 company to the extent that such insurance company shall
165 have paid the insured in the action brought against such
166 owner or operator as John Doe, except that such insurance
167 company shall pay its proportionate part of any reasonable
168 costs and expenses incurred in connection therewith,
169 including reasonable attorney's fees. Nothing in an
170 endorsement or provision made under this subsection, nor
171 any other provision of law, shall operate to prevent the
172 joining, in an action against John Doe, of the owner or
173 operator of the motor vehicle causing injury as a party
174 defendant, and such joinder is hereby specifically authorized.

175 (g) No such endorsement or provisions shall contain any
176 provision requiring arbitration of any claim arising under any
177 such endorsement or provision, nor may anything be
178 required of the insured except the establishment of legal
179 liability, nor shall the insured be restricted or prevented in
180 any manner from employing legal counsel or instituting legal
181 proceedings.

182 (h) The provisions of subsections (a) and (b) of this section
183 shall not apply to any policy of insurance to the extent that it
184 covers the liability of an employer to his employees under any
185 workmen's compensation law.

186 (i) The commissioner of insurance shall formulate and
187 require the use of standard policy provisions for the
188 insurance required by this section, but use of such standard
189 policy provisions may be waived by the commissioner in the
190 circumstances set forth in section ten of this article.

191 (j) A motor vehicle shall be deemed to be uninsured
192 within the meaning of this section, if there has been a valid

193 bodily injury or property damage liability policy issued upon
194 such vehicle, but which policy is uncollectible in whole or in
195 part, by reason of the insurance company issuing such policy
196 upon such vehicle being insolvent or having been placed in
197 receivership. The right of subrogation granted insurers under
198 the provisions of subsection (f) of this section shall not apply
199 as against any person or persons who is or becomes an
200 uninsured motorist for the reasons set forth in this
201 subsection.

202 (k) Nothing contained herein shall prevent any insurer
203 from also offering benefits and limits other than those
204 prescribed herein, nor shall this section be construed as
205 preventing any insurer from incorporating in such terms,
206 conditions and exclusions as may be consistent with the
207 premium charged.

208 (l) The insurance commissioner shall review on an annual
209 basis the rate structure for uninsured and underinsured
210 motorist's coverage as set forth in subsection (b) of this
211 section, and shall report to the Legislature on said rate
212 structure on or before the fifteenth day of January, one
213 thousand nine hundred eighty-three, and on or before the
214 fifteenth day of January of each of the next two succeeding
215 years.

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

1 No insurer once having issued or delivered a policy
2 providing automobile liability insurance in this state insuring
3 a private passenger automobile shall, after the policy has
4 been in effect for sixty days, or in case of renewal effective
5 immediately, issue or cause to issue a notice of cancellation
6 during the term of the policy except for one or more of the
7 following specified reasons:

8 (a) The named insured fails to discharge when due any of
9 his obligations in connection with the payment of premium
10 for such policy or any installment thereof;

11 (b) The policy was obtained through material
12 misrepresentation;

13 (c) The insured violates any of the material terms and
14 conditions of the policy;

15 (d) The named insured or any other operator, either

16 resident in the same household or who customarily operates
17 an automobile insured under such policy:

18 (1) Has had his operator's license suspended or revoked
19 during the policy period including suspension or revocation
20 for failure to comply with the provisions of article five-a,
21 chapter seventeen-c of this code, regarding consent for
22 chemical test for intoxication; or

23 (2) Is or becomes subject to epilepsy or heart attacks, and
24 such individual cannot produce a certificate from a physician
25 testifying to his ability to operate a motor vehicle.

26 (e) The named insured or any other operator, either
27 resident in the same household or who customarily operates
28 an automobile insured under such policy is convicted of or
29 forfeits bail during the policy period for any of the following:

30 (1) Any felony or assault involving the use of a motor
31 vehicle;

32 (2) Negligent homicide arising out of the operation of a
33 motor vehicle;

34 (3) Operating a motor vehicle while under the influence of
35 alcohol or of any controlled substance or while having an
36 alcohol concentration in his blood of ten one hundredths of
37 one percent (.10) or more by weight;

38 (4) Leaving the scene of a motor vehicle accident in which
39 the insured is involved without reporting as required by law;

40 (5) Theft of a motor vehicle or the unlawful taking of a
41 motor vehicle;

42 (6) Making false statements in an application for a motor
43 vehicle operator's license;

44 (7) A third violation, committed within a period of twelve
45 months, of any moving traffic violation which constitutes a
46 misdemeanor, whether or not the violations were repetitious
47 of the same offense or were different offenses.
48 Notwithstanding any of the provisions of this section to the
49 contrary, no insurance company may cancel a policy of
50 automobile liability insurance without first giving the insured
51 thirty days' notice of its intention to cancel: *Provided*, That
52 cancellation of the insurance policy by the insurance carrier
53 for failure of consideration to be paid by the insured upon
54 initial issuance of the insurance policy is effective upon the
55 expiration of ten days' notice of cancellation to the insured.

CHAPTER 107

(S. B. 335—By Mr. McGraw, Mr. President)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special officers in the enforcement of chapter seventeen-c, article seventeen, size, weight and load.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.

§17C-2-3. Enforcement of chapter; designation and bond of special officers; failure to obey police officer or special officers.

1 (a) It shall be the duty of the department of public
2 safety and its members to enforce the provisions of this
3 chapter and other laws of this state governing the opera-
4 tion of vehicles upon the streets and highways of this
5 state, as defined in section one, article two, chapter
6 seventeen-b of this code, or in other designated places
7 specifically referred to in a given section in this chapter;
8 and it shall be the duty of sheriffs and their deputies and
9 of the police of cities and towns to render to the depart-
10 ment of public safety such assistance in the performance
11 of said duties as the superintendent of the department of
12 public safety may require of them.

13 (b) The West Virginia commissioner of highways is
14 authorized to designate employees of the West Virginia
15 department of highways as special officers to enforce the
16 provisions of this chapter only when such special officers
17 are directing traffic upon bridges and the approaches to
18 bridges which are a part of the state road system when
19 any such bridge needs special traffic direction and the

20 superintendent of the department of public safety has
21 informed the West Virginia commissioner of highways
22 that he is unable to furnish personnel for such traffic
23 direction. The West Virginia commissioner of highways
24 may also designate certain employees of the West Vir-
25 ginia department of highways serving as members of
26 official weighing crews as special officers to enforce the
27 provisions of article seventeen of this chapter. The West
28 Virginia commissioner of highways shall provide a
29 blanket bond in the amount of ten thousand dollars for all
30 employees designated as special officers, as above pro-
31 vided.

32 (c) No person shall willfully fail or refuse to comply
33 with a lawful order or direction of any police officer
34 or such special officers invested by law with authority
35 to direct, control or regulate traffic.

36 (d) No person shall willfully fail or refuse to comply
37 with a lawful order or direction of any special officers
38 designated as such pursuant to the provisions of sub-
39 section (b) of this section.

CHAPTER 108

(Com. Sub. for S. B. 406—By Mr. Heck and Mr. Jones)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vehicle size, weight and load; permitting buses and trackless trolleys to operate with a maximum outside width of one hundred two inches; and providing for the exclusion of authorized safety equipment in width determinations for all vehicles.

Be it enacted by the Legislature of West Virginia:

That section two, article seventeen, 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 17. SIZE, WEIGHT AND LOAD.

§17C-17-2. Width of vehicles.

1 (a) The total outside width, exclusive of safety
2 equipment authorized by the United States department
3 of transportation, of any vehicle or the load thereon shall
4 not exceed eight feet, except as otherwise provided in
5 this article.

6 (b) Motor buses and trackless trolley coaches with a
7 total outside width of one hundred two inches, exclud-
8 ing safety equipment authorized by the United States
9 department of transportation, may operate on any high-
10 way.

CHAPTER 109

(H. B. 1927—By Mr. Blackwell and Mr. Hatcher)

[Passed March 11, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article seventeen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter seventeen-a of said code by adding thereto a new article, designated article six-a, all relating to antitrust act; restraint of trade; motor vehicle administration; motor vehicle dealers, distributors, wholesalers and manufacturers; definitions; cancellation of dealer contract; notification; circumstances not constituting good cause; burden of proof; notice provisions; reasonable compensation to dealer; payment of compensation; prohibited penalties; where motor vehicle dealer is deceased or incapacitated; relocation; obligations regarding warranties; acceptance of vehicles; risk of loss or damage; indemnity; actions at law; damages; injunctive relief.

Be it enacted by the Legislature of West Virginia:

That article seventeen, chapter forty-seven of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter seventeen-a of said code be amended by adding thereto a new article, designated article six-a, to read as follows:

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALESAERS AND MANUFACTURERS.

- §17A-6A-1. Legislative finding.
- §17A-6A-2. Governing law.
- §17A-6A-3. Definitions.
- §17A-6A-4. Cancellation of dealer contract; notification.
- §17A-6A-5. Circumstances not constituting good cause.
- §17A-6A-6. Burden of proof.
- §17A-6A-7. Notice provisions.
- §17A-6A-8. Reasonable compensation to dealer.
- §17A-6A-9. Payment of compensation.
- §17A-6A-10. Prohibited practices.
- §17A-6A-11. Where motor vehicle dealer deceased or incapacitated.
- §17A-6A-12. Relocation.
- §17A-6A-13. Obligations regarding warranties.
- §17A-6A-14. Acceptance of vehicles; risk of loss or damage.
- §17A-6A-15. Indemnity.
- §17A-6A-16. Actions at law; damages.
- §17A-6A-17. Injunctive relief.

§17A-6A-1. Legislative finding.

1 The Legislature finds and declares that the distribution and
2 sale of motor vehicles in this state vitally affects the general
3 economy and the public welfare and that in order to promote
4 the public welfare and in the exercise of its police power, it is
5 necessary to regulate motor vehicle dealers, manufacturers,
6 distributors and representatives of vehicle manufacturers and
7 distributors doing business in this state in order to avoid undue
8 control of the independent new motor vehicle dealer by the
9 vehicle manufacturer or distributor and to ensure that dealers
10 fulfill their obligations under their franchises and provide ade-
11 quate and sufficient service to consumers generally.

§17A-6A-2. Governing law.

1 In accord with the settled public policy of this state to pro-
2 tect the rights of its citizens, it is hereby enacted as the law of
3 West Virginia that each franchise or agreement between a
4 manufacturer or distributor and a dealer who is a resident of

5 West Virginia, to be performed in substantial part in West Vir-
6 ginia, shall be construed and governed by the laws of the state
7 of West Virginia, regardless of the state in which it was made
8 or executed and of any provision in such franchise or agree-
9 ment to the contrary.

10 The provisions of this article shall apply only to any such
11 franchise or agreement which is entered into or renewed sub-
12 sequent to the effective date of this article.

§17A-6A-3. Definitions.

1 For the purposes of this article, the words and phrases de-
2 fined in this section have the meanings ascribed to them, except
3 where the context clearly indicates a different meaning.

4 “Dealer agreement” means the agreement or contract in
5 writing between a manufacturer, distributor and a new motor
6 vehicle dealer, which purports to establish the legal rights and
7 obligations of the parties to the agreement or contract with
8 regard to the purchase and sale of new motor vehicles and
9 accessories for motor vehicles.

10 “Designated family member” means the spouse, child, grand-
11 child, parent, brother or sister of a deceased new motor vehicle
12 dealer who is entitled to inherit the deceased dealer’s ownership
13 interest in the new motor vehicle dealership under the terms
14 of the dealer’s will, or who has otherwise been designated in
15 writing by a deceased dealer to succeed the deceased dealer in
16 the new motor vehicle dealership, or is entitled to inherit
17 under the laws of intestate succession of this state. With re-
18 spect to an incapacitated new motor vehicle dealer, the term
19 means the person appointed by a court as the legal representa-
20 tive of the new motor vehicle dealer’s property. The term also
21 includes the appointed and qualified personal representative
22 and the testamentary trustee of a deceased new motor vehicle
23 dealer. However, the term shall mean only that designated
24 successor nominated by the new motor vehicle dealer in a
25 written document filed by the dealer with the manufacturer
26 or distributor, if such a document is filed.

27 “Distributor” means any person, resident or nonresident,
28 who in whole or in part offers for sale, sells or distributes any

29 new motor vehicle to a new motor vehicle dealer or who main-
30 tains a factory representative, resident or nonresident, or who
31 controls any person, resident or nonresident, who in whole or
32 in part offers for sale, sells or distributes any new motor
33 vehicle to a new motor vehicle dealer.

34 “Established place of business” means a permanent, enclosed
35 commercial building located within this state easily accessible
36 and open to the public at all reasonable times and at which
37 the business of a new motor vehicle dealer, including the dis-
38 play and repair of motor vehicles, may be lawfully carried on
39 in accordance with the terms of all applicable building codes,
40 zoning, and other land-use regulatory ordinances.

41 “Factory branch” means an office maintained by a manu-
42 facturer or distributor for the purpose of selling or offering
43 for sale, vehicles to a distributor, wholesaler or new motor
44 vehicle dealer, or for directing or supervising in whole or in
45 part factory or distributor representatives. The term includes
46 any sales promotion organization maintained by a manufac-
47 turer or distributor which is engaged in promoting the sale of
48 a particular make of new motor vehicles in this state to new
49 motor vehicle dealers.

50 “Factory representative” means an agent or employee of a
51 manufacturer, distributor or factory branch retained or em-
52 ployed for the purpose of making or promoting the sale of new
53 motor vehicles or for supervising or contracting with new
54 motor vehicle dealers or proposed motor vehicle dealers.

55 “Good faith” means honesty in fact and the observation of
56 reasonable commercial standards of fair dealing in the trade.

57 “Manufacturer” means any person who manufactures or
58 assembles new motor vehicles; or any distributor, factory
59 branch or factory representative.

60 “Motor vehicle” means that term as defined in section one,
61 article one, chapter seventeen-a of this code, but does not in-
62 clude a tractor or farm equipment.

63 “New motor vehicle” means a motor vehicle which is in the
64 possession of the manufacturer, distributor or wholesaler, or
65 has been sold only to a new motor vehicle dealer and on

66 which the original title has not been issued from the new
67 motor vehicle dealer.

68 "New motor vehicle dealer" means a person who holds a
69 dealer agreement granted by a manufacturer or distributor for
70 the sale of its motor vehicles, who is engaged in the business
71 of purchasing, selling, exchanging or dealing in new motor
72 vehicles and who has an established place of business in this
73 state.

74 "Person" means a natural person, partnership, corporation,
75 association, trust, estate or other legal entity.

76 "Proposed new motor vehicle dealer" means a person who
77 has an application pending for a new dealer agreement with a
78 manufacturer or distributor. Proposed motor vehicle dealer
79 does not include a person whose dealer agreement is being
80 renewed or continued.

81 "Relevant market area" means:

82 (a) For a proposed new motor vehicle dealer or a new
83 motor vehicle dealer who plans to relocate his or her place
84 of business in a county having a population which is greater
85 than thirty thousand, the area within a radius of eight miles
86 of the intended site of the proposed or relocated dealer.

87 (b) For a proposed new motor vehicle dealer or a new
88 motor vehicle dealer who plans to relocate his or her place
89 of business in a county having a population which is not
90 greater than thirty thousand, the area within a radius of
91 fifteen miles of the intended site of the proposed or relocated
92 dealer.

§17A-6A-4. Cancellation of dealer contract; notification.

1 (1) Notwithstanding any agreement, a manufacturer or dis-
2 tributor shall not cancel, terminate, fail to renew or refuse to
3 continue any dealer agreement with a new motor vehicle dealer
4 unless the manufacturer or distributor has complied with all of
5 the following:

6 (a) Satisfied the notice requirement of section seven of this
7 article.

8 (b) Acted in good faith.

9 (c) Has good cause for the cancellation, termination, non-
10 renewal or discontinuance.

11 (2) Notwithstanding any agreement, good cause shall exist
12 for the purposes of a termination, cancellation, nonrenewal or
13 discontinuance under subdivision (c), subsection (1) of this
14 section when both of the following occur:

15 (a) There is a failure by the new motor vehicle dealer to
16 comply with a provision of the dealer agreement and the pro-
17 vision is both reasonable and of material significance to the
18 relationship between the manufacturer or distributor and the
19 new motor vehicle dealer and (b) the manufacturer or dis-
20 tributor first acquired actual or constructive knowledge of
21 the failure not more than two years prior to the date on which
22 notification was given pursuant to section seven of this article.

23 (3) If the failure by the new motor vehicle dealer to com-
24 ply with a provision of the dealer agreement relates to the
25 performance of the new motor vehicle dealer in sales or ser-
26 vice, good cause shall exist for the purposes of a termination,
27 cancellation, nonrenewal or discontinuance under subsection
28 (1) of this section when the new motor vehicle dealer failed
29 to effectively carry out the performance provisions of the
30 dealer agreement if all of the following have occurred:

31 (a) The new motor vehicle dealer was given written notice
32 by the manufacturer or distributor of the failure.

33 (b) The notification stated that the notice of failure of per-
34 formance was provided pursuant to this article.

35 (c) The new motor vehicle dealer was afforded a reasonable
36 opportunity to exert good faith efforts to carry out the dealer
37 agreement.

38 (d) The failure continued for more than one hundred eighty
39 days after the date notification was given pursuant to sub-
40 division (a) of this subsection.

§17A-6A-5. Circumstances not constituting good cause.

1 Notwithstanding any agreement, the following alone shall
2 not constitute good cause for the termination, cancellation,

3 nonrenewal or discontinuance of a dealer agreement under
4 subdivision (c), subsection (1), section four of this article:

5 (a) A change in ownership of the new motor vehicle dealer's
6 dealership. The subdivision does not authorize any change in
7 ownership which would have the effect of a sale or an assign-
8 ment of the dealer agreement or a change in the principal man-
9 agement of the dealership without the manufacturer's or dis-
10 tributor's prior written consent.

11 (b) The refusal of the new motor vehicle dealer to purchase
12 or accept delivery of any new motor vehicle parts, accessories,
13 or any other commodity or services not ordered by the new
14 motor vehicle dealer.

15 (c) The fact that the new motor vehicle dealer owns, has
16 an investment in, participates in the management of, or holds
17 a dealer agreement for the sale of another make or line of new
18 motor vehicles, or that the new motor vehicle dealer has estab-
19 lished another make or line of new motor vehicles in the same
20 dealership facilities as those of the manufacturer or distribu-
21 tor: *Provided*, That the new motor vehicle dealer maintains a
22 reasonable line of credit for each make or line of new motor
23 vehicles, and that the new motor vehicle dealer remains in
24 substantial compliance with the terms and conditions of the
25 dealer agreement and with the reasonable facilities' require-
26 ments of the manufacturer or distributor.

27 (d) The fact that the new motor vehicle dealer sells or trans-
28 fers ownership of the dealership or sells or transfers capital
29 stock in the dealership to the new motor vehicle dealer's spouse,
30 son or daughter: *Provided*, That the sale or transfer shall not
31 have the effect of a sale or an assignment of the dealer agree-
32 ment or a change in the principal management of the dealer-
33 ship without the manufacturer's or distributor's prior written
34 consent.

§17A-6A-6. Burden of proof.

1 For each termination, cancellation, nonrenewal or discon-
2 tinuance, the manufacturer or distributor shall have the burden
3 of proof for showing that he has acted in good faith, that the
4 notice requirement has been complied with, and that there

5 was good cause for the termination, cancellation, nonrenewal
6 or discontinuance.

§17A-6A-7. Notice provisions.

1 Notwithstanding any agreement, prior to the termination,
2 cancellation, nonrenewal or discontinuance of any dealer agree-
3 ment, the manufacturer or distributor shall furnish notice of
4 the termination, cancellation, nonrenewal or discontinuance to
5 the new motor vehicle dealer as follows:

6 (a) Except as provided in subdivision (c) or (d), notice
7 shall be made not less than ninety days prior to the
8 effective date of the termination, cancellation, nonrenewal or
9 discontinuance.

10 (b) Notice shall be by certified mail to the new motor ve-
11 hicle dealer and shall contain the following:

12 (i) A statement of intention to terminate, cancel, not renew
13 or discontinue the dealer agreement.

14 (ii) A statement of the reasons for the termination, can-
15 cellation, nonrenewal or discontinuance.

16 (iii) The date on which the termination, cancellation, non-
17 renewal or discontinuance takes effect.

18 (c) Notwithstanding subdivision (a), notice shall be made
19 not less than fifteen days prior to the effective date
20 of the termination, cancellation, nonrenewal or discontinu-
21 ance for any of the following reasons:

22 (i) Insolvency of the new motor vehicle dealer, or the filing
23 of any petition by or against the new motor vehicle dealer
24 under any bankruptcy or receivership law.

25 (ii) Failure of the new motor vehicle dealer to conduct his
26 or her customary sales and service operations during his or
27 her customary business hours for seven consecutive business
28 days.

29 (iii) Conviction of the new motor vehicle dealer or its prin-
30 cipal owners of a crime, but only if the crime is punishable by
31 imprisonment in excess of one year under the law under which

32 the dealer was convicted, or the crime involved theft, dis-
33 honesty, or false statement regardless of the punishment.

34 (iv) Revocation of any license under which the new motor
35 vehicle dealer is required to have to operate a dealership.

36 (v) A fraudulent misrepresentation by the new motor vehicle
37 dealer to the manufacturer or distributor, which is material to
38 the dealer agreement.

39 (d) Notwithstanding subdivision (a) notice shall be made
40 not less than twelve months prior to the effective date
41 of a termination, cancellation, nonrenewal or discontin-
42 uance if a manufacturer or distributor discontinues produc-
43 tion of the new motor vehicle dealer's product line or dis-
44 continues distribution of the product line in this state.

§17A-6A-8. Reasonable compensation to dealer.

1 (1) Upon the termination, cancellation, nonrenewal or dis-
2 continuance of any dealer agreement, the new motor vehicle
3 dealer shall be allowed fair and reasonable compensation by
4 the manufacturer or distributor for the following:

5 (a) New current model year motor vehicle inventory pur-
6 chased from the manufacturer or distributor, which has not
7 been materially altered, substantially damaged, or driven for
8 more than three hundred miles.

9 (b) Supplies and parts inventory purchased from the manu-
10 facturer or distributor and listed in the manufacturer's or dis-
11 tributor's current parts catalog.

12 (c) Equipment, furnishings and signs purchased from the
13 manufacturer or distributor.

14 (d) Special tools purchased from the manufacturer or dis-
15 tributor within three years of the date of termination, can-
16 cellation, nonrenewal or discontinuance.

17 (2) Upon the termination, cancellation, nonrenewal or
18 discontinuance of a dealer agreement by the manufacturer or
19 distributor, the manufacturer or distributor shall also pay
20 to the new motor vehicle dealer a sum equal to the current,
21 fair rental value of his or her established place of business

22 for a period of one year from the effective date of termi-
23 nation, cancellation, nonrenewal or discontinuance, or the
24 remainder of the lease, whichever is less. However, the
25 payment required by this subsection shall not apply to any
26 termination, cancellation, nonrenewal or discontinuance made
27 pursuant to subdivision (c), subsection (1), section four of
28 this article.

§17A-6A-9. Payment of compensation.

1 (1) Compensation for new current model year motor ve-
2 hicle inventory under subdivision (a), subsection (1), section
3 eight of this article shall be paid, if possible, within thirty
4 days after the effective date of the termination, cancellation,
5 nonrenewal or discontinuance. Compensation for items of
6 personal property required by subdivisions (b), (c) and (d),
7 subsection (1), section eight of this article, shall be paid within
8 ninety days after the effective date of the termination, can-
9 cellation, nonrenewal or discontinuance, provided that the
10 new motor vehicle dealer has met all reasonable requirements
11 of the dealer agreement with respect to the return of the re-
12 purchased personal property, including providing clear title.

13 (2) Reasonable compensation pursuant to subdivision (a),
14 subsection (1), section eight of this article shall be not less
15 than the new motor vehicle dealer's net acquisition cost.
16 Reasonable compensation pursuant to subdivision (b), sub-
17 section (1), section eight of this article shall be the amount
18 stated in the manufacturer's or distributor's current parts
19 price list. Reasonable compensation pursuant to subdivisions
20 (c) and (d), subsection (1), section eight of this article shall
21 be the fair market value of the personal property.

22 (3) In the event payment is not made within ninety days
23 as provided in subsection (1), interest shall accrue thereafter
24 on all amounts due the new motor vehicle dealer at a rate of
25 twelve percent per annum.

§17A-6A-10. Prohibited practices.

1 (1) A manufacturer or distributor shall not require any new
2 motor vehicle dealer in this state to do any of the following:

3 (a) Order or accept delivery of any new motor vehicle, part

4 or accessory thereof, equipment, or any other commodity not
5 required by law which was not voluntarily ordered by the new
6 motor vehicle dealer. This section shall not be construed to
7 prevent the manufacturer or distributor from requiring that
8 new motor vehicle dealers carry a reasonable inventory of
9 models offered for sale by the manufacturer or distributor.

10 (b) Order or accept delivery of any new motor vehicle with
11 special features, accessories or equipment not included in the
12 list price of the new motor vehicle as publicly advertised by
13 the manufacturer or distributor.

14 (c) Participate monetarily in any advertising campaign or
15 contest or purchase any promotional materials, display de-
16 vices or display decorations or materials at the expense of the
17 new motor vehicle dealer.

18 (d) Enter into any agreement with the manufacturer or dis-
19 tributor or do any other act prejudicial to the new motor ve-
20 hicle dealer by threatening to terminate a dealer agreement or
21 any contractual agreement or understanding existing between
22 the dealer and the manufacturer or distributor. Notice in good
23 faith to any dealer of the dealer's violation of any terms or
24 provisions of the dealer agreement shall not constitute a vio-
25 lation of this article.

26 (e) Change the capital structure of the new motor vehicle
27 dealership or the means by or through which the dealer fi-
28 nances the operation of the dealership, if the dealership at all
29 times meets any reasonable capital standards determined by
30 the manufacturer in accordance with uniformly applied criteria.

31 (f) Refrain from participation in the management of, invest-
32 ment in, or the acquisition of, any other line of new motor
33 vehicle or related products, provided that the dealer main-
34 tains a reasonable line of credit for each make or line of ve-
35 hicle, remains in compliance with reasonable facilities require-
36 ments, and makes no change in the principal management of
37 the dealer.

38 (g) Change the location of the new motor vehicle dealership
39 or make any substantial alterations to the dealership premises,
40 where to do so would be unreasonable.

41 (h) Prospectively assent to a release, assignment, novation,
42 waiver or estoppel which would relieve any person from lia-
43 bility imposed by this article, or require any controversy be-
44 tween a new motor vehicle dealer and a manufacturer or dis-
45 tributor to be referred to a person other than the duly con-
46 stituted courts of the state or the United States, if the referral
47 would be binding upon the new motor vehicle dealer.

48 (2) A manufacturer or distributor shall not do any of the
49 following:

50 (a) Fail to deliver new motor vehicles or new motor vehicle
51 parts or accessories within a reasonable time and in reasonable
52 quantities relative to the new motor vehicle dealer's market area
53 and facilities, unless the failure is caused by acts or occur-
54 rences beyond the control of the manufacturer or distributor,
55 or unless the failure results from an order by the new motor
56 vehicle dealer in excess of quantities reasonably and fairly
57 allocated by the manufacturer or distributor.

58 (b) Refuse to disclose to a new motor vehicle dealer the
59 method and manner of distribution of new motor vehicles by
60 the manufacturer or distributor.

61 (c) Refuse to disclose to a new motor vehicle dealer the
62 total number of new motor vehicles of a given model, which
63 the manufacturer or distributor has sold during the current
64 model year within the dealer's marketing district, zone or
65 region, whichever geographical area is the smallest.

66 (d) Increase prices of new motor vehicles which the new
67 motor vehicle dealer had ordered and then eventually delivered
68 to, the same retail consumer for whom the vehicle was ordered,
69 if the order was made prior to the dealer's receipt of the writ-
70 ten official price increase notification. A sales contract signed
71 by a private retail consumer and binding on the dealer shall
72 constitute evidence of each order. In the event of manufacturer
73 or distributor price reductions or cash rebates, the amount of
74 any reduction or rebate received by a dealer shall be passed
75 on to the private retail consumer by the dealer. Any price
76 reduction in excess of five dollars shall apply to all vehicles in
77 the dealer's inventory which were subject to the price reduc-
78 tions. A price difference applicable to new model or series

79 motor vehicles at the time of the introduction of the new
80 models or the series shall not be considered a price increase or
81 price decrease. This subdivision shall not apply to price chang-
82 es caused by the following:

83 (i) The addition to a motor vehicle of required or optional
84 equipment pursuant to state or federal law.

85 (ii) In the case of foreign made vehicles or components,
86 revaluation of the United States dollar.

87 (iii) Any increase in transportation charges due to an in-
88 crease in rates charged by a common carrier and transporters.

89 (e) Offer any refunds or other types of inducements to any
90 dealer for the purchase of new motor vehicles of a certain line
91 make to be sold to this state or any political subdivision of this
92 state without making the same offer available upon request to
93 all other new motor vehicle dealers of the same line make.

94 (f) Release to an outside party, except under subpoena or
95 in an administrative or judicial proceeding to which the new
96 motor vehicle dealer or the manufacturer or distributor are
97 parties, any business, financial or personal information which
98 has been provided by the dealer to the manufacturer or dis-
99 tributor, unless the new motor vehicle dealer gives his or her
100 written consent.

101 (g) Deny a new motor vehicle dealer the right to associate
102 with another new motor vehicle dealer for any lawful purpose.

103 (h) Establish a dealership which would unfairly compete
104 with a new motor vehicle dealer of the same line make operat-
105 ing under a dealer agreement with the manufacturer or distri-
106 butor in the relevant market area. A manufacturer or distribu-
107 tor shall not be considered to be unfairly competing if the
108 manufacturer or distributor is:

109 (i) Operating a dealership temporarily for a reasonable
110 period.

111 (ii) Operating a dealership which is for sale at a reasonable
112 price.

113 (iii) Operating a dealership with another person who has

114 made a significant investment in the dealership and who will
115 acquire full ownership of the dealership under reasonable
116 terms and conditions.

117 (i) Unreasonably withhold consent to the sale, transfer or
118 exchange of the dealership to a qualified buyer capable of
119 being licensed as a new motor vehicle dealer in this state.

120 (j) Fail to respond in writing to a request for consent to a
121 sale, transfer or exchange of a dealership within sixty days
122 after receipt of a written application from the new motor
123 vehicle dealer on the forms generally utilized by the manu-
124 facturer or distributor for such purpose and containing the
125 information required therein. Failure to respond to the request
126 within the sixty days shall be deemed to be consent.

127 (k) Unfairly prevent a new motor vehicle dealer from re-
128 ceiving reasonable compensation for the value of the new
129 motor vehicle dealership.

130 (2) A manufacturer or distributor, either directly or through
131 any subsidiary, shall not terminate, cancel, fail to renew, or
132 discontinue any lease of the new motor vehicle dealer's estab-
133 lished place of business except for a material breach of the
134 lease.

§17A-6A-11. Where motor vehicle dealer deceased or incapacitated.

1 (1) Any designated family member of a deceased or
2 incapacitated new motor vehicle dealer may succeed the
3 dealer in the ownership or operation of the dealership under
4 the existing dealer agreement if the designated family mem-
5 ber gives the manufacturer or distributor written notice of
6 his or her intention to succeed to the dealership within one
7 hundred twenty days after the dealer's death or incapa-
8 city, agrees to be bound by all of the terms and conditions
9 of the dealer agreement, and the designated family mem-
10 ber meets the current criteria generally applied by the
11 manufacturer or distributor in qualifying new motor vehicle
12 dealers. A manufacturer or distributor may refuse to honor
13 the existing dealer agreement with the designated family
14 member only for good cause.

15 (2) The manufacturer or distributor may request from a
16 designated family member such personal and financial data as
17 is reasonably necessary to determine whether the existing
18 dealer agreement should be honored. The designated family
19 member shall supply the personal and financial data promptly
20 upon the request.

21 (3) If a manufacturer or distributor believes that good
22 cause exists for refusing to honor the succession, the manu-
23 facturer or distributor may, within sixty days after receipt
24 of the notice of the designated family member's intent
25 to succeed the dealer in the ownership and operation of
26 the dealership, or within sixty days after the receipt of
27 the requested personal and financial data, serve upon the
28 designated family member notice of its refusal to approve the
29 succession.

30 (4) The notice of the manufacturer or distributor provided
31 in subsection (3) shall state the specific grounds for the
32 refusal to approve the succession and that discontinuance of
33 the agreement shall take effect not less than ninety days after
34 the date the notice is served.

35 (5) If notice of refusal is not served within the sixty days
36 provided for in subsection (3), the dealer agreement shall
37 continue in effect and shall be subject to termination only as
38 otherwise permitted by this article.

39 (6) This section does not preclude a new motor vehicle
40 dealer from designating any person as his or her successor
41 by written instrument filed with the manufacturer or dis-
42 tributor, and if such an instrument is filed, it alone shall
43 determine the succession rights to the management and opera-
44 tion of the dealership.

§17A-6A-12. Relocation.

1 (1) As used in this section, "relocate" and "relocation"
2 shall not include the relocation of a new motor vehicle dealer
3 within two miles of its established place of business or the
4 relocation of a new motor vehicle dealer to a site within the
5 area of sales responsibility assigned to that dealer by the

6 manufacturing branch or distributor unless the relocation site
7 is within six miles of another dealer of the same line make.

8 (2) Before a manufacturer or distributor enters into a
9 dealer agreement establishing or relocating a new motor vehicle
10 dealer within a relevant market area where the same line
11 make is represented, the manufacturer or distributor shall give
12 written notice to each new motor vehicle dealer of the same
13 line make in the relevant market area of its intention to es-
14 tablish an additional dealer or to relocate an existing dealer
15 within that relevant market area.

16 (3) Within thirty days after receiving the notice provided
17 for in subsection (2), or within thirty days after the end of
18 any appeal procedure provided by the manufacturer or dis-
19 tributor, a new motor vehicle dealer of the same line make
20 within the affected relevant market area may bring a declara-
21 tory judgment action in the circuit court for the county in
22 which the new motor vehicle dealer is located to determine
23 whether good cause exists for the establishing or relocating
24 of a proposed new motor vehicle dealer. Once an action has
25 been filed, the manufacturer or distributor shall not establish
26 or relocate the proposed new motor vehicle dealer until the
27 circuit court has rendered a decision on the matter. An action
28 brought pursuant to this section shall be given precedence
29 over all other civil matters on the court's docket.

30 (4) This section shall not apply to the reopening in a rele-
31 vant market area of a new motor vehicle dealer that has been
32 closed within the preceding two years if the established place
33 of business of the new motor vehicle dealer is within two
34 miles of the established place of business of the closed new
35 motor vehicle dealer.

36 (5) In determining whether good cause exists for establishing
37 or relocating an additional new motor vehicle dealer for the
38 same line make, the court shall take into consideration the
39 existing circumstances, including, but not limited to, the fol-
40 lowing:

41 (a) Permanency of the investment.

42 (b) Effect on the retail new motor vehicle business and the
43 consuming public in the relevant market area.

44 (c) Whether it is injurious or beneficial to the public
45 welfare.

46 (d) Whether the new motor vehicle dealers of the same line
47 make in the relevant market area are providing adequate
48 competition and convenient consumer care for the motor ve-
49 hicles of that line make in the market area, including the
50 adequacy of motor vehicle sales and qualified service per-
51 sonnel.

52 (e) Whether the establishment or relocation of the new
53 motor vehicle dealer would promote competition.

54 (f) Growth or decline of the population and the number
55 of new motor vehicle registrations in the relevant market area.

56 (g) The effect on the relocating dealer of a denial of its
57 relocation into the relevant market area.

§17A-6A-13. Obligations regarding warranties.

1 (1) Each new motor vehicle manufacturer or distributor
2 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 manufacturer
8 or distributor shall provide the new motor vehicle dealer
9 with the schedule of compensation to be paid to the dealer
10 for parts, work and service, and the time allowance for the
11 performance of the work and service.

12 (2) The schedule of compensation shall include reason-
13 able compensation for diagnostic work, as well as repair
14 service and labor. Time allowances for the diagnosis
15 and performance of warranty work and service shall be rea-
16 sonable and adequate for the work to be performed. In the
17 determination of what constitutes reasonable compensation
18 under this section, the principal factor to be given considera-
19 tion shall be the prevailing wage rates being paid by dealers
20 in the community in which the dealer is doing business, and
21 in no event shall the compensation of a dealer for warranty
22 labor be less than the rates charged by the dealer for like

23 service to retail customers for nonwarranty service and repairs,
24 provided that such rates are reasonable.

25 (3) A manufacturer or distributor shall not do any of the
26 following:

27 (a) Fail to perform any warranty obligation.

28 (b) Fail to include in written notices of factory recalls to
29 new motor vehicle owners and dealers the expected date by
30 which necessary parts and equipment will be available to
31 dealers for the correction of the defects.

32 (c) Fail to compensate any of the new motor vehicle
33 dealers licensed in this state for repairs effected by the re-
34 call.

35 (4) All claims made by a new motor vehicle dealer
36 pursuant to this section for labor and parts shall be paid
37 within thirty days after their approval. All claims shall
38 be either approved or disapproved by the manufacturer or
39 distributor within thirty days after their receipt on a proper
40 form generally used by the manufacturer or distributor and
41 containing the usually required information therein. Any claim
42 not specifically disapproved in writing within thirty days after
43 the receipt of the form shall be considered to be approved
44 and payment shall be made within thirty days. The manu-
45 facturer has the right to audit the claims for two years
46 after payment and to charge back to the new motor vehicle
47 dealer the amount of any false, fraudulent or unsubstantiated
48 claim.

§17A-6A-14. Acceptance of vehicles; risk of loss or damage.

1 (1) Notwithstanding the terms, provisions or conditions
2 of any agreement, a new motor vehicle dealer is solely
3 liable for damages to new motor vehicles after acceptance
4 from the carrier and before delivery to the ultimate
5 purchaser. Acceptance by the new motor vehicle dealer shall
6 occur when the new motor vehicle dealer signs a delivery
7 receipt for any motor vehicle.

8 (2) Notwithstanding the terms, provisions or conditions of
9 any agreement, the manufacturer or distributor is liable for

10 all damages to motor vehicles before delivery to a carrier or
11 transporter.

12 (3) The new motor vehicle dealer is liable for damages
13 to new motor vehicles after delivery to the carrier only if
14 the dealer selects the method of transportation, mode of
15 transportation, and the carrier. In all other instances, the
16 manufacturer or distributor is liable for new motor vehicle
17 damage.

18 (4) If the new motor vehicle dealer rejects a new motor
19 vehicle pursuant to this section, the manufacturer or dis-
20 tributor shall credit the dealer's account within ten business
21 days after receipt of the notice of rejection.

§17A-6A-15. Indemnity.

1 Notwithstanding the terms of any dealer agreement, a
2 manufacturer or distributor shall indemnify and hold
3 harmless its dealers against any judgment for damages,
4 including court costs and attorney's fees, arising solely
5 out of complaints, claims or actions which relate to the
6 manufacture, assembly or design of a new motor vehicle, or
7 other functions by the manufacturer or distributor beyond
8 the control of the dealer, including, without limitation,
9 the selection by the manufacturer or distributor of parts or
10 components for the vehicle, or any damages to merchandise
11 occurring in transit to the dealer if the carrier is designated
12 by the manufacturer or distributor, if the new motor vehicle
13 dealer gives timely notice to the manufacturer or distribu-
14 tor of the complaint, claim or action.

§17A-6A-16. Actions at law; damages.

1 (1) If a manufacturer or distributor terminates, cancels,
2 fails to renew or discontinues a dealer agreement for other
3 than good cause as defined in this article, the new motor
4 vehicle dealer may bring an action against the manufacturer or
5 distributor to recover actual damages reasonably incurred as
6 a result of the termination, cancellation, failure or discon-
7 tinuance.

8 (2) A manufacturer or distributor who violates this article

9 is liable for all damages sustained by a new motor vehicle
10 dealer as a result of the violation.

11 (3) A manufacturer or distributor or new motor vehicle
12 dealer may bring an action for declaratory judgment for
13 determination of any controversy arising pursuant to this
14 article.

15 (4) A manufacturer or distributor who violates this article
16 shall be liable for all court costs and reasonable attorney's
17 fees incurred by the dealer.

§17A-6A-17. Injunctive relief.

1 Upon proper application to the circuit court, a manu-
2 facturer or distributor or new motor vehicle dealer may
3 obtain appropriate injunctive relief against termination, can-
4 cellation, nonrenewal or discontinuance of a dealer agree-
5 ment or any other violation of this article. The court may
6 grant injunctive relief or a temporary restraining order with-
7 out bond.

CHAPTER 110

(Com. Sub. for H. B. 1401—By Mr. Blackwell and Mr. Williams)

[Passed February 25, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eleven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers and duties with respect to ordinances and ordinance procedures; and permitting municipality to file for execution before the clerk of the circuit court to collect fines assessed by municipal judge against nonresidents of the municipality.

Be it enacted by the Legislature of West Virginia:

That section one, article eleven, 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 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.**§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief; right to maintain action to collect fines against nonresidents.**

1 To carry into effect the powers and authority conferred
2 upon any municipality or its governing body by the provisions
3 of this chapter or any past or future act of the Legislature of
4 this state, the governing body shall have plenary power and
5 authority to make and pass all needful ordinances, orders,
6 bylaws, acts, resolutions, rules and regulations, not contrary
7 to the constitution and laws of this state; and, for a violation
8 thereof, to prescribe reasonable penalties in the form of fines,
9 forfeitures and imprisonment in the county jail or the place of
10 imprisonment in such municipality, if there be one, for a
11 term not exceeding thirty days. Such fines, forfeitures and
12 imprisonment shall be recovered, imposed or enforced under
13 the judgment of the mayor of such municipality or the
14 individual lawfully exercising his functions, or the police
15 court judge or municipal court judge of a city, if there be
16 one, and may be suspended upon such reasonable conditions
17 as may be imposed by such mayor, other authorized individual
18 or judge. Any municipality may also maintain a civil action in
19 the name of the municipality in the circuit court of the
20 county in which the municipality or the major portion of the
21 territory thereof is located to obtain an injunction to com-
22 pel compliance with, or to enjoin a violation or threatened
23 violation of, any ordinance of such municipality, and such
24 circuit court shall have jurisdiction to grant the relief sought.
25 A certified transcript of a judgment for a fine rendered by
26 a municipal court may be filed in the office of the clerk of a
27 circuit court and docketed in the judgment lien book kept in
28 the office of the clerk of the county commission in the same
29 manner and with the same effect as the filing and docketing
30 of a certified transcript of judgment rendered by a magistrate
31 court as provided for in section two, article six, chapter fifty
32 of this code. The judgment may include costs assessed
33 against the defendant.

34 Execution shall be by fieri facias issued by the clerk of the
35 circuit court in the same manner as such writs are issued on
36 judgments for a fine rendered by circuit courts or other courts
37 of record under the provisions of section eleven, article four,
38 chapter sixty-two of this code.

CHAPTER 111

(Com. Sub. for H. B. 1362—By Mr. Hendricks)

[Passed March 11, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to the general powers of municipalities, their governing bodies, officers and employees; and limiting the power of such municipalities to regulate the ownership of any revolver, pistol, rifle or shotgun or the ammunition used therewith.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5a. Limitations upon municipalities' power to restrict ownership of certain weapons and ammunition.

1 The provisions of section five of this article notwithstanding,
2 neither a municipality nor the governing body of any
3 municipality shall have the power to limit the right of any
4 person to own any revolver, pistol, rifle or shotgun or any
5 ammunition or ammunition components to be used therewith
6 nor to so regulate the keeping of gunpowder so as to directly or
7 indirectly prohibit the ownership of such ammunition. Nothing

8 herein shall in any way impair the authority of any municipi-
9 pality, or the governing body thereof, to enact any ordinance or
10 resolution respecting the power to arrest, convict and punish
11 any individual under the provisions of subdivision (16), sec-
12 tion five of this article or from enforcing any such ordinance
13 or resolution.

CHAPTER 112

(Com. Sub. for H. B. 1159—By Mr. Farley)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty, twenty-three-a, twenty-four, twenty-five, twenty-six and twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen-d, article three, chapter thirty-three of said code, all relating to correcting grammatical and technical errors; eliminating obsolete code provisions concerning sums paid to members of municipal policemen's and firemen's pension and relief fund eligible for disability pension benefits prior to the first day of July, one thousand nine hundred eighty-one; providing for eligibility for retirement pension benefits for members of municipal policemen's and firemen's pension and relief funds whose service was interrupted, prior to the first day of July, one thousand nine hundred eighty-one, by duty with the United States armed forces; specifying six percent interest as interest to be paid whenever return of contributions occurs and is to be made to a nondependent beneficiary or the estate; allowing service credit for members of armed reserve units, national guard units and air national guard units when their units are called into active duty for one year or more; and requiring the state auditor to authorize the distribution of revenues from the municipal pensions and protection fund.

Be it enacted by the Legislature of West Virginia:

That sections twenty, twenty-three-a, twenty-four, twenty-five,

twenty-six and twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section fourteen-d, article three, chapter thirty-three of said code be amended and reenacted, all to read as follows:

Chapter

8. Municipal Corporations.

33. Insurance.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-20. Minimum standards for actuarial soundness.

§8-22-23a. Eligibility for total and temporary disability pensions and total and permanent disability pensions.

§8-22-24. Disability pensions.

§8-22-25. Retirement pensions.

§8-22-26. Death benefits.

§8-22-27. General provisions concerning disability pensions, retirement pensions and death benefits.

§8-22-20. Minimum standards for actuarial soundness.

1 The board of trustees for each pension and relief fund shall
2 have regularly scheduled actuarial valuation reports prepared
3 by a qualified actuary. All of the following standards must be
4 met:

5 (a) An actuarial valuation report shall be prepared at
6 least once every three years commencing with the later of
7 (1) the first day of July, one thousand nine hundred eighty-
8 three, or (2) three years following the most recently prepared
9 actuarial valuation report: *Provided*, That this most recently
10 prepared actuarial valuation report meets all of the standards
11 of this section.

12 (b) The actuarial valuation report shall consist of, but
13 is not limited to, the following disclosures: (1) The financial
14 objective of the fund and how the objective is to be at-

15 tained, (2) the progress being made toward realization of
16 the financial objective, (3) recent changes in the nature of
17 the fund, benefits provided, or actuarial assumptions or
18 methods, (4) the frequency of actuarial valuation reports
19 and the date of the most recent actuarial valuation report,
20 (5) the method used to value fund assets, (6) the extent to
21 which the qualified actuary relies on the data provided and
22 whether the data was certified by the fund's auditor or
23 examined by the qualified actuary for reasonableness, (7) a
24 description and explanation of the actuarial assumptions and
25 methods, and (8) any other information the qualified actuary
26 feels is necessary or would be useful in fully and fairly
27 disclosing the actuarial condition of the fund.

28 (c) After the thirtieth day of June, one thousand nine
29 hundred eighty-three, and thereafter, the financial objective
30 of each municipality shall not be less than to contribute to
31 the fund annually an amount which, together with the con-
32 tributions from the members and the allocable portion of
33 the state premium tax fund for municipal pension and relief
34 funds established under section fourteen-d, article three, chap-
35 ter thirty-three of this code and other income sources as
36 authorized by law, will be sufficient to meet the normal cost
37 of the fund and amortize any actuarial deficiency over a
38 period of not more than forty years: *Provided*, That for those
39 funds in existence on the first day of July, one thousand
40 nine hundred eighty-one, its actuarial deficiency, if any, shall
41 not be amortized over a period longer than that which
42 remains under its current schedule. For purposes of deter-
43 mining this minimum financial objective, (1) the value of
44 the fund's assets shall be determined on the basis of any
45 reasonable actuarial method of valuation which takes into
46 account fair market value, and (2) all costs, deficiencies,
47 rate of interest, and other factors under the fund shall be
48 determined on the basis of actuarial assumptions and methods
49 which, in aggregate, are reasonable (taking into account
50 the experience of the fund and reasonable expectations)
51 and which, in combination, offer the qualified actuary's best
52 estimate of anticipated experience under the fund. If as a
53 result of this legislation a municipality's financial commitment
54 to the fund is materially increased, the municipality may elect

55 to phase in this increase over the five fiscal years commencing
56 the first day of July, one thousand nine hundred eighty-
57 three.

58 (d) For purposes of this section the term "qualified
59 actuary" means only an actuary who is a member of the
60 Society of Actuaries or the American Academy of Actuaries.
61 The qualified actuary shall be designated a fiduciary and
62 shall discharge his duties with respect to a fund solely in
63 the interest of the members and member's beneficiaries of
64 that fund. In order for the standards of this section to be
65 met, the qualified actuary shall certify that the actuarial
66 valuation report is complete and accurate and that in his
67 opinion the technique and assumptions used are reasonable
68 and meet the requirements of this section of this article.

69 (e) The cost of the preparation of the actuarial valua-
70 tion report shall be paid by the fund.

**§8-22-23a. Eligibility for total and temporary disability pensions
and total and permanent disability pensions.**

1 (a) All members applying for total and temporary or total
2 and permanent disability benefits after the thirtieth day of
3 June, one thousand nine hundred eighty-one, shall be examined
4 by at least two physicians under the direction of the staff at
5 Marshall University, West Virginia University, Morgantown
6 or West Virginia University, Charleston: *Provided*, That if
7 such member's medical condition cannot be agreed upon by
8 two such physicians, a third physician shall examine such
9 member. Such medical examination shall include the review of
10 such member's medical history. The expense of the member's
11 transportation to such medical examination and the expense of
12 the medical examination shall be paid by the board of trustees,
13 such medical expense shall not exceed the reasonable and
14 customary charges for such services.

15 (b) Effective for members becoming eligible for total and
16 temporary disability benefits after the thirtieth day of June,
17 one thousand nine hundred eighty-one, initially or previously
18 under this subsection allowance for initial or additional total
19 and temporary disability payments, the amount thereof to be
20 determined as specified in section twenty-four of this article,

21 shall be paid to such member during such disability for a per-
22 iod not exceeding twenty-six weeks if after a medical exami-
23 nation in accordance with subsection (a) of this section of this
24 article, two examining physicians report in writing to the board
25 of trustees that (1) such member has become so totally, phy-
26 sically or mentally disabled, from any reason, as to render such
27 member totally, physically or mentally, incapacitated for em-
28 ployment as a police officer or firefighter and (2) it has not
29 been determined if such disability is permanent or it has been
30 determined that such disability may be alleviated or eliminated
31 if such member follows a reasonable medical treatment plan
32 or reasonable medical advice: *Provided*, That in any event a
33 member is not eligible for total and temporary disability pay-
34 ments following the fourth consecutive twenty-six week period
35 of total and temporary disability unless such subsequent dis-
36 ability results from a cause unrelated to the cause of the four
37 previous periods of total and temporary disability. During
38 such two-year period of such total and temporary disability,
39 such department is required to restore such member to his
40 former position in such department at any time he is deter-
41 mined to no longer be disabled: *Provided*, That the depart-
42 ment may refill, on a temporary basis, the position vacated by
43 such member after the first twenty-six weeks of his temporary
44 disability.

45 (c) Effective for members becoming eligible for total and
46 permanent disability benefits initially under this subsection or
47 becoming eligible for total and temporary disability benefits
48 under subsection (b) of this section after the thirtieth day of
49 June, one thousand nine hundred eighty-one, allowance for
50 total and permanent disability payments, the amount thereof
51 to be determined as specified in section twenty-four of this
52 article, shall be paid to such member after a medical exami-
53 nation in accordance with subsection (a) of this section, two
54 examining physicians report in writing to the board of trustees
55 that such member has become so totally, physically or men-
56 tally, and permanently disabled, as a proximate result of service
57 rendered in the performance of his duties in such department,
58 as to render such member totally, physically or mentally, and
59 permanently incapacitated for employment as a police officer
60 or firefighter or, if such member has been a member of either

61 of such departments for a period of not less than five consecu-
62 tive years preceding such disability, such member has become
63 so totally, physically or mentally, and permanently disabled,
64 from any reason other than service rendered in the perfor-
65 mance of his duties in such department, as to render such
66 member totally, physically or mentally, and permanently in-
67 capacitated for employment as a police officer or firefighter.
68 The phrase "totally, physically or mentally, and permanently
69 disabled" shall not be construed to include a medical condition
70 which may be corrected if such member follows a reasonable
71 medical treatment plan or reasonable medical advice.

72 (d) Effective for members becoming eligible for total and
73 temporary disability benefits after the thirtieth day of June,
74 one thousand nine hundred eighty-one, under the provisions
75 of subsection (b) of this section, any payments for total and
76 temporary disability for a period during such disability not
77 exceeding twenty-six weeks shall cease at the end of such
78 twenty-six week period under the following conditions:

79 (1) Such member fails to be examined as provided in sub-
80 section (a) of this section or (2) such member is examined
81 or reexamined as provided in subsection (a) and two examin-
82 ing physicians report to the board of trustees that such mem-
83 ber's medical condition does not meet the requirements of
84 subsection (b) or (c) of this section. Effective for members
85 becoming eligible for total and temporary disability benefits
86 after the thirtieth day of June, one thousand nine hundred
87 eighty-one, under subsection (b) of this section, subsequent to
88 such member's receipt of total and temporary disability pay-
89 ments for a period of two years, such payments shall cease at
90 the end of such two-year period under the following conditions:
91 (1) Such member fails to be examined as provided in sub-
92 section (a) of this section of this article or (2) such member is
93 examined or reexamined as provided in subsection (a) and two
94 examining physicians report to the board of trustees that such
95 member's medical condition does not meet the requirements of
96 subsection (c) of this section.

§8-22-24. Disability pensions.

1 (a) The monthly sum to be paid to each member eligible

2 for disability under the provisions of section twenty-three-a of
3 this article, shall be equal to sixty percent of the monthly salary
4 or compensation being received by such member, at the time
5 he is so disabled, or the sum of two hundred dollars per month,
6 whichever shall be greater: *Provided*, That the limitation
7 provided in subsection (b) of this section is not exceeded.

8 (b) Effective for any member who becomes eligible for dis-
9 ability benefits on or after the first day of July, one thousand
10 nine hundred eighty-one, under the provisions of section
11 twenty-three-a of this article, as a proximate result of service
12 rendered in the performance of his duties within such depart-
13 ments, his monthly disability payment as provided in subsection
14 (a) of this section shall not, when aggregated with the monthly
15 amount of state workmen's compensation, result in such dis-
16 abled member receiving a total monthly income from such
17 sources in excess of one hundred percent of the basic com-
18 pensation which is paid to members holding the same position
19 which such member held within such department at the time
20 of his disability. Lump sum payments of state workmen's
21 compensation benefits shall not be considered for purposes
22 of this subsection unless such lump sum payments represent
23 commuted values of monthly state workmen's compensation
24 benefits.

§8-22-25. Retirement pensions.

1 (a) Any member of a paid police or fire department who
2 is entitled to a retirement pension hereunder, and who has
3 been in the honorable service of such department for twenty
4 years, may, upon written application to the board of trustees,
5 be retired from all service in such department without medical
6 examination or disability; and on such retirement the board of
7 trustees shall authorize the payment of annual retirement pen-
8 sion benefits commencing upon his retirement or upon his at-
9 taining the age of fifty years, whichever is later, payable in
10 twelve monthly installments for each year of the remainder of
11 his life, in an amount equal to sixty percent of such member's
12 average annual salary or compensation received during the
13 three twelve-consecutive-month periods, not necessarily con-
14 secutive, each of such three periods beginning with the same
15 calendar month of different years and all such three periods

16 falling within the member's final five years of employment
17 with such department, in which such member received his
18 highest salary or compensation while a member of the de-
19 partment, or an amount of two hundred dollars per month,
20 whichever shall be greater.

21 (b) Any member of any such department who is entitled to
22 a retirement pension under the provisions of subsection (a)
23 of this section and who has been in the honorable service of
24 such department for more than twenty years at the time of
25 his retirement, as herein provided, shall, in addition to the
26 sixty percent authorized in said subsection (a), receive one
27 additional percent, to be added to the sixty percent, per each
28 year served in excess of said twenty years, up to a maximum
29 of ten additional percent.

30 (c) Any member of any such department whose service has
31 been interrupted by duty with the armed forces of the United
32 States as provided in section twenty-seven of this article prior
33 to the first day of July, one thousand nine hundred eighty-one,
34 shall be eligible for retirement pension benefits immediately
35 upon retirement, regardless of his age, if he shall otherwise be
36 eligible for such retirement pension benefits.

37 (d) Any member of a paid police or fire department shall be
38 retired at the age of sixty-five years in the manner provided
39 in this subsection. When a member of the paid police or fire
40 department shall have reached the age of sixty-five years, the
41 said board of trustees shall notify the mayor of this fact, with-
42 in thirty days of such member's sixty-fifth birthday; and the
43 mayor shall cause such sixty-five-year-old member of the paid
44 police or fire department to be retired within a period of not
45 more than thirty additional days. Upon retirement under the
46 provisions of this subsection (d), such member shall receive
47 retirement pension benefits payable in twelve monthly install-
48 ments for each year of the remainder of his life, in an amount
49 equal to sixty percent of such member's average annual salary
50 or compensation received during the three twelve-consecutive-
51 month periods, not necessarily consecutive, each of such three
52 periods beginning with the same calendar month of different
53 years and all such three periods falling within the member's
54 final five years of employment with such department, in which

55 such member received his highest salary or compensation
56 while a member of the department, or an amount of two
57 hundred dollars per month, whichever shall be greater, and if
58 such member has been employed in said department for more
59 than twenty years, the provisions of subsection (b) of this sec-
60 tion shall apply.

61 (e) It shall be the duty of each member of a paid police
62 or fire department at the time a fund is hereafter established
63 to furnish the necessary proof of his date of birth to the said
64 board of trustees, as specified in section twenty-three of this
65 article, within a reasonable length of time, said length of time
66 to be determined by the said board of trustees; and then the
67 board of trustees and the mayor shall proceed to act in the
68 manner provided in subsection (d) of this section and shall
69 cause all members of the paid police or fire department who
70 are over the age of sixty-five years to be retired in not less
71 than sixty days from the date the fund is established. Upon
72 retirement under the provisions of this subsection (e), such
73 member, whether he has been employed in said department for
74 twenty years or not, shall receive retirement pension benefits
75 payable in twelve monthly installments for each year of the
76 remainder of his life, in an amount equal to sixty percent of
77 such member's average annual salary or compensation received
78 during the three twelve-consecutive-month periods, not neces-
79 sarily consecutive, each of such three periods beginning with
80 the same calendar month of different years and all such three
81 periods falling within the member's final five years of em-
82 ployment with such department, in which such member re-
83 ceived his highest salary or compensation while a member of
84 the department, or an amount of two hundred dollars per
85 month, whichever shall be greater, and if such member has
86 been employed in said department for more than twenty years,
87 the provisions of subsection (b) of this section shall apply.

§8-22-26. Death benefits.

1 (a) In case:

2 (1) Any member of a paid police or fire department who
3 has been in continuous service for more than five years dies
4 from any cause other than as specified in subsection (b) of

5 this section before retirement on a disability pension under
6 the provisions of, prior to the first day of July, one thou-
7 sand nine hundred eighty-one, section twenty-four of this
8 article or, after the thirtieth day of June, one thousand
9 nine hundred eighty-one, sections twenty-three-a and twenty-
10 four of this article or a retirement pension under the pro-
11 visions of subsection (a) or both subsections (a) and (b), sec-
12 tion twenty-five of this article, leaving in either case sur-
13 viving a dependent spouse, or any dependent child or chil-
14 dren under the age of eighteen years, or dependent father
15 or mother or both, or any dependent brothers or sisters or
16 both under the age of eighteen years; or

17 (2) Any former member of any such department who is on a
18 disability pension prior to the first day of July, one thou-
19 sand nine hundred eighty-one, under section twenty-four of
20 this article, or after the thirtieth day of June, one thousand
21 nine hundred eighty-one, under sections twenty-three-a and
22 twenty-four of this article, or is receiving or is entitled to
23 receive retirement pension benefits under the provisions of
24 subsection (a) or both subsections (a) and (b), section
25 twenty-five of this article, shall die from any cause other
26 than as specified in subsection (b) of this section leaving in
27 either case surviving a dependent spouse to whom the marriage
28 took place prior to the date of such member's retirement on a
29 disability pension or a retirement pension, or any dependent
30 child or children under the age of eighteen years who were
31 born prior to or within ten months after the date of such mem-
32 ber's retirement on a disability pension or a retirement pension,
33 or dependent father or mother or both, or any dependent
34 brothers or sisters or both under the age of eighteen years; then
35 in any of the cases set forth above in (1) and (2) the board
36 of trustees of such pension and relief fund shall, immediately
37 following the death of such member, pay to or for each of such
38 entitled surviving dependents the following pension benefits
39 viz.: To such dependent spouse, until death or remarriage, a
40 sum per month equal to thirty percent of such member's average
41 monthly salary or compensation received during the three
42 twelve-consecutive-month periods, not necessarily consecutive,
43 each of such three periods beginning with the same calendar
44 month of different years and all such three periods falling

45 within the member's final five years of employment with such
46 department, in which such member received his highest salary
47 or compensation while a member of the department, herein-
48 after for convenience referred to in this section as "monthly
49 average," or an amount of one hundred dollars per month,
50 whichever shall be greater; to each such dependent child a sum
51 per month equal to ten percent of such monthly average, or
52 the sum of thirty dollars per month for each such child, which-
53 ever shall be greater, until such child shall attain the age of
54 eighteen years or marry, whichever first occurs; to each such
55 dependent orphaned child a sum per month equal to fifteen
56 percent of such monthly average, or the sum of forty-five
57 dollars per month for each such child, whichever shall be
58 greater, until such child shall attain the age of eighteen
59 years or marry, whichever first occurs; to each such
60 dependent father or mother a sum per month for each equal
61 to ten percent of such monthly average, or the sum of thirty
62 dollars per month for each such father and mother, which-
63 ever shall be greater; to each such dependent brother or sister
64 the sum of five dollars per month until such individual
65 shall attain the age of eighteen years or marry, whichever
66 first occurs, but in no event shall the aggregate amount paid
67 to such brothers and sisters exceed thirty dollars per month;
68 but if at any time, because of the number of dependents, all
69 such dependents cannot be paid in full as herein provided,
70 then each dependent shall receive his pro rata share of such
71 payments: *Provided*, That in no case shall the payments to
72 the surviving spouse and children be cut below sixty-five per-
73 cent of the total amount to be paid to all dependents.

74 (b) The dependent spouse, child or children, or dependent
75 father or mother, or dependent brothers or sisters, of any
76 such member who shall die by reason of service rendered in
77 the performance of such member's duties shall, regardless of
78 the length of such member's service and irrespective of whether
79 such member was or was not entitled to receive or was or
80 was not receiving disability pension or temporary disability
81 payments at the time of his death, receive the death benefits
82 provided for in subsection (a) of this section, and if such
83 member had less than three years' service at the time of his

84 death, the monthly average shall be computed on the basis
85 of the actual number of years of service.

86 (c) If a member dies without leaving a dependent spouse,
87 child or children, or dependent father or mother, or dependent
88 brothers or sisters, his contributions to the fund plus six per-
89 cent interest shall be refunded to his named beneficiary or,
90 if no beneficiary has been named, to his estate to the extent
91 that such contributions plus interest exceed any disability
92 or retirement benefits that he may have received before his
93 death.

94 (d) The provisions of this section shall not be con-
95 strued as creating or establishing any contractual or vested
96 rights in favor of any individual who may be or become
97 qualified as a beneficiary of the death benefits herein authorized
98 to be made, all the provisions hereof and benefits provided
99 for hereunder being expressly subject to such subsequent
100 legislative enactments as may provide for any change, modi-
101 fication or elimination of the beneficiaries or benefits specified
102 herein.

**§8-22-27. General provisions concerning disability pensions, re-
tirement pensions and death benefits.**

1 (a) In determining the years of service of a member in a
2 paid police or fire department for the purpose of ascertaining
3 certain disability pension benefits, all retirement pension bene-
4 fits and certain death benefits, the following provisions shall
5 be applicable:

6 (1) Absence from the service because of sickness or injury
7 for a period of two years or less shall not be construed as time
8 out of service; and

9 (2) Any member of any paid police or fire department cov-
10 ered by the provisions of sections sixteen through twenty-eight
11 of this article who has been required to or shall at any future
12 time be required to enter the armed forces of the United
13 States by conscription, by reason of being a member of some
14 reserve unit of the armed forces or a member of the West
15 Virginia national guard or air national guard, whose reserve
16 unit or guard unit is called into active duty for one year or

17 more, or who enlists in one of the armed forces of the United
18 States during hostilities, and who upon receipt of an honorable
19 discharge from such armed forces presents himself for re-
20 sumption of duty to his appointing municipal official within
21 six months from his date of discharge, and is accepted by the
22 pension board's board of medical examiners as being mentally
23 and physically capable of performing his required duties as a
24 member of such paid police or fire department, shall be given
25 credit for continuous service in said paid police or fire
26 department, and his rights shall be governed as herein pro-
27 vided. No member of a paid police or fire department shall
28 be required to pay the monthly assessment as now required
29 by law, during his period of service in the armed forces of
30 the United States.

31 (b) As to any former member of a paid police or fire
32 department receiving disability pension benefits or retire-
33 ment pension benefits from a policemen's or firemen's pen-
34 sion and relief fund, on the effective date of this article, the
35 following provisions shall govern and control the amount of
36 such pension benefits:

37 (1) A former member who on June thirtieth, one thousand
38 nine hundred sixty-two, was receiving disability pension bene-
39 fits or retirement pension benefits from a policemen's or
40 firemen's pension and relief fund, shall continue to receive
41 pension benefits but on and after July one, one thousand nine
42 hundred seventy-one, such pension benefits shall be in the
43 amount of two hundred dollars per month; and

44 (2) A former member who became entitled to disability
45 pension benefits or retirement pension benefits on or after
46 July one, one thousand nine hundred sixty-two, shall con-
47 tinue to receive pension benefits but on and after July one,
48 one thousand nine hundred seventy-one, shall receive the
49 disability pension benefits or retirement pension benefits
50 provided for in section twenty-four or section twenty-five of
51 this article, as the case may be.

52 (c) As to any dependent spouse, child or children, or de-
53 pendent father or mother, or dependent brothers or sisters,
54 of any former member of a paid police or fire department,

55 receiving any death benefits from a policemen's pension and
56 relief fund or firemen's pension and relief fund, on the ef-
57 fective date of this article, the following provisions shall
58 govern and control the amount of such death benefits:

59 (1) A dependent spouse, child or children, or dependent
60 father or mother, or dependent brothers or sisters, of any form-
61 er member, who on June thirty, one thousand nine hundred
62 sixty-two, was receiving any death benefits from a police-
63 men's pension and relief fund or firemen's pension and
64 relief fund, shall continue to receive death benefits but on
65 and after July one, one thousand nine hundred seventy-one,
66 such death benefits shall be in the following amounts: To a
67 dependent spouse, until death or remarriage, the sum of one
68 hundred dollars per month; to each dependent child the
69 sum of thirty dollars per month, until such child shall attain
70 the age of eighteen years or marry, whichever first occurs;
71 to each dependent orphaned child the sum of forty-five
72 dollars per month, until such child shall attain the age of
73 eighteen years or marry, whichever first occurs; to each
74 dependent father and mother the sum of thirty dollars per
75 month for each; to each dependent brother or sister the
76 sum of five dollars per month, until such individual shall
77 attain the age of eighteen years or marry, whichever first
78 occurs, but in no event shall the aggregate amount paid to
79 such brothers and sisters exceed thirty dollars per month;
80 but if at any time, because of the number of dependents, all
81 such dependents cannot be paid in full as herein provided,
82 then each dependent shall receive his pro rata share of such
83 payments: *Provided*, That in no case shall the payments to
84 the surviving spouse and children be cut below sixty-five
85 percent of the total amount to be paid to all dependents;

86 (2) A dependent spouse, child or children, or dependent
87 father or mother, or dependent brothers or sisters, of any
88 former member, who became eligible for death benefits on or
89 after July one, one thousand nine hundred sixty-two, shall
90 continue to receive death benefits but on and after July one,
91 one thousand nine hundred seventy-one, shall receive the
92 death benefits provided for in section twenty-six of this
93 article.

94 (d) A former member who is receiving disability pension
95 benefits on the thirtieth day of June, one thousand nine
96 hundred eighty-one, shall continue to receive disability pen-
97 sion benefits provided for in section twenty-four of this article.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

1 (a) For the purpose of providing additional revenue for
2 municipal policemen's and firemen's pension and relief funds
3 and additional revenue for volunteer and part volunteer fire
4 companies and departments, there is hereby levied and
5 imposed, on and after the first day of January, one thousand
6 nine hundred eighty-two, an additional premium tax equal
7 to one percent of gross direct premiums collected, less
8 premiums returned to policyholders because of cancellation
9 of policies, for fire insurance and casualty insurance
10 policies. Except as otherwise provided in this section, all
11 provisions of this article relating to the levy, imposition
12 and collection of the regular premium tax are applicable to
13 the levy, imposition and collection of the additional tax.

14 All moneys collected from this additional tax shall be re-
15 ceived by the commissioner and paid by him into a special
16 account in the state treasury, designated the municipal pen-
17 sions and protection fund. The net proceeds of this tax after
18 appropriation thereof by the Legislature, shall be dis-
19 tributed in accordance with the provisions of subsection (c)
20 of this section.

21 (b) Before the first day of August, one thousand nine
22 hundred eighty-three, and before the first day of August of
23 each calendar year thereafter, the treasurer of each mu-
24 nicipality in which a municipal policemen's or firemen's
25 pension and relief fund has been established shall report to
26 the state auditor the average monthly number of members
27 who worked at least one hundred hours per month of municip-
28 al policemen's or firemen's pension systems during the
29 preceding fiscal year. Before the first day of August, one

30 thousand nine hundred eighty-three, and before the first day
31 of August of each calendar year thereafter, the state fire
32 marshal shall report to the state auditor the names and ad-
33 dresses of all volunteer and part volunteer fire companies
34 and departments within the state which meet the eligibility
35 requirements established in section eight-a, article fifteen,
36 chapter eight of this code.

37 Before the first day of September, one thousand nine
38 hundred eighty-three, and before the first day of September
39 of each calendar year thereafter, the state auditor shall allo-
40 cate and authorize for distribution the revenues in the mu-
41 nicipal pensions and protection fund which were collected
42 during the preceding calendar year to municipal policemen's
43 and firemen's pension and relief funds and to volunteer and
44 part volunteer fire companies and departments. Seventy-five
45 percent of the aforementioned revenues allocated shall be
46 allocated to municipal policemen's and firemen's pension and
47 relief funds and twenty-five percent of such allocated reve-
48 nues shall be allocated to volunteer and part volunteer fire
49 companies and departments.

50 (c) (1) Each municipal pension and relief fund shall have
51 allocated and authorized for distribution a pro rata share of
52 the revenues allocated to municipal policemen's and fire-
53 men's pension and relief funds based upon the corresponding
54 municipality's average monthly number of members who
55 worked at least one hundred hours per month during the pre-
56 ceding fiscal year. All moneys received by municipal pension
57 and relief funds under this section may be expended only
58 for the purposes described in sections sixteen through twenty-
59 eight, article twenty-two, chapter eight of this code.

60 (2) Each volunteer fire company or department shall
61 receive an equal share of the revenues allocated for
62 volunteer and part volunteer fire companies and departments.

63 (3) In addition to the share allocated and distributed in
64 accordance with subdivision (1) of this subsection, each
65 municipal fire department composed of full-time paid members
66 and volunteers and part volunteer fire companies and de-
67 partments shall receive a share equal to the share distributed

68 to volunteer fire companies under subdivision (2) of this
69 subsection reduced by an amount equal to such share multiplied
70 by the ratio of the number of full-time paid fire department
71 members who are also members of a municipal firemen's
72 pension system to the total number of members of such fire de-
73 partment.

74 (d) The allocation and distribution of revenues provided
75 for in this section are subject to the provisions of section
76 twenty, article twenty-two and sections eight-a and eight-b,
77 article fifteen, chapter eight of this code.

CHAPTER 113

(Com. Sub. for H. B. 1216—By Mr. Albright and Mr. Steptoe)

[Passed February 22, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto seven new sections, designated sections seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven and seventy-eight, relating to allowing county commissions to adopt and implement farmland preservation programs; authorizing county commissions to appoint farmland advisory committees; requiring farmland advisory committees to propose farmland preservation programs; requiring farmland preservation programs to be integral parts of county comprehensive plans; specifying minimum requirements for adopted farmland preservation programs; specifying some acceptable methods of farmland preservation; imposing an annual fee on leases of property purchased by the county commission for farmland preservation purposes; designating funds which the county commission may use to fund farmland preservation programs; and requiring farmland advisory committees to submit written annual reports to county commissions.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter eight of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto seven new sections, designated sections seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven and seventy-eight, all to read as follows:

ARTICLE 24. PLANNING AND ZONING.

PART XX. FARMLAND PRESERVATION PROGRAMS.

- §8-24-72. Legislative findings and purpose.
- §8-24-73. County farmland preservation programs authorized; farmland advisory committees.
- §8-24-74. Relationship to county comprehensive plan.
- §8-24-75. Content and requirements of farmland preservation programs.
- §8-24-76. Methods of farmland preservation.
- §8-24-77. Funding of farmland preservation programs.
- §8-24-78. Annual farmland preservation report.

PART XX. FARMLAND PRESERVATION PROGRAMS.

§8-24-72. Legislative findings and purpose.

1 The Legislature hereby finds and declares that agriculture
 2 is a unique "life support" industry and that a need exists
 3 to assist those agricultural areas of the state which are ex-
 4 perencing the irreversible loss of agriculturally productive
 5 land. It is the purpose of this part of this article to provide
 6 counties with an opportunity to develop reasonable methods
 7 to safeguard the production of food and fiber and to con-
 8 serve agriculturally productive soils within the counties while
 9 preserving the worthwhile community values, institutions and
 10 landscapes which are inseparably associated with traditional
 11 farming.

**§8-24-73. County farmland preservation programs authorized;
 farmland advisory committees.**

1 The county commission of each county may adopt and
 2 implement a farmland preservation program within the county.
 3 The county commission of each county which decides to adopt
 4 and implement a farmland preservation program shall appoint
 5 a farmland advisory committee to act in an administrative
 6 and advisory capacity on behalf of the county commission in
 7 all matters concerning farmland preservation.

8 The farmland advisory committee shall be composed of six

9 members, each serving without compensation for a term of
10 two years, except the initial appointment of two voting com-
11 mittee members shall be for a term of one year. Membership
12 on the farmland advisory committee shall consist of the
13 following: One county commissioner; one county planning
14 commissioner; one farmer who is a county resident and a
15 board member of a recognized local farm organization, such
16 as a county farm bureau or a soil conservation district; two
17 farmers who are county residents; and one county resident
18 who is not a farmer and who is not engaged in any agricul-
19 turally related business. All members of the farmland ad-
20 visory committee shall be voting members, except the county
21 commissioner who shall serve in an advisory capacity as a
22 nonvoting member.

23 The farmland advisory committee shall adopt bylaws pre-
24 scribing committee officers, meeting dates, record-keeping
25 procedures and other internal operational procedures. The
26 member of the farmland advisory committee who is a county
27 commissioner shall serve as temporary chairman of the
28 committee until committee bylaws are adopted and until
29 committee officers are selected as prescribed by those bylaws.
30 The farmland advisory committee shall prepare a document
31 proposing a farmland preservation program which is consistent
32 with the county comprehensive plan.

§8-24-74. Relationship to county comprehensive plan.

1 The farmland preservation program adopted shall be con-
2 sistent with any existing county comprehensive plan and shall
3 be included in any revision of this plan or in the development
4 of any new county comprehensive plan.

**§8-24-75. Content and requirements of farmland preservation pro-
grams.**

1 A farmland preservation program adopted shall include
2 only those qualifying properties which are voluntarily offered
3 into the program by the landowners thereof.

4 An adopted farmland preservation program must meet the
5 following minimum requirements:

6 (a) The program shall be developed and administered by

7 the farmland advisory committee, subject to the approval and
8 direction of the county commission;

9 (b) The program shall be directed toward areas of the
10 county containing agriculturally productive soil as determined
11 by appropriate soil surveys;

12 (c) The program shall establish uniform standards and
13 guidelines for the eligibility of properties for the program.
14 Such standards and guidelines shall take into consideration
15 the following: Current and past uses of the property, existing
16 property improvements, natural soil capabilities, drainage,
17 slope, property tract size and shape, location of the property
18 tract in relation to other potential agricultural property tracts,
19 impending threat of conversion of the property to nonagricul-
20 tural uses, property ownership and existing deed covenants and
21 restrictions with respect to the property;

22 (d) The program shall provide that in order to be eligible for
23 program participation that property must be actively farmed
24 throughout the time period during which is it offered for pro-
25 gram participation unless exemption from this requirement is
26 granted by the county commission for good cause shown; and

27 (e) The program shall outline the various methods of
28 farmland preservation which are available to prospective
29 participating property owners and the procedures to be fol-
30 lowed in applying for program consideration.

§8-24-76. Methods of farmland preservation.

1 The county commission, through its appointed farmland
2 advisory committee, may negotiate with and compensate
3 eligible property owners to ensure the preservation of pro-
4 ductive farmland within the county. Methods of preserving
5 farmland may include, but are not limited to, the following:

6 (a) *Purchase of deed restriction.*—With the consent of a
7 property owner, the county commission may purchase and
8 place on record a deed restriction prohibiting the use of
9 specified property for any purpose other than agriculture
10 and related activities for any period of time. Deed restrictions
11 so acquired shall apply only to those properties which qualify
12 for consideration under the terms established by an adopted
13 farmland preservation program;

14 (b) *Land purchase and resale.*—The county commission
15 may purchase any property which qualifies for agricultural
16 preservation under terms established by an adopted farmland
17 preservation program. Property so purchased may be leased
18 by the county commission for agricultural purposes or may
19 be restricted to agricultural uses and sold to a buyer who
20 demonstrates the willingness and ability to farm the land.
21 Any property so purchased by the county commission must be
22 sold or placed under lease within two years after it is acquired
23 by the county commission. Any property so purchased by the
24 county commission and then sold must be sold subject to a
25 restriction limiting the use of the said property to agricul-
26 tural purposes for a period of not less than ten years from the
27 date of sale. If the property is leased, the lessee shall pay
28 to the county commission, in addition to rent, an annual
29 fee set by the county commission. The amount of this annual
30 fee shall be commensurate with the amount of property taxes
31 which would be assessed in accordance with the provisions
32 of this code upon such property if the property were held by
33 a private landowner.

34 Revenues from the sale of properties restricted to agricul-
35 tural uses shall be used to recover the original purchase costs
36 of such properties and shall be returned to the applicable
37 funds which were used by the county commission to purchase
38 the property. Any profits resulting from the sale of property
39 restricted to agricultural uses may be deposited in a farmland
40 preservation fund.

§8-24-77. Funding of farmland preservation programs.

1 A county commission may use any funds not specifically
2 limited to other uses to fund and support a farmland preser-
3 vation program.

§8-24-78. Annual farmland preservation report.

1 Before the first day of August of each year, the farmland
2 advisory committee shall submit a written report to the
3 county commission reviewing the operation, accomplishments,
4 and financial status of the county's farmland preservation
5 program during the previous fiscal year. The report shall
6 include a scaled map showing the location and extent of

7 properties within the county which are preserved for agri-
8 cultural use. The report shall include a tabulation of the
9 agricultural productivity of the farmland within the farmland
10 preservation program and outline program objectives for the
11 next fiscal year. The report shall also include a budget sum-
12 mary for the preceding fiscal year and for the next fiscal year.

13 A copy of this annual report shall be submitted to the
14 county planning commission for its consideration with respect
15 to county comprehensive plan revision.

CHAPTER 114

(S. B. 108—By Mr. Ash and Mr. Gilligan)

[Passed March 13, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact section six, article one-d, chap-
ter twenty-nine of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to continu-
ing West Virginia's membership in the Ohio River valley
water sanitation compact.

Be it enacted by the Legislature of West Virginia:

That section six, article one-d, 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 1D. OHIO RIVER VALLEY WATER SANITATION COM-
MISSION.**

§29-1D-6. When article effective; findings; continuation.

1 This article shall take effect and become operative and
2 the compact be executed for and on behalf of this state
3 only from and after the approval, ratification, and adop-
4 tion, and entering into thereof by the states of New York,
5 Pennsylvania, Ohio, and Virginia.

6 After having conducted a performance and fiscal audit
7 through its joint committee on government operations,
8 pursuant to section nine, article ten, chapter four of this
9 code, the Legislature hereby finds and declares that West
10 Virginia should remain a member of the compact. Accord-

11 ingly, notwithstanding the provisions of section four,
 12 article ten, chapter four of this code, West Virginia shall
 13 continue to be a member of this compact until the first
 14 day of July, one thousand nine hundred eighty-eight.

CHAPTER 115

(S. B. 187—By Mr. Nelson)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six-h, article seven-a, chapter eighteen of said code, all relating to the state public employees retirement act and the state teachers retirement system; providing a supplemental benefit for certain annuitants receiving less than a specified annual annuity, contingent on legislative appropriation; specifying factors for eligibility; and providing for computation for determination of eligibility and amount of any supplemental benefit to be made separately as to retirant's own benefit and that receivable as beneficiary of another.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.
18. Education.

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**§5-10-22b. Supplemental benefits for certain annuitants.**

1 Any annuitant who is receiving a retirement annuity of less
2 than seven thousand two hundred dollars annually on the
3 effective date of this section shall receive, upon application, a
4 supplemental benefit, prospectively, under this section in any
5 fiscal year for which the Legislature provides by line item
6 appropriation for the payment of such benefit: *Provided,*
7 That the effective date of retirement for such annuitant was
8 prior to the first day of July, one thousand nine hundred
9 seventy-seven, and he had ten years or more of credited
10 service at the time of such retirement. For the purposes of this
11 section, "effective date of retirement" means the last day of
12 actual employment, or the last day carried on the payroll of
13 the employer, whichever is later, together with a meeting
14 fully of all eligibility requirements for retirement prior to the
15 aforesaid effective date. Any annuitant retired pursuant to the
16 disability provisions of this article shall be considered to have
17 had ten years or more credited service at the time of such
18 retirement.

19 Each such annuitant shall receive as his supplemental
20 benefit an increased annual amount which is the product of
21 the sum of fifteen dollars multiplied by his years of credited
22 service: *Provided,* That the total annuity of any annuitant
23 affected by the provisions of this section, together with any of
24 the other provisions of this article or any other article or
25 chapter of this code, shall not exceed seven thousand two
26 hundred dollars annually.

27 For the purpose of calculating the supplemental benefit
28 provided in this section, fractional parts of a service credit
29 year are to be disregarded unless in excess of one half of a
30 credited service year, in which event the same shall constitute
31 a full year of service credit.

32 On and after the first day of July, one thousand nine
33 hundred eighty-two, for the purpose of computation for
34 determination of eligibility and for the amount of any
35 supplemental benefit hereunder, separate computation shall
36 be made of a retirant's own benefit and that which may be
37 receivable as beneficiary of another, under the provisions of
38 this article, with each such benefit being eligible for the
39 supplemental benefit herein provided.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26h. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of less
2 than seven thousand two hundred dollars annually on the
3 effective date of this section shall receive a supplemental
4 benefit, prospectively, under this section in any fiscal year for
5 which the Legislature provides by line item appropriation for
6 the payment of such benefit: *Provided*, That the effective date
7 of retirement for such annuitant was prior to the first day of
8 July, one thousand nine hundred seventy-seven, and he had
9 ten years or more of credited service at the time of such
10 retirement. For the purposes of this section, "effective date of
11 retirement" means the last day of actual employment, or the
12 last day carried on the payroll of the employer, whichever is
13 later, together with a meeting fully of all eligibility
14 requirements for retirement prior to the aforesaid effective
15 date. Any annuitant retired pursuant to the disability
16 provisions of this article shall be considered to have had ten
17 years or more of credited service at the time of such
18 retirement.

19 Each such annuitant shall receive as his supplemental
20 benefit an increased annual amount which is the product of
21 the sum of fifteen dollars multiplied by his years of credited
22 service: *Provided*, That the total annuity of any annuitant
23 affected by the provisions of this section, together with any of
24 other provisions of this article, shall not exceed seven
25 thousand two hundred dollars annually.

26 For the purpose of calculating the supplemental benefit
27 provided in this section, fractional parts of a service credit
28 year are to be disregarded unless in excess of one half of a
29 credited service year, in which event the same shall constitute
30 a full year of service credit.

31 On and after the first day of July, one thousand nine
32 hundred eighty-two, for the purpose of computation for
33 determination of eligibility and for the amount of any
34 supplemental benefit hereunder, separate computation shall
35 be made of a retirant's own benefit and that which may be
36 receivable as beneficiary of another under the provisions of
37 this article, with each such benefit being eligible for the
38 supplemental benefit herein provided.

CHAPTER 116

(H. B. 1768—By Mr. Tompkins)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-b, authorizing employees of the state of West Virginia and its political subdivisions to participate in voluntary tax-sheltered income deferral plans; providing definitions; authorizing the board of trustees of the West Virginia public employees retirement system to adopt deferred compensation plans; specifying the manner in which eligible employees may elect to participate in a deferred compensation plan; specifying how deferred compensation plans are to be administered; specifying the manner in which salary reductions are to be made; and establishing the extent of liability of the state of West Virginia and its political subdivisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.

- §5-10B-1. Legislative purpose.
- §5-10B-2. Definitions.
- §5-10B-3. Contracts for deferred compensation plans—approval of companies providing investments.
- §5-10B-4. Responsibility for implementing plans—payroll reductions—billing and administration.
- §5-10B-5. Investment of funds.
- §5-10B-6. Program supplemental.
- §5-10B-7. Other benefits unaffected by deferred compensation plan.
- §5-10B-8. Federal and state income tax.
- §5-10B-9. Liabilities of state of West Virginia or political subdivisions.

§5-10B-1. Legislative purpose.

- 1 The legislative purpose of this enactment is to enable em-

2 ployees of the state, its agencies, counties, municipalities and
3 political subdivisions of such governmental bodies to partici-
4 pate in voluntary deferred compensation plans authorized by
5 the United States Internal Revenue Code as interpreted by
6 the internal revenue service, thereby permitting such employees
7 to obtain the advantages inherent in such plans relative to
8 the income tax treatment of the contributions and disburse-
9 ments made pursuant to such voluntary income deferment
10 plans. It is further the purpose of this enactment to authorize
11 the establishment of separate plans for the state and its agencies
12 and for counties, municipalities and political subdivisions
13 within the state.

§5-10B-2. Definitions.

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

3 (a) "Board of trustees" means the board of trustees of the
4 West Virginia public employees retirement system provided
5 for in article ten of this chapter.

6 (b) "Deferred compensation plan" means an arrangement
7 whereby the state of West Virginia, as the public employer,
8 or a public employer agrees with an employee for the volun-
9 tary reduction in employee compensation for the payment of
10 benefits by the state employer or the public employer to the
11 employee at a later date pursuant to this article and the federal
12 laws and regulations relating to eligible state deferred com-
13 pensation plans as described in Internal Revenue Code Sec-
14 tion 457.

15 (c) "Employee" means any person, whether appointed, elec-
16 ted, or under contract, providing services for the state em-
17 ployer or public employer, for which compensation is paid.

18 (d) "Public employer" means counties, municipalities or
19 political subdivisions of such governmental bodies which meet
20 the definition of "state" as described in Internal Revenue
21 Code Section 457 (d) (1), but which do not meet the definition
22 of "state employer" as used in this article.

23 (e) "State employer" means the state of West Virginia and
24 any state agency or instrumentality of the state.

§5-10B-3. Contracts for deferred compensation plans—approval of plans—approval of companies providing investments.

1 The state employer or any public employer may, by contract,
2 agree with any of its employees to defer any portion of that em-
3 ployee's compensation and may subsequently purchase or ac-
4 quire from any company licensed to do business in the state of
5 West Virginia fixed or variable annuities, insurance, endow-
6 ment, or savings account for the purpose of carrying out the
7 objectives of the deferred compensation plan as described in
8 this article.

**§5-10B-4. Responsibility for implementing plans—payroll reduc-
tions—billing and administration.**

1 The responsibility for implementing the deferred compensa-
2 tion plan for employees of the state employer shall be delegated
3 to the board of trustees. The responsibility for implementing
4 the deferred compensation plan for employees of a public
5 employer, as defined hereunder, shall be delegated to the
6 county commission of a county or tribunal in lieu thereof, the
7 governing body of a municipality, as that term is defined in
8 section two, article one, chapter eight of this code, and, in the
9 case of any other political subdivision, the board, commission,
10 or other similar body responsible for determining the policy of
11 such political subdivision. If the governing body has adopted
12 more than one plan, an employee electing to participate shall
13 also elect the plan in which he desires to participate. Payroll
14 reductions shall be made, in each instance, by the appropriate
15 payroll officer. The board of trustees or appropriately desig-
16 nated local officer, board or committee of such deferred
17 compensation plan may contract with a private corporation,
18 institution and/or custodial bank to provide consolidated bill-
19 ing and all or any other administrative services deemed
20 necessary, in order that any such deferred compensation plan
21 adopted shall operate without cost to or contribution from
22 the state employer or public employer except for the inci-
23 dental expense of administering the payroll-salary reductions
24 and the remittance thereof.

§5-10B-5. Investment of funds.

1 Notwithstanding any other provision of law to the contrary,

2 the board of trustees, as well as the appropriate local officer,
3 board or committee, designated as responsible for implemen-
4 ting a deferred compensation plan, is hereby authorized to
5 invest compensation held pursuant to any such deferred com-
6 pensation plan in fixed and variable annuities, insurance, en-
7 dowment or savings accounts from any company duly autho-
8 rized to contract such business in the state.

§5-10B-6. Program supplemental.

1 The deferred compensation plan or plans established pur-
2 suant to this article shall exist and serve in addition to other
3 retirement, pension or benefit systems established by the state
4 employer and any public employer. The deferred compensation
5 plan or plans established by this article shall not supersede,
6 make inoperative or reduce any benefits provided by the con-
7 solidated retirement system or programs established by the
8 state employer or any public employer, or any other retire-
9 ment, pension or benefit program established by law for the
10 benefit of employees.

§5-10B-7. Other benefits unaffected by deferred compensation plan.

1 Notwithstanding any other provision of law to the con-
2 trary, any compensation deferred under this article shall be
3 considered part of an employee's compensation for purposes
4 of any other employee retirement, pension or benefit pro-
5 gram. No deferral of compensation under any deferred com-
6 pensation plan shall effect a reduction of any retirement,
7 pension or other benefit program provided by law.

§5-10B-8. Federal and state income tax.

1 Notwithstanding any other provision of this article or any
2 other provision of law to the contrary, any compensation de-
3 ferred under any deferred compensation plan shall not be sub-
4 ject to any federal, state or municipal income tax nor shall any
5 amount of compensation deferred be included for the purposes
6 of computation of any such income tax withheld on behalf of
7 any employee.

**§5-10B-9. Liabilities of state of West Virginia or political sub-
divisions.**

1 The financial liability of the state employer or public em-

2 ployer under any deferred compensation plan shall be limited
3 in each instance to the value of the particular fixed or variable
4 annuity, insurance, endowment or savings account acquired
5 pursuant to the terms and provisions of this article, and the
6 state employer or public employer shall not be liable for any
7 change in value of such investment at the time of distribution
8 to an employee.

CHAPTER 117

(Com. Sub. for H. B. 1625—By Mr. Bumgarner and Mr. Gilliam)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees insurance act; deleting provision that employees agree to pay the cost of coverage for spouses and dependents; providing for three-month continuation of insurance coverage subsequent to date of employee's involuntary or reduction in work force termination at no additional cost to employee; limitations in case of discharge for misconduct; and providing for reemployment or recall to active employment within twelve months of termination to not be deemed new employment for again requiring employee's contributive share of premium cost, where such share had earlier been once paid.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-12. Payment of cost by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination.

1 The board is hereby authorized to provide under any con-

2 tract or contracts entered into under the provisions of this
3 article that the costs of any such group hospital and surgical
4 insurance, group major medical insurance, group life and
5 accidental death insurance benefit plan or plans may be
6 paid by the employer and employee. In addition, each em-
7 ployee shall be entitled to have his spouse and dependents,
8 as defined by the rules and regulations of the board, included
9 in any group hospital and surgical insurance or group major
10 medical insurance coverage provided. The board shall adopt
11 rules and regulations according to chapter twenty-nine-a of
12 this code governing the discontinuance and resumption of any
13 employee's coverage for his spouse and dependents.

14 Should a participating employee be terminated from em-
15 ployment involuntarily or in reduction of work force, the
16 employee's insurance coverage provided under this article
17 shall continue for a period of three months at no additional
18 cost to the employee: *Provided*, That an employee discharged
19 for misconduct shall not be eligible for extended benefits under
20 this section: *Provided, however*, That coverage may be ex-
21 tended up to the maximum period of three months, while
22 administrative remedies contesting the charge of misconduct
23 are pursued: *Provided further*, That should the discharge for
24 misconduct be upheld, the full cost of the extended coverage
25 shall be reimbursed by the employee. If the employee is again
26 employed or recalled to active employment within twelve
27 months of his prior termination, he shall not be considered a
28 new enrollee and shall not be required to again contribute his
29 share of the premium cost, if he had already fully contributed
30 such share during the prior period of employment.

CHAPTER 118

(S. B. 300—By Mr. Boettner)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section thirteen-b, relating to voluntary deductions of association dues or fees from employee salaries by the state auditor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-13b. Voluntary deductions by state auditor from salaries of employees to pay association dues or fees.

1 Any officer or employee of the state of West Virginia
2 may authorize that a voluntary deduction from his net
3 wages be made for the payment of membership dues
4 or fees to an employee association. Such deductions
5 shall be authorized on a form provided by the audi-
6 tor of the state of West Virginia and shall state (a)
7 the identity of the employee; (b) the amount and
8 frequency of such deductions; and (c) the identity and
9 address of the association to which such dues shall be
10 paid. Upon execution of such authorization and its
11 receipt by the office of the auditor, such deductions shall
12 be made in the manner specified on the form and re-
13 mitted to the designated association on the tenth day of
14 each month: *Provided*, That such deductions shall not
15 be made more frequently than once monthly. Deduction
16 authorizations may be revoked at any time thirty days
17 prior to the date on which the deduction is regularly made
18 and on a form to be provided by the office of the state
19 auditor: *Provided. however*, That nothing in this section
20 shall interfere with or remove any existing arrangement
21 for dues deduction between an employer of any political
22 subdivision of the state and its employees.

CHAPTER 119

(H. B. 2036—By Mr. Sattes and Mrs. Blatnik)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to liability insurance for county boards of education, their employees, members, administrative staff and county superintendent, and employees and officers of the state department of corrections; requiring that the state board of risk and insurance management provide coverage in an amount not less than one million dollars for each occurrence; requiring that each county board of education purchase excess coverage of at least five million for each occurrence; requiring such insurance be purchased from a company licensed to do business in this state; and providing for defense in the case of suit.

Be it enacted by the Legislature of West Virginia:

That section five-a, article twelve, 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 12. STATE INSURANCE.

§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, and for employees and officers of the state department of corrections.

1 In accordance with the provisions of this article, the state
2 board of risk and insurance management shall provide appro-
3 priate professional or other liability insurance for all county
4 boards of education, teachers, supervisory and administrative
5 staff members, service personnel, county superintendents of
6 schools and school board members and for all employees and
7 officers of the state department of corrections. Said in-
8 surance shall cover any claim, demand, action, suit or judg-
9 ment by reason of alleged negligence or other acts resulting
10 in bodily injury or property damage to any person within or

11 without any school building or correctional institution if, at
12 the time of the alleged injury, the teacher, supervisor, ad-
13 ministrator, service personnel employee, county superintendent,
14 school board member, or employee or officer of the depart-
15 ment of corrections was acting in the discharge of his duties,
16 within the scope of his office, position or employment, under
17 the direction of the board of education or commissioner of
18 corrections or in an official capacity as a county superintendent
19 or as a school board member or as commissioner of corrections.
20 Such insurance coverage shall be in an amount to be deter-
21 mined by the state board of risk and insurance management,
22 but in no event less than one million dollars for each oc-
23 currence. In addition, each county board of education shall
24 purchase, through the board of risk and insurance manage-
25 ment, excess coverage of at least five million dollars for each
26 occurrence. The cost of this excess coverage will be paid by
27 the respective county boards of education. Any insurance
28 purchased under this section shall be obtained from a company
29 licensed to do business in this state.

30 The insurance policy shall include comprehensive coverage,
31 personal injury coverage, malpractice coverage, corporal pun-
32 ishment coverage, legal liability coverage as well as a pro-
33 vision for the payment of the cost of attorney's fees in con-
34 nection with any claim, demand, action, suit or judgment
35 arising from such alleged negligence or other act resulting in
36 bodily injury under the conditions specified in this section.

37 The county superintendent and other school personnel shall
38 be defended by the county board or an insurer in the case of
39 suit, unless the act or omission shall not have been within the
40 course or scope of employment or official responsibility or
41 was motivated by malicious or criminal intent.

42 No policy or contract of liability insurance shall be pur-
43 chased as provided herein, unless it shall contain a provision or
44 endorsement whereby the company issuing such policy waives,
45 or agrees not to assert as a defense to any claim covered by the
46 terms of such policy, the defense of governmental immunity.
47 In any action against a person covered by insurance furnished
48 pursuant to this section, when there is in effect liability in-

49 surance for such person in an amount equal to or greater than
50 the amount sued for, the attorney for such person, the at-
51 torney for such insurance company, or any other attorney
52 who may appear on behalf of such person or insurance com-
53 pany shall not set up the defense of governmental immunity
54 in any such action.

CHAPTER 120

(H. B. 2032—By Mr. Martin, 35th Dist.)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact section three, article five, chapter twenty-four-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to funding the gas pipeline safety operations of the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EMPLOYEES OF COMMISSION; FUNDING.

§24B-5-3. Funding; property and revenue license fees.

1 (a) Every pipeline company shall pay a special license fee
2 in addition to those now required by law. The amount of such
3 fees shall be fixed by the public service commission and levied
4 by it upon each of such pipeline companies according to the
5 number of three-inch equivalent pipeline miles included in its
6 pipeline facilities, and shall be apportioned among such pipe-
7 line companies upon the basis of the pipeline companies' re-
8 ports submitted to the commission in such form as the com-
9 mission may prescribe, so as to produce a revenue of not more
10 than three hundred thousand dollars per annum, which fees
11 shall be paid on or before the first day of July in each year.

12 (b) Such sums collected under subsection (a) of this section
13 shall be paid into the state treasury and kept as a special fund,

14 designated "Public Service Commission Gas Pipeline Safety
15 Fund," to be appropriated as provided by law for the purpose
16 of paying the salaries, compensation, costs and expenses of its
17 employees. Any balance in said fund at the end of any fiscal
18 year shall not revert to the treasury, but shall remain in said
19 fund and may be appropriated as provided in this subsection.

CHAPTER 121

(H. B. 1432—By Mr. Shingleton and Mr. Greer)

[Passed February 10, 1982; in effect ninety days from passage.
Disapproved by the Governor and repassed notwithstanding his objections.]

AN ACT to amend and reenact articles one, two and three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article four of said chapter twenty-nine-a, all relating generally to state administrative procedures; making legislative findings; defining certain terms; limiting application of the chapter; requiring the secretary of state to establish and maintain a state register; creating the state register; specifying that the contents of the state register include all materials relating to rule making; providing that the state register is deemed a public record; requiring agencies to file rules in the state register; providing the format and numbering of such rules and specifying the requirements of size and type; providing for publication of and subscription to the state register with monthly supplements and permanent biennial volumes; prohibiting agencies from duplicating rules unless the agency can do so more inexpensively; providing for distribution of one alternative format of the rules by agency; requiring agencies to make orders and records available; requiring that rules be promulgated only in accordance with this chapter; specifying limits on agency rule making; requiring agencies to adopt rules of procedure; requiring agencies to propose procedural and interpretive rules; requiring notice of rule making; providing for public comment on proposed rules; providing that findings and determinations be filed in the state register; requiring notice of hearings; allowing

for adoption of procedural and interpretive rules by agencies; requiring proposal of legislative rules and approval of such rules for submission to the Legislature; creating a legislative rule-making review committee; providing for review of rules submitted to the committee and the scope of that review; providing for a committee recommendation to the Legislature; providing for submission of legislative rules to the Legislature; providing for authorization by the Legislature to promulgate legislative rules; defining the effective date of such rules; providing for withdrawal or modification of rules by agency; providing for emergency rules and review of such rules; providing for legislative review of procedural and interpretive rules; and providing that prior rules are not affected.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Definitions and Application of Chapter.**
2. **State Register.**
3. **Rule Making.**
4. **Declaratory Rulings and Declaratory Judgments.**

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-1. Legislative findings and statement of purpose.

§29A-1-2. Definitions of terms used in this chapter.

§29A-1-3. Application of chapter; limitations.

§29A-1-1. Legislative findings and statement of purpose.

- 1 The Legislature finds and declares that administrative law
- 2 and the administrative practice and procedure of the various
- 3 executive and administrative officers, offices and agencies
- 4 comprises a body of law and policy which is voluminous, often
- 5 formulated without adequate public participation and col-
- 6 lected and preserved for public knowledge and use in an
- 7 unacceptable and essentially inaccessible fashion. The Legisla-
- 8 ture further finds that the delegation of its legislative powers
- 9 to other departments and agencies of government requires of

10 the Legislature that the rules and regulations of such other
11 departments and agencies, which have the force and effect
12 of law because of their legislative character, should be care-
13 fully and extensively reviewed by the Legislature in a man-
14 ner properly respectful of the separation of powers but in
15 keeping with the legislative force and effect of such rules and
16 regulations. Accordingly, the Legislature has and by this
17 chapter intends to fix by law uniform and settled administrative
18 practices and procedures, subject only to enumerated excep-
19 tions, for the exercise of executive rule-making authority and
20 for the exercise by executive and administrative officers, offices
21 and agencies of lawfully delegated legislative power, with ap-
22 propriate legislative review of that exercise of such delegated
23 legislative authority and with established procedures for legis-
24 lative oversight of the exercise of executive rule-making author-
25 ity.

26 In that light chapter twenty-nine-a of this code establishes,
27 with enumerated exceptions, procedures for rule making, de-
28 claratory rulings by agencies and the conduct of contested
29 administrative cases, together with a plan for the systematic
30 preparation, public consideration, orderly promulgation, pre-
31 servation and public availability of the body of law, policy and
32 administrative decisions within the purview of this chapter.

§29A-1-2. Definitions of terms used in this chapter.

1 For the purposes of this chapter:

2 (a) "Agency" means any state board, commission, depart-
3 ment, office or officer authorized by law to make rules or
4 adjudicate contested cases, except those in the legislative or
5 judicial branches;

6 (b) "Contested case" means a proceeding before an agency
7 in which the legal rights, duties, interests or privileges of
8 specific parties are required by law or constitutional right
9 to be determined after an agency hearing, but does not include
10 cases in which an agency issues a license, permit or certificate
11 after an examination to test the knowledge or ability of the
12 applicant where the controversy concerns whether the examina-
13 tion was fair or whether the applicant passed the examination
14 and does not include rule making;

15 (c) "Interpretive rule" means every rule, as defined in sub-
16 section (i) of this section, adopted by an agency independently
17 of any delegation of legislative power which is intended by the
18 agency to provide information or guidance to the public re-
19 garding the agency's interpretations, policy or opinions upon
20 the law enforced or administered by it and which is not in-
21 tended by the agency to be determinative of any issue affecting
22 private rights, privileges or interests. An interpretive rule may
23 not be relied upon to impose a civil or criminal sanction nor
24 to regulate private conduct or the exercise of private rights or
25 privileges nor to confer any right or privilege provided by law
26 and is not admissible in any administrative or judicial pro-
27 ceeding for such purpose, except where the interpretive rule
28 established the conditions for the exercise of discretionary
29 power as herein provided. However, an interpretive rule is
30 admissible for the purpose of showing that the prior conduct
31 of a person was based on good faith reliance on such rule. The
32 admission of such rule in no way affects any legislative or
33 judicial determination regarding the prospective effect of such
34 rule. Where any provision of this code lawfully commits any
35 decision or determination of fact or judgment to the sole dis-
36 cretion of any agency or any executive officer or employee,
37 the conditions for the exercise of that discretion, to the extent
38 that such conditions are not prescribed by statute or by legis-
39 lative rule, may be established by an interpretive rule and such
40 rule is admissible in any administrative or judicial proceeding
41 to prove such conditions.

42 (d) "Legislative rule" means every rule, as defined in sub-
43 section (i) of this section, proposed or promulgated by an agen-
44 cy pursuant to this chapter. Legislative rule includes every
45 rule which, when promulgated after or pursuant to authoriza-
46 tion of the Legislature, has (1) the force of law, or (2) supplies
47 a basis for the imposition of civil or criminal liability, or (3)
48 grants or denies a specific benefit. Every rule which, when
49 effective, is determinative on any issue affecting private rights,
50 privileges or interests is a legislative rule. Unless lawfully
51 promulgated as an emergency rule, a legislative rule is only a
52 proposal by the agency and has no legal force or effect until
53 promulgated by specific authorization of the Legislature. Ex-
54 cept where otherwise specifically provided in this code, legis-

55 lative rule does not include (A) findings or determinations of
56 fact made or reported by an agency, including any such find-
57 ings and determinations as are required to be made by any
58 agency as a condition precedent to proposal of a rule to the
59 Legislature; (B) declaratory rulings issued by an agency pur-
60 suant to the provisions of section one, article four of this
61 chapter; (C) orders, as defined in subdivision (e) of this sec-
62 tion; or (D) executive orders or proclamations by the gover-
63 nor issued solely in the exercise of executive power, including
64 executive orders issued in the event of a public disaster or
65 emergency;

66 (e) "Order" means the whole or any part of the final dis-
67 position (whether affirmative, negative, injunctive or declara-
68 tory in form) by any agency of any matter other than rule
69 making;

70 (f) "Person" includes individuals, partnerships, corporations,
71 associations or public or private organizations of any character;

72 (g) "Procedural rule" means every rule, as defined in sub-
73 section (i) of this section, which fixes rules of procedure, prac-
74 tice or evidence for dealings with or proceedings before an
75 agency, including forms prescribed by the agency;

76 (h) "Proposed rule" is a legislative rule, interpretive rule,
77 or a procedural rule which has not become effective pursuant
78 to the provisions of this chapter or law authorizing its promul-
79 gation;

80 (i) "Rule" includes every regulation, standard or statement
81 of policy or interpretation of general application and future
82 effect, including the amendment or repeal thereof, affecting
83 private rights, privileges or interests, or the procedures avail-
84 able to the public, adopted by an agency to implement, extend,
85 apply, interpret or make specific the law enforced or adminis-
86 tered by it or to govern its organization or procedure, but does
87 not include regulations relating solely to the internal manage-
88 ment of the agency, nor regulations of which notice is cus-
89 tomarily given to the public by markers or signs, nor mere in-
90 structions. Every rule shall be classified as "legislative rule,"
91 "interpretive rule" or "procedural rule," all as defined in this
92 section, and shall be effective only as provided in this chapter;

93 (j) "Rule making" means the process for the formulation,
94 amendment or repeal of a rule as provided in this chapter.

§29A-1-3. Application of chapter; limitations.

1 (a) The provisions of this chapter do not apply in any
2 respect whatever to executive orders of the governor, which
3 orders to the extent otherwise lawful, shall be effective ac-
4 cording to their terms: *Provided*, That the executive orders
5 shall be admitted to record in the state register when and to
6 the extent the governor deems suitable and shall be included
7 therein by the secretary of state when tendered by the gover-
8 nor.

9 (b) Except as to requirements for filing in the state
10 register, and with the Legislature or its rule-making review
11 committee, provided in this chapter or other law, the pro-
12 visions of this chapter do not apply in any respect whatever to
13 the West Virginia board of probation and parole, the public
14 service commission, the board of public works sitting as such,
15 the West Virginia board of education and the West Virginia
16 board of regents: *Provided*, That rules of such agencies shall
17 be filed in the state register in the form prescribed by this
18 chapter and be effective no sooner than sixty consecutive days
19 after being so filed: *Provided, however*, That such agencies
20 may promulgate emergency rules in conformity with section
21 fifteen, article three of this chapter.

22 (c) The provisions of this chapter do not apply to rules
23 relating to, or contested cases involving, public elections,
24 the conduct of inmates or other persons admitted to public
25 institutions, the conduct of students at public schools or public
26 educational institutions, the open seasons and the bag, creel,
27 size, age, weight and sex limits with respect to the wildlife in
28 this state, the conduct of persons in military service or the
29 receipt of public assistance, but two certified copies of each
30 such rule shall be filed in the state register.

31 (d) Nothing herein shall be construed to affect, limit or
32 expand any express and specific exemption from this chapter
33 contained in any other statute relating to a specific agency,
34 but such exemptions shall be construed and applied in ac-
35 cordance with the provisions of this chapter to effectuate any

36 limitations on such exemptions contained in any such other
37 statute.

ARTICLE 2. STATE REGISTER.

§29A-2-1. Duty of the secretary of state.

§29A-2-2. State register created.

§29A-2-3. Contents of state register.

§29A-2-4. Contents of state register deemed a public record.

§29A-2-5. Agency rules to be filed in state register; failure to file.

§29A-2-6. Format and numbering of agency rules filed in state register.

§29A-5-7. Publication of state register.

§29A-2-8. Publication of rules by agencies.

§29A-2-9. Making orders and records available.

§29A-2-1. Duty of the secretary of state.

1 It is the nondiscretionary, nondelegable duty of the secretary
2 of state to establish and maintain the state register hereby
3 created, and offer copies for subscription and public distribu-
4 tion in accordance with the provisions of this article.

§29A-2-2. State register created.

1 There is hereby created in the office of the secretary of
2 state, a public record to be known and denominated as the
3 state register, to be established, compiled, indexed and copied,
4 and such copies offered for subscription and distribution, in
5 accordance with the provisions of this article.

§29A-2-3. Contents of state register.

1 The secretary of state shall receive and file in the state
2 register:

3 (a) Every notice of a proposed rule or a public hearing
4 for the finding of facts or public comment on a proposed
5 rule.

6 (b) The text of every proposed rule and subsequent pro-
7 posed amendment thereto and fiscal notes attached thereto.

8 (c) Every determination of fact or judgment tendered by
9 an agency for inclusion therein and every notice of submission
10 to the Legislature or its rule-making review committee made
11 in conformity with this chapter.

12 (d) Every executive order tendered by the governor.

13 (e) Every notice of and the text of any report or finding
14 of the legislative rule-making review committee and such
15 other material as may be tendered by the clerk or presiding
16 officer of either house of the Legislature for filing in the
17 state register.

18 (f) Such other material related to administrative procedures
19 and actions as an agency may desire to make a public record
20 or the secretary of state may deem appropriate, or where
21 required by law.

22 (g) Notice of and the text of any action by an agency
23 of the Legislature or its committees relative to the process of
24 promulgation of rules tendered to the secretary of state for
25 inclusion in the register.

26 (h) Every other paper required by law to be filed in such
27 register or which may be filed therein in order to comply
28 with any other provision of law.

§29A-2-4. Contents of state register deemed a public record.

1 Every paper filed in the state register shall be a public
2 record provable and admissible as evidence if otherwise rele-
3 vant, of which judicial notice may be taken, either under
4 lawful certification or by reason of duplication and distribution
5 as a copy of the state register in accordance with this article.

§29A-2-5. Agency rules to be filed in state register; failure to file.

1 (a) Notwithstanding any filing prior to the effective date of
2 this section, each agency shall hereafter file in the state
3 register a certified copy of all of its lawfully adopted rules
4 which are in force on the date of such filing and all of its
5 proposed rules which have not become effective prior to the
6 date of such filing. All such rules and proposed rules shall
7 be arranged, compiled, numbered and indexed in accordance
8 with the provisions of section six of this article, and shall also
9 include a designation of each rule as either legislative rule,
10 interpretive rule or procedural rule. Any agency desiring to
11 pursue promulgation of a rule proposed prior to the ef-
12 fective date of this section but not then yet effective, shall
13 refile such proposed rule, following the procedure set forth
14 in article three: *Provided*, That it shall not be necessary for

15 the agency to again hold a public hearing to determine facts or
16 public comment, but in all other respects the procedures pro-
17 vided for the promulgation of rules under this section shall
18 be complied with. On or before the first day of January, one
19 thousand nine hundred eighty-three, any other agency required
20 by law to file its rules in the state register in order for such
21 rules to be effective shall resubmit and refile such rules in
22 accordance with this section. If any agency fails to file a
23 certified copy of any rule or proposed rule in accordance with
24 this section on or before the first day of January, one thou-
25 sand nine hundred eighty-three, then such rule or proposed
26 rule not so filed shall be thereafter void and unenforceable
27 and shall be of no further force and effect except as to en-
28 forcement of its effective provisions for actions, causes or
29 matters occurring prior to the first day of January, one thousand
30 nine hundred eighty-three.

31 (b) Except for such changes in the designation and num-
32 bering of a rule, including numerical references within a rule,
33 as are required to comply with the provisions of section six
34 of this article, no legislative rule filed under the provisions of
35 this section may be amended in any way prior to such filing
36 unless such amendment is made in compliance with the re-
37 quirements of article three of this chapter.

§29A-2-6. Format and numbering of agency rules filed in state register.

1 (a) Each rule or proposed rule filed by an agency in the
2 state register shall include as its initial provision: (1) A state-
3 ment identifying such rule as a legislative rule, an interpretive
4 rule, or a procedural rule, as the case may be; (2) a statement
5 of each section, article and chapter of this code to which such
6 rule or any part thereof relates; and (3) a statement of the
7 section, article and chapter of this code or any other provision
8 of law which provides authority for the promulgation of such
9 rule. The agency shall be estopped from relying on any author-
10 ity for the promulgation of such rule which is not stated there-
11 in in accordance with the requirements of this subdivision.

12 (b) An agency which files the rule is required, to the extent
13 practicable, to compile, number and index such rule in se-

14 quence according to the number of the section, article and
15 chapter of this code to which such rule or any part thereof
16 relates.

17 Each rule when filed to be finally effective shall have at-
18 tached thereto an abstract of its promulgation history prepared
19 by the agency showing the date of the filing in the state register
20 of the content of, or notice of any procedure relating to, action
21 necessary under this chapter to cause such rule to be finally
22 effective: *Provided*, That any error or omission in such abstract
23 shall not affect the validity of any rule or action in respect
24 thereto.

25 (c) The secretary of state may prescribe by legislative rule
26 a standard size and format for rules to be filed in the state
27 register and he may prescribe such procedural or interpretive
28 rules as he deems advisable to clarify and interpret the provi-
29 sions of this section. The secretary of state shall refuse to ac-
30 cept for filing any rules which do not comply with the specific
31 provisions of this section, and he may refuse to accept for
32 filing any rules which do not comply with the procedural rules
33 issued by him pursuant to this section until the rules sought to
34 be filed are brought into conformity with the secretary of state's
35 procedural rules.

36 (d) Unless and until the secretary of state prescribes other-
37 wise by rule issued and made effective under the provisions of
38 subsection (c) of this section, each rule filed in the state
39 register shall be on white paper measuring eight and one-half
40 inches by eleven inches, typewritten and single-spaced, with a
41 one inch margin at the top, bottom and each side of each page,
42 and shall be reproduced photographically, or by xerography
43 or other duplication process. The secretary of state may grant
44 specific exceptions to such requirements in the case of maps,
45 diagrams and exhibits, if the same may not be conveniently
46 folded and fastened with the other pages of rules and in the
47 case of rules which incorporate the promulgation of a federal
48 agency or other organization which could not be submitted in
49 the standard size and format except at undue expense. Ma-
50 terials submitted for inclusion in the state register shall be
51 fastened on the left side by two or more fasteners attached
52 through holes suitable for insertion into ring binders.

§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 copies
3 of the state register or parts thereof desired by the citizens.
4 The provisions of this section are enacted in order to provide
5 a means of doing so pending any other means provided by
6 law or legislative rule.

7 (b) Until the first day of January, one thousand nine
8 hundred eighty-three, the secretary of state may use any
9 procedure he adopts to fulfill the objects of this section in-
10 cluding any of the procedures provided in this section.

11 (c) On and after the first day of January, one thousand
12 nine hundred eighty-three, and the refileing of all rules effective
13 on the effective date of this section the body of the rules thus
14 refiled together with (1) those rules made effective from and
15 after the effective date of this section (2) all proposed rules not
16 yet effective on and before the first day of January, one
17 thousand nine hundred eighty-three (3) all notices and other
18 materials related to such proposed rules and (4) the chrono-
19 logical index hereinafter provided shall constitute the first
20 biennial permanent state register and have a publication date
21 of the first day of January, one thousand nine hundred
22 eighty-three.

23 (d) All materials filed in the state register after the effec-
24 tive date of this section shall be indexed daily in chronological
25 order of filing with a brief description of the item filed and
26 a columnar cross index to (1) agency and (2) section, article
27 and chapter of the code to which it relates and by which it
28 is filed in the state register and (3) such other information
29 in the description or cross index as the secretary of state
30 believes will aid a citizen in using the chronological index.

31 (e) The secretary of state shall cause to be duplicated in
32 such number as shall be required, on white paper with two
33 punches suitable for fastening in two-ring binders, the perma-
34 nent biennial state register, the chronological index and other
35 materials filed in the register, or any part by agency or sec-
36 tion, article or chapter for subscription at a cost including
37 labor, paper and postage, sufficient in his judgment to defray

38 the expense of such duplication. The secretary of state shall
39 also offer, at least at monthly intervals, supplements to the
40 published materials listed above. Any subscription for monthly
41 supplements shall be offered annually and shall include the
42 chronological index and materials related to such agency
43 or agencies, or section, article or chapter of the code as a
44 person may designate. A person may limit the request to
45 notices only, to notices and rules, or to notices and proposed
46 rules, or any combination thereof.

47 (f) On and after the first day of January, one thousand nine
48 hundred eighty-three, and every two years thereafter the
49 secretary of state shall offer for purchase succeeding biennial
50 permanent state registers which shall consist of all rules
51 effective on the date of publication selected by the secretary
52 of state, which date shall be at least two years from the last
53 such publication date, and materials filed in the state register
54 relating thereto. The cost of the succeeding biennial perma-
55 nent state register and for the portion relating to any agency
56 or any section, article or chapter of the code which may be
57 designated by a person purchasing the same shall be fixed in
58 the same manner specified in subsection (e) of this section.

59 (g) The secretary of state may omit from any duplication
60 made pursuant to subsections (c) and (f) of this section any
61 rules the duplication of which would be unduly cumbersome,
62 expensive or otherwise inexpedient, if a copy of such rules
63 is made available from the original filing of such rule, at a
64 price not exceeding the cost of duplication, and if the volume
65 from which such rule is omitted includes a notice in that
66 portion of the publication in which the rule would have been
67 located, stating (1) the general subject matter of the omitted
68 rule, (2) each section, article and chapter of this code to
69 which the omitted rule relates, and (3) the means by which
70 a copy of the omitted rule may be obtained.

71 (h) All fees and other moneys collected by the secretary
72 of state pursuant to the provisions of this section shall be
73 deposited by him in a separate fund in the state treasury
74 and shall be expended solely for the purposes of this section,
75 unless otherwise provided by appropriation or other action
76 of the Legislature.

77 (i) The secretary of state may propose changes to the
78 procedures outlined in the section above by proposing a legis-
79 lative rule under the provisions of section nine, article three,
80 but may promulgate no rules containing such changes unless
81 authorized by the Legislature pursuant to article three.

§29A-2-8. Publication of rules by agencies.

1 (a) No agency may duplicate copies of its rules for general
2 distribution except in accordance with this section. However,
3 a duly certified copy may be provided by the agency, at the cost
4 of reproduction, if requested and if not presently available from
5 the secretary of state. Whenever an agency desires multiple
6 copies of all or parts of its rules or other materials filed in the
7 state register, it shall purchase the same from the office of the
8 secretary of state: *Provided*, That when reproduction of the
9 number of copies desired by the agency can be accomplished at
10 a lower cost by the agency, it shall notify the secretary of
11 state in writing of such lower cost and, unless the secretary of
12 state shall within ten days agree to furnish such copies for an
13 equal and lower cost and do so within twenty days thereafter,
14 may proceed at its cost to acquire such copies elsewhere if
15 otherwise authorized to do so by law.

16 (b) Any published rules may be distributed only to those
17 persons who specifically request a copy of the rules and may
18 not be distributed in any manner to persons who have not
19 requested a copy. The agency may print or otherwise acquire
20 only the number of copies of any rule that it may reasonably
21 anticipate will be requested by members of the general public.

22 (c) Except as provided in this section, no agency may exp-
23 pend funds to alter the format or presentation of such rules
24 from that provided in the state register (except to adequately
25 fasten and bind the pages) or expend funds to compensate the
26 office of secretary of state to do so.

27 (d) Whenever for public convenience an agency deems it
28 appropriate to reproduce one or more rules for general public
29 distribution in some printed form, such as a booklet or other
30 format not provided by copying the state register, the agency
31 shall give written notice to the secretary of state and the
32 legislative auditor of its intention to do so, including therein

33 the anticipated cost and the source or account of appropriations
34 therefor. Such notice shall be recorded in the state register
35 as other notices. After twenty days shall have elapsed, the
36 agency may proceed unless the secretary of state shall have
37 made a finding that such additional publication is unnecessary
38 or unduly expensive. Any such finding shall be served on the
39 agency and the governor and filed in the state register. The
40 governor may, within ten days after receiving such finding,
41 order such publication canceled or order such amendment
42 thereof as is appropriate in his judgment. Any such order of
43 the governor shall be effective until and unless the Legislature
44 shall otherwise provide. In the absence of such an order by
45 the governor, the agency may proceed in accord with its
46 original notice of intent.

§29A-2-9. Making orders and records available.

1 Every agency shall file in the state register or, pursuant to
2 rules adopted in accordance with the provisions of this chapter,
3 make available to public inspection all final orders, decisions
4 and opinions in the adjudication of contested cases except those
5 required for good cause to be held confidential and not cited as
6 precedent. Except as otherwise required by statute, matters of
7 official record shall be made available for public inspection
8 pursuant to rules adopted in accordance with the provisions
9 of this chapter.

ARTICLE 3. RULE MAKING.

- §29A-3-1. Rules to be promulgated only in accordance with this article.
- §29A-3-2. Limitations on authority to exercise rule-making power.
- §29A-3-3. Rules of procedure required.
- §29A-3-4. Filing of proposed procedural rules and interpretive rules.
- §29A-3-5. Notice of proposed rule making.
- §29A-3-6. Filing findings and determinations for rules in state register;
evidence deemed public record.
- §29A-3-7. Notice of hearings.
- §29A-3-8. Adoption of procedural and interpretive rules.
- §29A-3-9. Proposal of legislative rules.
- §29A-3-10. Creation of a legislative rule-making review committee.
- §29A-3-11. Submission of legislative rules to the legislative rule-making
review committee.
- §29A-3-12. Submission of legislative rules to Legislature.
- §29A-3-13. Adoption of legislative rules; effective date.
- §29A-3-14. Withdrawal or modification of proposed rules.

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

§29A-3-16. Legislative review of procedural rules, interpretive rules and existing legislative rules.

§29A-3-17. Prior rules.

§29A-3-1. Rules to be promulgated only in accordance with this article.

1 In addition to other rule-making requirements imposed by
2 law and except to the extent specifically exempted by the
3 provisions of this chapter or other applicable law, every rule
4 and regulation (including any amendment of or rule to repeal
5 any other rule) shall be promulgated by an agency only in
6 accordance with this article and shall be and remain effective
7 only to the extent that it has been or is promulgated in ac-
8 cordance with this article.

§29A-3-2. Limitations on authority to exercise rule-making power.

1 (a) Except when, and to the extent, that this chapter or
2 any other provision of law now or hereafter made expressly
3 exempts an agency, or a particular grant of the rule-making
4 power, from the provisions of this article, every grant of rule-
5 making authority to an executive or administrative officer,
6 office or agency, heretofore provided, shall be construed and
7 applied to be effective only:

8 (1) If heretofore lawfully exercised in accordance with the
9 prior provisions of this chapter and the resulting rule has
10 not been revoked or invalidated by the provisions hereof or
11 by the agency, or

12 (2) If exercised in accordance with the provisions hereof.

13 (b) No executive or administrative agency shall be deemed
14 to have power and authority to promulgate a legislative rule
15 without compliance with this article unless: (1) The provision
16 of this code, heretofore or hereafter enacted, granting such
17 power and authority, expressly exempts its exercise from
18 legislative rule-making review prior to promulgation or (2)
19 the grant of such power and authority is exempted from the
20 application of this chapter by the express provisions of this
21 chapter. To the extent any such grant of power and authority,
22 not so exempt, shall be deemed to exceed the limits and pro-

23 visions of this article, such power and authority to promulgate
24 legislative rules is hereby revoked.

§29A-3-3. Rules of procedure required.

1 In addition to other rule-making requirements imposed by
2 law:

3 (a) Each agency shall adopt procedural rules governing
4 the formal and informal procedures prescribed or authorized
5 by this chapter. Procedural rules shall include rules of prac-
6 tice before the agency, together with forms and instructions.

7 (b) To assist interested persons dealing with it, each agency
8 shall, so far as considered practicable, supplement its rules
9 with descriptive statements of its procedures.

§29A-3-4. Filing of proposed procedural rules and interpretive rules.

1 (a) When an agency proposes a procedural rule or an inter-
2 pretive rule, the agency shall file in the state register a notice
3 of its action, including the text of the rule as proposed.

4 (b) All proposed rules filed under subsection (a) of this
5 section shall have a fiscal note attached itemizing the cost of
6 implementing the rules as they relate to this state and to per-
7 sons affected by the rules and regulations. Such fiscal note
8 shall include all information included in a fiscal note for
9 either house of the Legislature and a statement of the economic
10 impact of the rule on the state or its residents. The objectives
11 of the rules shall be clearly and separately stated in the fiscal
12 note by the agency issuing the proposed rules. No procedural
13 or interpretive rule shall be void or voidable by virtue of
14 noncompliance with this subsection.

§29A-3-5. Notice of proposed rule making.

1 When an agency proposes to promulgate a rule other than an
2 emergency rule it shall file in the state register a notice of
3 its action, including a text of the rule proposed, a fiscal note
4 as defined in subsection (b) of section four, and any request
5 for the submission of evidence to be presented on any factual
6 determinations or inquiries required by law to promulgate

7 such rule. If the agency is considering alternative draft
8 proposals it may include the text thereof.

9 The notice shall fix a date, time and place for the taking
10 of evidence for any findings and determinations which are a
11 condition precedent to promulgation of the proposed rule and
12 contain a general description of the issues to be decided. If
13 no findings and determinations are required as a condition
14 precedent to promulgation, the notice shall fix a date, time
15 and place for receipt of public comment on such proposed
16 rule.

17 If findings and determinations are a condition precedent to
18 the promulgation of such rule, then an opportunity for public
19 comment on the merits of the rule shall be afforded after such
20 findings and determinations are made. In such event, notice
21 of the hearing, or of the period for receiving public comment
22 on the proposed rule shall be attached to and filed as a part
23 of the findings and determinations of the agency when filed in
24 the state register.

25 In any hearing for public comment on the merits of the rule,
26 the agency may limit presentations to written material. The
27 time, date and place fixed in the notice shall constitute the last
28 opportunity to submit any written material relevant to any
29 hearing, all of which may be earlier submitted by filing with
30 the agency.

31 The agency may also, at its expense, cause to be published
32 as a Class I legal publication in every county of the state, any
33 notice required by this section.

34 Any citizen or other interested party may appear and be
35 heard at such hearings as are required by this section.

§29A-3-6. Filing findings and determinations for rules in state register; evidence deemed public record.

1 (a) Incident to fixing a date for public comment on a
2 proposed rule, the agency shall promulgate the findings and
3 determinations required as a condition precedent thereto, and
4 state fully and succinctly the reasons therefor and file such
5 findings and determinations in the state register. If the agency
6 amends the proposed rule as a result of the evidence or com-

7 ment presented pursuant to section five, such amendment shall
8 be filed with a description of any changes and a statement
9 listing the reasons for the amendment.

10 (b) The statement of reasons and a transcript of all
11 evidence and public comment received pursuant to notice are
12 public records and shall be carefully preserved by the agency
13 and be open for public inspection and copying for a period
14 of not less than five years from the date of the hearing.

§29A-3-7. Notice of hearings.

1 Notices of hearings required by sections five and six of this
2 article shall be filed in the state register not less than thirty
3 nor more than sixty days before the date of such hearing or the
4 last day specified therein for receiving written material. Any
5 hearing may be continued from time to time and place to
6 place by the agency which shall have the effect of extending
7 the last day for receipt of evidence or public comment. Notice
8 of such continuance shall be promptly filed thereafter in the
9 state register.

§29A-3-8. Adoption of procedural and interpretive rules.

1 A procedural and interpretive rule, other than an emergency
2 rule, shall be considered by the agency for adoption not
3 later than six months after the close of public comment and a
4 notice of withdrawal or adoption shall be filed in the state
5 register within that period. Failure to file such notice shall
6 constitute withdrawal and the secretary of state shall note such
7 failure in the state register immediately upon the expiration
8 of the six-month period.

9 A procedural or interpretive rule may be amended by the
10 agency prior to final adoption without further hearing or pub-
11 lic comment. No such amendment may change the main pur-
12 pose of the rule. If the fiscal implications have changed since
13 the rule was proposed, a new fiscal note shall be attached to
14 the notice of filing. Upon adoption of the rule (including any
15 such amendment) the agency shall file the text of the adopted
16 procedural or interpretive rule with its notice of adoption in
17 the state register and the same shall be effective on the date
18 specified in the rule or thirty days after such filing, whichever
19 is later.

§29A-3-9. Proposal of legislative rules.

1 When an agency proposes a legislative rule, other than an
2 emergency rule, it shall be deemed to be applying to the Legis-
3 lature for permission, to be granted by law, to promulgate such
4 rule as approved by the agency for submission to the Legisla-
5 ture or as amended and authorized by the Legislature by law.

6 An agency proposing a legislative rule, other than an emer-
7 gency rule, shall first file in the state register a notice of its
8 proposal, including the text of the legislative rule and including
9 all materials required in the case of a procedural or interpretive
10 rule. The agency shall then proceed as in the case of a pro-
11 cedural and interpretive rule to the point of, but not including
12 final adoption. In lieu of final adoption, the agency shall ap-
13 prove the rule, including any amendments, for submission to
14 the Legislature and file such notice of approval in the state
15 register and with the legislative rule-making review committee.

16 Such approval of the agency for submission to the Legisla-
17 ture shall be deemed to be approval for submission to the
18 Legislature only and not deemed to give full force and effect
19 until authority to do so is granted by law.

§29A-3-10. Creation of a legislative rule-making review committee.

1 (a) There is hereby created a joint committee of the
2 Legislature, known as the legislative rule-making review com-
3 mittee, to review all legislative rules of the several agencies
4 and such other rules as the committee deems appropriate.
5 The committee shall be composed of six members of the
6 Senate, appointed by the president of the Senate, and six
7 members of the House of Delegates, appointed by the speaker
8 of the House of Delegates. In addition, the president of the
9 Senate and the speaker of the House of Delegates shall be
10 ex officio nonvoting members of the committee and shall
11 designate the cochairmen. Not more than four of the voting
12 members of the committee from each house shall be members
13 of the same political party. The members shall serve until
14 their successors shall have been appointed as heretofore pro-
15 vided. Members of the committee shall receive such compen-
16 sation and expenses as provided in article two-a, chapter
17 four of this code. Such expenses and all other expenses,

18 including those incurred in the employment of legal, technical,
19 investigative, clerical, stenographic, advisory and other per-
20 sonnel shall be paid from an appropriation to be made expressly
21 for the legislative rule-making review committee, but if no
22 such appropriation be made, such expenses shall be paid
23 from the appropriation under "Account No. 103 for Joint
24 Expenses," but no expense of any kind whatever payable under
25 said Account No. 103 for joint expenses shall be incurred
26 unless first approved by the joint committee on government
27 and finance. The committee shall meet at any time, both
28 during sessions of the Legislature and in the interim.

29 (b) The committee may adopt such rules of procedure as
30 it considers necessary for the submission, presentation and
31 consideration of rules.

**§29A-3-11. Submission of legislative rules to the legislative rule-
making review committee.**

1 (a) When an agency finally approves a proposed legislative
2 rule for submission to the Legislature, pursuant to the provi-
3 sions of section nine of this article, the agency shall submit to
4 the legislative rule-making review committee at a regular
5 meeting of such committee fifteen copies of (1) the full text of
6 the legislative rule as finally approved by the agency, with new
7 language underlined and with language to be deleted from any
8 existing rule stricken-through but clearly legible; (2) a brief
9 summary of the content of the legislative rule and description
10 of any rule which the agency proposes to amend or repeal;
11 (3) a statement of the circumstances which require the rule;
12 (4) a fiscal note containing all information included in a fiscal
13 note for either house of the Legislature and a statement of the
14 economic impact of the rule on the state or its residents; and
15 (5) any other information which the committee may request or
16 which may be required by law.

17 (b) The committee shall review each proposed legislative
18 rule and, in its discretion, may hold public hearings thereon.
19 Such review shall include, but not be limited to, a determination
20 of:

21 (1) Whether the agency has exceeded the scope of its
22 statutory authority in approving the proposed legislative rule;

23 (2) Whether the proposed legislative rule is in conformity
24 with the legislative intent of the statute which the rule is in-
25 tended to implement, extend, apply, interpret or make specific;

26 (3) Whether the proposed legislative rule conflicts with any
27 other provision of this code or with any other rule adopted by
28 the same or a different agency;

29 (4) Whether the proposed legislative rule is necessary to
30 fully accomplish the objectives of the statute under which the
31 proposed rule was promulgated;

32 (5) Whether the proposed legislative rule is reasonable,
33 especially as it affects the convenience of the general public or
34 of persons particularly affected by it;

35 (6) Whether the proposed legislative rule could be made less
36 complex or more readily understandable by the general public;
37 and

38 (7) Whether the proposed legislative rule was promulgated
39 in compliance with the requirements of this article and with
40 any requirements imposed by any other provision of this code.

41 (c) After reviewing the legislative rule, the committee shall
42 recommend that the Legislature:

43 (1) Authorize the agency to promulgate the legislative rule,
44 or

45 (2) Authorize the agency to promulgate part of the legisla-
46 tive rule, or

47 (3) Authorize the agency to promulgate the legislative rule
48 with certain amendments, or

49 (4) Recommend that the rule be withdrawn.

50 The committee shall file notice of its action in the state re-
51 gister and with the agency proposing the rule: *Provided*, That
52 when the committee makes the recommendations of subdi-
53 vision (2), (3) or (4) of this subsection, the notice shall con-
54 tain a statement of the reasons for such recommendation.

55 (d) When the committee recommends that a rule be autho-
56 rized, in whole or in part, by the Legislature, the committee

57 shall instruct the office of legislative services to draft a bill
58 authorizing the agency to promulgate all or part of the legis-
59 lative rule, and incorporating such amendments as the com-
60 mittee desires. If the committee recommends that the rule not
61 be authorized, it shall include in its report a draft of a bill
62 authorizing promulgation of the rule together with a recom-
63 mendation. Any draft bill prepared under this section shall
64 contain a legislative finding that the rule is within the legisla-
65 tive intent of the statute which the rule is intended to imple-
66 ment, extend, apply or interpret and shall be available for any
67 member to introduce to the Legislature.

§29A-3-12. Submission of legislative rules to Legislature.

1 (a) No later than forty days before the sixtieth day of
2 each regular session of the Legislature, the cochairman of the
3 legislative rule-making review committee shall submit to the
4 clerk of the respective houses of the Legislature copies of all
5 proposed legislative rules which have been submitted to the
6 committee pursuant to the provisions of section eleven of this
7 article and which have not been previously submitted to the
8 Legislature for study, together with the recommendations of
9 the committee with respect to such rules, a statement of the
10 reasons for any recommendation that a rule or any part of a
11 rule be amended, and a statement that a bill authorizing the
12 legislative rule has been drafted by legislative services pursuant
13 to section eleven of this article. The cochairman of
14 the committee may also submit such rules at the di-
15 rection of the committee at any time before or during
16 a special session in which consideration thereof may be ap-
17 propriate. The committee may withhold from its report any
18 proposed legislative rule which was submitted to the com-
19 mittee fewer than two hundred ten days before the end of
20 a regular session. The clerk of each house shall submit
21 the report to his house at the commencement of the next
22 session.

23 All bills introduced authorizing the promulgation of a rule
24 may be referred by the speaker of the House of Delegates and
25 by the president of the Senate to appropriate standing com-
26 mittees of the respective houses for further consideration or
27 the matters may be otherwise dealt with as each house or

28 its rules provide. The Legislature may by act authorize the
29 agency to adopt a legislative rule incorporating the entire
30 rule, or may authorize the agency to adopt a rule with any
31 amendments which the Legislature shall designate. The clerk
32 of the house originating such act shall forthwith file a copy
33 of any bill enacted in contemplation of this section in the
34 state register and with the agency proposing such rule and
35 the clerk of each house may prepare and file a synopsis of
36 legislative action during any session on any proposed rule
37 submitted to the house during such session for which authority
38 to promulgate was not by law provided during such session.

39 (b) If the Legislature fails during its regular session to
40 act upon all or part of any legislative rule which was submitted
41 to it by the legislative rule-making review committee during
42 such session, no agency may thereafter issue any rule or
43 directive or take other action to implement such rule or part
44 thereof unless and until otherwise authorized to do so.

45 (c) Nothing herein shall be construed to prevent the
46 Legislature by law from authorizing or authorizing and direct-
47 ing an agency to promulgate legislative rules not proposed by
48 the agency or upon which some procedure specified in this
49 chapter is not yet complete.

50 (d) Whenever the Legislature is convened by proclamation
51 of the governor, upon his own initiative or upon application
52 of the members of the Legislature, or whenever a regular ses-
53 sion of the Legislature is extended or convened by the vote or
54 petition of its members, the Legislature may by act enacted
55 during such extraordinary or extended session authorize, in
56 whole or in part, any legislative rule whether submitted to the
57 legislative rule-making review committee, or not, if legislative
58 action on such rule during such session is a lawful order of
59 business.

60 (e) Whenever a date is required by this section to be
61 computed in relation to the end of a regular session of the
62 Legislature, such date shall be computed without regard to
63 any extensions of such session occasioned solely by the pro-
64 clamation of the governor.

65 (f) Whenever a date is required to be computed from or is

66 fixed by the first day of a regular session of the Legislature,
67 it shall be computed or fixed in the year one thousand nine
68 hundred eighty-four, and each fourth year thereafter without
69 regard to the second Wednesday of January of such years.

§29A-3-13. Adoption of legislative rules; effective date.

1 (a) Except as the Legislature may by law otherwise pro-
2 vide, within sixty days after the effective date of an act
3 authorizing promulgation of a legislative rule, the agency shall
4 promulgate the rule only in conformity with the provisions
5 of law authorizing and directing the promulgation of such
6 rule.

7 (b) A legislative rule authorized by the Legislature shall
8 become effective thirty days after such filing in the state
9 register, or on the effective date fixed by the authorizing act or
10 if none is fixed by law, such later date not to exceed ninety
11 days, as is fixed by the agency.

12 (c) The secretary of state shall note in the state register
13 the effective date of an authorized and promulgated legisla-
14 tive rule, and shall file such legislative rule in the state register
15 in lieu of the proposed legislative rule previously filed pursuant
16 to section six, article three.

§29A-3-14. Withdrawal or modification of proposed rules.

1 (a) Any legislative rule proposed by an agency may be
2 withdrawn by the agency any time before passage of a law
3 authorizing or authorizing and directing its promulgation, but
4 no such action shall be construed to affect the validity, force
5 or effect of a law enacted authorizing or authorizing and di-
6 recting the promulgation of an authorized legislative rule or
7 exercising compliance with such law. The agency shall file a
8 notice of any such action in the state register.

9 (b) At any time before a proposed legislative rule has been
10 submitted by the legislative rule-making review committee
11 to the Legislature pursuant to the provisions of section twelve
12 of this article, the agency may modify the proposed rule to
13 meet the objections of the committee. The agency shall file
14 in the state register a notice of its modifying action including

15 a copy of the modified rule, but shall not be required to com-
16 ply with any provisions of this article requiring opportunity
17 for public comment or taking of evidence with respect to
18 such modification. If a legislative rule has been withdrawn,
19 modified and then resubmitted to such committee, the rule
20 shall be considered to have been submitted to such committee
21 on the date of such resubmission.

**§29A-3-15. Emergency legislative rules; procedures for promulga-
tion; definition.**

1 (a) Any agency with authority to promulgate procedural or
2 interpretive rules or propose legislative rules may, without
3 hearing, find that an emergency exists requiring that emergency
4 rules be promulgated and promulgate the same in accordance
5 with this section. Such emergency rules, together with a
6 statement of the facts and circumstances constituting the
7 emergency, shall be filed in the state register and shall become
8 effective immediately upon such filing. Such emergency rules
9 may amend or repeal any legislative rule which by law has
10 been specifically authorized by the Legislature but the cir-
11 cumstances constituting the emergency requiring such amend-
12 ment or repeal shall be stated with particularity and be sub-
13 ject to de novo review by any court having original jurisdiction
14 of an action challenging their validity. Fifteen copies of the
15 rules and of the required statement shall be filed forthwith
16 with the legislative rule-making review committee.

17 Except as provided in subsections (b) and (e) of this section,
18 an emergency rule which is a legislative rule shall be effective
19 until the earlier of (1) the expiration date specified by the
20 agency in a notice filed in the state register or (2) the expira-
21 tion of one hundred eighty days following the filing of the
22 rule in the state register.

23 (b) An agency may extend the effective period of any
24 emergency rule which is a legislative rule for an additional
25 period not to exceed one hundred eighty days by filing notice
26 of such extension in the state register if:

27 (1) Such notice of extension is filed not more than ten
28 days prior to the date on which such emergency rule is other-
29 wise scheduled to expire;

30 (2) The agency has, within ninety days following the filing
31 of the emergency rule in the state register, initiated rule-
32 making procedures for permission to promulgate a regular
33 legislative rule to replace such emergency rule;

34 (3) The Legislature has not authorized or directed promul-
35 gation of an authorized legislative rule dealing with sub-
36 stantially the same subject matter since such emergency rule
37 was first promulgated; and

38 (4) The Legislature has not, by law, disapproved of such
39 emergency rule.

40 (c) The provisions of this section shall not be used to
41 avoid or evade any provision of this article or any other pro-
42 visions of this code, including any provisions for legislative
43 review and approval of proposed rules. Any emergency rule
44 promulgated for any such purpose may be contested in a
45 judicial proceeding before a court of competent jurisdiction.

46 (d) The legislative rule-making review committee may re-
47 view any emergency rule to determine (1) whether the agency
48 has exceeded the scope of its statutory authority in promulgat-
49 ing the emergency rule; (2) whether there exists an emergency
50 justifying the promulgation of such rule; and (3) whether the
51 rule was promulgated in compliance with the requirements
52 and prohibitions contained in this section. The committee
53 may recommend to the agency or the Legislature such action
54 as it may deem proper.

55 (e) For the purposes of this section, an emergency exists
56 when the promulgation of a rule is necessary for the immediate
57 preservation of the public peace, health, safety or welfare or
58 is necessary to comply with a time limitation established by
59 this code or by a federal statute or regulation or to prevent
60 substantial harm to the public interest.

§29A-3-16. Legislative review of procedural rules, interpretive rules and existing legislative rules.

1 The legislative rule-making review committee may review
2 any procedural rules, interpretive rules or existing legislative
3 rules and may make recommendations concerning such rules

4 to the Legislature, or to the agency, or to both the Legislature
5 and the agency.

§29A-3-17. Prior rules.

1 Any rule lawfully promulgated prior to the effective date
2 of this chapter shall remain in full force and effect until:

3 (1) Such rule is expressly made ineffective by the provisions
4 of this chapter, or

5 (2) Such rule should expire by reason of failure to refile the
6 same as provided in section five of article two, or expires pur-
7 suant to its own terms and provisions lawfully made before the
8 effective date of this section, or

9 (3) Such rule is repealed by the lawful act of the agency, in
10 conformity with this chapter, or

11 (4) Such rule is invalidated by an act of the Legislature or
12 the force and effect of another law.

**ARTICLE 4. DECLARATORY RULINGS AND DECLARATORY JUDG-
MENTS.**

§29A-4-2. Declaratory judgment on validity of rule.

1 (a) Any person, except the agency promulgating the rule,
2 may have the validity of any rule determined by instituting an
3 action for a declaratory judgment in the circuit court of Ka-
4 nawha County, West Virginia, when it appears that the rule,
5 or its threatened application, interferes with or impairs or
6 threatens to interfere with or impair, the legal rights or privi-
7 leges of the plaintiff or plaintiffs. The agency shall be made a
8 party to the proceeding. The declaratory judgment may be
9 rendered whether or not the plaintiff or plaintiffs has or have
10 first requested the agency to pass upon the validity of the rule
11 in question.

12 (b) The court shall declare the rule invalid if it finds that
13 the rule violates constitutional provisions or exceeds the statu-
14 tory authority or jurisdiction of the agency or was adopted
15 without compliance with statutory rule-making procedures or
16 is arbitrary or capricious, or that, in the case of an emergency
17 rule adopted pursuant to section fifteen, article three of this
18 chapter, action under said section fifteen was not justified.

19 (c) When the invalidity of a rule has been so declared, the
20 agency shall, within thirty days after such declaratory judg-
21 ment has been entered, acquiesce therein and modify or re-
22 scind such invalidated rule in accord with the requirement of
23 such declaratory judgment unless the agency promptly, and in
24 any event within such thirty-day period, notifies the plaintiff or
25 plaintiffs of its intention to apply for an appeal to the supreme
26 court of appeals from such declaratory judgment pursuant to
27 section one, article six of this chapter. In the event such agency
28 shall thereafter make timely application for such appeal, the
29 acquiescence of the agency in the invalidity of such rule shall
30 not be required until thirty days after timely applications for
31 such appeal have been refused or within thirty days after the
32 appeal has been dismissed or otherwise disposed of in the
33 supreme court of appeals by an affirmance of the judgment
34 invalidating said rule.

CHAPTER 122

(S. B. 61—By Mr. Williams)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two hundred two, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the registration procedure for securities broker-dealers, agents and investment advisers; increasing fees for registration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISERS.

§32-2-202. Registration procedure.

1 (a) A broker-dealer, agent or investment adviser may
2 obtain an initial or renewal registration by filing with the
3 commissioner an application together with a consent to

4 service of process pursuant to subsection (g), section four hundred
5 fourteen, article four of this chapter. The application shall contain
6 whatever information the commissioner by rule requires concerning
7 such matters as (1) the applicant's firm and place of
8 organization; (2) the applicant's proposed method of doing
9 business; (3) the qualifications and business history of the
10 applicant; in the case of a broker-dealer or investment
11 adviser, the qualifications and business history of any
12 partner, officer or director, any person occupying a similar
13 status or performing similar functions, or any person directly
14 or indirectly controlling the broker-dealer or investment
15 adviser; and, in the case of an investment adviser, the
16 qualifications and business history of any employee; (4) any
17 injunction or administrative order or conviction of a
18 misdemeanor involving a security or any aspect of the
19 securities business and any conviction of a felony; and (5) the
20 applicant's financial condition and history. The
21 commissioner may by rule or order require an applicant for
22 initial registration to publish an announcement of the
23 application as a Class I legal advertisement in compliance
24 with the provisions of article three, chapter fifty-nine of this
25 code, and the publication area or areas for such publication
26 shall be specified by the commissioner. If no denial order is in
27 effect and no proceeding is pending under section two
28 hundred four of this article, registration becomes effective at noon
29 of the thirtieth day after an application is filed. The commissioner
30 may by rule or order specify an earlier effective date, and he
31 may by order defer the effective date until noon of the
32 thirtieth day after the filing of any amendment. Registration
33 of a broker-dealer automatically constitutes registration of
34 any agent who is a partner, officer or director, or a person
35 occupying a similar status or performing similar functions, as
36 designated by the broker-dealer in writing to the
37 commissioner and approved in writing by the commissioner.

38 (b) Every applicant for initial or renewal registration shall
39 pay a filing fee of one hundred fifty dollars in the case of a
40 broker-dealer, thirty dollars in the case of an agent, and one
41 hundred dollars in the case of an investment adviser. When
42 application is denied or withdrawn, the commissioner shall
43 retain all of the fee.

44 (c) A registered broker-dealer or investment adviser may
45 file an application for registration of a successor, whether or
46 not the successor is then in existence, for the unexpired

47 portion of the year. A filing fee of twenty dollars shall be paid.
48 (d) The commissioner may by rule require a minimum
49 capital for registered broker-dealers and investment advisers.
50 (e) The commissioner may by rule require registered
51 broker-dealers, agents and investment advisers to post surety
52 bonds in amounts up to ten thousand dollars, and may
53 determine their conditions. Any appropriate deposit of cash
54 or securities shall be accepted in lieu of any bond so required.
55 No bond may be required of any registrant whose net capital,
56 which may be defined by rule, exceeds twenty-five thousand
57 dollars. Every bond shall provide for suit thereon by any
58 person who has a cause of action under section four hundred
59 ten, article four of this chapter and, if the commissioner by rule or
60 order requires, by any person who has a cause of action not arising
61 under this chapter. Every bond shall provide that no suit may be
62 maintained to enforce any liability on the bond unless
63 brought within two years after the sale or other act upon
64 which it is based.

CHAPTER 123

(Com. Sub. for S. B. 11—By Mr. Susman)

[Passed March 10, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, six and ten, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to homestead property tax exemptions; expanding the methods of documentation of permanent and total disability; eliminating the requirement that a claimant must file annually for exemption on the basis of permanent and total disability; providing that claimant must certify that he will notify assessor if he is no longer permanently and totally disabled; authorizing the assessor to deny exemptions originally granted upon belief that the claimant is ineligible for an exemption; providing for an appeal from the subsequent denial of an exemption by the assessor; providing for criminal penalties; and providing for res-

titution of all state taxes not paid due to improper exemption claim with interest thereon at legal rate until paid.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six and ten, article six-b, 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 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-4. Claim for exemption; renewals; waiver of exemption.

§11-6B-5. Determination; notice of denial of claim or exemption.

§11-6B-6. Appeals procedure.

§11-6B-10. Criminal penalties; restitution.

§11-6B-4. Claim for exemption; renewals; waiver of exemption.

1 (a) *General.*—No exemption shall be allowed under
2 this article unless a claim of exemption is filed with the
3 assessor of the county in which the homestead is located,
4 on or before the first day of October following the July
5 first assessment day. In the case of sickness, absence or
6 other disability of the claimant, the claim may be filed by
7 the claimant or his duly authorized agent.

8 (b) *Claims for disability exemption.*—Each claim for
9 exemption based on the owner being permanently and
10 totally disabled shall include one of the following forms of
11 documentation in support of said claim: (1) A written
12 certification by a doctor of medicine or doctor of osteop-
13 athy licensed to practice their particular profession in this
14 state that the claimant is permanently and totally dis-
15 abled; (2) A written certification by the social security
16 administration that the claimant is currently receiving
17 benefits for permanent and total disability; (3) A copy of
18 the letter from the social security administration origi-
19 nally awarding benefits to the claimant for permanent and
20 total disability and a copy of a current check for such
21 benefits, marked void; (4) A current social security
22 health insurance (medicare) card in the name of the
23 claimant and a copy of a current check to the claimant,
24 marked void, for benefits from the social security admin-

25 istration for permanent and total disability; (5) A writ-
26 ten certification signed by the veterans administration
27 certifying that a person is totally and permanently dis-
28 abled; (6) Any lawfully recognized workmen's compen-
29 sation documentation certifying that a person is totally
30 and permanently disabled; (7) Any lawfully recognized
31 pneumoconiosis documentation certifying that a person
32 is totally and permanently disabled; or (8) Any other
33 lawfully recognized documentation certifying that a per-
34 son is totally and permanently disabled.

35 (c) *Renewals.*

36 (1) *Senior citizens.*—If the claimant is age sixty-five
37 or older, then after the claimant has filed for exemp-
38 tion once with his assessor, there shall be no need for that
39 claimant to refile unless the claimant moves to a new
40 homestead.

41 (2) *Disabled.*—If the claimant is permanently and to-
42 tally disabled, then after the claimant has filed for the
43 exemption once with his assessor, and signed a statement
44 certifying that he will notify the assessor if he is no
45 longer eligible for an exemption on the basis of being
46 permanently and totally disabled and that the claimant
47 will notify the assessor within thirty days of the discon-
48 tinuance of the receipt of benefits for permanent and total
49 disability, if the claimant originally claimed receipt of
50 said benefits to document his claim for exemption, there
51 shall be no need for that claimant to refile, unless the
52 claimant moves to a new homestead.

53 (3) *Waiver of exemption.*—Any person not filing his
54 claim for exemption on or before the first day of October
55 shall be deemed to have waived his right to exemption for
56 the next tax year.

**§11-6B-5. Determination; notice of denial of claim or exemp-
tion.**

1 (a) The assessor shall as soon as practicable after a
2 claim for exemption is filed, review that claim and either
3 approve or deny it. If the exemption is denied, the assessor
4 shall promptly, but not later than the first day of Novem-

5 ber, serve the claimant with written notice explaining
6 why the exemption was denied, and furnish a form for
7 filing with the county commission should the claimant
8 desire to take an appeal. The notice required or autho-
9 rized by this section shall be served on the claimant or his
10 authorized representative either by personal service or
11 by certified mail.

12 (b) In the event that the assessor shall have informa-
13 tion sufficient to form a reasonable belief that a claimant,
14 after having been originally granted an exemption, is not
15 eligible for said exemption, he shall deny the exemption
16 on the next assessment date and shall promptly, but no
17 later than the first day of November, serve the claimant
18 with written notice explaining the reasons for the denial
19 and furnish a form for filing with the county commission
20 should the claimant desire to take an appeal.

§11-6B-6. Appeals procedure.

1 (a) *Notice of appeal; thirty days.*—Any claimant ag-
2 grieved by the denial of his claim for exemption or the
3 subsequent denial of his exemption, may appeal to the
4 county commission, within thirty days after receipt of
5 written notice explaining why the exemption was denied.

6 (b) *Review; determination; appeal.*—The county com-
7 mission shall complete its review and issue its determina-
8 tion within sixty days after receipt of the notice of appeal
9 from the claimant. In conducting its review, the county
10 commission may hold a hearing on the claim. The assessor
11 or the claimant may apply to the circuit court of the
12 county for review of the determination of the county
13 commission in the same manner as is provided for appeals
14 from the county commission in section twenty-five, article
15 three of this chapter.

§11-6B-10. Criminal penalties; restitution.

1 (a) *False or fraudulent claim for exemption.*—Any
2 claimant who willfully files a fraudulent claim for exemp-
3 tion, and any person who knowingly assisted in the prep-
4 aration or filing of such fraudulent claim for exemption
5 or who knowingly supplied information upon which the

6 fraudulent claim was prepared or allowed, shall be guilty
7 of a misdemeanor, and, upon conviction thereof, shall be
8 fined not less than fifty nor more than one hundred and
9 fifty dollars, or imprisoned in the county jail for not more
10 than six months, or both fined and imprisoned.

11 (b) *Fraudulent assessments.*—(1) An assessor or em-
12 ployee of a county who, with intent to defraud the state,
13 assesses the value of the eligible claimant's homestead
14 for an amount which is in excess of its true and actual
15 value or is in excess of the assessed value of similar
16 property in his county, in order to increase the cost of the
17 homestead exemption to his county and to thereby secure
18 a larger reimbursement from the state, shall be guilty of
19 a misdemeanor, and, upon conviction thereof, shall be
20 fined not less than one hundred dollars nor more than five
21 hundred dollars, or imprisoned in the county jail for not
22 more than one year, or both fined and imprisoned. Each
23 violation of this subsection shall constitute a separate of-
24 fense.

25 (2) An assessor or employee of a county who, with
26 intent to defraud a claimant, assesses the value of the
27 eligible claimant's homestead for an amount which is in
28 excess of its true and actual value or is in excess of the
29 assessed value of similar property in his county, shall be
30 guilty of a misdemeanor, and, upon conviction thereof,
31 shall be fined not less than one hundred dollars nor more
32 than five hundred dollars, or imprisoned in the county
33 jail for not more than one year, or both fined and im-
34 prisoned. Each violation of this subsection shall constitute
35 a separate offense.

36 (c) *Failure to notify assessor.*—A claimant or his legal
37 representative who, prior to the next first day of July,
38 fails to notify the assessor of the county wherein property
39 subject to the homestead property tax exemption is lo-
40 cated, that title to that property or a portion thereof was
41 transferred by deed, grant, sale, gift, will or by the laws
42 of this state regulating descent and distribution, that the
43 property is no longer used and occupied for residential
44 purposes exclusively by the claimant or that the claimant

45 is no longer permanently and totally disabled, shall be
46 guilty of a misdemeanor, and, upon conviction thereof,
47 shall be fined not more than one thousand dollars or im-
48 prisoned for not more than one year or both.

49 (d) In addition to the criminal penalties provided
50 above, upon conviction of any of the above offenses, the
51 court shall order that the defendant make restitution unto
52 the state for all taxes not paid due to an improper exemp-
53 tion for the claimant and interest thereon at the legal
54 rate until paid.

CHAPTER 124

(S. B. 407—By Mr. McGraw, Mr. President)

[Passed March 13, 1982; in effect April 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact sections two-a and two-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to business and occupation taxes upon the production of timber and the manufacturing of wood products; and providing for certain deductions.

Be it enacted by the Legislature of West Virginia:

That sections two-a and two-b, article thirteen, 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 13. BUSINESS AND OCCUPATION TAX.

§11-13-2a. Severance, extraction and production of coal and other natural resource products.

§11-13-2b. Manufacturing, compounding or preparing products; processing of food excepted.

§11-13-2a. Severance, extraction and production of coal and other natural resource products.

1 Upon every person exercising the privilege of engaging
2 or continuing within this state in the business of severing,

3 extracting, reducing to possession and producing for sale,
4 profit or commercial use any natural resource products,
5 the amount of such tax to be equal to the value of the
6 articles produced as shown by the gross proceeds derived
7 from the sale thereof by the producer, except as other-
8 wise provided, multiplied by the respective rates and in
9 the classifications as follows:

10 (1) Coal, three and five-tenths percent. The value of coal
11 mined and produced in this state in the exercise of the
12 production privilege, taxable at the rates herein and in
13 section two-1 in conjunction with section two of this
14 article, shall include in addition to the value of the mined
15 product those values arising from the ordinary processing
16 and preparing of such coal for sale or commercial use,
17 where such processing and preparing are done by the
18 producer of the coal. Ordinary processing and preparing
19 of coal activities by the producer thereof are considered
20 an integral part of the production privilege and include
21 crushing, washing, cleaning, drying, sorting, sizing, blend-
22 ing, loading for shipment and the like applied in the
23 ordinary mining of such products to make the same sal-
24 able and commercially usable. The values taxable herein
25 and attributable to such ordinary processing and prepar-
26 ing of coal activities will not be again taxable under the
27 provisions of section two-b of this article to the producer
28 of such coal. The processing associated with the produc-
29 tion of all other natural resources referred to in this
30 section and more sophisticated processing and preparing
31 of coal activities shall be subject to the other applicable
32 provisions of this article.

33 (2) Limestone or sandstone, quarried or mined, two
34 and two-tenths percent.

35 (3) Oil, four and thirty-four one-hundredths percent.

36 (4) Natural gas, in excess of the value of five thousand
37 dollars, eight and sixty-three one-hundredths percent.

38 (5) Blast furnace slag, four and thirty-four one-hun-
39 dredths percent.

40 (6) Sand, gravel or other mineral product not quarried
41 or mined, four and thirty-four one-hundredths percent.

42 (7) Timber, two and five-tenths percent. Severing and
43 delimiting of timber by the producer thereof is the pro-
44 duction privilege. The values taxable herein and attribut-
45 able to such production of timber will not again be
46 taxable under the provisions of section two-b of this ar-
47 ticle to the producer of such timber.

48 (8) Other natural resource products, two and eighty-
49 six one-hundredths percent.

50 The measure of this tax is the value of the entire pro-
51 duction in this state, regardless of the place of sale or the
52 fact that the delivery may be made to points outside the
53 state.

54 For the purpose of the production of oil classification,
55 and the production of natural gas classification, as set
56 forth in this section, multiple co-owners of oil or natural
57 gas, in place, lessees thereof, or others being vested with
58 title and ownership to part or all of the oil and gas, as
59 personal property, immediately after severance, extrac-
60 tion, reduction to possession and production, except
61 royalty recipients, in kind, shall be deemed to be a "group
62 or combination acting as a unit" and one "person," as
63 defined in section one of this article, if not otherwise
64 defined therein, whenever engaged in the business of pro-
65 ducing oil or natural gas through common use, by joint or
66 separately executed contracts, of the same independent
67 contractor driller or operator's services; and not with-
68 standing provisions of private contracts for separate
69 deposit for gross receipts in separate members' accounts
70 or for members of such group or combination to take in
71 kind any proportionate part of such natural resources.

72 Lessees, sublessees or other denominated lessees are
73 considered to be producers of all of the oil or natural gas
74 produced, regardless of any payment, in kind, to lessors,
75 sublessors or other denominated lessors of a part of such
76 natural resources as rents or royalties. Recipients of
77 royalties or rents, in kind, in cash or otherwise are tax-
78 able on their gross income pursuant to the provisions of
79 section two-i of this article.

§11-13-2b. Manufacturing, compounding or preparing products; processing of food excepted.

1 Upon every person engaging or continuing within this
2 state in the business of manufacturing, compounding or
3 preparing for sale, profit or commercial use, either di-
4 rectly or through the activity of others in whole or part,
5 any article or articles, substance or substances, commod-
6 ity or commodities, or electric power produced by public
7 utilities or others and not taxed under other provisions
8 of this article, or newspaper publishing (including all
9 gross income or proceeds of sale from circulation and
10 advertising), the amount of the tax to be equal to the
11 value of the article, substance, commodity or electric
12 power or newspaper, manufactured, compounded or pre-
13 pared for sale, as shown by the gross proceeds derived
14 from the sale thereof by the manufacturer or person
15 compounding or preparing the same, except as otherwise
16 provided, multiplied by a rate of eighty-eight one-hun-
17 dredths of one percent. The measure of this tax is the
18 value of the entire product manufactured, compounded
19 or prepared in this state for sale, profit or commercial
20 use, regardless of the place of sale or the fact that de-
21 liveries may be made to points outside the state. How-
22 ever, with respect to the manufacturing, compounding or
23 preparing for sale of timber or timber products, the mea-
24 sure of this tax is the value of the entire timber product
25 manufactured, compounded or prepared in the state for
26 sale, profit or commercial use, regardless of the place of
27 sale or the fact that deliveries may be made to points
28 outside the state but such value shall not include the
29 value of any timber or timber products used as ingre-
30 dients, components or elements of such timber products.
31 However, the dressing and processing of food by a person,
32 firm or corporation, which food is to be sold on a whole-
33 sale basis by such person, firm or corporation shall not be
34 considered as manufacturing or compounding, but the sale
35 of these products on a wholesale basis shall be subject to
36 the same tax as is imposed on the business of selling at
37 wholesale as provided in section two-c.

38 It is further provided, however, that in those instances

39 in which the same person partially manufactures, com-
40 pounds or prepares products within this state and par-
41 tially manufactures, compounds or prepares such prod-
42 ucts outside of this state the measure of his tax under
43 this section shall be that proportion of the sale price of
44 the product that the payroll cost of manufacturing within
45 this state bears to the entire payroll cost of manufactur-
46 ing the product; or, at the option of the taxpayer, the
47 measure of his tax under this section shall be the pro-
48 portion of the sales value of the articles that the cost of
49 operations in West Virginia bears to the full cost of manu-
50 facture of the articles.

CHAPTER 125

(S. B. 334—By Mr. McGraw, Mr. President)

[Passed March 8, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enforcement powers of the tax commissioner and his agents and employees; enforcement powers of the commissioner of the West Virginia department of highways and his agents and employees; enforcement powers of the public service commission and its agents and employees, and the bonds of any such agents and employees, in the enforcement of chapter eleven, article fourteen-a, motor carrier road tax.

Be it enacted by the Legislature of West Virginia:

That section twelve, article fourteen-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 14A. MOTOR CARRIER ROAD TAX.

§11-14A-12. Enforcement powers.

- 1 (a) Any employee or agent of the tax commissioner or
- 2 any employee or agent of the commissioner of the West

3 Virginia department of highways or any employee or
4 agent of the West Virginia public service commission so
5 authorized by the tax commissioner or the commissioner
6 of the West Virginia department of highways or the West
7 Virginia public service commission shall have all the law-
8 ful powers delegated to members of the department of
9 public safety to enforce the provisions of this article,
10 when bonded as hereinafter provided in this section.

11 (b) Any such employee or agent so authorized by
12 either the tax commissioner or by the commissioner of
13 the West Virginia department of highways or by the West
14 Virginia public service commission shall execute a bond
15 with security in the sum of thirty-five hundred dollars,
16 payable to the state of West Virginia, conditioned for the
17 faithful performance of his duties, as such, and such bond
18 shall be approved as to form by the attorney general, and
19 the same shall be filed with the secretary of state and
20 preserved in his office.

21 (c) The provisions of this bill shall apply notwith-
22 standing section five, article ten of this chapter.

CHAPTER 126

(Com. Sub. for S. B. 400—By Mr. McGraw, Mr. President)

[Passed March 2, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia personal income tax act; and amending the definition of West Virginia adjusted gross income by adding additional modifications increasing and reducing federal adjusted gross income in determining West Virginia adjusted gross income.

Be it enacted by the Legislature of West Virginia:

That sections nine and twelve, article twenty-one, chapter

eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

§11-21-12. West Virginia adjusted gross income of resident individual.

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same
2 meaning as when used in a comparable context in the
3 laws of the United States relating to income taxes, unless
4 a different meaning is clearly required. Any reference
5 in this article to the laws of the United States shall mean
6 the provisions of the Internal Revenue Code of 1954, as
7 amended, and such other provisions of the laws of the
8 United States as relate to the determination of income
9 for federal income tax purposes. All amendments made
10 to the laws of the United States prior to the first day of
11 January, one thousand nine hundred eighty-two, shall be
12 given effect in determining the taxes imposed by this
13 article for the tax period beginning the first day of
14 January, one thousand nine hundred eighty-one, and
15 thereafter, but no amendment to the laws of the United
16 States made on or after the first day of January, one
17 thousand nine hundred eighty-two, shall be given effect.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.*—The West Virginia adjusted gross in-
2 come of a resident individual means his federal adjusted
3 gross income as defined in the laws of the United States
4 for the taxable year with the modifications specified in
5 this section.

6 (b) *Modifications increasing federal adjusted gross*
7 *income.*—There shall be added to federal adjusted gross
8 income the following items, except that modifications
9 (5), (6) and (7) shall be required only with respect to
10 tax periods ending on or after the first day of January,
11 one thousand nine hundred eighty-two:

12 (1) Interest income on obligations of any state other
13 than this state, or of a political subdivision of any such
14 other state unless created by compact or agreement to
15 which this state is a party;

16 (2) Interest or dividend income on obligations or
17 securities of any authority, commission or instrumentality
18 of the United States, which the laws of the United States
19 exempt from federal income tax but not from state in-
20 come taxes;

21 (3) Income taxes imposed by this state or any other
22 taxing jurisdiction, to the extent deductible in determin-
23 ing federal adjusted gross income and not credited against
24 federal income tax;

25 (4) Interest on indebtedness incurred or continued to
26 purchase or carry obligations or securities the income
27 from which is exempt from tax under this article, to the
28 extent deductible in determining federal adjusted gross
29 income;

30 (5) Interest on a depository institution tax-exempt
31 savings certificate which is allowed as an exclusion from
32 federal gross income under section 128 of the Internal
33 Revenue Code, for the federal taxable year;

34 (6) The amount allowed as a deduction from federal
35 gross income under section 221 of the Internal Revenue
36 Code by married couples who file a joint federal return
37 for the federal taxable year; and

38 (7) The deferral value of certain income that is not
39 recognized for federal tax purposes, which value shall
40 be an amount equal to a percentage of the amount al-
41 lowed as a deduction in determining federal adjusted
42 gross income pursuant to the accelerated cost recovery
43 system under section 168 of the Internal Revenue Code
44 for the federal taxable year, with the percentage of the
45 federal deduction to be added as follows with respect to
46 the following recovery property: three-year property—
47 no modification; five-year property—ten percent; ten-
48 year property—fifteen percent; fifteen-year public utility
49 property—twenty-five percent; and fifteen-year real

50 property—thirty-five percent: *Provided*, That this modi-
51 fication shall not apply to any person whose federal de-
52 duction is determined by the use of the straight line
53 method.

54 (c) *Modifications reducing federal adjusted gross in-*
55 *come.*—There shall be subtracted from federal adjusted
56 gross income:

57 (1) Interest income on obligations of the United States
58 and its possessions to the extent includible in gross in-
59 come for federal income tax purposes;

60 (2) Interest or dividend income on obligations or
61 securities of any authority, commission or instrumental-
62 ity of the United States to the extent includible in gross
63 income for federal income tax purposes but exempt from
64 state income taxes under the laws of the United States;

65 (3) Any gain from the sale or other disposition of
66 property having a higher fair market value on the first
67 day of January, one thousand nine hundred sixty-one,
68 than the adjusted basis at said date for federal income
69 tax purposes: *Provided*, That the amount of this adjust-
70 ment is limited to that portion of any such gain which
71 does not exceed the difference between such fair market
72 value and such adjusted basis: *Provided, however*, That if
73 such gain is considered a long-term capital gain for
74 federal income tax purposes, the modification shall be
75 limited to forty per centum of such portion of the gain;

76 (4) The amount of any refund or credit for over-
77 payment of income taxes imposed by this state, or any
78 other taxing jurisdiction, to the extent properly included
79 in gross income for federal income tax purposes;

80 (5) Annuities, retirement allowances, returns of con-
81 tributions and any other benefit received under the
82 public employees retirement system, the department of
83 public safety death, disability and retirement fund, the
84 state teachers retirement system, and all forms of mili-
85 tary retirement, including regular armed forces, reserves
86 and national guard, including any survivorship annuities

87 derived therefrom, to the extent includible in gross in-
88 come for federal income tax purposes;

89 (6) Retirement income received in the form of pensions
90 and annuities after the thirty-first day of December, one
91 thousand nine hundred seventy-nine, under any police or
92 firemen's retirement system, including any survivorship
93 annuities derived therefrom, to the extent includible in
94 gross income for federal income tax purposes;

95 (7) Federal adjusted gross income in the amount of
96 eight thousand dollars received from any source after
97 the thirty-first day of December, one thousand nine
98 hundred seventy-nine, by any person who has attained
99 the age of sixty-five on or before the last day of the
100 taxable year, or by any person certified by proper
101 authority as permanently and totally disabled, regardless
102 of age, on or before the last day of the taxable year, to
103 the extent includible in federal adjusted gross income
104 for federal tax purposes: *Provided, That*

105 (i) Where the total modification under subdivisions
106 (1), (2), (5) and (6) of this subsection is eight thousand
107 dollars per person or more, no deduction shall be al-
108 lowed under this subdivision, and

109 (ii) Where the total modification under subdivisions
110 (1), (2), (5) and (6) of this subsection is less than eight
111 thousand dollars per person, the total modification al-
112 lowed under this subdivision for all gross income received
113 by such person shall be limited to the difference between
114 eight thousand dollars and the sum of modifications
115 under such subdivisions;

116 (8) Federal adjusted gross income in the amount of
117 eight thousand dollars received from any source after
118 the thirty-first day of December, one thousand nine
119 hundred seventy-nine, by the surviving spouse of any
120 person who had attained the age of sixty-five or who
121 had been certified as permanently and totally disabled,
122 to the extent includible in federal adjusted gross income
123 for federal tax purposes: *Provided, That*

124 (i) Where the total modification under subdivisions
125 (1), (2), (5), (6) and (7) of this subsection is eight
126 thousand dollars or more, no deduction shall be allowed
127 under this subdivision, and

128 (ii) Where the total modification under subdivisions
129 (1), (2), (5), (6) and (7) of this subsection is less than
130 eight thousand dollars per person the total modification
131 allowed under this subdivision for all gross income
132 received by such person shall be limited to the difference
133 between eight thousand dollars and the sum of such
134 subdivisions; and

135 (9) Any pay or allowances received, after the thirty-
136 first day of December, one thousand nine hundred
137 seventy-nine, by West Virginia residents who have not
138 attained the age of sixty-five, as compensation for active
139 service in the armed forces of the United States: *Provided,*
140 That such deduction shall be limited to an amount not
141 to exceed four thousand dollars.

142 (d) *Modification for West Virginia fiduciary adjust-*
143 *ment.*—There shall be added to or subtracted from federal
144 adjusted gross income, as the case may be, the taxpayer's
145 share, as beneficiary of an estate or trust, of the West
146 Virginia fiduciary adjustment determined under section
147 nineteen of this article.

148 (e) *Partners.*—The amounts of modifications required
149 to be made under this section by a partner, which relate
150 to items of income, gain, loss or deduction of a partner-
151 ship, shall be determined under section seventeen of this
152 article.

153 (f) *Husband and wife.*—If husband and wife determine
154 their federal income tax on a joint return but determine
155 their West Virginia income taxes separately, they shall
156 determine their West Virginia adjusted gross incomes
157 separately as if their federal adjusted gross incomes had
158 been determined separately.

CHAPTER 127

(Com. Sub. for S. B. 401—By Mr McGraw, Mr. President)

[Passed March 2, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and six, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia corporation net income tax act; and amending the definition of West Virginia taxable income by adding an additional adjustment increasing federal taxable income in determining West Virginia taxable income.

Be it enacted by the Legislature of West Virginia:

That sections three and six, 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.

§11-24-6. Adjustments in determining West Virginia taxable income.

§11-24-3. Meaning of terms.

- 1 (a) *General.*—Any term used in this article shall have
- 2 the same meaning as when used in a comparable context
- 3 in the laws of the United States relating to federal income
- 4 taxes, unless a different meaning is clearly required by
- 5 the context or by definition in this article. Any reference
- 6 in this article to the laws of the United States or to the
- 7 Internal Revenue Code or to the federal income tax law
- 8 shall mean the provisions of the laws of the United States
- 9 as relate to the determination of income for federal in-
- 10 come tax purposes. All amendments made to the laws of
- 11 the United States prior to the first day of January, one
- 12 thousand nine hundred eighty-two, shall be given effect
- 13 in determining the taxes imposed by this article for the
- 14 tax period beginning the first day of January, one thou-
- 15 sand nine hundred eighty-one, and thereafter, but no
- 16 amendment to laws of the United States made on or after

17 the first day of January, one thousand nine hundred
18 eighty-two, shall be given effect.

19 (b) *Certain terms defined.*—For purposes of this ar-
20 ticle:

21 (1) The term “tax commissioner” means the tax com-
22 missioner of the state of West Virginia or his delegate.

23 (2) The term “corporation” means and includes a joint-
24 stock company or any association which is taxable as a
25 corporation under the federal income tax law.

26 (3) The term “domestic corporation” means any cor-
27 poration organized under the laws of West Virginia.

28 (4) The term “foreign corporation” means any cor-
29 poration other than a domestic corporation.

30 (5) The term “state” means any state of the United
31 States, the District of Columbia, the Commonwealth of
32 Puerto Rico, any territory or possession of the United
33 States, and any foreign country or political subdivision
34 thereof.

35 (6) The term “taxable year” means the taxable year for
36 which the taxable income of the taxpayer is computed
37 under the federal income tax law.

38 (7) The term “taxpayer” means a corporation subject
39 to the tax imposed by this article.

40 (8) The term “tax” includes, within its meaning, in-
41 terest and penalties unless the intention to give it a more
42 limited meaning is disclosed by the context.

43 (9) The term “commercial domicile” means the prin-
44 cipal place from which the trade or business of the tax-
45 payer is directed or managed.

46 (10) The term “compensation” means wages, salaries
47 commissions and any form of remuneration paid to em-
48 ployees for personal services.

49 (11) The term “West Virginia taxable income” means
50 the taxable income of a corporation as defined by the laws
51 of the United States for federal income tax purposes,

52 adjusted as provided in section six: *Provided*, That in the
53 case of a corporation having income from business activ-
54 ity which is taxable without this state, its "West Virginia
55 taxable income" shall be such portion of its taxable in-
56 come as so defined and adjusted as is allocated or appor-
57 tioned to this state under the provisions of section seven
58 of this article.

59 (12) The term "business income" means income arising
60 from transactions and activity in the regular course of the
61 taxpayer's trade or business and includes income from
62 tangible and intangible property if the acquisition and
63 disposition of the property constitute integral parts of the
64 taxpayer's regular trade or business operations.

65 (13) The term "nonbusiness income" means all income
66 other than business income.

67 (14) The term "public utility" means any business
68 activity to which the jurisdiction of the public service
69 commission of West Virginia extends under section one,
70 article two, chapter twenty-four of the code of West Vir-
71 ginia.

72 (15) The term "this code" means the code of West
73 Virginia, one thousand nine hundred thirty-one, as
74 amended.

75 (16) The term "this state" means the state of West
76 Virginia.

§11-24-6. Adjustments in determining West Virginia taxable income.

1 (a) *General.*—In determining the West Virginia tax-
2 able income of a corporation, its taxable income as defined
3 for federal income tax purposes shall be adjusted by the
4 items specified in this section.

5 (b) *Adjustments increasing federal taxable income.*—
6 There shall be added to federal taxable income, unless
7 already included in the computation of federal taxable
8 income, the following items, except that adjustment (5)
9 shall be required only with respect to tax periods ending

10 after the thirty-first day of December, one thousand nine
11 hundred eighty-one:

12 (1) Interest or dividends on obligations or securities
13 of any state or of a political subdivision or authority
14 thereof, other than this state and its political subdivisions
15 and authorities, unless made exempt by compact or
16 agreement to which this state is a party;

17 (2) Interest or dividend income on obligations or se-
18 curities of any authority, commission or instrumentality
19 of the United States which the laws of the United States
20 exempt from federal income tax but not from state in-
21 come taxes;

22 (3) Income taxes imposed by this state or any other
23 taxing jurisdiction, to the extent deductible in determin-
24 ing federal taxable income and not credited against feder-
25 al income tax, and the taxes imposed by this state for
26 which credit against the taxes imposed by section four is
27 allowed by section nine;

28 (4) Interest on indebtedness incurred or continued
29 to purchase or carry obligations or securities the income
30 from which is exempt from tax under this article, to the
31 extent deductible in determining federal taxable income;
32 and

33 (5) The deferral value of certain income that is not
34 recognized for federal tax purposes, which value shall
35 be an amount equal to a percentage of the amount allowed
36 as a deduction in determining federal taxable income
37 pursuant to the accelerated cost recovery system under
38 section 168 of the Internal Revenue Code for the federal
39 taxable year, with the percentage of the federal deduc-
40 tion to be added as follows with respect to the following
41 recovery property: three-year property—no modification;
42 five-year property—ten percent; ten-year property—fif-
43 teen percent; fifteen-year public utility property—twenty-
44 five percent; and fifteen-year real property—thirty-five
45 percent: *Provided*, That this modification shall not apply
46 to any person whose federal deduction is determined
47 by the use of the straight line method.

48 (c) *Adjustments decreasing federal taxable income.*—
49 There shall be subtracted from federal taxable income:

50 (1) Interest income on obligations of the United States
51 and its possessions to the extent includible in gross in-
52 come for federal income tax purposes;

53 (2) Interest or dividend income on obligations or securi-
54 ties of any authority, commission or instrumentality of
55 the United States to the extent includible in gross in-
56 come for federal income tax purposes, but exempt from
57 state income taxes under the laws of the United States;

58 (3) Any gain from the sale or other disposition of
59 property having a higher fair market value on the first
60 day of July, one thousand nine hundred sixty-seven, than
61 the adjusted basis at said date for federal income tax
62 purposes: *Provided*, That the amount of this adjustment is
63 limited to that portion of any such gain which does not
64 exceed the difference between such fair market value and
65 such adjusted basis;

66 (4) The amount of any refund or credit for overpay-
67 ment of income taxes imposed by this state or any other
68 taxing jurisdiction, to the extent properly included in
69 gross income for federal income tax purposes;

70 (5) The amount of dividends received, to the extent
71 included in federal taxable income; and

72 (6) Thirty-seven and one-half percent of the excess
73 of net long-term capital gain over net short-term capital
74 loss as defined in the laws of the United States.

75 (d) *Adjustment resulting from recomputation of net*
76 *operating loss deduction.*—In determining the West Vir-
77 ginia taxable income of a corporation entitled to a net
78 operating loss deduction for the taxable year for federal
79 income tax purposes, there shall be added to or subtracted
80 from the federal taxable income the amount of an ad-
81 justment reflecting a recomputation of such net operating
82 loss deduction, in which the adjustments required by
83 subsections (b) and (c) are made for each taxable year
84 involved in the computation of such net operating loss
85 deduction.

86 (e) *Special adjustments for expenditures for water*
87 *and air pollution control facilities.—*

88 (1) If the taxpayer so elects under subdivision (2) of
89 this subsection, there shall be—

90 (A) Subtracted from federal taxable income the total
91 of the amounts paid or incurred during the taxable year
92 for the acquisition, construction or development within
93 this state of water pollution control facilities and air
94 pollution control facilities as defined in section 48(h) (12)
95 (B) and (C) of the Internal Revenue Code, and

96 (B) Added to federal taxable income the total of the
97 amounts of any allowances for depreciation and amorti-
98 zation of such water pollution control facilities and air
99 pollution control facilities, as so defined, to the extent
100 deductible in determining federal taxable income.

101 (2) The election referred to in subdivision (1) of this
102 subsection shall be made in the return filed within the
103 time prescribed by law (including extensions thereof)
104 for the taxable year in which such amounts were paid or
105 incurred. Such election shall be made in such manner, and
106 the scope and application of such election shall be defined,
107 as the tax commissioner may by regulations prescribe,
108 and shall be irrevocable when made as to all amounts
109 paid or incurred for any particular water pollution con-
110 trol facility or air pollution control facility.

111 (3) Notwithstanding any other provisions of this sub-
112 section or of section seven to the contrary, if the tax-
113 payer's federal taxable income is subject to allocation
114 and apportionment under section seven, the adjustments
115 prescribed in paragraphs (A) and (B), subdivision (1)
116 of this subsection shall (instead of being made to the
117 taxpayer's federal taxable income before allocation and
118 apportionment thereof as provided in section seven) be
119 made to the portion of the taxpayer's net income, com-
120 puted without regard to such adjustments, allocated and
121 apportioned to this state in accordance with section
122 seven.

CHAPTER 128

(Com. Sub. for S. B. 58—By Mrs. Spears)

[Passed March 11, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the publication and posting of delinquent tax lists; and providing notice by certified mail to all delinquent landowners.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article two, chapter eleven-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. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.

§11A-2-13. Publication and posting of delinquent tax lists.

1 A copy of each of the delinquent lists shall be posted
2 at the front door of the courthouse of the county at least
3 two weeks before the session of the county commission
4 at which they are to be presented for examination. At the
5 same time a copy of each list shall be published as a Class
6 I-0 legal advertisement in compliance with the provisions
7 of article three, chapter fifty-nine of this code, and the
8 publication area for such publication shall be the county.
9 Only the aggregate amount of the taxes owed by each
10 person need be published. In addition to such posting and
11 publication, the sheriff shall send a notice by certified
12 mail to the last known address of each person whose
13 taxes are delinquent notifying such person of the delin-
14 quency: *Provided*, That if the address of the person whose
15 taxes are delinquent is different from the address of the
16 location of the property, notice shall also be sent to the
17 location of the property. To cover the costs of preparing,
18 publishing and posting the delinquent lists and mailing
19 notice to the landowner, a charge of five dollars shall be

20 added to the taxes and interest already due on each item
21 listed.

22 Any person, whose taxes were delinquent on May first,
23 may have his name removed from the delinquent lists
24 prior to the time the same is delivered to the newspapers
25 for publication and the mailing of the above required
26 notice, by paying to the sheriff the full amount of the
27 taxes and costs owed by such person at the date of such
28 redemption. The sheriff shall collect a charge of only
29 fifty cents if redemption is made before the list is de-
30 livered for publication. Costs collected by the sheriff
31 hereunder which are not expended for publication shall
32 be paid into the general county fund.

CHAPTER 129

(H. B. 1769—By Mr. Schifano)

[Passed March 2, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to the office of child support enforcement; authorizing the provision of child support services to persons not otherwise eligible for receipt of public assistance; fees for services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-5. Services to persons not otherwise eligible.

1 The department of welfare may make available the services
2 established under the provisions of section four of this article,
3 to any person not eligible for receipt of public assistance upon

4 application by such person: *Provided*, That the department may
5 not require such person to use its services. These services may
6 include, but need not be limited to, the following: Location of
7 the responsible parent whose whereabouts are unknown, col-
8 lection of child support and maintenance moneys owed, and
9 distribution of support and maintenance moneys paid.

10 The department may charge a reasonable fee to nonpublic
11 assistance persons for the provision of services and, when the
12 department has provided services for the collection of support
13 and maintenance, may charge a reasonable fee to the person
14 responsible for the support and maintenance. The commis-
15 sioner shall establish by regulations the amount of such fees,
16 not in excess of maximum amounts permitted by applicable
17 federal law, which regulations may be amended and supple-
18 mented from time to time.

CHAPTER 130

(H. B. 1771—By Mr. Steptoe and Mr. Gilliam)

[Passed February 24, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-a, relating to the department of welfare and granting them the authority to apply for subpoenas and subpoenas duces tecum when investigating medical assistance programs.

Be it enacted by the Legislature of West Virginia:

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

§9-5-8a. Authority to subpoena witnesses and documents when investigating the provision of medical assistance programs.

1 The commissioner and every duly appointed hearing ex-
2 aminer shall have the power to apply, on behalf of any party,

3 to the circuit court of the county in which the hearing is to
4 be held, or the circuit court in which the subpoena or sub-
5 poena duces tecum is to be served, or the judge of either
6 such court in vacation, for the issuance of a subpoena or
7 subpoena duces tecum to compel the attendance of witnesses
8 or the production of documents, before any hearing or ad-
9 ministrative tribunal convened to consider suspension or
10 termination of any person or corporation from providing
11 services under the medical assistance programs administered
12 by the department of welfare. The application for a subpoena
13 duces tecum shall state with particularity any papers or docu-
14 ments requested and upon hearing, the applicant or party
15 shall notify the court or judge, as the case may be, of the
16 necessity therefor in such hearing. The court or judge thereof,
17 prior to issuing the requested subpoena or subpoena duces
18 tecum, may make any order which justice requires to pro-
19 tect a party or person from annoyance, embarrassment, op-
20 pression or undue burden or expense. The party who applies
21 for the subpoena or subpoena duces tecum shall pay the
22 sheriff's fees required for service of these documents.

CHAPTER 131

(S. B. 10—By Mr. Boettner)

[Passed February 16, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article fifteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to officers, boards and commissions; white cane law; equal right to use public facilities; establishing the same provision for "hearing ear dogs" that seeing eye dogs enjoy.

Be it enacted by the Legislature of West Virginia:

That section four, article fifteen, chapter five of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 15. WHITE CANE LAW.

§5-15-4. Equal right to use public facilities.

1 (a) Blind persons shall have the same right as persons
2 with normal sight to the full and free use of the highways,
3 roads, streets, sidewalks, walkways, public buildings,
4 public facilities, and other public places.

5 (b) Blind persons are entitled to full and equal ac-
6 commodations, advantages, facilities and privileges of all
7 common carriers, airplanes, motor vehicles, railroad trains,
8 motor buses, streetcars, boats or any other public con-
9 veyances or modes of transportation, hotels, lodging
10 places, restaurants, other places of public accommoda-
11 tion, amusement or resort, and other places to which the
12 general public is invited, subject only to the conditions
13 and limitations established by law and applicable alike to
14 all persons.

15 (c) Every blind person and every deaf person shall
16 have the right to be accompanied by a guide dog, wearing
17 a harness, especially trained for the purpose, which serves
18 as a guide, leader or listener in any of the places, ac-
19 commodations or conveyances specified in subsection (b)
20 of this section without being required to pay an extra
21 charge for the admission of such guide dog, but the blind
22 or deaf person shall, upon request, present for inspection
23 credentials issued by an accredited school for training
24 guide dogs. The blind or deaf person shall be liable for
25 any damage done by such guide dog to the premises or
26 facilities or to persons using such premises or facilities.
27 Such dog shall not occupy a seat in any public conveyance
28 and shall be upon a leash while using the facilities of a
29 common carrier.

CHAPTER 132

(H. B. 1938—By Mr. Speaker, Mr. See)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workmen's compensation benefits; permitting the commissioner of workmen's compensation to have access to certain tax and employment security information; penalty for wrongful disclosure of the information obtained; costs of compilation and production; exemption from the freedom of information act.

Be it enacted by the Legislature of West Virginia:

That section two, article two, 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 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-2. Commissioner to be furnished information by employers, state tax commissioner and commissioner of the department of employment security; secrecy of information; examination of employers, etc.; violation a misdemeanor.

1 (a) Every employer shall furnish the commissioner, upon
2 request, all information required by him to carry out the pur-
3 poses of this chapter. The commissioner, or any person em-
4 ployed by the commissioner for that purpose, shall have the
5 right to examine under oath any employer or officer, agent
6 or employee of any employer.

7 (b) Notwithstanding the provisions of any other statute,
8 specifically, but not exclusively, section five, article ten, chap-

9 ter eleven of this code, and section eleven, article ten, chapter
10 twenty-one-a of this code, the commissioner of workmen's
11 compensation may receive the following information:

12 (1) Upon written request to the state tax commissioner;
13 the names, addresses and other identifying information of all
14 businesses filing state business and occupational tax returns
15 and/or receiving a business franchise registration certificate.

16 (2) Upon written application to the commissioner of the
17 department of employment security; the names, addresses and
18 other identifying information of all employing units filing re-
19 ports and information pursuant to section eleven, article ten,
20 chapter twenty-one-a of this code as well as information con-
21 tained in those reports regarding the number of employees
22 employed and the gross quarterly wages paid by each em-
23 ploying unit.

24 (c) All information acquired by the workmen's compen-
25 sation commissioner pursuant to subsection (b) of this section
26 shall be used only for auditing premium payments. Any officer
27 or employee of this state who uses the aforementioned informa-
28 tion in any manner other than the one stated herein, or who
29 shall divulge or make known in any manner any of the afore-
30 mentioned information shall be guilty of a misdemeanor, and,
31 upon conviction thereof, shall be fined not more than one
32 thousand dollars or imprisoned for not more than one year,
33 or both, together with cost of prosecution.

34 (d) Reasonable costs of compilation and production of any
35 information made available pursuant to subsection (b) of this
36 section shall be charged to the workmen's compensation com-
37 missioner.

38 (e) Information acquired by the workmen's compensation
39 commissioner pursuant to subsection (b) of this section shall
40 not be subject to disclosure under the provisions of chapter
41 twenty-nine-b of this code.

CHAPTER 133

(H. B. 1939—By Mr. Speaker, Mr. See)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to interest on past due premium payments to the workmen's compensation fund.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article two, 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 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-13. Interest on past due payments.

1 Payments unpaid on the date on which due and payable, as
2 prescribed by the commissioner, shall after the first fifteen days
3 bear interest at the rate of two percent per month until pay-
4 ment plus accrued interest is received by the commissioner.
5 Interest collected pursuant to this section shall be paid into
6 the workmen's compensation fund.

CHAPTER 134

(Com. Sub. for H. B. 1109—By Mr. Tompkins and Mr. Hatcher)

[Passed February 4, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-a, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two, relating to prohibited discriminatory practices concerning medical coverage; prohibiting an employer from discontinuing or decreasing medical coverage for a previously covered em-

ployee during the entire period for which he is entitled to draw temporary medical benefits unless coverage for all employees is so discontinued or decreased; and providing a private remedy for the disabled employee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. DISCRIMINATORY PRACTICES.

§23-5A-2. Discriminatory practices prohibited—Medical insurance.

1 Any employer who has provided any type of medical in-
2 surance for an employee or his dependents by paying
3 premiums, in whole or in part, on an individual or group
4 policy shall not cancel, decrease his participation on behalf
5 of the employee or his dependents, or cause coverage
6 provided to be decreased during the entire period for which
7 that employee during the continuance of the employer-em-
8 ployee relationship is claiming or is receiving benefits under
9 this chapter for a temporary disability. If the medical in-
10 surance policy requires a contribution by the employee, that
11 employee must continue to make the contribution required,
12 to the extent the insurance contract does not provide for
13 a waiver of the premium.

14 Nothing in this section shall prevent an employer from
15 changing insurance carriers or cancelling or reducing medical
16 coverage if the temporarily disabled employee and his de-
17 pendents are treated with respect to insurance in the same
18 manner as other similarly classified employees and their de-
19 pendents who are also covered by the medical insurance
20 policy.

21 This section provides a private remedy for the employee
22 which shall be enforceable in an action by the employee in
23 a circuit court having jurisdiction over the employer.

CHAPTER 135

(H. B. 2018—By Mr. Wooton and Mr. Hutchinson)

[Passed March 11, 1982; in effect from passage. Approved by the Governor.]

AN ACT to establish the emergency service authority for Raleigh County, to provide such authority with power to plan and coordinate all emergency operations for Raleigh County, to provide for appointment and compensation of members of the authority, and to provide for the support, maintenance and operation of such emergency services.

Be it enacted by the Legislature of West Virginia:

EMERGENCY SERVICE AUTHORITY FOR RALEIGH COUNTY.

- §1. Emergency service authority for Raleigh County created; functions.
 - §2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.
 - §3. A body corporate.
 - §4. Support, maintenance and operation.
 - §5. Effect of future amendments of general law.
 - §6. Severability.
- §1. Emergency service authority for Raleigh County created; functions.**

1 There is hereby created an emergency service authority
2 for Raleigh County, which shall plan and coordinate all
3 emergency operations for Raleigh County in accordance with
4 article five, chapter fifteen of the code of West Virginia,
5 one thousand nine hundred thirty-one, as amended, and with
6 other provisions of general law relating to emergency services.

- §2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.**

1 The authority shall consist of five members to be appointed
2 before the first day of July, one thousand nine hundred
3 eighty-two. Three members shall be appointed by the Raleigh
4 county commission, one member for a term of one year,
5 one member for a term of two years, and one member for
6 a term of three years. No more than two of the members
7 appointed by the county commission may be from the same

8 political party. Two members shall be appointed by the
9 governing body of Beckley, one member for a term of two
10 years, and one member for a term of three years. The two
11 members appointed by the governing body of Beckley shall
12 be from different political parties. The initial terms of office
13 shall commence on the first day of July, one thousand nine
14 hundred eighty-two. Each successor member shall be ap-
15 pointed for a term of two years, except that any person ap-
16 pointed to fill a vacancy occurring before the expiration
17 of the term shall serve only for the unexpired portion thereof.
18 Any member of the authority shall be eligible for reappoint-
19 ment and the county commission may remove any member
20 for cause. There shall be an annual meeting of the authority
21 on the second Monday in July in each year and a monthly
22 meeting on the day in each month which the authority may
23 designate in its bylaws. A special meeting may be called
24 by the president, the secretary or any two members of the
25 authority and shall be held only after all of the members
26 are given notice thereof in writing. At all meetings three
27 members shall constitute a quorum and at each annual
28 meeting of the authority it shall elect a president, a vice
29 president, a secretary and a treasurer. The authority shall
30 adopt such bylaws, rules and regulations as are necessary
31 for its own guidance and for the operation and management
32 of Raleigh County emergency operations. The authority shall
33 have all the powers necessary, convenient and advisable for
34 the proper operation, equipment and management of emer-
35 gency operations in Raleigh County; and except as otherwise
36 especially provided in this act, shall have the powers and be
37 subject to the duties which are conferred and imposed, re-
38 spectively, upon local organizations for emergency services
39 by article five, chapter fifteen of the code of West Virginia,
40 one thousand nine hundred thirty-one, as amended, and by
41 other provisions of general law relating to emergency services.

42 Each member of the authority shall be compensated month-
43 ly by the governing body which appointed such member in an
44 amount to be fixed by such governing body.

§3. A body corporate.

1 The authority hereby created shall be a corporation. As

2 such it may contract and be contracted with, sue and be
3 sued, plead and be impleaded, and shall have and use a
4 common seal.

§4. Support, maintenance and operation.

1 The governing bodies of Raleigh County and Beckley may
2 provide for the support, maintenance and operation of
3 emergency operations by the levying of taxes and by the ap-
4 propriation and expenditure of public funds in accordance
5 with article five, chapter fifteen of the code of West Virginia,
6 one thousand nine hundred thirty-one, as amended, and with
7 other provisions of general law.

§5. Effect of future amendments of general law.

1 Amendments to article five, chapter fifteen of the code
2 of West Virginia, one thousand nine hundred thirty-one, as
3 amended, and other general laws shall control this act only
4 to the extent that they do not conflict with the special
5 features hereof, or unless the intent to amend this act is clear
6 and unmistakable.

§6. Severability.

1 If any provision hereof is held invalid, such invalidity shall
2 not affect other provisions hereof which can be given effect
3 without the invalid provision, and to this end the provisions
4 of this act are declared to be severable.

CHAPTER 136

(H. B. 2019—By Mr. Wooten)

[Passed March 11, 1982; in effect from passage. Approved by the Governor.]

AN ACT to establish the Raleigh County recreation authority, to provide such authority with power to operate, to provide for appointment and compensation of members of the authority.

Be it enacted by the Legislature of West Virginia:

RALEIGH COUNTY RECREATION AUTHORITY.

- §1. Raleigh County recreation authority created; functions.
- §2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.
- §3. A body corporate.
- §4. Lake Stephens excepted.
- §5. Support, maintenance and operation.
- §6. Severability.

§1. Raleigh County recreation authority created; functions.

1 There is hereby created a Raleigh County recreation
2 authority. The function of the authority shall be to establish,
3 operate and manage recreational facilities for the benefit of
4 the citizens of Raleigh County.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

1 The authority shall consist of five members to be ap-
2 pointed by the Raleigh County commission. Such members
3 shall be appointed and such authority shall commence opera-
4 tion on or before the first day of July, one thousand nine
5 hundred eighty-two. No more than three members shall be
6 from the same political party. One member shall be appointed
7 for a term of five years, one member for a term of four years,
8 one member for a term of three years, one member for a
9 term of two years and one member for a term of one year.
10 The initial terms of office shall commence on the first day
11 of July, one thousand nine hundred eighty-two. Each suc-
12 cessor member shall be appointed for a term of five years,
13 except that any person appointed to fill a vacancy occurring
14 before the expiration of the term shall serve only for the
15 unexpired portion thereof. Any member of the authority
16 shall be eligible for reappointment and the county com-
17 mission may remove any member for cause. There shall be
18 an annual meeting of the authority on the second Monday in
19 July in each year and a monthly meeting on the day in each
20 month which the authority may designate in its bylaws. A
21 special meeting may be called by the president, the secretary
22 or any two members of the authority and shall be held only

23 after all of the members are given notice thereof in writing.
24 At all meetings three members shall constitute a quorum
25 and at each annual meeting of the authority it shall elect
26 a president, a vice president, a secretary and a treasurer.
27 The authority shall adopt such bylaws, rules and regula-
28 tions as are necessary for its own guidance. The authority
29 shall have all the powers necessary, convenient and ad-
30 visable to effectuate the purposes of this act.

31 Each member of the authority shall be compensated monthly
32 by the county in an amount to be fixed by the county com-
33 mission.

§3. A body corporate.

1 The authority hereby created shall be a corporation. As
2 such it may contract and be contracted with, sue and be
3 sued, plead and be impleaded, and shall have and use a com-
4 mon seal.

§4. Lake Stephens excepted.

1 The recreation authority hereby created shall not be respon-
2 sible for recreational facilities located or situate on or near
3 Lake Stephens or under the control or jurisdiction of the
4 Lake Stephens recreation commission.

§5. Support, maintenance and operation.

1 The county commission of Raleigh County shall provide
2 for the support, maintenance and operation of the recrea-
3 tional facilities under the jurisdiction of the authority hereby
4 created.

§6. Severability.

1 If any provision hereof is held invalid, such invalidity shall
2 not affect other provisions hereof which can be given effect
3 without the invalid provision, and to this end the provisions of
4 this act are declared to be severable.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 18

(By Mr. Speaker, Mr. See, and Mr. Farley)

[Adopted March 13, 1982.]

Directing the Joint Committee on Government and Finance to create a Tax Study Commission to review and consider all phases of the tax structure of the State, to develop recommendations for improvements, and to report back to the Legislature.

WHEREAS, Various reports, publications and study groups have emphasized that the principal sources of tax revenues of the State of West Virginia were conceived originally as temporary or emergency revenue measures in the early nineteen hundred thirties to meet the dire economic conditions then prevailing; and

WHEREAS, The changed economic conditions of industry, labor and commerce, and the changes in present day standards of living, including necessary social programs, health coverages, providing for the welfare of our disadvantaged citizens, creation of greater employment and attraction and retention of new and existing industry and business, all warrant a new look and review of our presently constituted tax structure; and

WHEREAS, Our schools, road systems and programs for the health and welfare of our citizens are supported largely by state taxation; and

WHEREAS, Much criticism has been and is being continually directed at our tax structure as being inequitable, regressive and as not providing for a business climate conducive to attracting new industry or retention of existing industry, to the generation of development, employment and creation of payroll and to a fair sharing and distribution of the tax burden by all of our people; and

WHEREAS, The application of our constitutional tax limitation on real and personal property presents a factor needing new examination in light of increased funding requirements; and

WHEREAS, Counties and municipalities, under our amended constitutional provisions permitting state taxes to be levied and dedicated for their use and benefit, have sought revenue aid from state taxation and such dedication of a portion or all of such tax; creating a much closer tax relationship between the State and such political subdivisions; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance create a Tax Study Commission;

That such commission shall consist of fifteen members: five members to be appointed by the President of the Senate, not more than three members so appointed to be members of the Senate, with no more than two of such members to be of the same political party, and two members to be representative, private citizens, not of the same political party; five members to be appointed by the Speaker of the House of Delegates, not more than three members so appointed to be members of the House of Delegates, with no more than two of such members to be of the same political party, and two members to be representative, private citizens, not of the same political party; and five members to be appointed by the Governor, with not more than three members so appointed to be members of the same political party, and with at least two members to be representative, private citizens. The representative, private citizens may include persons with background, knowledge or experience in taxation, economics, current conditions of business and industry, labor, commerce, agriculture, or other activities fundamental to our business environment; and such other persons found eligible by the appointing authority because of sound judgment and deep interest may be appointed as representative citizens.

The President of the Senate, Speaker of the House of Delegates and the Governor shall confer together on their respective appointments prior to the same being made in order to ensure that the membership of the Tax Study Commission is reasonably diverse as to experience, knowledge, interest and representation.

The commission shall elect one of its members as chairman, one as vice chairman and other officers as it deems appropriate. Vacancies on the commission shall be promptly filled by the original appointing authority.

The commission may employ such professional, clerical and technical assistants as it deems necessary in order to perform its duties, and may request information from any state officer or agencies in order to assist the performance of its duties.

The commission shall meet in Charleston or elsewhere as it may deem necessary or appropriate, and it shall convene at least quarterly and at such other times as its duties may require. The first meeting shall be called jointly, by the President of the Senate and the Speaker of the House of Delegates, one of whom shall preside temporarily and until a chairman is elected.

Compensation shall be paid and actual and necessary expenses shall be paid or reimbursed from Legislative appropriations to the Joint Committee on Government and Finance, but no such compensation and expenses shall be incurred, paid or reimbursed without first obtaining the approval of the Joint Committee on Government and Finance.

The commission is empowered to find and determine, through all competent channels and sources of factual data research, the existing and potential proper sources of tax revenue at both the state and local levels, in order to provide for recommended improvements in our state tax structure and as such structure relates to the sources and levies of political subdivisions of the State.

It shall be the duty of the commission to:

(a) Confer with all officers of state or local government, or their representatives, having the responsibility of collecting or administering any part of the taxes or other revenues, and any other matters deemed relevant to the study program of the commission.

(b) Confer with other representative citizens and groups outside of state government who have knowledge, experience or contact with business and industry, in the field of education, labor or agriculture or are otherwise representative of a cross-section of the economy of our State.

The interim findings of the Tax Study Commission shall be reported to the Legislature at the regular session of the Legislature, one thousand nine hundred eighty-three, in respect to progress of activities, programs and plans of the commission toward the development of recommendations in establishing an equitable, improved and

sound tax structure for the State and geared to the new needs of the State in light of changed conditions of national energy shortage, the State's natural resources, its economy, its attraction and retention of manufacturing and other industry, its gainful employment of its citizens and its provisions for their health and welfare; and the final report of the commission shall be submitted to the Legislature at its regular session, one thousand nine hundred eighty-four, unless the existence of the Tax Study Commission is continued by resolution or other action of the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION 20

(By Mr. Otte and Mr. McKinley)

[Adopted March 13, 1982.]

Requesting and directing the Legislature and the State of Pennsylvania to perform their moral and legal obligation and complete the project known as PA-648.

WHEREAS, Water originating in Pennsylvania is flowing uncontrolled into West Virginia and flooding the City of Wheeling causing loss of life and destruction of property; and

WHEREAS, To help alleviate the flooding problem, Pennsylvania and West Virginia entered into the Wheeling Creek Watershed Protection and Flood Prevention District Compact in 1967; and

WHEREAS, Such dams were built in West Virginia, and Pennsylvania agreed to do the same in their state, but due to escalating costs, Pennsylvania has only partially fulfilled their commitment; and

WHEREAS, In the interest of preservation of life and property of West Virginia, the Wheeling Creek Watershed Commission has undertaken changes, compromises and developments to reduce the fiscal impacts of the dam to Pennsylvania and to improve the project generally; and

WHEREAS, Due to the aforementioned changes the proposed dam is now a dry dam with no permanent reservoir; and

WHEREAS, The Wheeling Creek Watershed Commission is committed to pay for the maintenance and operation of PA-648; and

WHEREAS, The Wheeling Creek Watershed Commission is undertaking a long-range study of the impacts of PA-648 in cooperation with Waynesburg College, the United States Geological Survey, the United States Environmental Protection Agency, the United States Soil Conservation Service, the Pennsylvania Game Commission and the Pennsylvania Fish Commission; and

WHEREAS, The Wheeling Creek Watershed Commission stands ready to assist in this project; therefore, be it

Resolved by the Legislature of West Virginia:

That the State of Pennsylvania perform its moral and legal obligations and take the necessary measures to prevent the flooding of Wheeling; and, be it

Further Resolved, That the Clerk of the House of Delegates be directed to furnish a copy of this resolution to the Honorable John D. Rockefeller IV, Governor; the Honorable A. James Manchin, Secretary of State; the Governor of Pennsylvania; the Pennsylvania Legislature; and the Wheeling Creek Watershed Commission.

HOUSE CONCURRENT RESOLUTION 22

(By Miss Davis, et al)

[Adopted March 9, 1982.]

Providing for the second session of the first West Virginia Silver Haired Legislature conducted by elected Delegates and Senators who are persons sixty years old or older to provide an opportunity for elder West Virginians to learn about the legislative process.

WHEREAS, The members of the West Virginia State Legislature have continually evidenced their special concern for issues affecting older West Virginians; and

WHEREAS, West Virginia's legislators seek input from the State's older citizens to aid them in making their legislative decisions; and

WHEREAS, The Silver Haired Legislature is an effective means for representing the needs of older West Virginians to West Virginia's legislators; and

WHEREAS, It is appropriate for the citizens of the State to understand the legislative process of the State Legislature; and

WHEREAS, The members of the 1981 Silver Haired Legislature were very impressed with the knowledge they gained about the legislative process; and

WHEREAS, The West Virginia Commission on Aging wishes to again sponsor such a session; therefore, be it

Resolved by the Legislature of West Virginia:

That the second session of the 65th West Virginia Senate and the second session of the 65th West Virginia House of Delegates grant permission for the Silver Haired Legislature to utilize the Senate and House of Delegates Chambers and appropriate hearing and meeting rooms for a Silver Haired Legislative Session for a period of three days: *Provided*, That no person who has publicly announced his candidacy for any elective office of this state or any political subdivision thereof or any member of the Legislature may serve as a member of the Silver Haired Legislature; and, be it

Further Resolved, That the office of the Clerk of the House of Delegates and the office of the Clerk of the Senate assist the Commission on Aging to effectuate the purposes of this resolution; and, be it

Further Resolved, That Legislative Services assist the Silver Haired Legislature to the maximum extent possible as determined by the Director of Legislative Services.

HOUSE JOINT RESOLUTION 5

(By Mr. Kopp)

[Adopted March 13, 1982.]

Proposing an amendment to the Constitution of the State of West Virginia, repealing section three, article nine thereof, relating to removing the limitation on the number of consecutive terms for which a person may be eligible for the office of sheriff;

numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-two, which proposed amendment is that section three, article nine thereof be repealed.

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 "Sheriff's Succession Amendment," and the purpose of the proposed amendment is summarized as follows: "To repeal section three, article nine of the State Constitution which provided that a person who had been elected or who had served as sheriff for all or part of two consecutive terms was ineligible for the office of sheriff for the term following the second of the two consecutive terms."

HOUSE JOINT RESOLUTION 14

(By Mr. Harman, 33rd Dist., and Mr. Blackwell)

[Adopted March 6, 1982.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section ten, article ten thereof, relating to reducing from sixty percent to a simple majority the number of votes required for approval of an excess levy for school purposes or the incurring of indebtedness and the issuance of bonds by a county board of education; 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 shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-two, which proposed amendment is that section ten, article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§10. School levy and bond amendment.

Notwithstanding any other provision of the Constitution to the contrary, the maximum rates authorized and allocated by law for tax levies on the several classes of property for the support of public schools may be increased in any school district for a period not to exceed five years, and in an amount not to exceed one hundred percent of such maximum rates, if such increase is approved, in the manner provided by law, by at least a majority of the votes cast for and against the same.

Notwithstanding any other provision of the Constitution to the contrary, the maximum rates provided for tax levies by school districts on the several classes of property may be used entirely for current expense purposes; and all levies required for principal and interest payments on any bonded indebtedness, now or hereafter contracted, not to exceed five percent on the value of the taxable property therein, the value to be ascertained in accordance with section eight of this article, shall be laid separate and apart and in addition to such maximum rates, but in the same proportions as such maximum rates are levied on the several classes of property.

Notwithstanding the provisions of section eight of this article relating to a vote of the people or any other provisions of this Constitution, a county board of education may contract indebtedness and issue bonds for public school purposes as provided by law, if, when submitted to a vote of the people of the county, in the manner provided by law, the question of contracting indebtedness and issuing bonds is approved by a majority of the votes cast for and against the same.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 1" and designated as the "Fair

Educational Opportunity Amendment," and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to permit county school levies, indebtedness and bonds to be approved by a simple majority of the votes cast for and against the same."

SENATE CONCURRENT RESOLUTION 2

(By Mrs. Spears, Mr. Huffman and Mr. Holliday)

[Adopted March 8, 1982.]

Directing creation of a Task Force on Catastrophic Diseases.

WHEREAS, The people of West Virginia as people everywhere are subject to a multitude of diseases which, because of their severity, debilitation and extended duration are often catastrophic in their impact on the victims of the diseases and their families; and

WHEREAS, The expense of caring for and treating victims of these diseases can exhaust benefits available through health insurance and public reimbursement programs and can cause victims and their families to go into significant debt in order to obtain the necessary care and treatment; and

WHEREAS, Access to the services needed for the care and treatment of victims of these diseases may be restricted because of the high cost or because the services are inadequate and fragmented; and

WHEREAS, These severe, chronic and debilitating diseases often unnecessarily rob people of the capability to live productive and fulfilling lives in a manner commensurate with their skills and aspirations because of the high cost and lack of availability of services; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature create a twelve member Task Force on Catastrophic Diseases, consisting of five members of the House of Delegates, five members of the Senate, the Director of the Department of Health or his designee, and the Insurance Commissioner or his designee, which shall, in cooperation with the Joint

Committee on Government and Finance and its Subcommittee on Health and Social Services:

A. (1) Study those diseases that may have catastrophic impact on individuals and their families and the relationship between the care and treatment of individuals with these diseases and the availability, accessibility, cost quality and acceptability of the services currently available to the people of the State; and

(2) Consider alternative actions and their costs that may be taken by the State to better assure the availability of services needed for victims of these catastrophic diseases at reasonable cost and to assist individuals and families with the excessive costs involved in the care and treatment of these diseases; and

(3) Prepare a report for submission to the Joint Committee on Government and Finance, the Governor and the Legislature on or before January 1, 1983, recommending legislation and any appropriations necessary to assist individuals with these diseases.

B. The Joint Committee on Government and Finance may provide such funds as are reasonable and necessary to carry out the purposes of the Task Force.

SENATE CONCURRENT RESOLUTION 25
(Originating in the Senate Committee on the Judiciary)

[Adopted March 13, 1982.]

Creating a special joint interim commission to conduct a comprehensive study of the recent Supreme Court decision *Mandolidis v. Elkins Industries, Inc.* 246 S.E. 2d 907 (W.Va. 1978).

WHEREAS, It is the duty of the State to clearly define the rights and responsibilities of both employee and employer consistent with both job opportunities and safe working conditions within the State of West Virginia; and

WHEREAS, A concern has developed in this State relating to the recent Supreme Court decision of *Mandolidis v. Elkins Industries, Inc.*, 246 S.E. 2d 907 (W.Va. 1978) and its impact on economic development, job opportunities and safe working conditions; therefore, be it

Resolved by the Legislature of West Virginia:

That a special interim commission be created to be known as the "Special Interim Commission on Mandolidis" to consist of the following members:

Five members of the Senate to be appointed by the President, and one designated by the President as cochairman with no more than three members of the same political party;

Five members of the House of Delegates appointed by the Speaker, one to serve as cochairman with no more than three members of the same political party;

The director of the Governor's Office of Economic and Community development or his designee; and

Eight members of the public and residents of the State, four of whom shall represent the interest of industry and four of whom shall represent the interest of labor, four members to be appointed by the President of the Senate, and four members to be appointed by the Speaker of the House; and, be it

Further Resolved, That the said commission is hereby directed to review, examine and study the status and effectiveness of the laws relating to employers' immunity from civil action for injuries arising in the course of and relating to employment, the needs for changes in the system, the ways and means to effect such changes and to make recommendations to the Legislature regarding the same; and, be it

Further Resolved, That the commission is authorized to meet at such times and in such places as the cochairman of the commission shall direct and that the commission is authorized to conduct meetings and hearings with such government officials and other parties as the commission shall deem necessary; and, be it

Further Resolved, That the commission report its findings and recommendations periodically to the Joint Committee on Government and Finance and that the commission shall complete its work and submit a complete report to the 1983 Regular Session of the West Virginia Legislature; and, be it

Further Resolved, That the expenses necessary to conduct the commission's study and to prepare appropriate reports, recommenda-

RESOLUTIONS

tions and proposed legislation be paid from the legislative appropriations to the Joint Committee on Government and Finance, but that no such expenses be incurred by the commission unless prior approval is obtained from the commission and from the Joint Committee on Government and Finance; and, be it

Further Resolved, That private citizen members and legislative members of the special interim commission on Mandolidis shall be reimbursed for the necessary expenses incurred in the performance of their duties, subject to the limitations governing the reimbursement of expenses for members of the Legislature of West Virginia.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1982

CHAPTER 1

(Com. Sub. for S. B. 4—By Mr. McGraw, Mr. President)

[Passed April 3, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, five, ten, eleven and twelve, article five-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the dam control act; defining certain terms; describing the powers and duties of the director; providing for the establishment of fees for certificate of approval; making it unlawful to place, construct, enlarge, alter, repair, remove or abandon certain dams without applying for and obtaining a certificate of approval from the director; procedures for handling emergencies involving dams; requirements for dams completed prior to effective date of section; requirements for dams under construction prior to effective date of section.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, ten, eleven and twelve, article five-d, 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 5D. DAM CONTROL ACT.

- §20-5D-3. Definition of terms used in article.
- §20-5D-4. General powers and duties of director; maximum fee established for certificates of approval.
- §20-5D-5. Unlawful to place, construct, enlarge, alter, repair, remove or

- abandon dam without certificate of approval; application required to obtain certificate.
- §20-5D-10. Procedures for handling emergencies involving dams; remedial actions to alleviate emergency; payment of costs of remedial actions to be paid by dam owner.
- §20-5D-11. Requirements for dams completed prior to effective date of this section.
- §20-5D-12. Requirements for dams under construction prior to effective date of this section.

§20-5D-3. Definition of terms used in article.

- 1 As used in this article, unless used in a context that clearly
 2 requires a different meaning, the term:
- 3 (a) "Alterations" or "repairs" means only those changes in
 4 the structure or integrity of a dam which may affect its safety,
 5 which determination shall be made by the director.
- 6 (b) "Application for a certificate of approval" means the
 7 request in writing by a person to the director requesting that
 8 such person be issued a certificate of approval.
- 9 (c) "Appurtenant works" means any structure or facility
 10 which is an adjunct of, or connected, appended or annexed to
 11 a dam, including, but not limited to, spillways, a reservoir and
 12 its rim, low level outlet works, or water conduits such as
 13 tunnels, pipelines and penstocks either through the dam or
 14 its abutments.
- 15 (d) "Certificate of approval" means the approval in writing
 16 issued by the director to a person who has applied to the
 17 director for such certificate of approval which authorizes
 18 such person to place, construct, enlarge alter, repair or
 19 remove a dam and specifies the conditions or limitations
 20 under which such work is to be performed by such person.
- 21 (e) "Dam" means an artificial barrier or obstruction,
 22 including any works appurtenant to it and any reservoir
 23 created by it, which is or will be placed, constructed,
 24 enlarged, altered or repaired so that it does or will impound or
 25 divert water and (1) is or will be twenty-five feet or more in
 26 height from the natural bed of such stream or watercourse
 27 measured at the downstream toe of the barrier and which
 28 does or can impound fifteen acre-feet or more of water or (2) is
 29 or will be six feet or more in height from the natural bed of
 30 such stream or watercourse measured at the downstream toe
 31 of the barrier and which does or can impound fifty acre-feet
 32 or more of water: *Provided*, That the term "dam" shall not
 33 include (1) any dam owned by the federal government, (2) any
 34 dam for which the operation and maintenance thereof is the

35 responsibility of the federal government, (3) slack-water dams
36 constructed and maintained in connection with public
37 highways, streets, bridges, culverts or viaducts, which shall
38 continue to be regulated and controlled as provided in article
39 five of this chapter, or (4) farm ponds constructed and used
40 primarily for agricultural purposes including, but not limited
41 to, livestock watering, irrigation, retention of animal wastes,
42 and fish culture, and which have no potential to cause loss of
43 human life in the event of embankment failure.

44 (f) "Department" means the department of natural
45 resources.

46 (g) "Director" means the director of the department of
47 natural resources or his authorized agents.

48 (h) "Enlargement" means any change in or addition to an
49 existing dam which (1) raises the height of the dam, (2) raises
50 or may raise the water storage elevation of the water
51 impounded by the dam, (3) increases or may increase the
52 amount of water impounded by the dam, or (4) increases or
53 may increase the watershed area from which water is
54 impounded by the dam.

55 (i) "Person" means any public or private corporation,
56 institution, association, society, firm, organization or
57 company organized or existing under the laws of this or any
58 other state or country; the state of West Virginia; any state
59 governmental agency; any political subdivision of the state or
60 of its counties or municipalities; sanitary district; public
61 service district; drainage district; soil conservation district;
62 watershed improvement district; partnership; trust; estate;
63 person or individual; group of persons or individuals acting
64 individually or as a group; or any other legal entity whatever.
65 The term "person," when used in this article, shall be
66 understood to include and refer to any authorized agent,
67 lessee or trustee of any of the foregoing or receiver or trustee
68 appointed by any court for any of the foregoing.

69 (j) "Reservoir" means any basin which contains or will
70 contain impounded water.

71 (k) "Water" means any liquid, including any solids or
72 other matter which may be contained therein, which is or
73 may be impounded by a dam.

74 (l) "Water storage elevation" means the maximum
75 elevation that water can reach behind a dam without
76 encroaching on the freeboard approved for the dam under
77 flood conditions.

§20-5D-4. General powers and duties of director; maximum fee established for certificates of approval.

1 The director shall have the following powers and duties:

2 (a) To control and exercise regulatory jurisdiction over
3 dams as provided for in this article;

4 (b) To review all applications for a certificate of approval
5 for the placement, construction, enlargement, alteration,
6 repair or removal of any dam;

7 (c) To grant, modify, amend, revoke, restrict or refuse to
8 grant any certificate of approval based on a determination by
9 him that such action is proper or necessary to protect life and
10 property as provided in this article;

11 (d) To adopt, modify, repeal and enforce rules, and issue
12 orders, which he shall do in accordance with the provisions of
13 chapter twenty-nine-a of this code as if the provisions of said
14 chapter twenty-nine-a were set forth in extenso herein to
15 implement and make effective the powers and duties vested
16 in him by the provisions of this article;

17 (e) To take any lawful action he deems necessary for the
18 effective enforcement of the provisions of this article;

19 (f) To establish and charge reasonable fees not to exceed
20 twenty-five dollars for the review of applications for
21 certificates of approval and the issuance thereof;

22 (g) To employ qualified consultants or additional persons
23 in the department as necessary to review applications for
24 certificates of approval and to recommend whether they
25 should be approved, to inspect dams and to enforce the
26 provisions of this article;

27 (h) To cooperate and coordinate with agencies of the
28 federal government, this state and counties and
29 municipalities of this state to improve, secure, study and
30 enforce dam safety and dam technology within this state;

31 (i) To make any investigation or inspection necessary to
32 implement or enforce the provisions of this article and to
33 enter upon the public or private property of any dam owner
34 as may be necessary to make such investigations or
35 inspections. The director may make such investigations,
36 inspections or entries after notifying the dam owner or other
37 person in charge of such dam: *Provided*, That where the
38 owner or person in charge of the dam is not available, the
39 director may make such investigations, inspections or entries
40 as are necessary; and

41 (j) To prepare and publish within a reasonable time,

42 criteria to govern the design, construction, repair, inspection
43 and maintenance of proposed dams herein defined, and to
44 review these criteria annually in order to consider improved
45 technology for inclusion in such criteria.

§20-5D-5. Unlawful to place, construct, enlarge, alter, repair, remove or abandon dam without certificate of approval; application required to obtain certificate.

1 On and after the effective date of this section, it shall be
2 unlawful for any person to place, construct, enlarge, alter,
3 repair, remove or abandon any dam under the jurisdiction of
4 the department until he has first (a) filed an application for a
5 certificate of approval with the department, and (b) obtained
6 from the department a certificate of approval: *Provided*, That
7 a person who has applied for and obtained a certificate of
8 approval on or after the first day of July, one thousand nine
9 hundred seventy-three, in accordance with the provisions of
10 the prior enactment of this section, shall not be required to
11 re-apply for a new certificate of approval for the plans and
12 specifications which were approved by the original
13 certificate: *Provided, however*, That a person making routine
14 repairs on a dam which do not affect the safety of the dam
15 shall not be required to submit such application or have such
16 certificate. A separate application for a certificate of approval
17 must be submitted by a person for each dam he desires to
18 place, construct, enlarge, alter, repair, remove or abandon
19 except that, under rules adopted by the director, one
20 application may be valid for more than one dam involved in a
21 single project or formation of a reservoir.

22 Each application for a certificate of approval shall be made
23 in writing on a form prescribed by the director and shall be
24 signed and verified by the applicant. The application shall
25 contain and provide information which may be reasonably
26 required by the director to administer the provisions of this
27 article.

§20-5D-10. Procedures for handling emergencies involving dams; remedial actions to alleviate emergency; payment of costs of remedial actions to be paid by dam owner.

1 The owner of a dam shall have primary responsibility for
2 determining when an emergency involving his dam exists.

3 When the owner of a dam determines such emergency does
4 exist, he shall notify the director and shall notify any persons
5 who may be endangered if the dam should fail. The owner
6 shall also immediately take any remedial action necessary to
7 protect life and property.

8 The director shall, if he determines that an emergency
9 exists involving a dam, notify any persons who may be
10 endangered if the dam should fail and who have not been so
11 notified and immediately take any remedial action necessary
12 to protect life and property if in his judgment (a) the condition
13 of the dam so endangers life and property that time is not
14 sufficient to permit the issuance and enforcement of an order
15 for the owner to correct the condition or (b) passing or
16 imminent floods or other conditions threaten the safety of the
17 dam. Remedial actions the director may take include, but are
18 not limited to:

- 19 (1) Taking full charge and control of the dam.
- 20 (2) Lowering the level of water impounded by the dam by
21 releasing such impounded water.
- 22 (3) Completely releasing all water impounded by the dam.
- 23 (4) Performing any necessary remedial or protective work
24 at the site of the dam.
- 25 (5) Taking any other steps necessary in the opinion of the
26 director to safeguard life and property.

27 Once the director has taken full charge of the dam, the
28 director shall continue in full charge and control of such dam
29 until, in the director's opinion, it has been rendered safe or
30 the emergency occasioning the action has ceased and the
31 owner is adjudged competent by the director to reassume
32 control of such dam and its operation. The assumption by the
33 director of the control of the dam will not relieve the owner of
34 a dam of liability for any negligent acts the owner commits or
35 which are committed by his agents.

36 In case of an emergency where the director declares that
37 making repairs to the dam or breaching of the dam is
38 immediately necessary to safeguard life and property, repairs
39 or breaching shall be started immediately by the owner, or by
40 the director at the owner's expense, if the owner fails to do so.
41 The owner shall notify the director at once of any emergency
42 repairs or breaching the owner proposes to undertake and of
43 work he has under way to alleviate the emergency. The
44 proposed repairs, breaching and work shall be made to
45 conform to such orders as the director may issue. The director

46 may obtain equipment and personnel for emergency work
47 from any person as is necessary and expedient to accomplish
48 the required work. Any person undertaking such work at the
49 request of the director shall come under the provisions of the
50 good samaritan law, section fifteen, article seven, chapter
51 fifty-five of this code: *Provided*, That a person undertaking
52 such work shall receive remuneration for his services from
53 the department of natural resources.

54 The costs reasonably incurred in any remedial action taken
55 by the director as provided in this article shall be paid for
56 initially by funds appropriated to the department of natural
57 resources for such purposes, and such sums so expended, if
58 not promptly repaid by the owner upon request of the
59 director, shall be recovered from the owner by appropriate
60 civil action to be initiated by the attorney general upon
61 request of the director.

§20-5D-11. Requirements for dams completed prior to effective date of this section.

1 The director shall give notice to file an application for a
2 certificate of approval to every owner of a dam which was
3 completed prior to the effective date of this section: *Provided*,
4 That no such notice need be given to a person who has
5 applied for and obtained a certificate of approval on or after
6 the first day of July, one thousand nine hundred
7 seventy-three, in accordance with the provisions of the prior
8 enactment of section five of this article. Such notice shall be
9 given by certified or registered mail, return receipt requested,
10 to the owner at his last address of record in the office of the
11 county assessor of the county in which the dam is located and
12 such mailing shall constitute service. A separate application
13 for each dam a person owns shall be filed with the director in
14 writing upon forms supplied by him and shall include or be
15 accompanied by appropriate information concerning the dam
16 as the director requires.

17 The director shall make inspections of such dams or
18 reservoirs at state expense. The director shall require owners
19 of such dams to perform at their expense such work or tests
20 as may reasonably be required to disclose information
21 sufficient to enable the director to determine whether to issue
22 a certificate of approval or to issue an order directing further

23 work at the owner's expense necessary to safeguard life and
24 property. For this purpose, the director may require an owner
25 to lower the water level of, or to empty, water impounded by
26 the dam adjudged by the director to be unsafe. If, upon
27 inspection or upon completion to the satisfaction of the
28 director of all work that he ordered, the director finds that the
29 dam is safe to impound water, a certificate of approval shall
30 be issued.

**§20-5D-12. Requirements for dams under construction prior to
effective date of this section.**

1 Any dam which the director finds was under construction
2 and based on his findings not fifty percent constructed on the
3 effective date of this section shall, except as provided in the
4 next succeeding paragraph, be subject to the same provisions
5 of this article as a dam commenced after that date. Every
6 owner of such a dam shall file an application with the director
7 for the director's written approval of the plan and
8 specifications of the dam: *Provided*, That if the person
9 constructing such dam has applied for and obtained a
10 certificate of approval on or after the first day of July, one
11 thousand nine hundred seventy-three, in accordance with the
12 provisions of the prior enactment of section five of this
13 article, such person shall not be required to re-apply for a new
14 certificate of approval for the plans and specifications which
15 were approved by the original certificate.

16 Construction work on such a dam may proceed, provided
17 an application for approval of the plans and specifications
18 therefor is filed, until a certificate of approval is received by
19 the owner from the director approving the dam or an order is
20 received by the owner from the director specifying how the
21 construction must be performed to render the dam safe. After
22 receipt of an order specifying how construction of the dam
23 must be performed, work thereafter must be in accordance
24 with the order.

25 Dams which are determined by the director to be fifty
26 percent or more constructed on the effective date of this
27 section shall be subject to the same supervision as dams
28 which were completed prior thereto.

CHAPTER 2

(S. B. 5—By Mr. McGraw, Mr. President)

[Passed April 3, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employment security benefit program; and changing the formula by which such benefits are triggered.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-1. Definitions.

- 1 As used in this article, unless the context clearly requires
- 2 otherwise:
- 3 (1) "Extended benefit period" means a period which:
- 4 (A) Begins with the third week after a week for which
- 5 there is a state "on" indicator; and
- 6 (B) Ends with either of the following weeks, whichever
- 7 occurs later:
- 8 (i) The third week after the first week for which there is a
- 9 state "off" indicator; or
- 10 (ii) The thirteenth consecutive week of such period.
- 11 Notwithstanding the foregoing provisions of this section, no
- 12 extended benefit period may begin by reason of a state "on"
- 13 indicator before the fourteenth week following the end of a
- 14 prior extended benefit period which was in effect with
- 15 respect to this state, and no extended benefit period may
- 16 become effective in this state prior to the sixty-first day
- 17 following the date of enactment of the Federal-State
- 18 Extended Unemployment Compensation Act of 1970, and,
- 19 within the period beginning on such sixty-first day and
- 20 ending on December thirty-one, one thousand nine hundred
- 21 seventy-one, an extended benefit period may become
- 22 effective and be terminated in this state solely by reason of a
- 23 state "on" and state "off" indicator, respectively.
- 24 (2) There is a "state 'on' indicator" for this state for a week
- 25 if the commissioner determines, in accordance with the

26 regulations of the United States secretary of labor, that for the
27 period consisting of such week and the immediately
28 preceding twelve weeks, the rate of insured unemployment
29 (not seasonally adjusted) under this article:

30 (A) Equaled or exceeded one hundred twenty percent of
31 the average of such rates for the corresponding thirteen-week
32 period ending in each of the preceding two calendar years,
33 and

34 (B) Equaled or exceeded four percent.

35 (C) The determination of whether there has been a state
36 "on" indicator beginning any extended benefit period shall
37 be made hereunder as if subsection (2) did not contain
38 paragraph (A) thereof, but only if the commissioner
39 determines that the rate of insured unemployment (not
40 seasonally adjusted) equals or exceeds five percent.

41 (3) After the twenty-fifth day of September, one thousand
42 nine hundred eighty-two, there is a "state 'on' indicator" for
43 this state for a week if the commissioner determines, in
44 accordance with the regulations of the United States
45 secretary of labor, that for the period consisting of such week
46 and the immediately preceding twelve weeks, the rate of
47 insured unemployment (not seasonally adjusted) under this
48 article:

49 (A) Equaled or exceeded one hundred twenty percent of
50 the average of such rates for the corresponding thirteen-week
51 period ending in each of the preceding two calendar years,
52 and

53 (B) Equaled or exceeded five percent.

54 (C) An extended benefit period shall be made hereunder
55 as if subsection (3) did not contain paragraph (A) thereof, but
56 only if the commissioner determines that the rate of insured
57 unemployment (not seasonally adjusted) equals or exceeds
58 six percent.

59 (4) There is a state "off" indicator for a week if, for the
60 period consisting of such week and the immediately
61 preceding twelve weeks, either subsections (2) or (3) were not
62 satisfied.

63 (5) "Rate of insured unemployment," for purposes of
64 subdivisions (2) and (3) of this section, means the percentage
65 derived by dividing

66 (A) The average weekly number of individuals filing
67 claims for regular compensation in this state for weeks of
68 unemployment with respect to the most recent

69 thirteen-consecutive-week period, as determined by the
70 commissioner on the basis of his reports to the United States
71 secretary of labor by

72 (B) The average monthly employment covered under this
73 chapter for the first four of the most recent six completed
74 calendar quarters ending before the end of such
75 thirteen-week period.

76 (6) "Regular benefits" means benefits payable to an
77 individual under this chapter or under any other state law
78 (including benefits payable to federal civilian employees and
79 to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than
80 extended benefits.

81 (7) "Extended benefits" means benefits (including
82 benefits payable to federal civilian employees and to
83 ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an
84 individual under the provisions of this article for weeks of
85 unemployment in his eligibility period.

86 (8) "Eligibility period" of an individual means the period
87 consisting of the weeks in his benefit year which begin in an
88 extended benefit period and, if his benefit year ends within
89 such extended benefit period, any weeks thereafter which
90 begin in such period.

91 (9) "Exhaustee" means an individual who, with respect to
92 any week of unemployment in his eligibility period:

93 (A) Has received, prior to such week, all of the regular
94 benefits which were available to him under this chapter or
95 any other state law (including dependents' allowances and
96 benefits payable to federal civilian employees and
97 ex-servicemen under 5 U.S.C., chapter 85) in his current
98 benefit year that includes such week: *Provided*, That for the
99 purposes of this subdivision, an individual shall be deemed to
100 have received all of the regular benefits which were available
101 to him although (i) as a result of a pending appeal with respect
102 to wages and/or employment which were not considered in
103 the original monetary determination in his benefit year, he
104 may subsequently be determined to be entitled to added
105 regular benefits, or (ii) he may be entitled to regular benefits
106 with respect to future weeks of unemployment, but such
107 benefits are not payable with respect to such week of
108 unemployment by reason of the provisions of section one-a,
109 article six of this chapter; or

110 (B) His benefit year having expired prior to such week,
111 has no, or insufficient, wages and/or employment on the basis

112 of which he could establish a new benefit year which would
113 include such week; and

114 (C) Has no right to unemployment benefits or allowances,
115 as the case may be, under the Railroad Unemployment
116 Insurance Act, the Trade Expansion Act of 1962, the
117 Automotive Products Trade Act of 1965 and such other
118 federal laws as are specified in regulations issued by the
119 United States secretary of labor; and has not received and is
120 not seeking unemployment benefits under the
121 unemployment compensation law of the Virgin Islands or of
122 Canada; but if he is seeking such benefits and the appropriate
123 agency finally determines that he is not entitled to benefits
124 under such law he is considered an exhaustee.

125 (10) "State law" means the unemployment insurance law
126 of any state, approved by the United States secretary of labor
127 under section 3304 of the Internal Revenue Code of 1954.

128 (11) No individual shall be entitled to extended benefits
129 during a period of unemployment if he was disqualified
130 under the provisions of subdivision (1), (2) or (3) of section
131 three, article six of this chapter, which disqualification shall
132 not be terminated until such individual has returned to
133 covered employment and has been employed in covered
134 employment for at least thirty working days.

135 (12) (A) Notwithstanding any other provisions of this
136 section, an individual shall be ineligible for payment of
137 extended benefits for any week of unemployment in his
138 eligibility period if the commissioner finds that during such
139 period:

140 (i) He failed to accept any offer of suitable work or failed to
141 apply for any suitable work (as defined under subdivision (12)
142 (C) of this section), to which he was referred by the
143 commissioner; or

144 (ii) He failed to actively engage in seeking work as
145 prescribed under subdivision (12) (E) of this section.

146 (B) Any individual who has been found ineligible for
147 extended benefits by reason of the provisions in subdivision
148 (12) (A) of this section shall also be denied benefits beginning
149 with the first day of the week following the week in which
150 such failure occurred and until he has been employed in each
151 of four subsequent weeks (whether or not consecutive) and
152 has earned remuneration equal to not less than four times the
153 extended weekly benefit amount;

154 (C) For purposes of this subdivision (12) (A) (i) of this

155 section, the term "suitable work" means, with respect to any
156 individual, any work which is within such individual's
157 capabilities: *Provided, however,* That the gross average
158 weekly remuneration payable for the work must exceed the
159 sum of:

160 (i) The individual's average weekly benefit amount (as
161 determined under subdivision (12) (D) of this section) plus;

162 (ii) The amount, if any, of supplemental unemployment
163 benefits (as defined in section 501 (c)(17)(D) of the Internal
164 Revenue Code of 1954) payable to such individual for such
165 week; and further,

166 (iii) Pays wages equal to the higher of:

167 (I) The minimum wages provided by section (6)(a)(1) of the
168 Fair Labor Standards Act of 1938, without regard to any
169 exemption; or

170 (II) The state or local minimum wage;

171 (iv) Provided that no individual shall be denied extended
172 benefits for failure to accept an offer or referral to any job
173 which meets the definition of suitability as described above
174 if:

175 (I) The position was not offered to such individual in
176 writing and was not listed with the employment service; or

177 (II) Such failure could not result in a denial of benefits
178 under the definition of suitable work for regular benefit
179 claimants in section five, article six of this chapter, to the
180 extent that the criteria of suitability in that section are not
181 inconsistent with the provisions of this subdivision (12) (C) of
182 this section; or

183 (III) The individual furnishes satisfactory evidence to the
184 commissioner that his or her prospects for obtaining work in
185 his or her customary occupation within a reasonably short
186 period are good. If such evidence is deemed satisfactory for
187 this purpose, the determination of whether any work is
188 suitable with respect to such individual shall be made in
189 accordance with the definition of suitable work in section
190 five, article six of this chapter, without regard to the
191 definition specified by subdivision (12) (C) of this section.

192 (D) Notwithstanding the provisions of this section to the
193 contrary, no work shall be deemed to be suitable work for an
194 individual which does not accord with the labor standard
195 provisions required by section 3304(a)(5) of the Internal
196 Revenue Code of 1954 and set forth herein under subdivision
197 (12) (C) (iii) (I) of this section.

198 (E) For the purposes of subdivision (12) (A) (ii) of this
199 section an individual shall be treated as actively engaged in
200 seeking work during any week if:

201 (i) The individual has engaged in a systematic and
202 sustained effort to obtain work during such week, and

203 (ii) The individual furnishes tangible evidence that he has
204 engaged in such effort during such week.

205 (F) The employment service shall refer any claimant
206 entitled to extended benefits under this article to any suitable
207 work which meets the criteria prescribed in subdivision (12)
208 (C) of this section.

209 (G) An individual shall not be eligible to receive extended
210 benefits with respect to any week of unemployment in his
211 eligibility period if such individual has been disqualified for
212 regular benefits under this chapter because he or she
213 voluntarily left work, was discharged for misconduct or
214 refused an offer of suitable work unless the disqualification
215 imposed for such reasons has been terminated in accordance
216 with specific conditions established under this subdivision
217 requiring the individual to perform service for remuneration
218 subsequent to the date of such disqualification.

219 (13) Notwithstanding any other provisions of this chapter,
220 if the benefit year of any individual ends within an extended
221 benefit period, the remaining balance of extended benefits
222 that such individual would, but for this section, be entitled to
223 receive in that extended benefit period, with respect to weeks
224 of unemployment beginning after the end of the benefit year,
225 shall be reduced (but not below zero) by the product of the
226 number of weeks for which the individual received any
227 amounts as trade readjustment allowances within that benefit
228 year, multiplied by the individual's weekly benefit amount
229 for extended benefits.

230 (14) An unemployed individual shall be eligible to receive
231 benefits with respect to any week only if it has been found
232 that he has been paid wages by an employer who was subject
233 to the provisions of this chapter during the base period of his
234 current benefit year in an amount at least equal to forty times
235 his benefit rate for total unemployment.

CHAPTER 3

(S. B. 3—By Mr. McGraw, Mr. President)

[Passed April 3, 1982; in effect June 11, 1982. Approved by the Governor.]

AN ACT to amend article eighteen-b, 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 twelve, relating generally to the implementation of Enrolled Committee Substitute for Senate Bill 409, enacted by the Legislature during the regular session thereof in the year one thousand nine hundred eighty-two; permitting such provisions to be so implemented notwithstanding requirements for promulgation of legislative rules relating to the state mortgage and industrial development investment pool; permitting the promulgation of procedural, interpretive or legislative rules with respect thereto as emergency rules to be effective upon the filing thereof; removing the requirement of certain findings with respect to such rules; limiting or prohibiting certain actions for review of such rules in certain cases; and the contents of certain deeds, deeds of trust, mortgages and other documents used with respect to transactions arising pursuant to said article.

Be it enacted by the Legislature of West Virginia:

That article eighteen-b, 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 twelve, to read as follows:

ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT INVESTMENT POOL.

§31-18B-12. Rules of construction and interpretation for prompt implementation of this article.

- 1 It is the intent of the Legislature that the housing
- 2 development fund shall proceed with the implementation of
- 3 this article promptly upon the effective date of this article
- 4 under the provisions of this section and of Enrolled
- 5 Committee Substitute for Senate Bill No. 409, enacted at the
- 6 regular session of the Legislature in the year one thousand
- 7 nine hundred eighty-two.
- 8 Notwithstanding the provisions of sections seven and eight

9 of this article for the promulgation of legislative rules and
10 notwithstanding any contrary provisions of chapter
11 twenty-nine-a of this code:

12 (1) The housing development fund may promulgate
13 emergency rules pursuant to the provisions of section fifteen,
14 article three, chapter twenty-nine-a of this code to implement
15 this article. Any such emergency rule, whether procedural,
16 interpretive or legislative, shall be effective upon filing
17 thereof in the state register. No findings of circumstances to
18 justify such emergency rules shall be required; such
19 emergency rules shall be deemed to have been promulgated
20 to comply with a time limitation established by this code. No
21 action shall lie for de novo or other review of such rule to
22 contest or question the existence of circumstances justifying
23 the promulgation of an emergency rule nor to challenge the
24 validity of such rule because of its classification as an
25 emergency rule: *Provided*, That no such rule shall suspend
26 the provisions of section eight of this article.

27 (2) Any deed, deed of trust, mortgage or other instrument
28 or document utilized in connection with any transaction
29 arising under or affected by this article may contain
30 provisions related to any emergency rule promulgated under
31 this section and any extension or amendment thereof and
32 shall, to the extent the instrument or document so provides,
33 fully bind and be enforceable by the parties thereto as if such
34 rule had been properly made effective under law and whether
35 or not such rule thereafter expires or is revoked: *Provided*,
36 That no such provision or agreement under this subdivision
37 shall suspend the provisions of this article or exceed its
38 limitations.

CHAPTER 4

(Com. Sub. for S. B. 1—By Mr. Boettner)

[Passed April 3, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen-a, relating to municipal police officers and firemen generally; providing for a procedure concerning punitive actions; providing for appointment of a hearing board; providing for the duties of the

circuit judge with respect thereto; defining certain terms relative to the investigation of a police officer or fireman; requiring an interrogation of a police officer or fireman be conducted at a reasonable hour; stipulating that a police officer or fireman must be informed of the nature of any investigation against him; prohibiting the act of subjecting an officer or fireman under interrogation to offensive language; requiring all interrogations of police officers or firemen to be recorded; granting a police officer or fireman the right to counsel when upon filing formal written charges against him or when an interrogation may lead to punitive action; providing a hearing procedure for police officers or firemen if punitive action is recommended from an interrogation or investigation; requiring notification by the police department or fire department to the police officer or fireman that he is entitled to a hearing; granting the hearing board power of subpoena; granting police officers or firemen the right to refuse to disclose personal finances, exceptions thereto; granting any police officer or fireman adversely affected by any action as a result of a hearing the right to appeal said adverse action to the policemen's or firemen's civil service commission; and exempting suspension of police officers and firemen under the influence of alcohol or controlled substances or for apparent emotional or mental disturbances.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 14A. MUNICIPAL POLICE OFFICERS AND FIREMEN;
PROCEDURE FOR INVESTIGATION.**

§8-14A-1. Definitions.

§8-14A-2. Investigation and interrogation of a police officer or fireman.

§8-14A-3. Hearing.

§8-14A-4. Right to refuse to disclose personal finances; exceptions.

§8-14A-5. Appeal.

§8-14A-1. Definitions.

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

3 (1) "Police officer" or "fireman" means any police officer
4 or fireman of a police or fire department employed by the city

5 or municipality but shall not include the highest ranking
6 officer of such police or fire department.

7 (2) "Under investigation" or "under interrogation" means
8 any situation in which any police officer or fireman becomes
9 the focus of inquiry regarding any matter which may result in
10 punitive action.

11 (3) "Punitive action" means any action which may lead to
12 dismissal, demotion, suspension, reduction in salary, written
13 reprimand or transfer for purposes of punishment.

14 (4) "Hearing board" means a board which is authorized by
15 the chief of police or chief of the fire department to hold a
16 hearing on a complaint against a law-enforcement officer or
17 fireman and which consists of three members, all to be
18 selected from law-enforcement officers or firemen within that
19 agency, or law-enforcement officers or firemen of another
20 agency with the approval of the chief of police or chief of the
21 fire department of the other agency and who have had no part
22 in the investigation or interrogation of the law-enforcement
23 officer or fireman under investigation. One of the members of
24 the board shall be appointed by the chief of police or chief of
25 the fire department, one shall be appointed by the police
26 officers or firemen of that agency, and these two members of
27 the board shall, by mutual agreement, appoint the third
28 member of the board: *Provided*, That should the first two
29 members of the board fail to agree upon the appointment of
30 the third member of the board within five days they shall
31 submit to the policemen's civil service commission or to the
32 firemen's civil service commission, as may be appropriate, or
33 if there be no civil service commission, to the chief judge of
34 the circuit court of the county, a list of four qualified
35 candidates from which list the commission or chief judge
36 shall appoint the third member of the board: *Provided*,
37 *however*, That in the event one or more members of the board
38 cannot be appointed as otherwise provided in this section,
39 then the chief judge shall appoint a sufficient number of the
40 citizens of the municipality as may be necessary to constitute
41 the board. At least one member of the hearing board shall be
42 of the same rank as the law-enforcement officer or fireman
43 against whom the complaint has been filed.

44 (5) "Hearing" means any meeting in the course of an
45 investigatory proceeding, other than an interrogation at
46 which no testimony is taken under oath, conducted by a

47 hearing board for the purpose of taking or inducing
48 testimony or receiving evidence.

§8-14A-2. Investigation and interrogation of a police officer or fireman.

1 When any police officer or fireman is under investigation
2 and subjected to interrogation by his commanding officer, or
3 any other member of the employing police or fire department,
4 which could lead to punitive action, such interrogation shall
5 be conducted under the following conditions:

6 (1) The interrogation shall be conducted at a reasonable
7 hour, preferably at a time when the police officer or fireman is
8 on duty, or during his normal working hours, unless the
9 seriousness of the investigation requires otherwise. If such
10 interrogation does occur during off-duty time of the police
11 officer or fireman being interrogated at any place other than
12 his residence, such officer or fireman shall be compensated
13 for such off-duty time in accordance with regular department
14 procedure. If the interrogation of the police officer or fireman
15 occurs during his regular duty hours, such officer or fireman
16 shall not be released from employment for any work missed
17 due to interrogation.

18 (2) Any police officer or fireman under investigation shall
19 be informed of the nature of the investigation prior to any
20 interrogation. Such officer shall also be informed of the name,
21 rank and command of the officer in charge of the
22 interrogation, the interrogating officers, and all other persons
23 to be present during the interrogation. No more than three
24 interrogators at one time shall question the officer or fireman
25 under investigation.

26 (3) No police officer or fireman under interrogation shall
27 be subjected to offensive language or threatened with
28 punitive action. No promise of reward shall be made as an
29 inducement to answering questions.

30 (4) The complete interrogation of any police officer or
31 fireman shall be recorded, either written, taped or
32 transcribed. Upon request of the law-enforcement officer or
33 fireman under investigation or his counsel, and upon advance
34 payment of the reasonable cost thereof a copy of the record
35 shall be made available to him not less than ten days prior to
36 any hearing.

37 (5) Upon the filing of a formal written statement of
38 charges or whenever an interrogation focuses on matters

39 which are likely to result in punitive action against any police
40 officer or fireman, then that officer or fireman shall have the
41 right to be represented by counsel who may be present at all
42 times during such interrogation.

43 Nothing herein shall prohibit the immediate temporary
44 suspension, pending an investigation, from duty of any police
45 officer or fireman who reports for duty under the influence of
46 alcohol or controlled substances which would prevent the
47 officer or fireman from performing his duties as defined in
48 chapter sixty-a of this code, or under the influence of an
49 apparent mental or emotional disorder.

§8-14A-3. Hearing.

1 (a) If the investigation or interrogation of a police officer
2 or fireman results in the recommendation of some punitive
3 action, then, before taking such action the police or fire
4 department shall give notice to the police officer or fireman
5 that he is entitled to a hearing on the issues by a hearing
6 board. The notice shall state the time and place of the hearing
7 and the issues involved and be delivered to the police officer
8 or fireman no later than ten days prior to the hearing. An official
9 record, including testimony and exhibits, shall be kept of the
10 hearing.

11 (b) The hearing shall be conducted by the hearing board of
12 the police or fire department except that in the event the
13 recommended punitive action is discharge, suspension or
14 reduction in rank or pay, and such action has been taken the
15 hearing shall be pursuant to the provisions of article fourteen,
16 section twenty, and article fifteen, section twenty-five of this
17 chapter, if applicable. Both the police or fire department and
18 the police officer or fireman shall be given ample opportunity
19 to present evidence and argument with respect to the issues
20 involved.

21 (c) With respect to the subject of any investigation or
22 hearing conducted pursuant to this section, the hearing board
23 may subpoena witnesses and administer oaths or
24 affirmations and examine any individual under oath, and may
25 require and compel the production of records, books, papers,
26 contracts and other documents.

27 (d) Any decision, order or action taken as a result of the
28 hearing shall be in writing and shall be accompanied by
29 findings of fact. The findings shall consist of a concise
30 statement upon each issue in the case. A copy of the decision

31 or order and accompanying findings and conclusions, along
32 with written recommendations for action, shall be delivered
33 or mailed promptly to the police officer or fireman, or to his
34 attorney of record.

§8-14A-4. Right to refuse to disclose personal finances; exceptions.

1 No police officer or fireman shall be required or requested
2 for purposes of job assignment or other personnel action to
3 disclose any item of his property, income, assets, source of
4 income, debts or personal or domestic expenditures unless
5 such information is obtained through proper legal procedures
6 or is necessary for the employing agency to ascertain the
7 desirability of assigning the police officer to a specialized unit
8 in which there is a strong possibility that bribes or other
9 improper inducements might be offered.

§8-14A-5. Appeal.

1 Any police officer or fireman adversely affected by any
2 decision, order or action taken as a result of a hearing as
3 herein provided shall have the right to appeal the same to the
4 policemen's or firemen's civil service commission, if
5 applicable, in the manner provided for in section nineteen,
6 article fourteen and section twenty-five, article fifteen of this
7 chapter, or if there be no civil service commission, to the
8 circuit court of the county wherein said police officer or
9 fireman resides.

CHAPTER 5

(S. B. 2—By Mr. McGraw, Mr. President)

[Passed April 3, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemption from business and occupation tax for the value of electricity generated and used or consumed in a business activity taxable under section two-b.

Be it enacted by the Legislature of West Virginia:

That section two-b, article thirteen, 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 13. BUSINESS AND OCCUPATION TAX.

§11-13-2b. Manufacturing, compounding or preparing products; processing of food; exception of generated or produced electric power by public utilities or others; treatment accorded electricity generated by manufacturers for own use; valuation of timber products.

1 Upon every person engaging or continuing within this state
2 in the business of manufacturing, compounding or preparing
3 for sale, profit, or commercial use, either directly or through
4 the activity of others in whole or in part, any article or articles,
5 substance or substances, commodity or commodities, or
6 newspaper publishing (including all gross income or
7 proceeds of sale from circulation and advertising), except
8 electric power produced by public utilities or others, the
9 amount of the tax to be equal to the value of the article,
10 substance, commodity or newspaper, manufactured,
11 compounded or prepared for sale, as shown by the gross
12 proceeds derived from the sale thereof by the manufacturer
13 or person compounding or preparing the same, except as
14 otherwise provided, multiplied by a rate of eighty-eight
15 one-hundredths of one percent. The measure of this tax is the
16 value of the entire product manufactured, compounded or
17 prepared in the state for sale, profit or commercial use,
18 regardless of the place of sale or the fact that deliveries may
19 be made to points outside the state. The value of electricity
20 generated by persons taxed under the provisions of this
21 section, which electricity is directly used by such persons in
22 the business of manufacturing and not sold or otherwise
23 transferred or transmitted to others, shall be exempt from the
24 imposition of any tax under this article. With respect to the
25 manufacturing, compounding or preparing for sale of timber
26 or timber products, the measure of this tax is the value of the
27 entire timber product manufactured, compounded or
28 prepared in the state for sale, profit or commercial use,
29 regardless of the place of sale or the fact that deliveries may
30 be made to points outside the state but such value shall not
31 include the value of any timber or timber products used as
32 ingredients, components, or elements of such timber
33 products. The dressing and processing of food by a person,

34 firm or corporation, which food is to be sold on a wholesale
35 basis by such person, firm or corporation shall not be
36 considered as manufacturing or compounding, but the sale of
37 these products on a wholesale basis shall be subject to the
38 same tax as is imposed on the business of selling at wholesale
39 as provided in section two-c.

40 It is further provided, however, that in those instances in
41 which the same person partially manufactures, compounds
42 or prepares products within this state and partially
43 manufactures, compounds or prepares such products outside
44 of this state the measure of his tax under this section shall be
45 that proportion of the sale price of the product that the
46 payroll cost of manufacturing within this state bears to the
47 entire payroll cost of manufacturing the product; or, at the
48 option of the taxpayer, the measure of his tax under this
49 section shall be the proportion of the sales value of the
50 articles that the cost of operations in West Virginia bears to
51 the full cost of manufacture of the articles.

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