

ACTS  
OF THE  
LEGISLATURE  
OF  
WEST VIRGINIA



**Regular Session, 1977**  
**Second Extraordinary Session, 1976**  
**First Extraordinary Session, 1977**

**BJW Printers, Beckley, W. Va.**



**C-641**

## FOREWORD

This volume contains the Acts of the First Regular Session of the 63rd Legislature (1977), the Second Extraordinary Session of 1976 (62nd Legislature) and the First Extraordinary Session of 1977 (63rd Legislature).

### Regular Session, 1977

The first regular session of the 63rd Legislature convened on January 12, 1977, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 2nd day of November, 1976, all as prescribed by Section 18, Article VI, of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and separately and concurrently acting on certain other matters incident to organization, took an adjournment until February 9, 1977, as provided by the aforesaid section of the Constitution. Reconvening on February 9, 1977, pursuant to the adjournment, the constitutional 60-day limit on the duration of the session being at midnight April 9, 1977, *sine die* adjournment came on that date.

Bills totaling 1697 were introduced in the two houses during the session (1067 House and 630 Senate). The Legislature passed 174 bills, 80 House and 94 Senate. The Governor approved 165 bills and vetoed 10. However, one bill disapproved was amended, re-passed and subsequently approved by the Governor, leaving a net total of 9 bills lost through veto.

There were 105 concurrent resolutions during the session, 69 House and 36 Senate, of which 11 House and 6 Senate were adopted. Twenty-eight House Joint and 15 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted one House Joint Resolution—HJR 16, proposing an amendment to the Constitution of the State designated the "Freeport Amendment", permitting the Legislature to exempt inventory and warehouse goods from ad valorem property taxation by general law. The House had 29 House Resolutions and the Senate had 27 Senate Resolutions, of which 14 House and 20 Senate were adopted.

The Senate failed to pass 61 House Bills passed by the House and 68 Senate Bills failed passage by the House. Five House bills, and five Senate Bills died in conference.

### Second Extraordinary Session, 1976

This session convened on July 26, 1976, and concluded its business on November 10, 1976. An adjournment of the session was taken on July 30 until November 9, 1976.

The proclamation of the Governor convening the session contained 71 items of business for consideration.

During the session, 143 bills were introduced in the two houses—68 House bills and 75 Senate bills dealing with the matters set forth in the proclamation of the Governor. The Legislature passed eleven bills—four House and seven Senate. All bills passed were approved by the Governor. Three House bills, passed by the House, were not passed by the Senate. Two Concurrent Resolutions were introduced in the House, but were not adopted, and the Senate had four Concurrent Resolutions, only one of which was adopted. The Senate had one Joint Resolution and the House had two, none of which were adopted. There were three House Resolutions, with two adopted, and nine Senate Resolutions, all adopted.

#### **First Extraordinary Session, 1977**

This session convened on May 2, 1977, and concluded on June 22, 1977. An adjournment of the session was taken on May 13, until June 21, 1977.

The proclamation of the Governor convening the session contained eleven items of business for consideration.

During the eleven days the Legislature met in daily session, 27 bills were introduced in the two houses—17 House and 10 Senate. The Legislature passed ten bills—five House and five Senate. All bills passed were approved by the Governor.

There were 24 concurrent resolutions offered during the session—16 House and eight Senate, of which six House and one Senate were adopted. No joint resolutions were introduced in either house. The House had six House Resolutions, and the Senate had seven Senate Resolutions, of which three House and seven Senate were adopted.

One bill (H. B. 113, licensing of chiropractors) died in conference.

This volume will be distributed as provided by House Resolution No. 29, adopted April 7, 1977. These Acts will be published with buckram binding, and may be purchased from the Department of Finance and Administration, State Capitol, Charleston, West Virginia 25305.

**C. A. BLANKENSHIP, Clerk**  
*House of Delegates*

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REGULAR SESSION, 1977

## OFFICERS

*Speaker*—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	Charles Donley (D)	Wellsburg
	Pamela Sue Shuman (D)	Wellsburg
Third	Mrs. Thais Blatnik (D)	Triadelphia
	John M. Karras (D)	Wheeling
	Paul J. Otte (R)	Wheeling
	Jerry A. Tighe (D)	Wheeling
Fourth	Albert D. Yanni (D)	Glen Dale
	Larry Wiedeusch (D)	Glen Dale
Fifth	Joseph M. Bailouz (D)	New Martinsville
Sixth	Larry D. Swann (R)	Salem
Seventh	Sam White (R)	St. Marys
Eighth	Joseph P. Albright (D)	Parkersburg
	Stephen C. Bird (D)	Parkersburg
	George E. Farley (D)	Parkersburg
	M. E. Mowery (D)	Parkersburg
	Donza T. Worden (D)	Parkersburg
Ninth	Corlis W. Harris (D)	Spencer
Tenth	Charles H. Damron (D)	Fraziers Bottom
	John E. Fitzgerald (D)	Ravenswood
	Dave O'Neal (D)	Pt. Pleasant
	Dan Shumate (D)	Ravenswood
Eleventh	Michele P. Craig (D)	Huntington
	Albert C. Esposito (R)	Huntington
	Patricia O. Hartman (D)	Huntington
	Hugh A. Kincaid (D)	Huntington
	Dorsey Ketchum (D)	Huntington
	Charles M. Polan, Jr. (D)	Huntington
Twelfth	Burnie R. Crabtree (D)	Genoa
	Fox Fry (D)	Wayne
Thirteenth	James E. Blevins (D)	Delbarton
	R. Doyle Van Meter (D)	Williamson
Fourteenth	Ernest C. Moore (D)	Thorpe
	T. J. Scott (D)	Weich
	Lacy Wright, Jr. (D)	Bradshaw
Fifteenth	Frank L. Blackwell (D)	Mullens
	Thomas G. Goodwin (D)	Seth
	Troy W. Hendricks (D)	Madison
Sixteenth	Sammy D. Dalton (D)	Harts
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	Thomas W. Mathis (D)	Logan
	Earl Ray Tomblin (D)	Chapmanville
Seventeenth	John Boettner, Jr. (D)	Charleston
	Jack Canfield (D)	Charleston
	Leon T. Copeland (D)	Charleston
	William L. Dodd, Jr. (D)	Charleston
	Darrell E. Holmes (D)	Charleston
	E. M. Johnson (D)	Charleston
	Helaine Rotgin (D)	Charleston
	Lyle Sattes (D)	Charleston
	Walton Shepherd (D)	Sissonville

# HOUSE OF DELEGATES

XV

District	Name	Address
	John T. Slack (D)	Charleston
	Larry Sonis (D)	Charleston
	Roger W. Tompkins (D)	Charleston
	Martha G. Wehrle (D)	Charleston
<b>Eighteenth</b>	Sterling T. Lewis (D)	Shady Spring
	Ted T. Stacy (D)	Beckley
	Mrs. W. W. Withrow (D)	Beckley
	William R. Wooton (D)	Beckley
<b>Nineteenth</b>	C. C. Christian, Jr. (D)	Princeton
	Charles E. Lohr (D)	Princeton
	James W. McNeely (D)	Bluefield
	W. Marion Shiflet (D)	Union
	Tony E. Whitlow (D)	Princeton
<b>Twentieth</b>	Betty D. Crookshanks (D)	Rupert
	Sarah L. Neal (D)	Rainelle
<b>Twenty-first</b>	Carroll E. Bumgarner (D)	Oak Hill
	Paul W. McKown (D)	Fayetteville
	Adam Toney (D)	Oak Hill
<b>Twenty-second</b>	D. Boyd Dotson, Jr. (D)	Webster Springs
	Larry A. Tucker (D)	Summersville
<b>Twenty-third</b>	Billy B. Burke (D)	Glenville
	Harold V. Long (D)	Little Birch
<b>Twenty-fourth</b>	George E. Arnold (D)	Weston
<b>Twenty-fifth</b>	Gino R. Colombo (D)	Nutter Fort
	Michael D. Greer (R)	Salem
	Donald L. Kopp (D)	Clarksburg
	James Laulis (D)	Bridgeport
<b>Twenty-sixth</b>	Samuel A. Morasco (D)	Grafton
	Paul E. Prunty (R)	Fairmont
	William E. Shingleton (D)	Fairmont
	Cody A. Starcher (D)	Fairmont
<b>Twenty-seventh</b>	Ralph Brown (D)	Arthurdale
	Clyde W. Hagedorn (D)	Morgantown
	Clyde H. Richey (D)	Morgantown
	Larry E. Schifano (D)	Morgantown
<b>Twenty-eighth</b>	James W. Teets (R)	Terra Alta
<b>Twenty-ninth</b>	E. E. Bryan (D)	Phillippi
	Charles R. Shaffer (R)	Buckhannon
<b>Thirtieth</b>	Julia Pitsenberger (D)	Elkins
	Jae Spears (D)	Elkins
<b>Thirty-first</b>	Clyde M. See, Jr. (D)	Moorefield
<b>Thirty-second</b>	Guy Ross Smith (D)	Davis
<b>Thirty-third</b>	Robert D. Harman (R)	Keyser
<b>Thirty-fourth</b>	William T. Milleson (D)	Springfield
<b>Thirty-fifth</b>	Joseph E. Caudle (D)	Martinsburg
	Terry T. Harden (D)	Berkeley Springs
	Clarence E. Martin, III (D)	Martinsburg
<b>Thirty-sixth</b>	Carolyn M. Snyder (D)	Charles Town

(D) Democrats	91
(R) Republicans	9
<b>Total</b>	<b>100</b>

# MEMBERS OF THE SENATE

REGULAR SESSION, 1977

## OFFICERS

*President*—W. T. Brotherton, Jr., Charleston

*Clerk*—J. C. Dillon, Jr., Hinton

*Sergeant at Arms*—John E. Howell, Charleston

*Doorkeeper*—E. L. Bevins, Williamson

District	Name	Address
First	*Judith A. Herndon (R) Samuel N. Kusic (R)	Wheeling Weirton
Second	*William L. Gilligan (R) Dan R. Tonkovich (D)	Sistersville Benwood
Third	*Russell G. Beall (D) David G. Hanlon (D)	Parkersburg Harrisville
Fourth	*Robert F. Hatfield (D) Orton A. Jones (R)	Hurricane Spencer
Fifth	*Robert R. Nelson (D) Walter Rollins (D)	Huntington Kenova
Sixth	John Pat Fanning (D) *Lafe P. Ward (D)	Jaeger Williamson
Seventh	J. Ned Grubb (D) *J. Robert Rogers (D)	Man Madison
Eighth	Mario J. Palumbo (D) *Roland Savilla (D)	Charleston St. Albans
Ninth	Warren R. McGraw (D) *Alan L. Susman (D)	Pineville Beckley
Tenth	†Richard P. Baylor (D) Odell H. Huffman (D)	Hinton Princeton
Eleventh	Pat R. Hamilton (D) *Ralph D. Williams (D)	Oak Hill Rainelle
Twelfth	Richard Benson (D) *Carl E. Gainer (D)	Elkins Richwood
Thirteenth	*W. Walter Neeley (D) Wm. R. Sharpe, Jr. (D)	Clarksburg Weston
Fourteenth	James L. Davis (D) *William A. Moreland (D)	Fairmont Morgantown
Fifteenth	*C. N. Harman (R) J. D. Hinkle, Jr. (R)	Grafton Buckhannon
Sixteenth	William J. Oates, Jr. (D) *Robert M. Steptoe (D)	Romney Martinsburg
Seventeenth	W. T. Brotherton, Jr. (D) *Si Galperin, Jr. (D)	Charleston Charleston

† Elected in 1976 for unexpired term.

\* Elected in 1974. All others elected in 1976.

(D) Democrats	28
(R) Republicans	6
Total	34



## **STANDING COMMITTEES OF THE HOUSE OF DELEGATES**

**1977**

### **Agriculture and Natural Resources**

Ballouz (Chairman), Neal (Vice Chairman), Arnold, Blevins, Brenda, Brown, Bryan, Burke, Crookshanks, Fry, Goodwin, Harden, Harris, McKown, McNeely, Milleson, O'Neal, Rotgin, Shiflet, Smith, Whitlow, Wiedebusch, Worden, Shaffer and Swann.

### **Banking and Insurance**

Shingleton (Chairman of Banking), Morasco (Chairman of Insurance), Bryan (Vice Chairman of Banking), Stacy (Vice Chairman of Insurance), Bird, Donley, Fry, Hartman, Holmes, Johnson, Lohr, McKown, Milleson, Mowery, Pitsenberger, Sattes, Schifano, Scott, Shepherd, Shiflet, Shumate, Tucker, Wright, Esposito and Shaffer.

### **Constitutional Revision**

Copeland (Chairman), Wehrle (Vice Chairman), Ballouz, Caudle, Colombo, Craig, Dalton, Damron, Donley, Ketchum, Martin, Mathis, Moore, Mowery, Neal, Sattes, Schifano, Shuman, Sonis, Spears, Tucker, Wooton, Wright, Harman and White.

### **Education**

Albright (Chairman), Bumgarner (Vice Chairman), Ballouz, Blackwell, Blatnik, Blevins, Crookshanks, Dalton, Goodwin, Hagedorn, Harris, Hartman, Ketchum, Lewis, McNeely, Martin, O'Neal, Richey, Rotgin, Snyder, Starcher, Wright, Yanni, Harman and Prunty.

### **Finance**

Polan (Chairman), Farley (Vice Chairman), Boettner, Brenda, Brown, Colombo, Crabtree, Fitzgerald, Holmes, Johnson, Karras, Kincaid, Lohr, Long, Mathis, Milleson, Morasco, Neal, Spears, Tomblin, Toney, Van Meter, Withrow, Swann and Teets.

### **Government Organization**

Canfield (Chairman), Shuman (Vice Chairman), Bird, Blatnik, Burke, Dodd, Fry, Gvoyich, Harden, Hendricks, Laulis, McKown, Martin, Schifano, Shiflet, Shumate, Slack, Sonis, Tighe, Whitlow, Wiedebusch, Worden, Wright, Greer and Otte.

**Health and Welfare**

Withrow (Chairman), Fitzgerald (Vice Chairman), Arnold, Bird, Blevins, Boettner, Bumgarner, Caudle, Dodd, Dotson, Gvoyich, Hagedorn, Harden, Ketchum, Laulis, Lewis, Rotgin, Spears, Smith, Tighe, Tomblin, Wehrle, Worden, Esposito and Otte.

**Industry and Labor**

Wiedebusch (Chairman), Moore (Vice Chairman), Blackwell, Bumgarner, Christian, Copeland, Crabtree, Crookshanks, Dodd, Fry, Gilliam, Gvoyich, Hagedorn, Harris, Holmes, Karras, Long, Richey, Shepherd, Sonis, Starcher, Whitlow, Yanni, Greer and Prunty.

**Interstate Cooperation**

Shiflet (Chairman), Christian, Donley, Gilliam, Scott, Withrow and Swann. (Speaker is ex officio nonvoting member.)

**Judiciary**

Tompkins (Chairman), Tucker (Vice Chairman), Albright, Bryan, Caudle, Christian, Copeland, Craig, Damron, Donley, Dotson, Gilliam, Moore, Mowery, Pitsenberger, Sattes, Scott, See, Shepherd, Shingleton, Stacy, Wehrle, Wooton, Shaffer and White.

**Political Subdivisions**

Damron (Chairman), Toney (Vice Chairman), Boettner, Brown, Dotson, Goodwin, Gvoyich, Hendricks, Ketchum, Kincaid, Lewis, Mathis, McNeely, Mowery, O'Neal, Pitsenberger, Richey, Shepherd, Shuman, Sonis, Snyder, Van Meter, Wooton, Greer and Otte.

**Roads and Transportation**

Goodwin (Chairman), Long (Vice Chairman), Arnold, Blackwell, Blatnik, Burke, Christian, Crabtree, Craig, Dalton, Farley, Fitzgerald, Hendricks, Laulis, Shumate, Slack, Smith, Snyder, Stacy, Starcher, Tomblin, Toney, Yanni, Harman and Swann.

**Rules**

Kopp (Chairman, ex officio), Albright, Brenda, Canfield, Colombo, Lohr, Polan, See, Shiflet, Tompkins, Tucker and Teets.

**State and Federal Affairs**

Scott (Chairman), Van Meter (Vice Chairman), Brenda, Caudle, Colombo, Crabtree, Dalton, Gilliam, Hartman, Holmes, Johnson, Karras, Kincaid, Morasco, Neal, Shepherd, Shingleton, Smith, Snyder, Spears, Tighe, Tomblin, Withrow, Prunty and White.

**HOUSE COMMITTEES**

**xix**

**JOINT COMMITTEES**

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**Enrolled Bills**

Christian (Chairman), Holmes, Spears, Esposito and Prunty.

**Government and Finance**

Kopp (Chairman), Albright, Polan, See, Tompkins, Greer and Teets.

**Joint Rules**

Kopp (Chairman ex officio), See and Teets.

**Legislative Rule-Making Review Committee**

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

**PURCHASING PRACTICES AND PROCEDURES  
COMMISSION**

Kopp (Chairman), Moore, Sattes, Harman and Teets.

## STANDING COMMITTEES OF THE SENATE

1977

### **Agriculture**

Beall (Chairman), Williams (Vice Chairman), Benson, Hamilton, Hanlon, Hatfield, Oates, Steptoe, Susman, Gilligan and Jones.

### **Banking and Insurance**

Neeley (Chairman), Rogers (Vice Chairman), Baylor, Benson, Hamilton, Huffman, Moreland, Rollins, Susman, Ward, Williams, Herndon and Kusic.

### **Confirmations**

Benson (Chairman), Galperin (Vice Chairman), Davis, Hamilton, McGraw, Neeley, Oates, Rogers, Savilla, Tonkovich, Gilligan, Harman and Herndon.

### **Education**

Nelson (Chairman), Oates (Vice Chairman), Beall, Benson, Galperin, Grubb, McGraw, Moreland, Rogers, Rollins, Savilla, Sharpe, Gilligan, Herndon and Jones.

### **Elections**

Oates (Chairman), Nelson (Vice Chairman), Galperin, Hamilton, Huffman, McGraw, Moreland, Palumbo, Steptoe, Gilligan and Herndon.

### **Energy, Industry and Mining**

Susman (Chairman), Rogers (Vice Chairman), Baylor, Beall, Benson, Gainer, Grubb, Williams, Hinkle and Kusic.

### **Finance**

Fanning (Chairman), Susman (Vice Chairman), Beall, Gainer, Grubb, Hatfield, Hanlon, McGraw, Neeley, Rollins, Savilla, Sharpe, Steptoe, Tonkovich, Williams, Gilligan, Harman and Hinkle.

### **Health**

Huffman (Chairman), Hatfield (Vice Chairman), Davis, Galperin, Hamilton, Hanlon, Moreland, Sharpe, Tonkovich, Harman and Jones.

**Interstate Cooperation**

Gainer (Chairman), Neeley (Vice Chairman), Moreland, Nelson, Oates, Davis and Hinkle. (President is ex officio nonvoting member)

**Judiciary**

Palumbo (Chairman), Oates (Vice Chairman), Baylor, Benson, Davis, Gainer, Galperin, Hamilton, Huffman, Moreland, Neeley, Nelson, Rogers, Rollins, Ward, Herndon, Jones and Kusic.

**Labor**

Hatfield (Chairman), Davis (Vice Chairman), Hanlon, Huffman, Sharpe, Steptoe, Ward, Gilligan and Harman.

**Local Government**

Galperin (Chairman), Moreland (Vice Chairman), Beall, Benson, Hanlon, Huffman, Steptoe, Herndon and Hinkle.

**Military**

Moreland (Chairman), Savilla (Vice Chairman), Baylor, Hatfield, McGraw, Neeley, Williams, Harman and Hinkle.

**Natural Resources**

Gainer (Chairman), Rogers (Vice Chairman), Baylor, Beall, Benson, Galperin, Grubb, McGraw, Oates, Palumbo, Rollins, Steptoe, Susman, Harman and Hinkle.

**Public Institutions**

Sharpe (Chairman), Hatfield (Vice Chairman), Davis, Nelson, Hamilton, Rollins, Savilla, Gilligan, Harman and Hinkle.

**Rules**

Brotherton (Chairman ex officio), Fanning, Gainer, Nelson, Palumbo, Sharpe, Susman, Ward, Jones and Kusic.

**Transportation**

Steptoe (Chairman), Davis (Vice Chairman), Beall, Gainer, Hamilton, Hatfield, Huffman, Neeley, Nelson, Palumbo, Savilla, Sharpe, Tonkovich, Williams, Gilligan, Herndon and Jones.

**SENATE COMMITTEES**

**JOINT COMMITTEES**

**Enrolled Bills**

Davis (Chairman), Beall, Rogers, Hinkle and Jones.

**Government and Finance**

Brotherton (Chairman), Fanning, Palumbo, Sharpe, Ward, Harman and Kusic.

**Joint Rules**

Brotherton (Chairman ex officio), Ward and Kusic.

**Legislative Rule-Making Review Committee**

Stephoe (Chairman), Moreland, Rollins, Susman, Herndon and Hinkle. (President is ex officio nonvoting member)

**PURCHASING PRACTICES AND PROCEDURES  
COMMISSION**

Brotherton (Chairman), Beall, Nelson, Harman and Jones.







# LEGISLATURE OF WEST VIRGINIA

# ACTS

**REGULAR SESSION, 1977**

## CHAPTER 1

(H. B. 1585—By Mr. Speaker, Mr. Kepp)

[Passed March 29, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article three, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the purchase, reorder and sales of alcoholic liquors by the West Virginia alcohol beverage control commissioner and providing that the amount of the operating fund and the value of the inventory stock shall not exceed twenty million dollars.

*Be it enacted by the Legislature of West Virginia:*

That section fifteen, 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.**

**§60-3-15. Amount of operating fund and value of inventory stock allowed; contract for manufacture of state brand; ordering listed and unlisted brands.**

1 In order to avoid the accumulation of excessive stocks in  
2 warehouses and stores, the commissioner shall so plan his  
3 purchases of alcoholic liquors for sale in state stores and  
4 agencies that none of the stock on hand be on a consignment  
5 basis and that the amount of operating fund and the value of  
6 inventory stock shall not exceed twenty million dollars.

7 The commissioner may, with the consent of the governor,  
8 contract for the manufacture of alcoholic liquors for sale in  
9 state stores and agencies. Such liquors shall bear a special  
10 designation as "state brand."

11 Listed brands and sizes of spirituous liquors shall not be  
12 reordered in quantities greater than at the rate of comparative  
13 gross sales as determined by the last three monthly reports  
14 published prior to each reorder: *Provided*, That to take ad-  
15 vantage of price discounts or to anticipate price increases  
16 listed brands may be reordered upon the basis of anticipated  
17 needs to be determined by projecting adjusted sales records;  
18 but in no event shall the amount of operating fund and the  
19 value of inventory stock exceed the limit provided in the first  
20 paragraph of this section.

21 The initial order of any new or unlisted brand of spirituous  
22 liquor, excepting wine, shall not exceed five hundred cases.  
23 The initial order of new or unlisted wine brands shall not  
24 exceed fifteen hundred cases.

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## CHAPTER 2

(H. B. 1369—By Mr. Sattes)

[Passed April 1, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three, relating to the treatment by physicians of minors addicted to alcoholic liquor or nonintoxicating beer without the consent or knowledge of the minor's parent or guardian.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 6. MISCELLANEOUS PROVISIONS.****§60-6-23. Treatment of minors for addiction to alcoholic liquor and beer.**

1 Notwithstanding any other law to the contrary, any licensed  
 2 physician may examine, counsel, diagnose and treat any  
 3 minor at his or her request for any addiction to or dependency  
 4 upon the use of alcoholic liquor or nonintoxicating beer, as  
 5 defined in section five, article one of this chapter, without the  
 6 knowledge or consent of the minor's parent or guardian. Such  
 7 physicians shall not incur any civil or criminal liability in con-  
 8 nection therewith except for negligence or willful injury.

**CHAPTER 3**

(Com. Sub. for H. B. 1610—By Mr. Goodwin and Mr. Tucker)

[Passed April 7, 1977; in effect ninety days from passage. Approved by the Governor.]

**AN ACT** to amend and reenact sections two and five, article seven, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the issuance of licenses to private clubs which sell alcoholic liquors generally; including licenses issued at certain parks, airports and vessels; leasing of certain premises by director of the department of natural resources and certain local government authorities; and approval for issuance of such licenses by the director of natural resources and certain local government authorities.

*Be it enacted by the Legislature of West Virginia:*

That sections two and five, article seven, 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 7. LICENSES TO PRIVATE CLUBS.**

§60-7-2. Definitions.

§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.

**§60-7-2. Definitions.**

1 Unless the context in which used clearly requires a different  
2 meaning, as used in this article:

3 (a) "Private club" means any corporation or unincorporated  
4 association which either (1) belongs to or is affiliated with a  
5 nationally recognized fraternal or veterans organization, which  
6 is operated exclusively for the benefit of its members, which  
7 pays no part of its income to its shareholders or individual  
8 members, which owns or leases a building or other premises,  
9 to which club are admitted only duly elected or approved  
10 dues paying members in good standing of such corporation  
11 or association and their guests while in the company of a  
12 member and to which club the general public is not admitted,  
13 and which club maintains in said building or on said premises  
14 a suitable kitchen and dining facility with related equipment  
15 for serving food to members and their guests, or (2) is a  
16 nonprofit social club, which is operated exclusively for the  
17 benefit of its members, which pays no part of its income  
18 to its shareholders or individual members, which owns or  
19 leases a building or other premises, to which club are admitted  
20 only duly elected or approved dues paying members in good  
21 standing of such corporation or association and their guests  
22 while in the company of a member and to which club the  
23 general public is not admitted, and which club maintains in  
24 said building or on said premises a suitable kitchen and  
25 dining facility with related equipment for serving food to  
26 members and their guests, or (3) is organized and operated  
27 for legitimate purposes, which has at least one hundred duly  
28 elected or approved dues paying members in good standing,  
29 which owns or leases a building or other premises, including  
30 any vessel licensed or approved by any federal agency to  
31 carry or accommodate passengers on navigable waters of this  
32 state, to which club are admitted only duly elected or ap-  
33 proved dues paying members in good standing of such cor-  
34 poration or association and their guests while in the company  
35 of a member and to which club the general public is not  
36 admitted, and which club maintains in said building or on  
37 said premises a suitable kitchen and dining facility with  
38 related equipment and employs a sufficient number of persons

39 for serving meals to members and their guests, or (4) is  
40 organized for legitimate purposes and owns or leases a  
41 building or other limited premises in any state, county or  
42 municipal park or at any airport, in which building or  
43 premises a club has been established, to which club are  
44 admitted only duly elected and approved dues paying mem-  
45 bers in good standing and their guests while in the company  
46 of a member and to which club the general public is not  
47 admitted, and which maintains in connection with said club  
48 a suitable kitchen and dining facility and related equipment  
49 and employs a sufficient number of persons for serving meals  
50 in said club to said members and their guests.

51 (b) "Licensee" means the holder of a license to operate  
52 a private club granted under the provisions of this article,  
53 which license shall remain unexpired, unsuspended and un-  
54 revoked.

55 (c) "Applicant" means a private club applying for a license  
56 under the provisions of this article.

57 (d) "Commissioner" means the West Virginia alcohol  
58 beverage control commissioner.

59 (e) "Code" means the official code of West Virginia, one  
60 thousand nine hundred thirty-one, as amended.

61 The department of natural resources, the authority govern-  
62 ing any county or municipal park, or any county commission,  
63 municipality, other governmental entity, public corporation or  
64 public authority operating any park or airport shall have  
65 plenary power and authority to lease as lessor a building or  
66 portion thereof or other limited premises in any such park  
67 or airport to any corporation or unincorporated association  
68 for the establishment of a private club pursuant to the pro-  
69 visions of this article.

**§60-7-5. Investigation by commissioner; issuance or refusal of  
license; special requirements for clubs at parks and  
airports; form of license; license valid at one location  
only; expiration and renewal; transferability.**

1 (a) Upon receipt of the application referred to in section

2 four of this article, together with the accompanying fee and  
3 bond, the commissioner shall conduct an investigation to  
4 determine the accuracy of the matters contained in such  
5 application and whether applicant is a bona fide private  
6 club of good reputation in the community in which it shall  
7 operate. For the purpose of conducting such investigation,  
8 the commissioner may withhold the granting or refusal to  
9 grant such license for a period not to exceed thirty days.  
10 If it shall appear that such applicant is a bona fide private  
11 club, of good reputation in the community in which it shall  
12 operate and that there is no false statement contained in such  
13 application, the commissioner shall issue a license authorizing  
14 the applicant to sell alcoholic liquors as provided in section  
15 three of this article, and otherwise shall refuse to issue such  
16 license, except that in the case of an application by a  
17 corporation or association to operate a private club in con-  
18 nection with:

19 (1) A state park, the director of the department of natural  
20 resources must grant his approval before the license can  
21 be issued; or

22 (2) A county or municipal park, or an airport, the  
23 authority governing the park or airport must grant its approval  
24 before the license can be issued.

25 A license may not be issued for a private club in any state  
26 park unless (i) there is a facility containing twenty or more  
27 rooms under one roof which are available for sleeping accom-  
28 modations and (ii) a dining facility comparable to the dining  
29 facility for the proposed private club will be available to  
30 serve meals to the general public. A license may not be  
31 issued for a private club in any county or municipal park, or an  
32 airport, unless a dining facility comparable to the dining facility  
33 for the proposed private club will be available to serve meals  
34 to the general public.

35 (b) Upon refusal to issue such license the commissioner  
36 shall make and enter an order denying such application,  
37 which denial and refusal shall be final unless a hearing is  
38 requested in accordance with the provisions of section thirteen  
39 of this article. When such refusal or denial becomes final

40 the commissioner shall forthwith refund to the applicant  
41 his fees and bond accompanying said application.

42 (c) Such license shall be of such form and design as  
43 the commissioner may prescribe by reasonable rule or regula-  
44 tion, and shall authorize the licensee to sell alcoholic liquors  
45 at only one location.

46 (d) Such license shall expire on the thirtieth day of June  
47 next following the date of issue and may be renewed upon  
48 the same showing as required for the issuance of the initial  
49 license, together with the payment of fees and filing of the  
50 bond as required by this article.

51 (e) A license issued under the provisions of this article  
52 shall not be transferable.

## CHAPTER 4

(Com. Sub. for S. B. 266—By Mr. Brotherton, Mr. President)

[Passed April 1, 1977; 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 the special revenue account of the West Virginia Alcohol Beverage Control Commissioner remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the West Virginia Alcohol Beverage Control Commissioner, Account No. 927, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor has reviewed the revenues of the special revenue account of the West Virginia Alcohol Beverage Control Commissioner and finds that funds are available for further appropriation for the fiscal year 1976-77, a part of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 927, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

TITLE II—APPROPRIATIONS.

Section 2. Appropriations from Other Funds.

151—West Virginia Alcohol Beverage Control Commissioner

Acct. No. 927

TO BE PAID FROM SPECIAL REVENUE FUND

1	2	Other Personal Services .....	\$	60,000
2	3	Current Expenses .....		140,000
3	6	Social Security Matching .....		26,942
4	7	Agency Operating Expense .....		2,200
5	8	Public Employees Retirement Matching ...		39,270
6	9	Public Employees Health Insurance .....		106,000
7	10	Total .....	\$	374,412

8 The purpose of this supplementary appropriation bill  
 9 is to supplement the aforesaid account and items therein  
 10 for expenditure in the current fiscal year 1976-77. Such  
 11 amounts shall be available for expenditure upon the  
 12 effective date of this bill.

CHAPTER 5

(Com. Sub. for H. B. 1076—By Mr. Speaker, Mr. Kopp)

[Passed April 9, 1977; 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 seventy-seven, to the Andrew S. Rowan Memorial Home, Account No. 384, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature, the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 384, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 CHARITIES AND CORRECTION

4 58—*Andrew S. Rowan Memorial Home*

5 Acct. No. 384

6	1	Personal Services .....	\$20,000
7	2	Current Expenses .....	\$18,171
8	5	Total ..	\$38,171

9 The purpose of this supplementary appropriation bill is to  
 10 supplement the aforesaid account and items therein for ex-  
 11 penditures in the current fiscal year 1976-77. Such amounts  
 12 shall be available for expenditure upon the effective date of  
 13 this bill.

## CHAPTER 6

(S. B. 240—By Mr. Brotherton, Mr. President)

[Passed March 28, 1977; 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 seventy-seven, to the Anthony Center, Account No. 369, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 369, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

### TITLE II—APPROPRIATIONS.

#### Section 1. Appropriations from General Revenue.

#### CHARITIES AND CORRECTION

#### 48—Anthony Center

Acct. No. 369

1	1	Personal Services .....	\$ 20,423
2	4	Equipment .....	9,360
3	5	Total.....	\$ 29,783

4 The purpose of this supplementary appropriation bill is  
5 to supplement the aforesaid account and items therein for  
6 expenditure in the current fiscal year 1976-77. Such  
7 amounts shall be available for expenditure upon the  
8 effective date of this bill.

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## CHAPTER 7

(S. B. 236—By Mr. Brotherton, Mr. President)

[Passed March 17, 1977; 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 seventy-seven, to the Auditor's Office—General Administration, Account No. 150, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 150, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

## TITLE II—APPROPRIATIONS.

**Section 1. Appropriations from General Revenue.**

## FISCAL

13—*Auditor's Office—General Administration*

Acct. No. 150

5	Mental Hygiene Fund .....	\$ 70,000
7	Total .....	\$ 70,000

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

△

**CHAPTER 8**

(S. B. 256—By Mr. Brotherton, Mr. President)

[Passed April 8, 1977; 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 seventy-seven, to the Barboursville State Hospital, Account No. 424, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 424, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HEALTH AND WELFARE

77—Barboursville State Hospital

Acct. No. 424

1 2 Current Expenses .....\$ 58,200

2 The purpose of this supplementary appropriation bill  
3 is to supplement the aforesaid account and item therein  
4 for expenditure in the current fiscal year 1976-77. Such  
5 amount shall be available for expenditure upon the effec-  
6 tive date of this bill.



CHAPTER 9

(H. B. 1081—By Mr. Speaker, Mr. Kopp)

[Passed April 5, 1977; 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 seventy-seven, to the Colin Anderson Center, Account No. 419, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 419, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.	
2	Section 1. Appropriations From General Revenue	
3	HEALTH AND WELFARE	
4	72—Colin Anderson Center	
5	Acct. No. 419	
6	1 Personal Services .....	\$199,000
7	2 Current Expenses	21,500
8	5 Total .....	\$220,500

9 The purpose of this supplementary appropriation bill is  
 10 to supplement the aforesaid account and items therein for  
 11 expenditure in the current fiscal year 1976-77. Such amounts  
 12 shall be available for expenditure upon the effective date of  
 13 this bill.

⋮

## CHAPTER 10

(Com. Sub. for H. B. 1068—By Mr. Speaker, Mr. Kopp)

[Passed April 9, 1977; 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 seventy-seven, to the State Commissioner of Public Institutions, Account No. 190, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 190, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.	
2	Section 1. Appropriations from General Revenue.	
3	FISCAL	
4	20— <i>State Commissioner of Public Institutions</i>	
5	Acct. No. 190	
6	4 Other Personal Services .....	\$ 56,013
7	5 Current Expenses .....	79,500
8	8 Total .....	\$135,513

9 The purpose of this supplementary appropriation bill is to  
10 supplement the aforesaid account and items therein for ex-  
11 penditure in the current fiscal year of 1976-77. Such amounts  
12 shall be available for expenditure upon the effective date of  
13 this bill.

## CHAPTER 11

(S. B. 545—By Mr. Brotherton, Mr. President)

[Passed March 23, 1977; 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 seventy-seven, to the State Commissioner of Public Institutions, Account No. 190, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 190, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following designated line item and sum:

### TITLE II—APPROPRIATIONS.

#### Section 1. Appropriations from General Revenue.

##### FISCAL

##### 20—State Commissioner of Public Institutions

##### Acct. No. 190

1	7a	Prison Industries .....	\$ 400,417
2	8	Total .....	\$ 400,417



3 The purpose of this supplementary appropriation bill  
4 is to add a new line item and sum to the aforesaid account  
5 for expenditure in the current fiscal year 1976-77. Such  
6 amount shall be available for expenditure upon the  
7 effective date of this bill.

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## CHAPTER 12

(S. B. 594—Originating in the Senate Committee on Finance)

[Passed April 4, 1977; 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 seventy-seven, to the State Commissioner of Public Institutions, Account No. 190, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 190, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following designated line items and sums:

## TITLE II—APPROPRIATIONS.

## Section 1. Appropriations from General Revenue.

## FISCAL

## 20—State Commissioner of Public Institutions

## Acct. No. 190

1	7b	Prison Industries .....	\$ 160,300
2	1	Furniture Factory Equipment .....	\$ 8,000
3	2	Clothing and Mattress Factory .....	30,000
4	3	Sign Shop Equipment .....	5,350
5	4	Graphic Arts Program Equipment .....	11,950
6	5	Dryer and Conveyor System .....	105,000
7	8	Total .....	\$ 160,300

8 The purpose of this supplementary appropriation bill  
 9 is to add a new line item and sum to the aforesaid account  
 10 for expenditure in the current fiscal year 1976-77. Such  
 11 amounts shall be available for expenditure upon the  
 12 effective date of this bill.

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## CHAPTER 13

(Com. Sub. for H. B. 1071—By Mr. Speaker, Mr. Kopp)

[Passed April 9, 1977; 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 seventy-seven, to the Davis Center, Account No. 371, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, the Governor submitted to the Legislature, the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, a part of which balance is hereby appropriated by the terms of the supplementary appropriation bill; therefore

*Be it enacted by the Legislature of West Virginia:*

That Account No. 371, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from General Revenue.		
3	CHARITIES AND CORRECTION		
4	50— <i>Davis Center</i>		
5	Acct. No. 371		
6	1	Personal Services _____	\$9,500
7	5	Total _____	\$9,500

8 The purpose of this supplementary appropriation bill is to  
 9 supplement the aforesaid account and items therein for  
 10 expenditure in the current fiscal year of 1976-77. Such  
 11 amounts shall be available for expenditure upon the effective  
 12 date of this bill.

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## CHAPTER 14

(H. B. 1416—Originating in the House Committee on Finance)

[Passed March 23, 1977; 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 re-

maining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the Department of Agriculture, Account No. 510, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the current fiscal year of 1976-77, 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. 510, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," is hereby supplemented by adding thereto the following sum to the designated line item:

1	TITLE II—APPROPRIATIONS.	
2	<b>Section 1. Appropriations from General Revenue.</b>	
3	AGRICULTURE	
4	101— <i>Department of Agriculture</i>	
5	Acct. No. 510	
6	3	Current Expenses ..... \$32,000

7 The purpose of this supplementary appropriation bill is  
 8 to supplement the aforesaid account and item therein for  
 9 payment of laboratory building rental expense. Such amount  
 10 shall be available for expenditure immediately upon the  
 11 effective date of this bill and in the current fiscal year of  
 12 1976-77.

## CHAPTER 15

(S. B. 247—By Mr. Brotherton, Mr. President)

[Passed April 8, 1977; 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 seventy-seven, to the State Health Department, Account No. 400, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 400, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

### TITLE II—APPROPRIATIONS.

#### Section 1. Appropriations from General Revenue.

##### HEALTH AND WELFARE

##### 59—*State Health Department*

##### Acct. No. 400

1	1	Personal Services .....	\$	136,187
2	24	Total .....	\$	136,187

3 The purpose of this supplementary appropriation bill is  
4 to supplement the aforesaid account and item therein for  
5 expenditure in the current fiscal year 1976-77. Such  
6 amount shall be available for expenditure upon the  
7 effective date of this bill.

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## CHAPTER 16

(H. B. 1661—Originating in the House Committee on Finance)

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[Passed March 29, 1977; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the State Department of Highways, Account No. 670, supplementing chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-six, which amended and supplemented chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, wherein on page IV thereof and as further detailed in his executive communication of February 28, 1977, is set forth the revenues and expenditures of the state road fund, including fiscal year 1976-77; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the State Road Fund available for further appropriation during the fiscal year 1976-77, 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. 670, chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-six, which amended and supplemented chapter seven, acts of the Legis-

lature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding thereto the following amounts to the designated line items as follows:

1	TITLE II—APPROPRIATIONS.	
2	Section 2. Appropriations from Other Funds.	
3	129— <i>State Department of Highways</i>	
4	Acct. No. 670	
5	TO BE PAID FROM STATE ROAD FUND	
6	1 Expressway, Trunkline and Feeder _____	\$19,707,000
7	2 State Local Service _____	16,479,000
8	4 Equipment Revolving _____	1,400,000
9	8d Nonfederal Aid Construction _____	1,331,000
10	Total _____	\$38,917,000 ✓

11 The purpose of this bill is to supplement existing items in  
 12 the aforesaid account for expenditure in the current fiscal year  
 13 of 1976-77. Such amount shall be available for expenditure  
 14 immediately upon the effective date of this bill.

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## CHAPTER 17

(H. B. 1660—Originating in the House Committee on Finance)

[Passed March 29, 1977; 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 seventy-seven, to the State Department of Highways, Account No. 641, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-six, which amended and supplemented chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 641, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-six, which amended and supplemented chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1	<b>TITLE II—APPROPRIATIONS.</b>	
2	<b>Section 1. Appropriations from General Revenue.</b>	
3	<b>PROTECTION</b>	
4	<i>128-A—State Department of Highways</i>	
5	<i>Acct. No. 641</i>	
6	1 Expressway, Trunkline and Feeder .....	\$19,707,000
7	2 <sup>a</sup> State Local Service .....	16,479,000
8	6 Nonfederal Aid Construction .....	1,331,000
9	6a Equipment Revolving .....	1,400,000
10	<b>Total .....</b>	<b>\$38,917,000</b>

11 Any or all of the above appropriation may be transferred to  
12 the state road fund for disbursement therefrom.

13 The purpose of this supplementary appropriation bill is to  
14 supplement the aforesaid account and items therein for ex-  
15 penditure in the current fiscal year of 1976-77. Such amounts  
16 shall be available for expenditure immediately upon the effec-  
17 tive date of the bill.



## CHAPTER 18

(S. B. 249—By Mr. Brotherton, Mr. President)

[Passed April 8, 1977; 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 seventy-seven, to the Department of Mental Health, Account No. 410, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 410, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

### TITLE II—APPROPRIATIONS.

#### Section 1. Appropriations from General Revenue.

##### HEALTH AND WELFARE

##### 67—Department of Mental Health

##### Acct. No. 410

1	1	Personal Services .....	\$	90,000
2	7	Community Mental Retardation Program -		345,000
3	8	Alcohol and Drug Abuse Program .....		120,000

4	9	Community Mental Health Program .....	425,000
5	10	Total .....	\$ 980,000

6 The purpose of this supplementary appropriation bill  
 7 is to supplement the aforesaid account and items therein  
 8 for expenditure in the current fiscal year 1976-77. Such  
 9 amounts shall be available for expenditure upon the  
 10 effective date of this bill.

## CHAPTER 19

(Com. Sub. for H. B. 1094—By Mr. Speaker, Mr. Kopp)

[Passed March 23, 1977; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the Department of Motor Vehicles, Account No. 671, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, wherein on page IV thereof and as further detailed in his Executive communication of February 28, 1977, is set forth the revenues and expenditures of the State Road Fund, including fiscal year 1976-77; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the State Road Fund available for further appropriation during the fiscal year 1976-77, 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. 671, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as

the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.		
2	Section 2. Appropriations from Other Funds.		
3	130— <i>Department of Motor Vehicles</i>		
4	Acct. No. 671		
5	TO BE PAID FROM STATE ROAD FUND		
6	1	Personal Services .....	\$ 55,000
7	2	Current Expenses .....	130,290
8	4	Purchase of License Plates .....	192,000
9	5	Social Security Matching .....	3,190
10	6	Public Employees Retirement Matching .....	5,150
11	7	Public Employees Health Insurance .....	2,450
12	8	Total .....	\$388,080

13 The purpose of this supplementary appropriation bill is to  
 14 supplement the aforesaid account and items therein for  
 15 expenditure in the current fiscal year 1976-77. Such amounts  
 16 shall be available for expenditure immediately upon the effec-  
 17 tive date of this bill.

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## CHAPTER 20

(M. B. 1600—By Mr. Speaker, Mr. Kopp)

[Passed March 23, 1977; 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 seventy-seven, to the Department of Natural Resources, Account No. 565, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Execu-

tive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 565, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.	
2	Section 1. Appropriations From General Revenue.	
3	CONSERVATION AND DEVELOPMENT	
4	108— <i>Department of Natural Resources</i>	
5	Acct. No. 565	
6	6 Clarke-McNary Fire Prevention .....	\$285,000
7	35 Total .....	\$285,000

8 The purpose of this bill is to supplement the aforesaid  
9 account and items therein for expenditure in the fiscal year  
10 1976-77. Such amounts shall be available for expenditure upon  
11 the effective date of this bill.

## CHAPTER 21

(Com. Sub. for H. B. 1337—By Mr. Shifler and Mr. Ballouz)

[Passed April 9, 1977; 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 seventy-seven, to the Department of Natural Resources, Account No. 565, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature, the Executive Budget Document, dated February 16, 1977, 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 appropriation during the current fiscal year of 1976-77, 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. 565, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1		TITLE II—APPROPRIATIONS.	
2		Section 1. Appropriations from General Revenue.	
3		CONSERVATION AND DEVELOPMENT	
4		108— <i>Department of Natural Resources</i>	
5		Acct. No. 565	
6	36	Little Beaver State Park—To complete	
7	37	Activities Building and Parking Area . . .	\$ 100,000
8	38	Beartown State Park—Rest Rooms, Trails,	
9	39	Parking Area and Other Park	
10		Improvements .....	20,000
11	40	Watoga State Park.—Campground	
12	41	Improvements, Including Buildings,	
13	42	Sewage and Water Systems .....	375,000
14	43	Coopers Rock State Forest—Water System	150,000
15	44	Greenbrier State Forest—Picnic Area	
16	45	Improvements .....	60,000
17	46	Kanawha State Forest—Picnic Area	
18	47	Improvements .....	40,000

19	48	Panther State Forest—Group Camp	
20	49	Improvements, Including Sewage and	
21	50	Water Systems, Furniture and Cabin .....	355,000
22	51	Seneca State Forest—Water System .....	45,000
23	52	Moncove Lake Public Hunting and Fishing	
24	53	Area—Campground Improve-	
25	54	ments, Including Water System,	
26	55	Roads and Campsites .....	90,000
27	56	Pleasants Creek Public Hunting and Fishing	
28	57	Area—Campground Improvements,	
29	58	Including Water System, Tables and	
30	59	Fireplaces	50,000
31	60	Plum Orchard Lake Public Hunting and	
32	61	Fishing Area—Campground	
33	62	Improvements, Including Water	
34		System and Campsites .....	40,000
35	63	To examine the structure of Laurel Lake	
36	64	in Mingo County .....	16,000
37		Total	\$1,341,000

38 The purpose of this supplementary appropriation bill is to  
 39 supplement the aforesaid account and items therein for ex-  
 40 penditure during the current fiscal year of 1976-77 and upon  
 41 the effective date of this bill. Any unexpended balance  
 42 remaining in the above items at the close of fiscal year 1976-77  
 43 is hereby reappropriated for expenditure in the fiscal year  
 44 1977-78.

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## CHAPTER 22

(S. B. 262—By Mr. Brotherton, Mr. President)

[Passed April 4, 1977; 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 seventy-seven, to the Department of Natural Resources, Account No. 565, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 565, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

CONSERVATION AND DEVELOPMENT

108—Department of Natural Resources

Acct. No. 565

1	1	Personal Services .....	\$ 285,000
2	2	Current Expenses .....	200,000
3	35	Total .....	\$ 485,000

4 The purpose of this supplementary appropriation bill is  
5 to supplement the aforesaid account and items therein for  
6 expenditure in the current fiscal year 1976-77. Such  
7 amounts shall be available for expenditure upon the  
8 effective date of this bill.

## CHAPTER 23

(Com. Sub. for S. B. 116—By Mr. Benson)

[Passed March 21, 1977; 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 seventy-seven, to the Farm Management Commission, Account No. 511, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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 Title II, section one, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding thereto the following account, line items and sums:

### TITLE II—APPROPRIATIONS.

#### Section 1. Appropriations from General Revenue.

##### AGRICULTURE

##### *Farm Management Commission*

##### Acct. No. 511

1	1	Personal Services .....	\$	123,823
2	2	Current Expenses .....		382,050
3	3	Repairs and Alterations .....		64,000



4	4	New Equipment .....	106,500
5		Total .....	\$ 676,373

6 The purpose of this bill is to provide a supplementary  
 7 appropriation for the aforesaid new account and items  
 8 therein for expenditure in the fiscal year 1976-77. Such  
 9 amounts shall be available for expenditure upon the effec-  
 10 tive date of this bill. Any unexpended balance remaining  
 11 in this account at the close of the fiscal year 1976-77 is  
 12 hereby reappropriated for expenditure during the fiscal  
 13 year 1977-78.

†

## CHAPTER 24

(Com. Sub. for H. B. 1063—By Mr. Speaker, Mr. Kopp)

[Passed April 6, 1977; 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 seventy-seven, to the Governor's Office—Civil Contingent Fund, Account No. 124, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

**WHEREAS**, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 124, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as

the "Budget Bill," be supplemented by adding the following sum to the designated line item:

1	<b>TITLE II—APPROPRIATIONS.</b>	
2	<b>Section 1. Appropriations from General Revenue.</b>	
3	<b>EXECUTIVE</b>	
4	<i>7—Governor's Office—Civil Contingent Fund</i>	
5	<b>Acct. No. 124</b>	
6	1 Total .....	\$1,500,000

7 The purpose of this supplementary appropriation bill is  
8 to supplement the aforesaid account and item therein for ex-  
9 penditure in the current fiscal year 1976-77. Such amounts  
10 shall be available for expenditure upon the effective date of  
11 this bill.

12 If any portion of the above appropriation is expended in  
13 connection with disaster or emergency relief, the governor shall,  
14 on the first day of each month, provide to the legislative  
15 auditor an itemized report of the amount and purpose of each  
16 such expenditure incurred during the preceding month.

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## CHAPTER 25

(S. B. 231—By Mr. Brotherton, Mr. President)

[Passed March 17, 1977; 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 seventy-seven, to the Governor's Office, Account No. 120, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

**WHEREAS**, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 120, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

**TITLE II—APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**

**EXECUTIVE**

**5—Governor's Office**

**Acct. No. 120**

1 3 Current Expenses \_\_\_\_\_ \$ 65,000

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

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**CHAPTER 26**

**(S. B. 232—By Mr. Brotherton, Mr. President)**

[Passed March 17, 1977; 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 seventy-seven, to the Governor's Office—Custodial Fund, Account No. 123, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 123, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

6—Governor's Office—Custodial Fund

Acct. No. 123

1 Total.....\$ 80,000

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1976-77. Such amount shall be available for expenditure upon the effective date of this bill.



CHAPTER 27

(S. B. 313—Originating in the Senate Committee on Finance)

[Passed March 1, 1977; 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 seventy-

seven, to the Governor's Office-Emergency Relief, Account No. 128, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

WHEREAS, The severe weather conditions of the winter of 1976-77 have caused unprecedented damage to the water systems of municipalities, towns, villages and public service districts in this state; and

WHEREAS, The damage to said systems has created conditions detrimental to the health, safety and welfare of the citizens of this state, and the expenditure of public moneys is required to relieve these conditions; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Title II, section one, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," is hereby supplemented by adding thereto the following account, line item and sum:

#### EXECUTIVE

#### *Governor's Office—Emergency Relief*

#### Acct. No. 128

1	1	Emergency Relief for Water Systems of	
2	2	Municipalities, Towns, Villages and Public	
3	3	Service Districts .....	\$ 2,000,000

4 The above appropriation is to be expended in connec-  
5 tion with the repair and rehabilitation of water systems  
6 damaged by weather conditions during the winter of  
7 1976-77. All or any part of this appropriation may be

8 expended in conjunction with federal funds and to match  
9 or maximize grants-in-aid from the federal government  
10 or any other source. Any part of this appropriation may  
11 be transferred to any other account in the Governor's  
12 office or to any other department of state government for  
13 such purposes.

14 This appropriation shall be available for expenditure  
15 immediately upon the effective date of this bill. Any  
16 unexpended balance remaining in the appropriation at  
17 the close of the fiscal year 1976-77 is hereby reappropri-  
18 ated for expenditure during the fiscal year 1977-78.

19 On the first day of each month following the effective  
20 date of this appropriation, the governor shall submit to  
21 the legislative auditor an itemized report of the transfers  
22 and expenditures made hereunder during the preceding  
23 month.

∴

## CHAPTER 28

(S. B. 234—By Mr. Brotherton, Mr. President)

[Passed April 1, 1977; 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 seventy-seven, to the Governor's Office—Federal-State Coordination, Account No. 125, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-

77, 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. 125, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

#### TITLE II—APPROPRIATIONS.

#### Section 1. Appropriations from General Revenue.

#### EXECUTIVE

#### 8—Governor's Office—Federal-State Coordination

#### Acct. No. 125

1	1	Federal-State Coordination .....	\$ 1,590,000
2	5	Total.....	\$ 1,590,000

3 The purpose of this supplementary appropriation bill  
4 is to supplement the aforesaid account and item therein  
5 for expenditure in the current fiscal year 1976-77. Such  
6 amount shall be available for expenditure upon the effec-  
7 tive date of this bill.

⋄

## CHAPTER 29

(S. B. 250—By Mr. Brotherton, Mr. President)

[Passed April 6, 1977; 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 seventy-seven, to the Greenbrier School for Mentally Retarded Children, Account No. 414, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 414, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

#### TITLE II—APPROPRIATIONS.

##### Section 1. Appropriations from General Revenue.

##### HEALTH AND WELFARE

##### 69—*Greenbrier School for Mentally Retarded Children*

Acct. No. 414

1 1 Personal Services .....\$ 19,167

2 The purpose of this supplementary appropriation bill  
3 is to supplement the aforesaid account and item therein  
4 for expenditure in the current fiscal year 1976-77. Such  
5 amount shall be available for expenditure upon the effec-  
6 tive date of the bill.

⋮

## CHAPTER 30

(Com. Sub. for H. B. 1089—By Mr. Speaker, Mr. Kopp)

[Passed April 9, 1977; 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 seventy-seven, to the Hopemont State Hospital, Account No. 430, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 430, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

1	TITLE II—APPROPRIATIONS.	
2	<b>Section 1. Appropriations from General Revenue.</b>	
3	HEALTH AND WELFARE	
4	80— <i>Hopemont State Hospital</i>	
5	Acct. No. 430	
6	2	Current Expenses _____ \$45,500
7	5	Total _____ \$45,500

8 The purpose of this supplementary appropriation bill is  
 9 to supplement the aforesaid account and item therein for  
 10 expenditure in the current fiscal year 1976-77. Such amount  
 11 shall be available for expenditure upon the effective date  
 12 of this bill.

## CHAPTER 31

(S. B. 254—By Mr. Brotherton, Mr. President)

[Passed April 7, 1977; 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 seventy-seven, to the Huntington State Hospital, Account No. 422, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 422, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

### TITLE II—APPROPRIATIONS.

#### Section 1. Appropriations from General Revenue.

##### HEALTH AND WELFARE

##### 75—Huntington State Hospital

##### Acct. No. 422

1	1	Personal Services .....	\$ 125,250
2	2	Current Expenses .....	130,000
3	6	Total .....	\$ 255,250

4 The purpose of this supplementary appropriation bill  
5 is to supplement the aforesaid account and items therein  
6 for expenditure in the current fiscal year 1976-77. Such  
7 amounts shall be available for expenditure upon the  
8 effective date of this bill.

---

## CHAPTER 32

(Com. Sub. for H. B. 1074—By Mr. Speaker, Mr. Kopp)

[Passed April 9, 1977; 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 seventy-seven, to the Huttonsville Correctional Center, Account No. 376, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

**WHEREAS**, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 376, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from General Revenue.		
3	CHARITIES AND CORRECTION		
4	55—Huttonsville Correctional Center		
5	Acct. No. 376		
6	1	Personal Services —————	\$ 39,190
7	2	Current Expenses .....	50,000
8	5	Total .....	\$89,190

9 The purpose of this supplementary appropriation bill is to  
 10 supplement the aforesaid account and items therein for expendi-  
 11 ture in the current fiscal year 1976-77. Such amounts shall be  
 12 available for expenditure upon the effective date of this bill.

## CHAPTER 33

(H. B. 1085—By Mr. Speaker, Mr. Kopp)

[Passed April 4, 1977; in effect from pasage. 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 seventy-seven, to the Lakin State Hospital, Account No. 423, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 423, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.	
2	Section 1. Appropriations From General Revenue.	
3	HEALTH AND WELFARE	
4	76— <i>Lakin State Hospital</i>	
5	Acct. No. 423	
6	2 Current Expenses .....	\$15,000
7	5 Total .....	\$15,000

8 The purpose of this supplementary appropriation bill is  
 9 to supplement the aforesaid account and items therein for  
 10 expenditure in the current fiscal year 1976-77. Such amounts  
 11 shall be available for expenditure upon the effective date of  
 12 this bill.

⋄

## CHAPTER 34

(S. B. 263—By Mr Brotherton, Mr. President)

[Passed March 28, 1977; 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 seventy-seven, to the West Virginia Public Employees Insurance Board, Account No. 615, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 615, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

#### TITLE II—APPROPRIATIONS.

##### Section 1. Appropriations from General Revenue.

###### MISCELLANEOUS BOARDS AND COMMISSIONS

###### 127—*West Virginia Public Employees Insurance Board*

###### Acct. No. 615

1	2	Public Employees Health Insurance—	
2	3	State Contribution .....	\$ 3,150,000

3 The purpose of this supplementary appropriation bill is  
4 to supplement the aforesaid account and item therein for  
5 expenditure in the current fiscal year 1976-77. Such  
6 amount shall be available for expenditure upon the effective  
7 date of this bill.

## CHAPTER 35

(H. B. 1701—Originating in the House Committee on Finance)

[Passed April 4, 1977; 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 seventy-seven, to Roney's Point Branch Hospital, Account No. 417, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature, the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 417, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

1	TITLE II—APPROPRIATIONS.	
2	Section 1. Appropriations from General Revenue.	
3	HEALTH AND WELFARE	
4	70—Roney's Point Branch Hospital	
5	Acct. No. 417	
6	1 Personal Services	\$10,000
7	5 Total	\$10,000

8 The purpose of this supplementary appropriation bill is to  
 9 supplement the aforesaid account and item therein for expendi-  
 10 ture in the current fiscal year 1976-77. Such amount shall  
 11 be available for expenditure upon the effective date of this bill.

## CHAPTER 36

(S. B. 239—By Mr. Brotherton, Mr. President)

[Passed March 17, 1977; 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 seventy-seven, to the Secretary of State, Account No. 250, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 250, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

## TITLE II—APPROPRIATIONS.

### Section 1. Appropriations from General Revenue.

#### INCORPORATING AND RECORDING

##### 25—Secretary of State

##### Acct. No. 250

1	3	Current Expenses .....	\$14,000
2	6a	Publication of State Register .....	25,000
3	7	Total .....	\$39,000

4 The purpose of this supplementary appropriation bill  
 5 is to supplement the aforesaid account and items therein  
 6 for expenditure in the current fiscal year 1976-77. Such  
 7 amounts shall be available for expenditure upon the  
 8 effective date of this bill.



## CHAPTER 37

(H. B. 1090—By Mr. Speaker, Mr. Kopp)

[Passed April 6, 1977; 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 seventy-seven, to the State Board of Education—Rehabilitation Division, Account No. 440, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 440, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1	<b>TITLE II—APPROPRIATIONS.</b>	
2	<b>Section 1. Appropriations From General Revenue.</b>	
3	<b>HEALTH AND WELFARE</b>	
4	<b>83—State Board of Education—Rehabilitation Division</b>	
5	<b>Acct. No. 440</b>	
6 1	Personal Services .....	\$241,230
7 3	Rehabilitation Center .....	409,345
8 10	Total .....	\$650,575

9 The purpose of this supplementary appropriation bill is to  
10 supplement the aforesaid account and items therein for ex-  
11 penditure in the current fiscal year 1976-77. Such amounts  
12 shall be available for expenditure upon the effective date of  
13 this bill.

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## CHAPTER 38

(Com. Sub. for H. B. 1067—By Mr. Speaker, Mr. Kopp)

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[Passed March 28, 1977; 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 seventy-seven, to the Treasurer's Office, Account No. 160, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

**WHEREAS**, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 160, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

1	TITLE II—APPROPRIATIONS.	
2	Section 1. Appropriations from General Revenue.	
3	FISCAL	
4	15— <i>Treasurer's Office</i>	
5	Acct. No. 160	
6	3 Current Expenses .....	\$91,603
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 1976-77. Such amount	
10	shall be available for expenditure upon the effective date of	
11	this bill.	

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## CHAPTER 39

(S. B. 252—By Mr. Brotherton, Mr. President)

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[Passed April 6, 1977; 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 seventy-seven, to the Weston State Hospital, Account No. 420, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 420, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

**TITLE II—APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**

**HEALTH AND WELFARE**

*73—Weston State Hospital*

Acct. No. 420

- |   |   |  |            |
|---|---|--|------------|
| 1 | 2 | Current Expenses _____                                   | \$ 165,000 |
| 2 |   | The purpose of this supplementary appropriation bill     |            |
| 3 |   | is to supplement the aforesaid account and item therein  |            |
| 4 |   | for expenditure in the current fiscal year 1976-77. Such |            |
| 5 |   | amount shall be available for expenditure upon the       |            |
| 6 |   | effective date of this bill.                             |            |

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**CHAPTER 40**

(H. B. 1065—By Mr. Speaker, Mr. Kopp)

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[Passed April 9, 1977; in effect from passage. Approved by the Governor.]

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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 seventy-seven, to the West Virginia Industrial School for Boys, Account No. 370, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 370, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.	
2	Section 1. Appropriations From General Revenue.	
3	CHARITIES AND CORRECTION	
4	49— <i>West Virginia Industrial School for Boys</i>	
5	Acct. No. 370	
6	1 Personal Services .....	\$ 42,445
7	2 Current Expenses .....	31,550
8	5 Total .....	\$ 73,995

9 The purpose of this supplementary appropriation bill  
10 is to supplement the aforesaid account and items therein  
11 for expenditure in the current fiscal year 1976-77. Such  
12 amounts shall be available for expenditure upon the effective  
13 date of this bill.

:

## CHAPTER 41

(S. B. 243—By Mr. Brotherton, Mr. President)

[Passed April 4, 1977; in effect from pasage. 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 seventy-seven, to the West Virginia Penitentiary, Account No.

375, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 375, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

## TITLE II—APPROPRIATIONS.

### Section 1. Appropriations from General Revenue.

#### CHARITIES AND CORRECTION

#### 54—West Virginia Penitentiary

Acct. No. 375

1 2 Current Expenses .....\$ 15,000

2 The purpose of this supplementary appropriation bill is  
3 to supplement the aforesaid account and item therein for  
4 expenditure in the current fiscal year 1976-77. Such  
5 amount shall be available for expenditure upon the effec-  
6 tive date of this bill.

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## CHAPTER 42

(Com. Sub. for S. B. 451—By Mr. Sharpe and Mr. Oates)

[Passed March 29, 1977; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the special revenue funds

of the West Virginia University—Medical School Fund, for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the West Virginia University—Medical School, Account No. 928, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill.”

WHEREAS, It appears from the Governor’s Executive Budget Document, dated February 16, 1977, that there are special revenues in the West Virginia University—Medical School Fund available for appropriation for the 1976-77 fiscal year; and

WHEREAS, It is the purpose of the Legislature to make the following supplementary appropriation to the West Virginia University—Medical School out of such available revenue; therefore

*Be it enacted by the Legislature of West Virginia:*

That Account No. 928, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding thereto the following sum to the designated line item:

## TITLE II—APPROPRIATIONS.

### Section 2. Appropriations from Other Funds.

#### 152—West Virginia University—Medical School

#### Acct. No. 928

#### TO BE PAID FROM MEDICAL SCHOOL FUND

1 2 Current Expenses .....\$ 750,000

2 The purpose of this supplementary appropriation bill is  
3 to supplement the aforesaid account and item therein for  
4 expenditure in the current fiscal year 1976-77.

5 The amount as itemized for expenditure during the  
6 fiscal year one thousand nine hundred seventy-seven shall  
7 be available for expenditure upon the effective date of  
8 this bill.

## CHAPTER 43

(H. B. 1430—By Mr. Speaker, Mr. Kopp)

[Passed March 29, 1977; 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 the special revenue account of Workmen's Compensation Commission remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to Workmen's Compensation Commission, Account No. 900, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor has reviewed the revenues of the account for special revenue of Workmen's Compensation Commission and finds that funds are available for further appropriation during the fiscal year 1976-77, a part of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

*Be it enacted by the Legislature of West Virginia:*

That Account No. 900, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1	<b>TITLE II—APPROPRIATIONS.</b>	
2	<b>Section 2. Appropriations from Other Funds.</b>	
3	<b>150—Workmen's Compensation Commission</b>	
4	<b>Acct. No. 900</b>	
5	<b>TO BE PAID FROM WORKMEN'S COMPENSATION FUND</b>	
6	1 Personal Services .....	\$125,000
7	2 Current Expenses .....	380,000
8	4 Social Security Matching .....	7,500
9	5 Public Employees Retirement Matching .....	12,000
10	6 Public Employees Health Insurance .....	2,240
11	7 Total .....	<u>\$526,740</u>



12 The purpose of this supplementary appropriation bill is to  
 13 supplement the aforesaid account and items therein for ex-  
 14 penditure in the current fiscal year 1976-77. Such amount shall  
 15 be available for expenditure upon the effective date of this bill.

## CHAPTER 44

(H. B. 1574—Originating in the House Committee on Finance)

[Passed March 24, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Andrew S. Rowan Memorial Home, Account No. 384, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 384, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

1	CHARITIES AND CORRECTION	
2	58— <i>Andrew S. Rowan Memorial Home</i>	
3	Acct. No. 384	
4	2 Current Expenses .....	\$364,400
5	4 Equipment .....	15,600

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

## CHAPTER 45

(S. B. 623—Originating in the Senate Committee on Finance)

[Passed April 1, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Attorney General, Account No. 240, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 240, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

### LEGAL

#### 23—Attorney General

##### Acct. No. 240

1	2	Other Personal Services .....	\$ 847,292
2	3	Current Expenses .....	124,000
3	4	Equipment .....	43,500

4 The purpose of this bill is to supplement, amend and  
 5 transfer certain moneys from items of the existing appro-  
 6 priation to another item of such appropriation for the  
 7 designated spending unit, with no new moneys being  
 8 appropriated hereby. The amounts as itemized for ex-  
 9 penditure during the fiscal year one thousand nine hun-  
 10 dred seventy-seven, shall be made available for expendi-  
 11 ture upon the effective date of this bill.

## CHAPTER 46

(H. B. 1573—Originating in the House Committee on Finance)

[Passed March 24, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Davis Center, Account No. 371, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 371, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

1	CHARITIES AND CORRECTION	
2	50— <i>Davis Center</i>	
3	Acct. No. 371	
4	1 Personal Services _____	\$294,000
5	2 Current Expenses _____	147,000
6	4 Equipment _____	17,000

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

## CHAPTER 47

(S. B. 627—Originating in the Senate Committee on Finance)

[Passed April 1, 1977; 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. 670, for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, as appropriated by Enrolled House Bill No. 1661, regular session, one thousand nine hundred seventy-seven, by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-six, and by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, 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. 670, for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, as appropriated by Enrolled House Bill No. 1661, regular session, one thousand nine hundred seventy-seven, by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-six, and by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented, amended and transferred to read as follows:

### TITLE II—APPROPRIATIONS.

#### Section 2. Appropriations from Other Funds.

##### 129—State Department of Highways

##### Acct. No. 670

##### TO BE PAID FROM STATE ROAD FUND

1	1	Expressway, Trunkline and Feeder .....	\$ 62,332,000
2	2	State Local Service .....	62,037,000
3	3	Inventory Revolving .....	1,000,000
4	4	Equipment Revolving .....	3,400,000

5	5	General Operations .....	19,024,000
6	6	Debt Service .....	69,880,000
7	8a	Interstate Construction .....	107,465,000
8	8b	Appalachian Program .....	72,697,000
9	8c	Other Federal Aid Construction .....	70,451,000
10	8d	Nonfederal Aid Construction .....	83,983,847

11 The purpose of this bill is to supplement, amend and  
 12 transfer certain moneys from items of the existing appro-  
 13 priations to other items of such appropriations for the  
 14 designated spending unit, and to reflect the total spend-  
 15 ing authority of the spending unit for the 1976-77 fiscal  
 16 year, with no new moneys being appropriated hereby.  
 17 The amounts as newly itemized for expenditure in such  
 18 fiscal year shall be available for expenditure upon the  
 19 effective date of this bill.

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## CHAPTER 48

(H. B. 1372—By Mr. Shiflet and Mr. Ballouz)

[Passed April 6, 1977; in effect from passage. Approved by the Governor.]

AN ACT amending and transferring an existing appropriation of the Department of Natural Resources, Account No. 972, as appropriated by chapter fifty-one, acts of the Legislature, regular session, one thousand nine hundred seventy-five, supplementing chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred seventy-four, known as the "Budget Bill."

WHEREAS, In chapter fifty-one, acts of the Legislature, regular session, one thousand nine hundred seventy-five, the Legislature appropriated \$250,000 out of the Revenue Sharing Trust Fund to the Department of Natural Resources, Account No. 972, for "acquisition of land, right-of-way and certain personal property situate in Fayette County, West Virginia," and said appropriation being supplementary to chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred seventy-four, known as the "Budget Bill"; and

WHEREAS, Said appropriation has not been fully expended to date and the balance thereof has been carried forward for expenditure in the fiscal years 1975-76 and 1976-77; and

WHEREAS, A balance of \$21,080 remains unexpended, subject to reduction for encumbrances prior to the effective date of this bill, of said appropriation and said balance is no longer needed for the original purpose of the appropriation; and

WHEREAS, The Director of the Department of Natural Resources in the exercise of his discretion is of the opinion that the aforesaid balance of the appropriation should immediately be transferred to enable the completion of another department project as set forth below; therefore

*Be it enacted by the Legislature of West Virginia:*

That the appropriation made to Account No. 972, by chapter fifty-one, acts of Legislature, regular session, one thousand nine hundred seventy-five, supplementing chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred seventy-four, known as the "Budget Bill," be amended and transferred to read as follows:

1	DEPARTMENT OF NATURAL RESOURCES	
2	Acct. No. 972	
3	TO BE PAID FROM REVENUE SHARING TRUST FUND	
4	4	Acquisition of land, right-of-way and
5	5	• certain personal property situate in
6	6	Fayette County, West Virginia ..... \$228,920
7	6a	Watoga State Park—Park Improvements
8	6b	Including All-Weather Surface
9	6c	Treatment of Tennis Courts ..... \$ 21,080

10 The purpose of this bill is to amend and transfer an existing  
11 appropriation made by said chapter fifty-one for acquisition  
12 of Minden Railroad, by transferring \$21,080, subject to  
13 reduction for encumbrances prior to the effective date, to the  
14 new designated line item. No new moneys are being appro-  
15 priated. The amount as hereby itemized for expenditure during  
16 the fiscal year 1976-77 shall be available for expenditure upon  
17 the effective date of this bill. Any unexpended balance

18 remaining in the above appropriation at the close of the  
19 fiscal year 1976-77 is hereby reappropriated for expenditure  
20 during the fiscal year 1977-78.

## CHAPTER 49

(Com. Sub. for H. B. 1371—By Mr. Shiflet and Mr. Balloux)

[Passed April 9, 1977; in effect from passage. Approved by the Governor.]

AN ACT amending and transferring appropriations made to the Department of Natural Resources by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-two, known as the "Budget Bill," and by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, In section four, title two, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-two, known as the "Budget Bill," the Legislature in Item IX, line item No. 10 thereof, appropriated \$300,000 to the Department of Natural Resources for "Stonewall Jackson Lake (State Park)"; and

WHEREAS, Said appropriation has not been fully expended to date but has been reappropriated in the budget bills for each fiscal year subsequent to the fiscal year in which the original appropriations were made; and

WHEREAS, Of the \$300,000 originally appropriated for "Stonewall Jackson Lake (State Park)", the amount of \$299,990 remains unexpended subject to reduction for encumbrances prior to the effective date of this bill, and is no longer needed for the original purpose of the appropriation; and

WHEREAS, In section four, title two, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," the Legislature in Item III, line item 4D thereof, appropriated \$15,000 to the Department of Natural Resources for "Matoaka State Park," the full amount of which remains unexpended subject to reduction for encumbrances prior to the effective date of this bill; and

WHEREAS, Said appropriation to Matoaka State Park is no longer needed for the original purpose of the appropriation; and

WHEREAS, The total balance remaining unexpended in the above appropriations is \$314,990 subject to reduction as aforesaid, and the Director of the Department of Natural Resources in the exercise of his discretion is of the opinion that the aforesaid total balance should be transferred and expended on existing department projects which have not been completed due to lack of funds; therefore

*Be it enacted by the Legislature of West Virginia:*

That the existing balance of \$299,990 in Item IX, line item No. 10, "Stonewall Jackson Lake (State Park)," as appropriated in section four, title two, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-two, and as reappropriated; and the existing balance of \$15,000 in Item III, line item 4D, "Matoaka State Park", as appropriated in section four, title two, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, being a total of \$314,990 subject to reduction for encumbrances prior to the effective date of this bill, which reduction, if any, is to be applied on a percentage proration basis, are hereby transferred to the following designated line items and allocated in the following amounts:

1	Cass Scenic Railroad—Improvements Including	
2	Reconstruction of Railroad Depot .....	\$ 83,000
3	Pipestem State Park—Park Improvement Including	
4	Acquisition of Solid Waste Disposal Facility	
5	and Construction of Sled Run .....	55,000
6	Prickett's Fort State Park—Park Improvements	
7	Including Construction of Restroom and	
8	Supporting Facilities .....	30,000
9	Twin Falls State Park—Park Improvements	
10	Including Completion of Campground and	
11	Picnic Facilities .....	52,000
12	Watters Smith State Park—Park	
13	Improvements Including Restoration of	
14	Watters Smith Pioneer Home .....	22,000
15	Chief Logan State Park—Park Improvements	
16	Including Completion of Maintenance Building	30,000
17	Holly River State Park—Park	
18	Improvements Including Land Purchase .....	30,000



- 19 Watoga State Park—Park  
 20 Improvements Including All-Weather  
 21 Surface Treatment of Tennis Courts \_\_\_\_\_ 12,990
- 22 The purpose of this bill is to transfer certain existing  
 23 appropriations for the Department of Natural Resources to the  
 24 new designated line items. No new moneys are being appro-  
 25 priated. The amounts as newly itemized for expenditure during  
 26 the fiscal year 1976-77 shall be available upon the effective  
 27 date of this bill. Any unexpended balance remaining in the  
 28 above appropriations at the close of the fiscal year 1976-77  
 29 is hereby reappropriated for expenditure during the fiscal year  
 30 1977-78.

†

## CHAPTER 50

(H. B. 1373—By Mr. Shiflet and Mr. Ballouz)

[Passed April 6, 1977; in effect from passage. Approved by the Governor.]

AN ACT amending and transferring an existing appropriation of the Department of Natural Resources, Account No. 972, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, In Account No. 972, section seven, title two, chapter seven, acts of the Legislature, regular session, 1976, the Legislature on line 5 thereof, appropriated \$162,000 out of the Revenue Sharing Trust Fund to the Department of Natural Resources for Minden Railroad; and

WHEREAS, A balance of \$161,989 remains unexpended of said appropriation, subject to reduction for encumbrances prior to the effective date of this bill, with such reduction to be applied pro rata to the new line items, and said balance is no longer needed for the original purpose of the appropriation; and

WHEREAS, The Director of the Department of Natural Resources in the exercise of his discretion is of the opinion that the aforesaid balance of the appropriation should immediately be transferred to enable the completion of other department projects as set forth below; therefore

*Be it enacted by the Legislature of West Virginia:*

That the appropriation made to Account No. 972, section seven, title two, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be amended and transferred to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 7. Appropriations from Revenue Sharing  
3 Trust Fund.

4 179—*Revenue Sharing Trust Fund—*  
5 *Department of Natural Resources*

6 Acct. No. 972

7	5	Minden Railroad .....	\$	11
8	9	Canaan Valley State Park—Park		
9	10	Improvements Including Upgrading of		
10	11	Ski Facilities and Golf Course .....	106,989	
11	12	Blackwater Falls State Park—Park		
12	13	Improvements Including Tennis Courts		
13	14	and Sled Run .....	55,000	

14 The purpose of this bill is to amend and transfer an exist-  
15 ing appropriation for Minden Railroad, subject to reduction  
16 for encumbrances prior to the effective date of this bill with  
17 such reductions to be applied pro rata, to the new designated  
18 line items. No new moneys are being appropriated. The  
19 amounts as newly itemized for expenditure during the fiscal  
20 year 1976-77 shall be available for expenditure upon the  
21 effective date of this bill. Any unexpended balance remaining  
22 in the above appropriations at the close of the fiscal year  
23 1976-77 is hereby reappropriated for expenditure during the  
24 fiscal year 1977-78.

# CHAPTER 51

(H. B. 1752—Originating in the House Committee on Finance)

[Passed April 7, 1977; 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 Natural Resources, Account No. 565, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 565, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

1	CONSERVATION AND DEVELOPMENT	
2	108— <i>Department of Natural Resources</i>	
3	Acct. No. 565	
4	9	Water Resources Board ..... \$25,000
5	12	Reclamation Board of Review ..... \$ 5,000

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

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# CHAPTER 52

(S. B. 444—By Mr. Brotherton, Mr. President)

[Passed March 28, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the De-

partment of Public Safety, Account No. 570, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 570, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

### PROTECTION

#### 112—Department of Public Safety

Acct. No. 570

1	1	Personal Services .....	\$ 6,967,039
2	2	Current Expenses .....	3,031,723
3	3	Repairs and Alterations .....	143,500

4 The purpose of this bill is to supplement, amend and  
 5 transfer certain moneys from items of the existing appro-  
 6 priation to another item of such appropriation for the  
 7 designated spending unit, with no new moneys being  
 8 appropriated hereby. The amounts as newly itemized for  
 9 expenditure during the fiscal year one thousand nine  
 10 hundred seventy-seven shall be available for expenditure  
 11 upon the effective date of this bill.

## CHAPTER 53

(S. B. 413—Originating in the Senate Committee on Finance)

[Passed March 18, 1977; 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 Veterans Affairs, Account No. 404, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 404, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

### HEALTH AND WELFARE

#### 62—*Department of Veterans Affairs*

#### Acct. No. 404

1	1	Personal Services .....	\$	426,706
2	4	Educational opportunities for children of		
3	5	War Veterans .....		13,294

4 The purpose of this supplementary appropriation bill  
 5 is to supplement, amend and transfer certain moneys from  
 6 one item of the existing appropriation to another item of  
 7 such appropriation for the designated spending unit. The  
 8 amounts as itemized for expenditure during the fiscal  
 9 year one thousand nine hundred seventy-seven, shall be  
 10 made available for expenditure upon the effective date  
 11 of this bill.

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## CHAPTER 54

(S. B. 414—Originating in the Senate Committee on Finance)

[Passed March 18, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Fairmont Emergency Hospital, Account No. 425, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 425, chapter seven, acts of the Legislature, regular session, one

thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

### HEALTH AND WELFARE

#### 78—Fairmont Emergency Hospital

Acct. No. 425

1	1	Personal Services .....	\$	526,500
2	2	Current Expenses .....		297,500

3 The purpose of this supplementary appropriation bill is  
 4 to supplement, amend and transfer certain moneys from  
 5 one item of the existing appropriation to another item  
 6 of such appropriation for the designated spending unit.  
 7 The amounts as itemized for expenditure during the  
 8 fiscal year one thousand nine hundred seventy-seven,  
 9 shall be made available for expenditure upon the effective  
 10 date of this bill.

## CHAPTER 55

(H. B. 924—By Mr. Speaker, Mr. Kopp)

[Passed March 7, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of geological and economic survey commission; as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 520, chapter seven, acts of the Legislature, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

1	<b>CONSERVATION AND DEVELOPMENT</b>	
2	106— <i>Geological and Economic Survey Commission</i>	
3	Acct. No. 520	
4	2	Current Expenses ..... \$112,814
5	3	Repairs and Alterations ..... 91,850
6	The purpose of this supplementary appropriation bill is to	
7	supplement, amend and transfer certain moneys from one item	
8	of the existing appropriation to another item of such appro-	
9	priation for the designated spending unit. The amounts as	
10	itemized for expenditure during the fiscal year one thousand	
11	nine hundred seventy-seven, shall be made available for ex-	
12	penditure upon the effective date of this bill.	

⋮

## CHAPTER 56

(H. B. 1702—Originating in the House Committee on Finance)

[Passed April 1, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Guthrie Center, Account No. 418, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 418, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

1	<b>HEALTH AND WELFARE</b>	
2	71— <i>Guthrie Center</i>	
3	Acct. No. 418	
4	1	Personal Services ..... \$575,645

5	2	Current Expenses .....	161,275
6	3	Repairs and Alterations .....	34,793
7	4	Equipment .....	26,287

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

## CHAPTER 57

(H. B. 1500—Originating in the House Committee on Finance)

[Passed March 24, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Hopemont State Hospital, Account No. 430, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 430, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

1	HEALTH AND WELFARE		
2	80—Hopemont State Hospital		
3	Acct. No. 430		
4	2	Current Expenses .....	\$618,606
5	3	Repairs and Alterations .....	47,500
6	4	Equipment .....	80,000



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



## CHAPTER 58

(S. B. 411—Originating in the Senate Committee on Finance)

[Passed March 15, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Leckie Center, Account No. 373, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 373, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

### CHARITIES AND CORRECTION

#### 52—Leckie Center

#### Acct. No. 373

1	1	Personal Services .....	\$	290,500
2	3	Repairs and Alterations .....		32,500

3     The purpose of this supplementary appropriation bill  
 4     is to supplement, amend and transfer certain moneys  
 5     from one item of the existing appropriation to another  
 6     item of such appropriation for the designated spending  
 7     unit. The amounts as itemized for expenditure during

8 the fiscal year one thousand nine hundred seventy-seven,  
 9 shall be made available for expenditure upon the effec-  
 10 tive date of this bill.

## CHAPTER 59

(S. B. 624—Originating in the Senate Committee on Finance)

[Passed March 31, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Treasurer's Office, Account No. 160, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 160, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

### FISCAL

#### 15—*Treasurer's Office*

#### Acct. No. 160

1	2	Other Personal Services .....	\$ 277,000
2	4	Equipment .....	12,000

3 The purpose of this bill is to supplement, amend and  
 4 transfer certain moneys from one item of the existing  
 5 appropriation to another item of such appropriation for  
 6 the designated spending unit, with no new moneys being  
 7 appropriated hereby. The amounts as itemized for ex-  
 8 penditure during the fiscal year one thousand nine hun-  
 9 dred seventy-seven, shall be made available for expendi-  
 10 ture upon the effective date of this bill.

## CHAPTER 60

(S. B. 415—Originating in the Senate Committee on Finance)

[Passed March 18, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Welch Emergency Hospital, Account No. 426, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 426, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

### HEALTH AND WELFARE

#### 79—Welch Emergency Hospital

##### Acct. No. 426

1	1	Personal Services .....	\$ 895,000
2	2	Current Expenses .....	319,400
3	3	Repairs and Alterations .....	80,000

4 The purpose of this supplementary appropriation bill  
 5 is to supplement, amend and transfer certain moneys  
 6 from certain items of the existing appropriation to an-  
 7 other item of such appropriation for the designated  
 8 spending unit. The amounts as itemized for expenditure  
 9 during the fiscal year one thousand nine hundred seventy-  
 10 seven, shall be made available for expenditure upon the  
 11 effective date of this bill.

## CHAPTER 61

(S. B. 412—Originating in the Senate Committee on Finance)

[Passed March 15, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Children's Home, Account No. 380, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 380, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

## CHARITIES AND CORRECTION

57—*West Virginia Children's Home*

Acct. No. 380

1	1	Personal Services .....	\$	153,000
2	4	Equipment .....		13,060

3 The purpose of this supplementary appropriation bill  
 4 is to supplement, amend and transfer certain moneys from  
 5 one item of the existing appropriation to another item of  
 6 such appropriation for the designated spending unit.  
 7 The amounts as itemized for expenditure during the  
 8 fiscal year one thousand nine hundred seventy-seven,  
 9 shall be made available for expenditure upon the effective  
 10 date of this bill.

## CHAPTER 62

(S. B. 595—Originating in the Senate Committee on Finance)

[Passed April 4, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Penitentiary, Account No. 375, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

*Be it enacted by the Legislature of West Virginia:*

That items of the total appropriation of Account No. 375, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

### TITLE II—APPROPRIATIONS.

#### Section 1. Appropriations from General Revenue.

##### CHARITIES AND CORRECTION

##### 54—West Virginia Penitentiary

##### Acct. No. 375

1	2	Current Expenses .....	\$ 1,245,000
2	4	Equipment .....	155,000

3 The purpose of this supplementary appropriation bill  
 4 is to supplement, amend and transfer certain moneys  
 5 from one item of the existing appropriation to another  
 6 item of such appropriation for the designated spending  
 7 unit, with no new moneys being appropriated hereby.  
 8 The amounts as itemized for expenditure during the  
 9 fiscal year one thousand nine hundred seventy-seven shall  
 10 be made available for expenditure upon the effective date  
 11 of this bill.

## CHAPTER 63

(Com. Sub. for H. B. 1022—By Mr. Smith and Mr. Arnold)

[Passed March 31, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to banks and other lending institutions; requiring banks and other lending institutions to insure their deposits.

*Be it enacted by the Legislature of West Virginia:*

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

### ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

#### §31A-1-6. Deposit insurance required for banking and other lending institutions.

1 All building and loan associations established pursuant to  
2 article six, chapter thirty-one, industrial banks established  
3 pursuant to article seven, chapter thirty-one, credit unions  
4 established pursuant to article ten, chapter thirty-one, members  
5 of the savings and loan association of the state of West Vir-  
6 ginia established pursuant to article eleven, chapter thirty-one  
7 and all banking institutions governed by the provisions of this  
8 chapter shall qualify for and obtain federal deposit insurance,  
9 or shall obtain insurance as approved by the commis-  
10 sioner of banking in an amount equal to that provided  
11 by the federal deposit insurance corporation for eligible  
12 institutions.

13 Each such institution which fails to obtain deposit insurance  
14 as required herein by the first day of July, one thousand nine  
15 hundred seventy-eight shall be prohibited from conducting any  
16 business as a lending institution until such insurance is ob-  
17 tained, except that the commissioner may grant continuances  
18 for compliance with this section for any institution showing  
19 good cause for such a continuance.

**CHAPTER 64**

(S. B. 610—By Mr Benson)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend chapter twenty-nine 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 solicitation of charitable funds act; short title; definitions; commission created; compensation of members and expenses of commission; registration of charitable organizations; exemptions from registration; limitations on payments; limitations on activities; registration of fund-raising counsel and solicitor; bonds; records; books; public records; reciprocal agreements; prohibited acts; nonresident charitable organizations, counsel and solicitors; secretary of state as agent; notice of service by attorney general; and enforcement and penalties.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.**

- §29-19-1. Short title.
- §29-19-2. Definitions.
- §29-19-3. Commission on charitable organizations; powers and duties.
- §29-19-4. Compensation of members; expenses of commission.
- §29-19-5. Registration of charitable organizations; fee.
- §29-19-6. Certain persons and organizations exempt from registration.
- §29-19-7. Limitations on amount of payments for solicitation activities.
- §29-19-8. Limitations on activities of charitable organizations.
- §29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.
- §29-19-10. Information filed to become public records.
- §29-19-11. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.
- §29-19-12. Reciprocal agreements.
- §29-19-13. Prohibited acts.

§29-19-14. Nonresident charitable organizations, professional fund-raising counsel and solicitors, designation of secretary of state as agent for service of process; notice of such service by attorney general.

§29-19-15. Enforcement and penalties.

**§29-19-1. Short title.**

1 This article shall be known and may be cited as the  
2 "Solicitation of Charitable Funds Act."

**§29-19-2. Definitions.**

1 As used in this article:

2 (1) "Charitable organization" means a person which  
3 is or holds itself out to be a benevolent, educational,  
4 philanthropic, humane, patriotic, religious or eleemosy-  
5 nary organization or any person which solicits or obtains  
6 contributions solicited from the public for charitable  
7 purposes after the effective date of this article. A chapter,  
8 branch, area, office or similar affiliate or any person  
9 soliciting contributions within the state for a charitable  
10 organization which has its principal place of business  
11 outside the state is a charitable organization for the  
12 purposes of this article. This definition shall not be  
13 deemed to include religious organizations or any group  
14 affiliated with and forming an integral part of said  
15 organization no part of the net income of which inures to  
16 direct benefit of any individual and which have received  
17 a declaration of current tax exempt status from the gov-  
18 ernment of the United States nor shall this definition  
19 include any single church congregation located in the  
20 county or local congregation of any religious affiliation  
21 or any municipal-wide or county-wide little league or  
22 similar youth athletic organization or any service club.  
23 No such affiliated group may be required to obtain such  
24 declaration if the parent or principal organization shall  
25 have obtained same.

26 (2) "Contributions" means the promise or grant of any  
27 money or property of any kind or value.

28 (3) "Federated fund-raising organization" means a  
29 federation of independent charitable organizations which  
30 have voluntarily joined together, including, but not



31 limited to, a united fund or community chest, for pur-  
32 poses of raising and distributing money for and among  
33 themselves and where membership does not confer oper-  
34 ating authority and control of the individual agencies  
35 upon the federated group organization.

36 (4) "Parent organization" is that part of a charitable  
37 organization which coordinates, supervises or exercises  
38 control over policy, fund raising and expenditures, or  
39 assists or advises one or more chapters, branches or  
40 affiliates in the state.

41 (5) "Person" means any individual, organization,  
42 trust, foundation, group, association, partnership, cor-  
43 poration, society or any combination of them.

44 (6) "Professional fund-raising counsel" means any  
45 person who for a flat fixed fee under a written agreement  
46 plans, conducts, manages, carries on, advises or acts as  
47 a consultant, whether directly or indirectly, in connec-  
48 tion with soliciting contributions for, or on behalf of  
49 any charitable organization but who actually solicits no  
50 contributions as a part of such services. A bona fide  
51 salaried officer or employee of a charitable organization  
52 maintaining a permanent establishment within the state  
53 shall not be deemed to be a professional fund-raising  
54 counsel.

55 (7) "Professional solicitor" means any person who,  
56 for a financial or other consideration, solicits contribu-  
57 tions for, or on behalf of a charitable organization,  
58 whether such solicitation is performed personally or  
59 through their agents, servants or employees specially  
60 employed by, or for a charitable organization, who are  
61 engaged in the solicitation of contributions under the di-  
62 rection of such person, or a person who plans, conducts,  
63 manages, carries on, advises or acts as a consultant to a  
64 charitable organization in connection with the sollicita-  
65 tion of contributions but does not qualify as "professional  
66 fund-raising counsel" within the meaning of this act. A  
67 bona fide salaried officer or employee of a charitable  
68 organization maintaining a permanent establishment

69 within the state shall not be deemed to be a professional  
70 solicitor.

71 No attorney, investment counselor or banker, who ad-  
72 vises any person to make a contribution to a charitable  
73 organization, shall be deemed, as the result of such  
74 advice, to be a professional fund-raising counsel or a  
75 professional solicitor.

76 (8) "Commission" means the commission on chari-  
77 table organizations herein created.

**§29-19-3. Commission on charitable organizations; powers and  
duties.**

1 (a) The commission on charitable organizations, herein  
2 referred to as the "commission," consists of seven mem-  
3 bers, one of whom shall be the secretary of state or his  
4 designate, who shall be the chairman, one of whom shall  
5 be the attorney general or his designate, one of whom  
6 shall be the commissioner of welfare or his designate  
7 and one of whom shall be the director of the state depart-  
8 ment of health or his designate and three members to be  
9 appointed by the governor who shall serve at his will and  
10 pleasure.

11 (b) The commission shall promulgate rules and reg-  
12 ulations and prescribe forms for registration or other  
13 purposes consistent with the specific requirements of this  
14 article and, after due notice to and consultation with  
15 representatives of charitable organizations, professional  
16 fund-raising counsel and professional solicitors and an  
17 opportunity for all such to be heard to make effective  
18 such rules, regulations, forms and procedures and when  
19 necessary to hold hearings and make adjudications as  
20 provided in this article and make recommendations to the  
21 attorney general for enforcement of this article.

**§29-19-4. Compensation of members; expenses of commission.**

1 No member of the commission shall receive any com-  
2 pensation, whether in the form of salary, per diem allow-  
3 ance or otherwise, for or in connection with his services  
4 as a member. Each member, however, is entitled to re-  
5 imbursement by the commission for all reasonable and

6 necessary expenses actually incurred in connection with  
7 the performance of his duties as a member.

8 The expenses of the members and the general operating  
9 expenses of the commission shall be paid from moneys  
10 appropriated by the Legislature for those purposes.

**§29-19-5. Registration of charitable organizations; fee.**

1 (a) Every charitable organization which intends to  
2 solicit contributions within this state, or has funds so-  
3 licited on its behalf, shall, prior to any solicitation file  
4 a registration statement with the secretary of state  
5 upon forms prescribed by the commission, which shall  
6 be good for one full year and which shall be refiled in  
7 the next and each following year in which such charitable  
8 organization is engaged in solicitation activities. It shall  
9 be the duty of the president, chairman or principal officer  
10 of such charitable organization to file the statements re-  
11 quired under this article. Such statements shall be sworn  
12 to and shall contain the following information:

13 (1) The name of the organization and the purpose for  
14 which it was organized;

15 (2) The principal address of the organization and the  
16 address of any offices in this state. If the organization  
17 does not maintain an office, the name and address of the  
18 person having custody of its financial records;

19 (3) The names and addresses of any chapters, branches  
20 or affiliates in this state;

21 (4) The place where and the date when the organiza-  
22 tion was legally established, the form of its organization,  
23 and a reference to any determination of its tax-exempt  
24 status under the Internal Revenue Code;

25 (5) The names and addresses of the officers, directors,  
26 trustees and the principal salaried executive staff of-  
27 ficer;

28 (6) A copy of a balance sheet and income and expense  
29 statement audited by an independent public account-  
30 tant for the organization's immediately preceding fiscal  
31 year, or a copy of a financial statement audited by an  
32 independent public accountant covering, in a consolidated

33 report, complete information as to all the preceding  
34 year's fund-raising activities of the charitable or-  
35 ganization, showing kind and amount of funds raised,  
36 costs and expenses incidental thereto, and alloca-  
37 tion or disbursement of funds raised: *Provided*,  
38 That only organizations raising more than fifty thou-  
39 sand dollars per year in contributions shall be re-  
40 quired to have an audit by an independent public ac-  
41 countant;

42 (7) Whether the organization intends to solicit con-  
43 tributions from the public directly or have such done  
44 on its behalf by others;

45 (8) Whether the organization is authorized by any  
46 other governmental authority to solicit contributions  
47 and whether it is or has ever been enjoined by any court  
48 from soliciting contributions;

49 (9) The general purpose or purposes for which the  
50 contributions to be solicited shall be used;

51 (10) The name or names under which it intends to  
52 solicit contributions;

53 (11) The names of the individuals or officers of the  
54 organization who will have final responsibility for the  
55 custody of the contributions; and

56 (12) The names of the individuals or officers of the  
57 organization responsible for the final distribution of the  
58 contributions.

59 (b) Each chapter, branch or affiliate, except an in-  
60 dependent member agency of a federated fund-raising  
61 organization, may separately report the information re-  
62 quired by this subsection, or report the information to its  
63 parent organization which shall then furnish such infor-  
64 mation as to its West Virginia affiliates, chapters and  
65 branches in a consolidated form to the secretary of state.  
66 An independent member agency of a federated fund-  
67 raising organization, as hereinbefore defined, shall comply  
68 with the provisions of this article independently, unless  
69 specifically exempted from doing so.

70 (c) The registration forms and any other documents  
71 prescribed by the commission shall be signed by an au-

72 thORIZED officer or by an independent public accountant  
73 and by the chief fiscal officer of the charitable organiza-  
74 tion and shall be verified under oath.

75 (d) Every charitable organization which submits an  
76 independent registration to the secretary of state shall  
77 pay an annual registration fee of ten dollars; a parent  
78 organization filing on behalf of one or more chapters,  
79 branches or affiliates and a federated fund-raising orga-  
80 nization filing on behalf of its member agencies shall pay  
81 a single annual registration fee for itself and such chapters,  
82 branches, affiliates or member agencies included in the  
83 registration statement.

**§29-19-6. Certain persons and organizations exempt from registration.**

1 (a) The following charitable organizations shall  
2 not be required to file an annual registration state-  
3 ment with the secretary of state:

4 (1) Educational institutions, the curriculums of which  
5 in whole or in part are registered or approved by the state  
6 board of education, either directly or by acceptance of  
7 accreditation by an accrediting body recognized by the  
8 state board of education;

9 (2) Persons requesting contributions for the relief of  
10 any individual specified by name at the time of the  
11 solicitation when all of the contributions collected without  
12 any deductions whatsoever are turned over to the named  
13 beneficiary for his use;

14 (3) Charitable organizations which do not intend to  
15 solicit and receive and do not actually raise or receive  
16 contributions from the public in excess of seven thousand  
17 five hundred dollars during a calendar year or do not  
18 receive contributions from more than ten persons during  
19 a calendar year, if all of their functions, including fund-  
20 raising activities, are carried on by persons who are  
21 unpaid for their services and if no part of their assets or  
22 income inures to the benefit of or is paid to any officer or  
23 member. Nevertheless, if the contributions raised from  
24 the public, whether all of such is or is not received by any  
25 charitable organization during any calendar year, shall be

26 in excess of two thousand dollars, it shall, within thirty  
27 days after the date it shall have received total contri-  
28 butions in excess of seven thousand five hundred dol-  
29 lars, register with and report to the department as re-  
30 quired by this article;

31 (4) Hospitals which are nonprofit and charitable;

32 (5) Organizations which solicit only within the mem-  
33 bership of the organization by the members thereof.

34 The term "membership" shall not include those persons  
35 who are granted a membership upon making a contribu-  
36 tion as the result of solicitation; or

37 (6) A local post, camp, chapter or similarly designated  
38 element or a county unit of such elements of a bona fide  
39 veterans' organization which issues charters to such local  
40 elements throughout this state, a bona fide organization of  
41 volunteer firemen, a bona fide ambulance association or  
42 bona fide rescue squad association or a bona fide auxiliary  
43 or affiliate of any such organization, provided all its fund-  
44 raising activities are carried on by members of such an  
45 organization or an affiliate thereof, and such members  
46 receive no compensation directly or indirectly therefor.

47 (b) Any charitable organization claiming to be exempt  
48 from the registration provisions of this act and which is  
49 about to or does solicit charitable contributions shall  
50 submit, annually, to the secretary of state on forms to be  
51 prescribed by the commission the name, address and  
52 purpose of the organization and a statement setting forth  
53 the reason for the claim for exemption. If exempted, the  
54 secretary of state shall issue, annually, a letter of ex-  
55 emption which may be exhibited to the public. No  
56 registration fee shall be required of any exempt orga-  
57 nization.

**§29-19-7. Limitations on amount of payments for solicitation activities.**

1 (a) No charitable organization shall pay or agree to  
2 pay to a professional solicitor or his agents, servants or  
3 employees in the aggregate a total amount in excess  
4 of fifteen percent (including reimbursement for ex-  
5 penses incurred) of the total moneys, pledges or other

6 property raised or received by reason of any solicitation  
7 activities or campaigns.

8 (b) For purposes of this section the total moneys,  
9 funds, pledges or other property raised or received shall  
10 not include the actual cost to the charitable organization  
11 or professional solicitor of goods sold or service provided  
12 to the public in connection with the soliciting of con-  
13 tributions.

14 (c) Every contract or written agreement between  
15 professional fund-raising counsel and a charitable organi-  
16 zation shall be filed with the secretary of state within ten  
17 days after such contract or written agreement is  
18 concluded.

19 (d) Every contract or a written statement of the nature  
20 of the arrangement to prevail in the absence of a contract  
21 between a professional solicitor and a charitable organi-  
22 zation shall be filed with the secretary of the state within  
23 ten days after such contract or written agreement is  
24 concluded. If the contract or arrangement with a pro-  
25 fessional solicitor does not provide for compensation on a  
26 percentage basis, the commission shall examine the con-  
27 tract to ascertain whether the compensation to be paid in  
28 such circumstances is likely to exceed fifteen percent  
29 of the total moneys, pledges or other property raised  
30 or received as a result of the contract or arrangement;  
31 if the reasonable probabilities are that the compensa-  
32 tion will exceed fifteen percent of the total moneys,  
33 pledges or other property, the secretary of state shall  
34 disapprove the contract or arrangement within ten days  
35 after its filing. No registered charitable organization or  
36 professional solicitor shall carry out or execute a dis-  
37 approved contract, or receive or perform services, or  
38 receive or make payments, pursuant to a disapproved  
39 contract. Any party to a disapproved contract shall, upon  
40 written request made within thirty days of disapproval,  
41 be given a hearing before the commission within thirty  
42 days after such request is filed.

**§29-19-8. Limitations on activities of charitable organizations.**

1 No charitable organizations subject to this article may  
2 solicit funds from the public except for charitable pur-

- 3 poses or expend funds raised for charitable purposes  
4 for noncharitable purposes.

**§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.**

1 (a) No person may act as a professional fund-raising  
2 counsel or professional solicitor for a charitable organi-  
3 zation subject to the provisions of this article, unless he  
4 has first registered with the secretary of state. Applica-  
5 tions for such registration shall be in writing under oath  
6 or affirmation in the form prescribed by the secretary of  
7 state and contain such information as the commission  
8 may require. The application for registration by pro-  
9 fessional fund-raising counsel or professional solicitor  
10 shall be accompanied by an annual fee in the sum of  
11 fifty dollars. A partnership or corporation, which is a  
12 professional fund-raising counsel or professional solicitor,  
13 may register for and pay a single fee on behalf of all its  
14 members, officers, agents and employees. However, the  
15 names and addresses of all officers, agents and employees  
16 of professional fund-raising counsel and all professional  
17 solicitors, their officers, agents, servants or employees  
18 employed to work under the direction of a professional  
19 solicitor must be listed in the application.

20 (b) The applicant shall, at the time of making applica-  
21 tion, file with and have approved by the secretary of  
22 state a bond in which the applicant shall be the principal  
23 obligor in the sum of ten thousand dollars with one or  
24 more sureties satisfactory to the secretary of state, whose  
25 liability in the aggregate as such sureties will at least  
26 equal the said sum and maintain said bond in effect so long  
27 as a registration is in effect. The bond shall run to the state  
28 for the use of the secretary of state and any person who may  
29 have a cause of action against the obligor of said bonds  
30 for any losses resulting from malfeasance, nonfeasance  
31 or misfeasance in the conduct of solicitation activities.  
32 A partnership or corporation which is a professional  
33 fund-raising counsel or professional solicitor may file  
34 a consolidated bond on behalf of all its members, officers  
35 and employees.

36 (c) Each registration shall be valid throughout the



37 state for a period of one year and may be renewed for  
38 additional one-year periods upon written application un-  
39 der oath in the form prescribed by the commission and  
40 the payment of the fee prescribed herein.

41 (d) The secretary of state or his designate shall  
42 examine each application, and if he finds it to be in  
43 conformity with the requirements of this article and all  
44 relevant rules and regulations and the registrant has  
45 complied with the requirements of this article and all  
46 relevant rules and regulations, he shall approve the  
47 registration. Any applicant who is denied approved  
48 registration may, within fifteen days from the date of  
49 notification of such denial, request, in writing, a hearing  
50 before the commission, which hearing shall be held  
51 within fifteen days from the date of the request.

**§29-19-10. Information filed to become public records.**

1 Registration statements and applications, reports,  
2 professional fund-raising counsel contracts or professional  
3 solicitor contracts, and all other documents and informa-  
4 tion required to be filed under this article or by the  
5 secretary of state or by the commission shall become  
6 public records in the office of the secretary of state, and  
7 shall be open to the general public for inspection at such  
8 time and under such conditions as the secretary of state  
9 may prescribe.

**§29-19-11. Records to be kept by charitable organizations,  
professional fund-raising counsel and professional  
solicitors.**

1 Every charitable organization subject to the provisions  
2 of this article shall, in accordance with the rules and  
3 regulations prescribed by the commission, keep true  
4 fiscal records as to its activities in this state as may  
5 be covered by this article in such form as will enable it  
6 accurately to provide the information required by this  
7 article. Upon demand, such records shall be made avail-  
8 able to the secretary of state, the commission or the at-  
9 torney general for inspection. Such records shall be re-  
10 tained for a period of at least three years after the end  
11 of the period of registration to which they relate.

**§29-19-12. Reciprocal agreements.**

1 The secretary of state may enter into reciprocal agree-  
2 ments with the appropriate authority of any other state  
3 for the purpose of exchanging information with respect to  
4 charitable organizations, professional fund-raising coun-  
5 sel and professional solicitors. Pursuant to such agree-  
6 ments the secretary of state may accept information filed  
7 by a charitable organization, professional fund-raising  
8 counsel or professional solicitor with the appropriate  
9 authority of another state in lieu of the information re-  
10 quired to be filed in accordance with the provisions of  
11 this article, if such information is substantially similar to  
12 the information required under this article. The secre-  
13 tary of state shall also grant exemption from the require-  
14 ment for the filing of annual registration statement with  
15 the secretary of state to charitable organizations orga-  
16 nized under the laws of another state having their principal  
17 place of business outside of this state whose funds are  
18 derived principally from sources outside the state and  
19 which have been granted exemption from the filing of  
20 registration statements by the state under whose laws  
21 they are organized if such state has a statute similar in  
22 substance to the provisions of this article.

**§29-19-13. Prohibited acts.**

1 (a) No charitable organization, professional fund-  
2 raising counsel or professional solicitor, subject to the  
3 provisions of this article, may use or exploit the fact  
4 of registration so as to lead the public to believe that  
5 such registration in any manner constitutes an endorse-  
6 ment or approval by the state. The use of the following  
7 statement shall not be deemed a prohibited exploitation:  
8 "Registered with the secretary of state as required by  
9 law. Registration does not imply endorsement of a pub-  
10 lic solicitation for contributions."

11 (b) No person may, in connection with the sollicita-  
12 tion of contributions for or the sale of goods or services  
13 of a person other than a charitable organization, mis-  
14 represent to or mislead anyone by any manner, means,  
15 practice or device whatsoever, to believe that the person

16 on whose behalf such solicitation or sale is being con-  
17 ducted is a charitable organization or that the proceeds  
18 of such solicitation or sale will be used for charitable  
19 purposes, if such is not the fact.

20 (c) No person may in connection with the solicitation  
21 of contributions or the sale of goods or services for  
22 charitable purposes represent to or lead anyone by any  
23 manner, means, practice or device whatsoever, to believe  
24 that any other person sponsors or endorses such solicita-  
25 tion of contributions, sale of goods or services for chari-  
26 table purposes or approves of such charitable purposes  
27 of a charitable organization connected therewith when  
28 such other person has not given consent to the use of his  
29 name for these purposes; any member of the board  
30 of directors or trustees of a charitable organization  
31 or any other person who has agreed either to serve or  
32 to participate in any voluntary capacity in the campaign  
33 shall be deemed thereby to have given his consent to  
34 the use of his name in said campaign.

35 (d) No person may make any representation that he  
36 is soliciting contributions for or on behalf of a charitable  
37 organization or shall use or display any emblem, device  
38 or printed matter belonging to or associated with a chari-  
39 table organization for the purpose of soliciting or in-  
40 ducing contributions from the public without first being  
41 authorized to do so by the charitable organization.

42 (e) No professional solicitor may solicit in the name  
43 of or on behalf of any charitable organization unless  
44 such solicitor has:

45 (1) Written authorization of two officers of such or-  
46 ganization, a copy of which shall be filed with the secre-  
47 tary of state. Such written authorization shall bear  
48 the signature of the solicitor and shall expressly  
49 state on its face the period for which it is valid,  
50 which shall not exceed one year from the date is-  
51 sued; and

52 (2) Such authorization with him when making solici-  
53 tations and exhibits the same on request to persons so-  
54 licited or police officers or agents of the secretary of state.

**§29-19-14. Nonresident charitable organizations, professional fund-raising counsel and solicitors, designation of secretary of state as agent for service of process; notice of such service by attorney general.**

1 Any charitable organization or professional fund-  
2 raising counsel or professional solicitor having its or his  
3 principal place of business without the state, or organized  
4 under and by virtue of the laws of a foreign state, which  
5 or who shall solicit contributions from people in this  
6 state, is subject to the provisions of this article and shall  
7 be deemed to have irrevocably appointed the secretary  
8 of state as its or his agent upon whom may be served  
9 any summons, subpoena, subpoena duces tecum or other  
10 process directed to such charitable organization, profes-  
11 sional fund-raising counsel or professional solicitor or  
12 any partner, principal officer or director thereof in any  
13 action or proceeding brought under the provisions of  
14 this article. Service of such process upon the secretary  
15 of state shall be made by personally delivering to and  
16 leaving with him a copy thereof, and such service shall  
17 be sufficient service provided that notice of such service  
18 and a copy of such process are forthwith sent by the  
19 attorney general to such charitable organization or pro-  
20 fessional fund-raising counsel or professional solicitor by  
21 registered or certified mail with return receipt requested  
22 at its or his office, as set forth in the registration form  
23 required to be filed with the secretary of state pursuant  
24 to this article or in default of the filing of such form, at  
25 the last address known to the attorney general or to the  
26 secretary of state.

**§29-19-15. Enforcement and penalties.**

1 (a) If any charitable organization, professional fund-  
2 raising counsel or professional solicitor fails to file any  
3 registration application or statement, report or other  
4 information required to be filed by the secretary of state  
5 or the commission under this article, or otherwise violates  
6 the provisions of this act, the department shall notify  
7 the delinquent charitable organization, professional fund-  
8 raising counsel or professional solicitor by mailing a  
9 notice by registered or certified mail, with return receipt

10 requested, to its or his last-known address. If the re-  
11 quired registration application or statement, annual re-  
12 port or other information is not filed or if the existing  
13 violation is not discontinued within two weeks after the  
14 formal notification or receipt of such notice, the com-  
15 mission may cancel, suspend or refuse to accept the  
16 registration of such delinquent charitable organization,  
17 professional fund-raising counsel or professional solicitor.

18 (b) The commission, upon its own motion or upon  
19 complaint of any person, may, if it has reasonable ground  
20 to suspect a violation, investigate any charitable orga-  
21 nization, professional fund-raising counsel or professional  
22 solicitor to determine whether such charitable organiza-  
23 tion, professional fund-raising counsel or professional  
24 solicitor has violated the provisions of this article or  
25 has filed any application or other information required  
26 under this article which contains false or misleading  
27 statements. If the commission finds that any applica-  
28 tion or other information contains false or misleading  
29 statements, or that a registrant under this article has  
30 violated the provisions thereof, it may recommend to  
31 the secretary of state that the registration be suspended  
32 or canceled and the secretary of state may so order.

33 (c) The registration of any charitable organization,  
34 professional fund-raising counsel or professional solicitor,  
35 which or who knowingly makes a false or misleading  
36 statement in any registration application or statement,  
37 report or other information required to be filed by the  
38 secretary of state or this article shall be revoked.

39 (d) All administrative proceedings under this article,  
40 including the promulgation of rules and regulations,  
41 shall be conducted in accordance with the provisions of  
42 chapter twenty-nine-a of this code and all commission  
43 adjudications shall be subject to review and appeal as  
44 provided therein.

45 (e) In addition to the foregoing, any person who  
46 willfully and knowingly violates any provisions of this  
47 article, or who shall willfully and knowingly give false  
48 or incorrect information to the secretary of state in filing

49 statements or reports required by this article, whether such  
50 report or statement is verified or not, shall be guilty of a  
51 misdemeanor, and, upon conviction thereof, shall be sen-  
52 tenced for the first offense to pay a fine of not less than one  
53 hundred dollars and not more than five hundred dollars  
54 or be imprisoned for not more than six months, or both,  
55 and for the second and any subsequent offense to pay  
56 a fine of not less than five hundred dollars and not more  
57 than one thousand dollars or be imprisoned for not  
58 more than one year, or both.

59 (f) Whenever the attorney general or any prosecuting  
60 attorney has reason to believe that any charitable orga-  
61 nization, professional fund-raising counsel or professional  
62 solicitor is operating in violation of the provisions of  
63 this article or has knowingly and willfully made any  
64 false statement in any registration application or state-  
65 ment, report or other information required to be filed  
66 by this article or whenever a charitable organization,  
67 professional fund-raising counsel or professional solicitor  
68 has failed to file a registration statement required by  
69 this article, or whenever there is employed or is about  
70 to be employed in any solicitation or collection of con-  
71 tributions for a charitable organization any device,  
72 scheme or artifice to defraud or to obtain money or  
73 property by means of any false pretense, representation  
74 or promise, or whenever the officers or representatives  
75 of any charitable organization, professional fund-raising  
76 counsel or professional solicitor have refused or failed  
77 after notice to produce any records of such organization,  
78 or whenever the funds raised by solicitation activities  
79 are not devoted or will not be devoted to the charitable  
80 purposes of the charitable organization, in addition to  
81 all other actions authorized by law, the attorney general  
82 or prosecuting attorney may bring an action in the name  
83 of the state against such charitable organization and its  
84 officers, such professional fund-raising counsel or pro-  
85 fessional solicitor or any other person who has violated  
86 this article or who has participated or is about to par-  
87 ticipate in any solicitation or collection by employing  
88 any device, scheme, artifice, false representation or

89 promise, to defraud or obtain money or other property,  
90 to enjoin such charitable organization or professional  
91 fund-raising counsel or professional solicitor or other  
92 person from continuing such violation, solicitation or  
93 collection, or engaging therein or doing any acts in fur-  
94 therance thereof and for such other relief as the court  
95 deems appropriate.

96 (g) In addition to the foregoing, any charitable orga-  
97 nization, professional fund-raising counsel or professional  
98 solicitor who willfully and knowingly violates any pro-  
99 visions of this article by employing any device, scheme,  
100 artifice, false representation or promise with intent to  
101 defraud or obtain money or other property shall be  
102 guilty of a misdemeanor, and, upon conviction thereof,  
103 for a first offense, be fined not less than one hundred  
104 dollars and not more than five hundred dollars or con-  
105 fined in the county jail not more than six months, or  
106 both; and for a second and any subsequent offense shall  
107 be fined not less than five hundred dollars and not more  
108 than one thousand dollars or confined in the county jail  
109 not more than one year, or both.

110 At any proceeding under this section, the court shall  
111 also determine whether it is possible to return to the  
112 contributors the contributions which were thereby  
113 obtained.

114 If the court finds that the said contributions are readily  
115 returnable to the original contributors, it may order the  
116 money to be placed in the custody and control of a  
117 general receiver, appointed pursuant to the provisions  
118 of article six, chapter fifty-one of this code who shall be  
119 responsible for its proper disbursement to such contribu-  
120 tors.

121 If the court finds that (1) it is impossible to obtain  
122 the names of over one half the persons who were solicited  
123 and in violation of this article, or (2) if the majority of  
124 individual contributions were less than five dollars, or  
125 (3) if the cost to the state of returning these contribu-  
126 tions is equal to or more than the total sum to be re-  
127 funded, the court shall order the money to be placed

128 in the custody and control of a general receiver ap-  
129 pointed pursuant to the provisions of article six, chapter  
130 fifty-one of this code. The general receiver shall main-  
131 tain this money pursuant to the provisions of article  
132 eight, chapter thirty-six of this code.

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## CHAPTER 65

(Com. Sub. for S. B. 200—By Mr. Jones, Mr. Nelson, Mr. Hamilton and Mr. Kusic)

[Passed April 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article two by adding thereto a new section, designated section fourteen; to amend and reenact sections one, two, three, seven, eight, nine, ten, eleven, thirteen, fourteen and fifteen, article five; to further amend said article by adding thereto two new sections, designated sections sixteen and seventeen; to amend and reenact section two, article five-a; to amend and reenact sections one, two, three, four and five, article six; to further amend said article six by adding thereto three new sections, designated sections six, seven and eight; to amend and reenact article six-a of said chapter; to amend and reenact section six, article seven; and to further amend said article seven by adding thereto two new sections, designated sections one and twenty-seven, all of said chapter forty-nine, all relating to purpose; definitions of child, neglected child, abused child; removing child from foster home; jurisdiction of the juvenile court; noncustodial counseling of a child; petitioning the court for disposition of suspected delinquents, warrants, and notice to child and parents; taking a child into custody; probable cause hearing and improvement period; transfer of jurisdiction; hearings and adjudications; disposition and appeal; modification of dispositional orders; juvenile probation officers; committing



children to jail; expungement of records and no discrimination; investigation and release of child taken into custody; petition to court when child believed neglected; notice; right to counsel; hearing; temporary custody; improvement period; examinations; disposition of neglected children; modification of dispositional orders; foster care review; consensual termination; reports of children suspected of being abused or neglected; confidentiality and civil liability for violation; penalty for failure to report; enforcement of order for support; and emancipation.

***Be it enacted by the Legislature of West Virginia:***

That sections one, two, three, four and five, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article two be amended by adding thereto a new section, designated section fourteen; that sections one, two, three, seven, eight, nine, ten, eleven, thirteen, fourteen and fifteen, article five be amended and reenacted; that said article five be further amended by adding thereto two new sections, designated sections sixteen and seventeen; that section two, article five-a be amended and reenacted; that sections one, two, three, four and five, article six be amended and reenacted; that said article six be further amended by adding thereto three new sections, designated sections six, seven and eight; that article six-a be amended and reenacted; that section six, article seven be amended and reenacted; and that said article seven be further amended by adding thereto two new sections, designated sections one and twenty-seven, all of said chapter forty-nine, all to read as follows:

**Article**

1. **Purposes, definitions.**
2. **State and county responsibilities for the protection and care of children.**
5. **Juvenile proceedings.**
- 5A. **Juvenile referee system.**
6. **Procedure in cases of child neglect or abuse.**
- 6A. **Reports of children suspected to be abused or neglected.**
7. **General provisions.**

**ARTICLE 1. PURPOSES; DEFINITIONS.**

§49-1-1. Purpose.

§49-1-2. "Child" defined.

§49-1-3. "Neglected child" and "abused child" defined.

§49-1-4. "Delinquent child" defined.

§49-1-5. Definitions of other terms.

**§49-1-1. Purpose.**

1 (a) The purpose of this chapter is to provide a com-  
2 prehensive system of child welfare throughout the state  
3 which will assure to each child such care and guidance,  
4 preferably in his own home, as will serve the spiritual,  
5 emotional, mental and physical welfare of the child;  
6 preserve and strengthen the child's family ties whenever  
7 possible with recognition to the fundamental rights of  
8 parenthood and with recognition of the state's responsi-  
9 bility to assist the family in providing the necessary educa-  
10 tion and training and protect the welfare of the general  
11 public. In pursuit of these goals it is the intention of the  
12 Legislature to provide for removing the child from the  
13 custody of parents only when the child's welfare or  
14 the safety and protection of the public cannot be adequate-  
15 ly safeguarded without removal; and, when the child has  
16 to be removed from his own family, to secure for him  
17 custody, care and discipline as nearly as possible equiv-  
18 alent to that which should have been given by his  
19 parents, consistent with the child's best interests.

20 (b) The child welfare service of the state shall be  
21 administered by the state department of welfare and the  
22 licensing board created by section four-a, article two of  
23 this chapter.

24 The state department of welfare is designated as the  
25 agency to cooperate with the United States department of  
26 health, education and welfare and United States de-  
27 partment of justice in extending and improving child  
28 welfare services, to comply with regulations thereof, and  
29 to receive and expend federal funds for these services.

**§49-1-2. "Child" defined.**

1 "Child" means any person under eighteen years of  
2 age. Once a child is transferred to a court with criminal  
3 jurisdiction pursuant to section ten, article five of this  
4 chapter, he nevertheless remains a child for the purposes  
5 of the applicability of the provisions of this chapter with

6 the exception of sections one through fourteen of article  
7 five of this chapter.

**§49-1-3. "Neglected child" and "abused child" defined.**

1 "Abused child" means a child:

2 Whose parent or guardian inflicts or attempts to inflict  
3 or allows to be inflicted as a result of inadequate super-  
4 vision, physical injury upon the child which seriously  
5 endangers the present physical or mental health of such  
6 child or inflicts sexual abuse upon the child.

7 "Neglected child" means a child:

8 (1) Whose physical or mental condition is im-  
9 paired or endangered as a result of the present  
10 refusal, failure or inability of the child's parent or cus-  
11 todian to supply the child with necessary food, clothing,  
12 shelter, medical care or education, notwithstanding efforts  
13 of the state department to remedy the inadequacy, and  
14 the condition is not due primarily to the lack of financial  
15 means of the parent or custodian; or

16 (2) Who is presently without necessary food, clothing,  
17 shelter, medical care, education or supervision because  
18 of the disappearance or absence of the child's parent or  
19 custodian.

20 "Neglected child" does not mean a child:

21 (1) Whose parent or custodian has failed to provide  
22 him with medical care because such medical care con-  
23 flicts with the tenets and practices of a recognized or  
24 religious denomination or order of which such parent or  
25 custodian is an adherent or member; or

26 (2) Whose education is conducted within the provisions  
27 of section one, article eight, chapter eighteen of this code.

**§49-1-4. "Delinquent child" defined.**

1 "Delinquent child" means a child:

2 (1) Who commits an act which would be a crime  
3 under state law or a municipal ordinance if committed  
4 by an adult punishable by confinement in the county  
5 jail or imprisonment;

6 (2) Who commits an act designated a crime under a  
7 municipal ordinance or state law not punishable by  
8 confinement in the county jail or imprisonment;

9 (3) Who, without just cause, habitually and continu-  
10 ally refuses to respond to the supervision legally required  
11 of such child's parents or custodian; or

12 (4) Who is habitually absent from school without good  
13 cause.

**§49-1-5. Definitions of other terms.**

1 For the purposes of this chapter:

2 (1) "State department" means the state department  
3 of welfare;

4 (2) "State board" means the state advisory board;

5 (3) "Commissioner" means the commissioner of wel-  
6 fare;

7 (4) "Child welfare agency" means any agency or in-  
8 stitution maintained by a municipality or county, or any  
9 agency or institution maintained by a person, firm, cor-  
10 poration, association or organization to receive children  
11 for care and maintenance or for placement in a family  
12 home or day care center or any institution that provides  
13 care for unmarried mothers and their children, but shall  
14 not include county shelters established and maintained  
15 for the detention of delinquent children or those charged  
16 with delinquency;

17 (5) "Licensing board" means the state licensing board  
18 created by section four-a, article two of this chapter;

19 (6) "Custodian" means a person who has actual physi-  
20 cal possession or care and custody of a child, regardless  
21 of whether such person has been granted custody of the  
22 child by any contract, agreement or legal proceeding;

23 (7) "Referee" means a juvenile referee appointed pur-  
24 suant to section one, article five-a of this chapter, ex-  
25 cept that in any county which does not have a juvenile  
26 referee the judge or judges of the circuit court may  
27 designate one or more magistrates of the county to per-

28 form the functions and duties which may be performed  
29 by a referee under this chapter;

30 (8) "Court" means the circuit court of the county with  
31 jurisdiction of the case or the judge thereof in vacation  
32 unless otherwise specifically provided.

**ARTICLE 2. STATE AND COUNTY RESPONSIBILITIES FOR THE  
PROTECTION AND CARE OF CHILDREN.**

**§49-2-14. Procedure for removal of child from foster home.**

1 If at any time the state department is of the opinion  
2 that a child in a foster care home is lacking the proper  
3 care and supervision, it may terminate the foster care  
4 arrangement: *Provided*, That unless the foster parents  
5 have agreed in writing or unless the state department  
6 is returning a child to its natural parents, the state de-  
7 partment must apply to the circuit court for termination  
8 of a foster care arrangement involving a child who has  
9 resided in such foster home for a period in excess of  
10 eighteen months. In such a case the court may terminate  
11 the foster care arrangement only if it finds that the child  
12 is lacking the proper care and supervision or a meaningful  
13 relationship with the foster parents and that the state  
14 department has a more suitable long-term arrangement  
15 for care and custody.

**ARTICLE 5. JUVENILE PROCEEDINGS.**

§49-5-1. Jurisdiction of circuit courts over persons under eighteen years of age; constitutional guarantees; right to counsel; hearings.

§49-5-2. Continuing jurisdiction of court.

§49-5-3. Noncustodial counseling of a child.

§49-5-7. Institution of proceedings by petition; notice to child and parents; subpoena.

§49-5-8. Taking a child into custody; detention hearing.

§49-5-9. Preliminary hearing; counsel; improvement period.

§49-5-10. Transfer of jurisdiction.

§49-5-11. Adjudication.

§49-5-13. Disposition; appeal.

§49-5-14. Modification of dispositional orders.

§49-5-15. Juvenile probation officers; duties; expenses; powers.

§49-5-16. Committing children to jail and detention facilities; standards.

§49-5-17. Expungement of records; no discrimination.

**§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

2 original jurisdiction in proceedings brought under this  
3 article.

4 If during a criminal proceeding against a person in any  
5 other court it shall be ascertained or shall appear that  
6 the person was under the age of eighteen years at the time  
7 of the alleged offense, such court, judge or magistrate  
8 shall immediately certify the case to the circuit court by  
9 transferring it with all the papers, documents and testi-  
10 mony connected, and the circuit court shall assume juris-  
11 diction of the case in the same manner as cases originally  
12 instituted in the circuit court by petition: *Provided*, That  
13 for violation of a traffic law of West Virginia or a municipi-  
14 pal ordinance, magistrate courts and municipal courts  
15 shall have concurrent jurisdiction with the circuit court,  
16 and persons under the age of eighteen years shall be  
17 liable for punishment for violation of such traffic laws  
18 and ordinances in the same manner as adults except  
19 that magistrate courts and municipal courts shall have  
20 no jurisdiction to impose a sentence of confinement for  
21 the violation of traffic laws or ordinances.

22 As used in this section, "violation of a traffic law of  
23 West Virginia" means violation of any law contained in  
24 chapters seventeen-a, seventeen-b, seventeen-c and  
25 seventeen-d of this code except sections one and two,  
26 article four (hit and run) and sections one (negligent  
27 homicide), two (driving under influence of alcohol, con-  
28 trolled substances or drugs) and four (reckless driving),  
29 article five, chapter seventeen-c of this code.

30 (b) Any child shall be entitled to be admitted to bail  
31 or recognizance in the same manner as a person over the  
32 age of eighteen years and shall have the protection  
33 guaranteed by article three of the constitution of West  
34 Virginia.

35 (c) The child shall have the right to be effectively  
36 represented by counsel at all stages of proceedings under  
37 the provisions of this article. If the child, parent or cus-  
38 todian executes an affidavit showing that he cannot pay  
39 for an attorney appointed by the court or referee, the

40 court shall allow the attorney so appointed an amount  
41 to be paid in the same manner as fees for appointed  
42 counsel are paid in felony cases. At any stage of the  
43 proceedings the child's counsel shall be entitled to copies  
44 of all social, investigative, medical and law-enforcement  
45 reports, unless otherwise ordered by the court upon good  
46 cause shown.

47 (d) In all proceedings under this article, the child  
48 shall be afforded a meaningful opportunity to be heard in-  
49 cluding the opportunity to testify and to present and  
50 cross-examine witnesses. In such proceedings the general  
51 public shall be excluded except persons whose presence  
52 is requested by a child or respondent and other persons  
53 the court finds to have a legitimate interest.

54 The rules of evidence shall apply including the rule  
55 against written reports based upon hearsay. All proce-  
56 dural rights afforded adults in criminal proceedings shall  
57 be applicable. Extra-judicial statements other than res  
58 gestae statements by a child made to law-enforcement  
59 officials or while the child is in custody and outside the  
60 presence of the child's counsel shall not be admissible.  
61 A transcript or recording shall be made of all transfer,  
62 adjudicatory and dispositional hearings. A waiver of any  
63 rights which are subject to waiver by a child may be  
64 accomplished only by an affirmative statement by a  
65 competent child on the record after a complete explana-  
66 tion by the court of the rights, the consequences of the  
67 waiver and an inquiry sufficient to assure the child's  
68 understanding of the consequences of the waiver. At the  
69 conclusion of any hearing, the court shall make findings  
70 of fact and conclusions of law.

71 (e) The court reporter shall furnish a transcript of  
72 the relevant proceedings to any indigent child who seeks  
73 review of any proceeding under this article if an affidavit  
74 is filed stating that the child and his parent or custodian  
75 are unable to pay therefor.

#### **§49-5-2. Continuing jurisdiction of court.**

1 As used in this article, a "child" shall include a person  
2 under the age of eighteen years or a person subject to

3 the juvenile jurisdiction of the court pursuant to this  
4 section. If a child sixteen years of age or older commits  
5 an act which if committed by an adult would be a crime  
6 and for such act is adjudged delinquent, the jurisdiction  
7 of the court may be retained until the child becomes  
8 twenty years of age with the same power over the child  
9 that the court had prior to the child's becoming an adult,  
10 and the further power to sentence the child to not more  
11 than six months in jail if the child is between the ages  
12 of eighteen and twenty years. This shall not preclude  
13 the exercise of jurisdiction in case the child, after be-  
14 coming an adult, commits a violation of law. Any child  
15 over the age of sixteen years may demand to be tried as  
16 an adult in a court of competent jurisdiction. A person  
17 subject to the provisions of this article may be brought  
18 before the circuit court by the following means and  
19 no others:

20 (a) By juvenile petition praying that the child be  
21 adjudged neglected or delinquent;

22 (b) By certification from any other court before which  
23 such child is brought charged with the commission of a  
24 crime, as provided in section one of this article; or

25 (c) By warrant issued by a judge or referee returnable  
26 to the circuit court, charging a child with an act of de-  
27 linquency.

### **§49-5-3. Noncustodial counseling of a child.**

1 Upon request for assistance from a parent or custodian,  
2 the state department or other official may, without insti-  
3 tution of proceedings under this article, refer a child  
4 alleged to be delinquent to a counselor at the state de-  
5 partment or a community mental health center or other  
6 professional counselor in the community. In the event  
7 the child refuses to respond to such reference the state  
8 department may serve a notice by first class mail or  
9 personal service of process upon the child, setting forth  
10 the facts and stating that the department will seek a  
11 noncustodial order from the court or referee directing  
12 the child to submit to counseling. The notice shall set  
13 forth the time and place for the hearing on the matter.



14 The court or referee after hearing may direct the child  
15 to participate in a noncustodial period of counseling not  
16 to exceed six months. No information obtained as the  
17 result of such counseling shall be admissible in a subse-  
18 quent proceeding under this article except a dispositional  
19 proceeding.

**§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  
2 child may be filed by a person who has knowledge of or  
3 information concerning the facts alleged. The petition  
4 shall be verified by the petitioner, shall set forth the name  
5 and address of the child's parents or custodians known  
6 to the petitioner and shall be filed in the circuit court  
7 in the county where the child may be found. The court  
8 may refer the matter to a state department worker or  
9 probation officer for preliminary inquiry to determine  
10 whether the matter can be resolved informally without  
11 the filing of a petition. The petition shall contain (1)  
12 reference to the specific statutory provisions of this  
13 chapter which give the court jurisdiction of the proceed-  
14 ing; (2) specific allegations of the conduct and facts  
15 upon which the petition is based, including the approxi-  
16 mate time and place of the alleged conduct; (3) a state-  
17 ment of the right to have counsel appointed and consult  
18 with counsel at every stage of the proceedings; and (4)  
19 the relief sought.

20 Upon the filing of the petition, the court or referee  
21 shall set a time and place for a preliminary hearing as  
22 provided in section nine of this article and may appoint  
23 counsel. A copy of the petition and summons shall be  
24 served upon the respondent child by first class mail or  
25 personal service of process. If a child does not appear  
26 in response to a summons served by mail, no further  
27 proceeding may be held until the child is served a copy  
28 of the petition and summons by personal service of  
29 process.

30 (b) The parents or custodians shall be named in the  
31 petition as respondents and shall be served with notice

32 of the proceedings in the same manner as provided in  
33 subsection (a) of this section for service upon the child  
34 and required to appear with the child at the time and  
35 place set for the proceedings. If any such respondent  
36 cannot be found after diligent search, service may be by  
37 publication as a Class II legal advertisement in com-  
38 pliance with the provisions of article three, chapter fifty-  
39 nine of this code and the publication area shall be the  
40 county. The respondent shall have thirty days after the  
41 date of publication to appear or answer.

42 (c) The answer shall have as evidence no greater  
43 weight than the petition. In default of answer a petition  
44 shall not be taken as confessed, and no party shall be  
45 required to answer the petition.

46 (d) The court or referee may, after failure to secure  
47 attendance by other means, order the issuance of a sub-  
48 poena against the person having custody and control of  
49 the child to bring the child before the court or referee.

50 (e) When any case of a child charged with the com-  
51 mission of a crime is certified to the circuit court or  
52 brought before the court by warrant pursuant to section  
53 one of this article, the court or referee shall forthwith  
54 cause the child and his parents or custodians to be served  
55 with a petition, as provided in subsections (a) and (b)  
56 of this section. In the event the child is in custody the  
57 petition shall be served within ninety-six hours of the  
58 time custody began, or the child shall be released forth-  
59 with.

60 (f) The clerk of the court shall promptly notify the  
61 state department of all proceedings under this article.

**§49-5-8. Taking a child into custody; detention hearing.**

1 (a) In proceedings instituted by the filing of a juvenile  
2 petition the circuit court may enter an order directing  
3 that a child be taken into custody only if the petition  
4 shows that grounds exist for the arrest of an adult in  
5 identical circumstances or that the health, safety and  
6 welfare of the child demand such custody. A detention  
7 hearing shall be held without delay, but in no event shall

8 the delay exceed the next succeeding judicial day, ex-  
9 cluding Saturday, and such child shall be released on  
10 recognizance to his parent or custodian unless findings  
11 are made as specified in subsection (c) of this section.

12 (b) Absent a court order, a child may be taken into  
13 custody by a law-enforcement official only if grounds  
14 exist for the arrest of an adult in identical circumstances.  
15 Upon taking a child into custody, the arresting officer  
16 shall: (1) Immediately notify the child's parent, custodian  
17 or, if the parent or custodian cannot be located, a close  
18 relative; (2) release the child into the custody of his  
19 parent or custodian unless the circumstances warrant  
20 otherwise; and (3) refer the matter to the prosecuting  
21 attorney, state department or probation officer for pro-  
22 ceedings under this article. If the circumstances do not  
23 warrant the immediate release of the child, the arresting  
24 officer shall without undue delay notify the court or  
25 referee.

26 (c) In the event that a child is delivered into the cus-  
27 tody of a sheriff or director of a detention facility, such  
28 sheriff or director shall immediately notify the court or  
29 referee. Said sheriff or director shall immediately pro-  
30 vide to every child who is delivered into his custody,  
31 a written statement explaining the child's right to a  
32 prompt detention hearing, his right to counsel including  
33 appointed counsel if he cannot afford counsel and his  
34 privilege against self-incrimination. In all cases when  
35 a child is delivered into custody, the child shall be released  
36 to his parent or custodian by the end of the next succeed-  
37 ing judicial day, excluding Saturday, after being delivered  
38 into such custody, unless the child has been placed in  
39 detention pursuant to subsection (d) of this section.

40 (d) A child in custody must immediately be taken be-  
41 fore a referee or judge of the circuit court and in no  
42 event shall a delay exceed the next succeeding judicial  
43 day, excluding Saturday. The judge or referee shall in-  
44 form the child of his right to remain silent, that any  
45 statement may be used against him and of his right to  
46 counsel, and no interrogation shall be made without the  
47 presence of a parent or counsel. If the child or his parent

48 or custodian has not retained counsel, counsel shall be  
49 appointed forthwith. The referee or judge shall hear  
50 testimony concerning the circumstances for taking the  
51 child into custody, probable cause and the possible need  
52 for detention in accordance with section two, article five-a  
53 of this chapter.

54 If there are shown to be sufficient grounds for the  
55 arrest, including probable cause for the offense, the child  
56 shall be released on recognizance to his parent or cus-  
57 todian, except that bail may be required when: (1) There  
58 is reasonable cause to believe that the child will be  
59 unavailable for court proceedings if the child is not de-  
60 tained; or (2) there is reasonable cause to believe that  
61 the child will, if not detained, commit an offense in-  
62 volving serious injury to any person. The findings and  
63 order shall be made in accordance with section three,  
64 article five-a of this chapter. If sufficient grounds for the  
65 arrest and probable cause are not shown, the child shall  
66 be released.

**§49-5-9. Preliminary hearing; counsel; improvement period.**

1 (a) Following the filing of a juvenile petition, the  
2 circuit court or referee shall hold a preliminary hearing.  
3 In the event that the child is in custody, such hearing shall  
4 be in addition to the immediate detention hearing required  
5 by section eight of this article and shall be held within  
6 seven days of the time the child is taken into custody  
7 unless good cause be shown for a continuance; and if no  
8 preliminary hearing is held within seven days of the time  
9 the child is taken into custody, the child shall be released  
10 on recognizance unless the hearing has been continued for  
11 good cause. If the judge is in another county in the circuit,  
12 the hearing may be conducted in such other county. The  
13 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) Inform the child and his parents or custodians or  
17 any other person standing in loco parentis to him of the  
18 child's right to be represented at all stages of proceedings  
19 under this article and the right to have counsel appointed

20 if neither the child nor any other of the aforementioned  
21 persons can pay for the services of counsel.

22 (2) Appoint counsel by order entered of record, if  
23 counsel has not already been retained or appointed.

24 (3) Determine after hearing if there is probable cause  
25 to believe that the child is a delinquent child. If probable  
26 cause is not found, the child shall be released and the  
27 proceedings dismissed. If probable cause is found, the time  
28 for the adjudicatory hearing shall be set. The date for the  
29 adjudicatory hearing shall be set to give the child, the  
30 child's parents and attorney at least ten days' notice, un-  
31 less notice is waived by all parties.

32 (4) In the case of a child over the age of sixteen years  
33 charged with an offense which if committed by an adult  
34 would be a felony, conduct a hearing and make a  
35 decision or recommendation whether to transfer the  
36 proceeding to a criminal proceeding in accordance with  
37 the provisions of section ten of this article. No inquiry  
38 relative to admission or denial of allegations or jury  
39 demand shall be made by the court or referee until after  
40 the determination of whether to transfer the case to a  
41 criminal proceeding. The determination by a court or  
42 referee that the circumstances do not warrant transfer  
43 may not be revoked at a later time.

44 (5) If the child is in custody, review the earlier deci-  
45 sion on custody and the amount of bail, if any. In lieu of  
46 placing the child in a detention facility, the court may  
47 place the child in the temporary custody of the state  
48 department pursuant to section sixteen, article two of this  
49 chapter or may place the child in the custody of a proba-  
50 tion officer. If the child is detained in custody, the deten-  
51 tion shall not continue longer than thirty days without  
52 commencement of the adjudicatory hearing.

53 (6) Inform the child of the right to demand a jury trial.

54 (b) The child may move to be allowed an improve-  
55 ment period for a period not to exceed one year. If the  
56 court is satisfied that the best interest of the child is  
57 likely to be served by an improvement period, the court  
58 may delay the adjudicatory hearing and allow a noncus-

59 todial improvement period upon terms calculated to serve  
60 the rehabilitative needs of the child. At the conclusion of  
61 the improvement period, the court shall dismiss the pro-  
62 ceeding if the terms have been fulfilled; otherwise, the  
63 court shall proceed to the adjudicatory stage. A motion  
64 for an improvement period shall not be construed as an  
65 admission or be used as evidence.

**\*§49-5-10. Transfer of jurisdiction.**

1 (a) Upon motion of the prosecuting attorney, the  
2 recommendation of the referee or upon its own motion,  
3 the court may at the time specified in section nine of this  
4 article transfer to a criminal proceeding the case of a child  
5 who is alleged to have committed, on or after his sixteenth  
6 birthday, an offense which, if committed by an adult, would  
7 be a felony if there is clear and convincing proof that: (1)  
8 The offense allegedly committed by the child is one of vio-  
9 lence or evidences conduct which constitutes a substantial  
10 danger to the public; and (2) there are no reasonable pros-  
11 pects for rehabilitating the child through resources avail-  
12 able to the court under this article. With reference to such  
13 rehabilitation prospects the court shall consider the child's  
14 mental and physical condition, maturity, emotional atti-  
15 tude, home or family environment, school experience and  
16 the like. The burden of proof of such determination shall  
17 rest on the petitioner.

18 Such motion shall state the grounds for seeking the  
19 transfer from a juvenile proceeding to a criminal pro-  
20 ceeding and the consequences of such transfer and shall  
21 be served upon the child, his parents or custodians and  
22 the child's counsel not less than seventy-two hours before  
23 the preliminary hearing. If the child's counsel is ap-  
24 pointed at the preliminary hearing, the court or referee  
25 shall continue the hearing for at least five days to allow  
26 counsel to prepare for the transfer hearing unless counsel  
27 indicates that he is prepared to proceed. Testimony of  
28 a child at a transfer hearing shall not be admissible in a

\* This section was also amended and reenacted by Section 49-5-10, Chapter 82, of these acts and the section was again amended and reenacted by H. B. 114, First Extraordinary Session, 1977.

29 criminal proceeding or at the adjudicatory hearing under  
30 this article.

31 (b) Counsel for the child cannot waive the hearing  
32 on transfer on behalf of the child. Failure to object to  
33 the transfer shall not constitute a waiver.

34 (c) If the court transfers the case to a criminal pro-  
35 ceeding, the court's findings of fact and conclusions of  
36 law shall be incorporated within the order. The child  
37 shall have the right to appeal to the supreme court of  
38 appeals from this order.

#### §49-5-11. Adjudication.

1 At the outset of an adjudicatory hearing, the court shall  
2 inquire of the child whether he wishes to admit or deny the  
3 allegations in the petition.

4 (a) If the respondent child admits the allegations of the  
5 petition, the court shall consider the admission to be proof  
6 of the allegations if the court finds (1) the respondent fully  
7 understands all his rights under this article, (2) the  
8 respondent voluntarily, intelligently and knowingly ad-  
9 mits all facts requisite for an adjudication and (3) the  
10 respondent in his admission has not set forth facts which  
11 constitute a defense to the allegations. A plea of admis-  
12 sion shall not be construed as a waiver of a defective  
13 petition or defective notice.

14 (b) If the respondent child denies the allegations,  
15 the court shall dispose of all pretrial motions and the court  
16 or jury shall proceed to hear evidence.

17 (c) If the allegations in the petition are admitted or  
18 are sustained by proof beyond a reasonable doubt, the  
19 court shall schedule the matter for disposition; otherwise  
20 the petition shall be dismissed and the child discharged  
21 from custody. Findings of fact and conclusions of law  
22 addressed to all allegations in the petition shall be in-  
23 corporated into the order of the court.

#### §49-5-13. Disposition; appeal.

1 (a) In aid of disposition, the juvenile probation officer  
2 or state department worker assigned to the court shall,  
3 upon request of the court, make an investigation of the

4 environment of the child and the alternative dispositions  
5 possible. The court, upon its own motion, or upon request  
6 of counsel, may order a psychological examination of the  
7 child. The report of such examination and other investi-  
8 gative and social reports shall not be made available to the  
9 court until the dispositional stage. Unless waived, copies  
10 of the report shall be provided to counsel for the peti-  
11 tioner and the child no later than seventy-two hours prior  
12 to the dispositional hearing.

13 (b) Following the adjudication, the court shall con-  
14 duct the dispositional proceeding, giving both the peti-  
15 tioner and the child an opportunity to be heard. In  
16 disposition the court shall not be limited to the relief  
17 sought in the petition and shall give precedence to the  
18 least restrictive of the following alternatives consistent  
19 with the child's best interests:

20 (1) Dismiss the petition;

21 (2) Refer the child and the child's parent or custodian  
22 to a community agency for needed assistance and dismiss  
23 the petition;

24 (3) Upon a finding that the child is in need of extra-  
25 parental supervision (a) place the child under the su-  
26 pervision of a probation officer or other person while  
27 leaving the child in custody of his parent or custodian and  
28 (b) prescribe a program of treatment or therapy or limit  
29 the child's activities under terms which are reasonable  
30 and within the child's ability to perform;

31 (4) Upon a finding that a parent or custodian is not  
32 willing or able to take custody of the child, that a child  
33 is not willing to reside in the custody of his parent or  
34 custodian, or that a parent or custodian cannot provide the  
35 necessary supervision and care of the child, the court may  
36 place the child in temporary foster care or temporarily  
37 commit the child to the state department or a child wel-  
38 fare agency. In the event the court treats the child as a  
39 neglected child, the provisions of article six of this chap-  
40 ter shall apply;

41 (5) Upon a finding that no less restrictive alternative  
42 would accomplish the requisite rehabilitation of the child,



43 and upon an adjudication of delinquency pursuant to  
44 subdivision (1), section four, article one of this chapter,  
45 commit the child to an industrial home or correctional  
46 institution for children. All such commitments shall be  
47 for an indeterminate period not to exceed the maximum  
48 term for which an adult could have been sentenced for the  
49 same offense, with discretion as to discharge to rest with  
50 the director of the institution, who may release the child,  
51 or return him to the court for further disposition;

52 (6) After a hearing conducted under the procedures  
53 set out in subsections (c) and (d), section four, article  
54 five, chapter twenty-seven of the code, commit the child  
55 to a mental health facility. Discretion as to discharge in  
56 such a case will rest with the clinical director of the  
57 mental health facility in accordance with the child's  
58 treatment plan; the director may release a child or  
59 return him to the court for further disposition.

60 (c) The disposition of the child shall not be affected  
61 by the fact that the child demanded a trial by jury or  
62 made a plea of denial. Any dispositional order is subject  
63 to appeal to the supreme court of appeals.

64 (d) Following disposition, it shall be inquired of the  
65 respondent whether or not appeal is desired and the  
66 response transcribed; a negative response shall not be  
67 construed as a waiver. The evidence shall be transcribed  
68 as soon as practicable and made available to the child  
69 or his counsel, if the same is requested for purposes of  
70 further proceedings. A judge may grant a stay of execu-  
71 tion pending further proceedings.

#### **§49-5-14. Modification of dispositional orders.**

1 A dispositional order of the court may be modified:

2 (1) Upon the motion of the probation officer, a state  
3 department official or prosecuting attorney;

4 (2) Upon the request of the child or a child's parent  
5 or custodian who alleges a change of circumstances re-  
6 lating to disposition of the child.

7 Upon such a motion or request, the court shall conduct  
8 a review proceeding, except that if the last dispositional

9 order was within the previous six months the court may  
10 deny a request for review. Notice in writing of a review  
11 proceeding shall be given to the child, the child's parent  
12 or custodian and all counsel not less than seventy-two  
13 hours prior to the proceeding. The court shall review the  
14 performance of the child, the child's parent or custodian,  
15 the child's social worker and other persons providing as-  
16 sistance to the child or child's family. If the motion or  
17 request for review of disposition is based upon an alleged  
18 violation of a court order, the court may, within one year  
19 after the entry of the initial dispositional order, modify  
20 the dispositional order to a more restrictive alternative if  
21 it finds clear and convincing proof of substantial violation.  
22 Otherwise, the dispositional order may be modified only  
23 to one of the less restrictive alternatives set forth in  
24 section thirteen of this article. A proceeding to modify a  
25 dispositional order may not be used in circumvention of  
26 a full delinquency proceeding based upon new circum-  
27 stances or a new violation of a law or ordinance. No child  
28 shall be required to seek a modification order as provided  
29 in this section in order to exercise his right to seek re-  
30 lease by habeas corpus.

**§49-5-15. Juvenile probation officers; duties; expenses; powers.**

1 (a) The commissioner of the state department shall,  
2 with the approval of the court, designate an employee  
3 of the state department to act as a juvenile probation  
4 officer, and when required one or more employees of  
5 the state department to act as assistant to such pro-  
6 bation officer, and such employee or employees, when  
7 so assigned, shall perform their duties under the sole  
8 supervision and control of the court. There shall be at  
9 least one such juvenile probation officer assigned to each  
10 county, but a juvenile probation officer may be assigned  
11 to more than one county.

12 The foregoing provisions of this section shall not be  
13 construed as abrogating or affecting in any way the  
14 power and authority vested in any court, subject to the  
15 approval of and in accordance with the rules of the su-

16 preme court of appeals, to select, supervise and discharge  
17 its own probation officers and assistants thereto.

18 (b) The clerk of a court shall notify, if practicable,  
19 the chief probation officer of the county when a child is  
20 brought before the court or judge. When notified, or if  
21 the probation officer otherwise obtains knowledge of such  
22 fact, he or one of his assistants shall:

23 (1) Make investigation of the case;

24 (2) Be present in court or before the judge to repre-  
25 sent the interests of the child when the case is heard;

26 (3) Furnish such information and assistance as the  
27 court or judge may require;

28 (4) Take charge of the child before and after the trial,  
29 as may be directed by the court or judge.

**§49-5-16. Committing children to jail and detention facilities;  
standards.**

1 (a) A child under eighteen years of age shall not be  
2 committed to a jail or police station, except that any  
3 child over fourteen years of age who has been committed  
4 to an industrial home or correctional institution may be  
5 held in the juvenile department of a jail while awaiting  
6 transportation to the institution for a period not to exceed  
7 ninety-six hours, and a child over sixteen years of age  
8 who is charged with a crime which would be a violent  
9 felony if committed by an adult, may, upon an order of  
10 the circuit court, be housed in a juvenile detention por-  
11 tion of a county facility, but not within sight of adult  
12 prisoners. A child charged with or found to be delinquent  
13 under subdivision (3) or (4), section four, article one  
14 of this chapter, shall not be housed in a detention or  
15 other facility wherein persons are detained for criminal  
16 offenses or for delinquency involving offenses which  
17 would be crimes if committed by an adult.

18 (b) The supreme court of appeals shall prescribe  
19 written policies and procedures governing the operation  
20 of all correctional, detention and other facilities wherein  
21 juveniles may be housed. Said policies and procedures

22 shall include, but shall not be limited to, standards of  
23 cleanliness, temperature and lighting; availability of  
24 medical and dental care; provision of food, furnishings,  
25 clothing and toilet articles; supervision; procedures for  
26 enforcing rules of conduct consistent with due process  
27 of law, and visitation privileges. On and after January  
28 one, one thousand nine hundred seventy-nine, a child  
29 in custody or detention shall have, at a minimum, the  
30 following rights, and the policies prescribed shall ensure  
31 that:

32 (1) A child shall not be punished by physical force,  
33 deprivation of nutritious meals, deprivation of family  
34 visits or solitary confinement;

35 (2) A child shall have the opportunity to participate  
36 in physical exercise each day;

37 (3) Except for sleeping hours a child in a state facility  
38 shall not be locked alone in a room unless such child is  
39 out of control;

40 (4) A child shall be provided his own clothing or in-  
41 dividualized clothing which is clean, supplied by the  
42 facility, and daily access to showers;

43 (5) A child shall have constant access to writing ma-  
44 terials and may send mail without limitation, censorship  
45 or prior reading, and may receive mail without prior  
46 reading, except that mail may be opened in the child's  
47 presence, without being read, to inspect for contraband;

48 (6) A child may make and receive regular local phone  
49 calls without charge and long distance calls to his family  
50 without charge at least once a week, and receive visitors  
51 daily and on a regular basis;

52 (7) A child shall have immediate access to medical  
53 care as needed;

54 (8) A child in a juvenile detention facility or state  
55 institution shall be provided access to education includ-  
56 ing teaching, educational materials and books;

57 (9) A child shall have reasonable access to an attorney  
58 upon request; and

59 (10) A child shall be afforded a grievance procedure,  
60 including an appeal mechanism.

61 Upon admission to a jail, detention facility or institu-  
62 tion, a child shall be furnished with a copy of the rights  
63 provided him by virtue of this section and as further  
64 prescribed by rules promulgated pursuant to this section.

65 (c) The supreme court of appeals shall appoint and  
66 maintain a five-member panel, consisting of five attorneys  
67 who are willing to serve in such capacity, to visit, inspect  
68 and interview residents of all juvenile institutions, de-  
69 tention facilities and places in the state wherein juveniles  
70 may be held involuntarily, to make public reports of such  
71 reviews, and to perform such other duties as shall be  
72 prescribed by the court. The members so appointed shall  
73 serve without compensation for their time.

**§49-5-17. Expungement of records; no discrimination.**

1 (a) On the Monday following the first Tuesday of every  
2 year, the court shall orally direct the expungement of all  
3 law-enforcement files and records, including fingerprints,  
4 court files and records of government and private  
5 agencies regarding every person having juvenile records  
6 in the court with regard to whom juvenile jurisdiction has  
7 terminated. As used in this section, "expungement" means  
8 the physical destruction of files and records.

9 (b) The court, upon its own motion or upon the motion  
10 of a child or the child's parent or custodian, may at any  
11 time order the expungement of law-enforcement files and  
12 records, including fingerprints, court files and records  
13 pertaining to any juvenile proceeding which does not  
14 result in an adjudication of delinquency.

15 (c) Notice of the expungement order shall be sent to  
16 every agency which the court has reason to believe may  
17 have information concerning the files and records of the  
18 child. An agency receiving notice of the expungement  
19 order shall transmit copies of the notice to all agencies to  
20 which it has forwarded information concerning the law-  
21 enforcement files and records, including fingerprints,  
22 court files and records of the child.

23 (d) After the child's eighteenth birthday or after ter-  
24 mination of juvenile jurisdiction, whichever is later, a  
25 proceeding conducted under this chapter shall be deemed  
26 never to have occurred. The child, the child's parent or  
27 custodian, the court, law-enforcement agencies and other  
28 governmental and private agencies, in response to a re-  
29 quest for record information shall reply that a law-en-  
30 forcement record, court record or record of proceedings or  
31 arrests with respect thereto does not exist.

32 (e) No individual, firm, corporation or other entity  
33 shall, on account of a person's prior involvement in a pro-  
34 ceeding under this article, discriminate against any person  
35 in access to, terms of, or conditions of employment, hous-  
36 ing, education, credit, contractual rights or otherwise.

#### **ARTICLE 5A. JUVENILE REFEREE SYSTEM.**

##### **§49-5A-2. Investigation and release of child taken into custody; detention hearings.**

1 A child who has been arrested or who under color of  
2 law is taken into the custody of any officer or employee  
3 of the state or any political subdivision thereof shall be  
4 forthwith afforded a hearing to ascertain if such child  
5 shall be further detained. In connection with any such  
6 hearing, the provisions of article five of this chapter shall  
7 apply. It shall be the duty of the judge or referee to  
8 avoid incarceration of such child in any jail. Unless the  
9 circumstances of the case otherwise require, taking into  
10 account the welfare of the child as well as the interest  
11 of society, such child shall be released forthwith into  
12 the custody of his parent or parents, relative, custodian  
13 or other responsible adult or agency.

#### **ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

- §49-6-1. Petition to court when child believed neglected or abused; notice.
- §49-6-2. Same—Right to counsel; improvement period; hearing; transcript.
- §49-6-3. Same—Temporary custody.
- §49-6-4. Medical and mental examinations.
- §49-6-5. Disposition of neglected or abused children.
- §49-6-6. Modification of dispositional orders.
- §49-6-7. Consensual termination of parental rights.
- §49-6-8. Foster care review; annual reports to the court.

**§49-6-1. Petition to court when child believed neglected or abused; notice.**

1 (a) If the state department or a reputable person  
2 believes that a child is neglected or abused, the depart-  
3 ment or the person may present a petition setting forth  
4 the facts to the circuit court in the county in which the  
5 child resides, or to the judge of such court in vacation.  
6 The petition shall be verified by the oath of some credible  
7 person having knowledge of the facts. The peti-  
8 tion shall allege specific conduct including time and place,  
9 how such conduct comes within the statutory definition  
10 of neglect or abuse with references thereto, any supportive  
11 services provided by the state department to remedy the  
12 alleged circumstances and the relief sought. Upon filing  
13 of the petition, the court shall set a time and place for a  
14 hearing and may appoint counsel. When there is an order  
15 for temporary custody pursuant to section three of this  
16 article, such hearing shall be held within thirty days of  
17 such order, unless a continuance for a reasonable time is  
18 granted to a date certain, for good cause shown.

19 (b) The petition and notice of the hearing shall be  
20 served upon both parents and any other custodian, giving  
21 to such parents or custodian at least ten days' notice, and  
22 notice shall be given to the state department. In cases  
23 wherein personal service within West Virginia cannot be  
24 obtained after due diligence upon any parent or other  
25 custodian, a copy of the petition and notice of the hearing  
26 shall be mailed to such person by certified mail, addressee  
27 only, return receipt requested, to the last known address  
28 of such person. If said person signs the certificate, service  
29 shall be complete and said certificate shall be filed as  
30 proof of said service with the clerk of the circuit court.  
31 If service cannot be obtained by personal service or by  
32 certified mail, notice shall be by publication as a Class II  
33 legal advertisement in compliance with the provisions of  
34 article three, chapter fifty-nine of this code. A notice of  
35 hearing shall specify the time and place of the hearing,  
36 the right to counsel of the child and parents or other  
37 custodians at every stage of the proceedings and the fact  
38 that such proceedings can result in the permanent termi-

39 nation of the parental rights. Failure to object to defects  
40 in the petition and notice shall not be construed as a  
41 waiver.

42 (c) At the time of the institution of any proceeding  
43 under this article, the state department shall provide  
44 supportive services in an effort to remedy circumstances  
45 detrimental to a child.

**§49-6-2. Same—Right to counsel; improvement period; hearing;  
transcript.**

1 (a) In any proceeding under the provisions of this  
2 article, the child, his parents, his custodian or other  
3 persons standing in loco parentis to him, such persons  
4 other than the child being hereinafter referred to as  
5 other party or parties, shall have the right to be repre-  
6 sented by counsel at every stage of the proceedings and  
7 shall be informed by the court of their right to be so  
8 represented and that if they cannot pay for the services  
9 of counsel, that counsel will be appointed. If the child  
10 or other parties have not retained counsel and the child  
11 and other parties cannot pay for the services of counsel,  
12 the court shall, by order entered of record, at least ten  
13 days prior to the date set for hearing, appoint an attorney  
14 or attorneys to represent the child and other party or  
15 parties and so inform the parties. Under no circumstances  
16 may the same attorney represent both the child and the  
17 other party or parties; however, if more than one child  
18 from a family is involved in the proceeding, one attorney  
19 may represent all the children. The court may allow to  
20 each attorney so appointed a fee in the same  
21 amount which appointed counsel can receive in  
22 felony cases.

23 (b) In any proceeding under this article, the parents or  
24 custodians may, prior to final hearing, move to be allowed  
25 an improvement period of three to twelve months in  
26 order to remedy the circumstances or alleged circum-  
27 stances upon which the proceeding is based. The court  
28 shall allow such an improvement period unless it finds  
29 compelling circumstances to justify a denial thereof, but  
30 may require temporary custody in the state department  
31 or another agency during the improvement period.



32 (c) In any proceeding under this article, the party  
33 or parties having custody of the child shall be afforded  
34 a meaningful opportunity to be heard, including the  
35 opportunity to testify and to present and cross-examine  
36 witnesses. The petition shall not be taken as confessed.  
37 A transcript or recording shall be made of all proceed-  
38 ings unless waived by all parties to the proceeding. The  
39 rules of evidence shall apply. Where relevant, the court  
40 shall consider the efforts of the state department to rem-  
41 edy the alleged circumstances. At the conclusion of the  
42 hearing the court shall make a determination based upon  
43 the evidence and shall make findings of fact and conclu-  
44 sions of law as to whether such child is abused or  
45 neglected, which shall be incorporated into the order of  
46 the court. The findings must be based upon conditions  
47 existing at the time of the filing of the petition and at  
48 the time of the hearing and proven by clear and convincing  
49 proof.

50 (d) Following the court's determination, it shall be  
51 inquired of the parents or custodians whether or not  
52 appeal is desired and the response transcribed. A negative  
53 response shall not be construed as a waiver. The evidence  
54 shall be transcribed and made available to the parties or  
55 their counsel as soon as practicable, if the same is re-  
56 quired for purposes of further proceedings. If an indigent  
57 person intends to pursue further proceedings, the court  
58 reporter shall furnish a transcript of the hearing without  
59 cost to the indigent person, if an affidavit is filed stating  
60 that he cannot pay therefor.

### §49-6-3. Same—Temporary custody.

1 (a) Upon the filing of a petition, the court may order  
2 that the child be delivered for not more than ten days  
3 into the custody of the state department or a responsible  
4 relative, pending a preliminary hearing, if it finds that:  
5 (1) There exists imminent danger to the physical well-  
6 being of the child, and (2) there are no reasonably avail-  
7 able alternatives to removal of the child, including, but  
8 not limited to, the provision of medical, psychiatric, psy-  
9 chological or homemaking services in the child's present  
10 custody. The initial order directing such custody shall

11 contain an order appointing counsel and scheduling the  
12 preliminary hearing, and upon its service shall require  
13 the immediate transfer of custody of such child to the  
14 state department or a responsible relative.

15 (b) Whether or not the court orders immediate trans-  
16 fer of custody as provided in subsection (a) of this sec-  
17 tion, if the facts alleged in the petition demonstrate to  
18 the court that there exists imminent danger to the child,  
19 the court may schedule a preliminary hearing giving the  
20 respondents at least five days' actual notice. If the court  
21 finds at the preliminary hearing that there are no alter-  
22 natives less drastic than removal of the child and that a  
23 hearing on the petition cannot be scheduled in the interim  
24 period, the court may order that the child be delivered  
25 into the temporary custody of the state department or  
26 an appropriate person or agency for a period not exceeding  
27 thirty days: *Provided*, That if the court grants an improve-  
28 ment period as provided in subsection (b), section two  
29 of this article, the thirty-day limit upon temporary  
30 custody may be waived.

#### **§49-6-4. Medical and mental examinations.**

1 At any time during proceedings under this article the  
2 court may, upon its own motion or upon motion of the  
3 child or other parties, order the child or other parties  
4 to be examined by a physician, psychologist or psychia-  
5 trist, and may require testimony from such medical  
6 expert, subject to cross-examination and the rules of  
7 evidence: *Provided*, That the court shall not terminate  
8 parental or custodial rights of a party solely because  
9 the party refuses to submit to the examination, nor  
10 shall the court hold such party in contempt for refusing  
11 to submit to an examination. The physician, psychologist  
12 or psychiatrist shall be allowed to testify as to the con-  
13 clusions reached from hospital, medical, psychological or  
14 laboratory records provided the same are produced at  
15 the hearing. The court by order shall provide for the  
16 payment of all such expert witnesses. If the child, parent  
17 or custodian is indigent, such witnesses shall be com-  
18 pensated out of the treasury of the state, upon certificate

19 of the court wherein the case is pending. No evidence  
20 acquired as a result of any such examination of the parent  
21 or any other person having custody of the child may  
22 be used against such person in any subsequent criminal  
23 proceedings against such person.

**§49-6-5. Disposition of neglected or abused children.**

1 (a) Following a determination pursuant to section two  
2 of this article, the court may request from the state de-  
3 partment information about the history, physical condi-  
4 tion and present situation of the child. The court shall  
5 forthwith proceed to disposition giving both the petitioner  
6 and respondents an opportunity to be heard. The court  
7 shall give precedence to dispositions in the following  
8 sequence:

- 9 (1) Dismiss the petition;
- 10 (2) Refer the child and the child's parent or custodian  
11 to a community agency for needed assistance and dismiss  
12 the petition;
- 13 (3) Return the child to his own home under super-  
14 vision of the state department;
- 15 (4) Order terms of supervision calculated to assist  
16 the child and the child's parent or custodian which pre-  
17 scribe the manner of supervision and care of the child  
18 and which are within the ability of the parent or custo-  
19 dian to perform;
- 20 (5) Upon a finding that the parents or custodians are  
21 presently unwilling or unable to provide adequately  
22 for the child's needs, commit the child temporarily to  
23 the custody of the state department, a licensed private  
24 child welfare agency or a suitable person who may be  
25 appointed guardian by the court;
- 26 (6) Upon a finding that there is no reasonable likeli-  
27 hood that the conditions of neglect or abuse can be sub-  
28 stantially corrected in the near future, and when neces-  
29 sary for the welfare of the child, terminate the parental  
30 or custodial rights and responsibilities and commit the  
31 child to the permanent guardianship of the state depart-

32 ment or a licensed child welfare agency. Notwithstanding  
33 any other provisions of this article, the permanent paren-  
34 tal rights shall not be terminated if a child fourteen years  
35 of age or older or otherwise of an age of discretion as  
36 determined by the court, objects to such termination. No  
37 adoption of a child shall take place until all proceedings  
38 for termination of parental rights under this article and  
39 appeals thereof are final.

40 (b) As used in this section, "no reasonable likeli-  
41 hood that conditions of neglect or abuse can be sub-  
42 stantially corrected" shall mean that: (1) The parent  
43 or parents have habitually abused or are addicted to in-  
44 toxicating liquors, narcotics or other dangerous drugs  
45 to the extent that proper parenting ability has been  
46 seriously impaired and the parent has not responded to  
47 or followed through with recommended and appropriate  
48 treatment which could have improved the capacity for  
49 adequate parental functioning; (2) the parent or parents  
50 have willfully refused or are presently unwilling to co-  
51 operate in the development of a reasonable foster care  
52 plan designed to lead to the child's return to the parent  
53 or parents; (3) the parent or parents have not responded  
54 to or followed through with reasonable rehabilitative  
55 efforts of social, medical, mental health or other rehabili-  
56 tative agencies designed to reduce or prevent the neglect  
57 or abuse of the child, as evidenced by the continuation  
58 of substantial or repeated acts of neglect or abuse after  
59 the provision of such services; (4) the parent or parents  
60 have abandoned the child; or (5) the parent or parents  
61 have repeatedly or seriously physically abused the child.

62 (c) The court may as an alternative disposition allow  
63 to the parents or custodians an improvement period not  
64 to exceed twelve months. During this period the parental  
65 rights shall not be permanently terminated and the court  
66 shall require the parent to rectify the conditions upon  
67 which the determination was based. The court may order  
68 the child to be placed with the parents, a relative, the  
69 state department or other appropriate placement during  
70 the period. At the end of the period the court shall hold

71 a hearing to determine whether the conditions have been  
72 adequately improved, and at the conclusion of such hear-  
73 ing, shall make a further dispositional order in accor-  
74 dance with this section.

**§49-6-6. Modification of dispositional orders.**

1 Upon motion of a child, a child's parent or custodian  
2 or the state department alleging a change of circumstances  
3 requiring a different disposition, the court shall conduct  
4 a hearing pursuant to section two of this article and may  
5 modify a dispositional order: *Provided*, That a disposi-  
6 tional order pursuant to subdivision (6), subsection (a)  
7 of section five shall not be modified after the child has  
8 been adopted. Adequate and timely notice of any motion  
9 for modification shall be given to the child's counsel, coun-  
10 sel for the child's parent or custodian and to the state  
11 department.

**§49-6-7. Consensual termination of parental rights.**

1 An agreement of a natural parent in termination of  
2 parental rights shall be valid if made by a duly acknowl-  
3 edged writing, and entered into under circumstances  
4 free from duress and fraud.

**§49-6-8. Foster care review; annual reports to the court.**

1 (a) If, twenty months after receipt of physical or  
2 legal custody of a child, the state department has not placed  
3 a child in permanent foster care or an adoptive home or  
4 placed the child with a natural parent, the state depart-  
5 ment shall file with the court a petition stating the child's  
6 situation, the efforts that have been made to place the  
7 child in a permanent situation, the present foster care  
8 arrangements and the plan for pursuing permanent ar-  
9 rangements. "Permanent foster care" shall mean a writ-  
10 ten arrangement with an adult or adults following a six-  
11 month trial period whereby the state department places  
12 the care, custody and control of a child until the child's  
13 emancipation with such adult or adults. The court may  
14 schedule a hearing in chambers, giving notice and the  
15 right to be present to: The child, if twelve years of age  
16 or older; the child's parents; the child's foster parents; and

17 such other persons as the court may in its discretion  
 18 direct. At the conclusion of the proceeding the court shall  
 19 in accordance with the best interests of the child enter  
 20 an appropriate order of disposition. The court shall  
 21 possess continuing jurisdiction over cases reviewed under  
 22 this section for so long as a child remains in temporary  
 23 foster care or, when a child is returned to his natural  
 24 parents subject to conditions imposed by the court, for  
 25 so long as the conditions are effective. If the child  
 26 remains in the physical or legal custody of the state  
 27 department, the state department shall file a supple-  
 28 mentary petition with the court within eighteen months  
 29 and every eighteen months thereafter until the child is  
 30 placed in an adoptive home or permanent foster care or  
 31 returned to his parents.

32 (b) The state department shall annually report to the  
 33 court the current status of the placements of children in  
 34 permanent care and custody of the state department who  
 35 have not been adopted.

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED  
 OR NEGLECTED.**

- §49-6A-1. Purpose.
- §49-6A-2. Persons mandated to report suspected abuse and neglect.
- §49-6A-3. Mandatory reporting to medical examiner or coroner; post-mortem investigation.
- §49-6A-4. Photographs and X rays.
- §49-6A-5. Reporting procedures.
- §49-6A-6. Immunity from liability.
- §49-6A-7. Abrogation of privileged communications.
- §49-6A-8. Failure to report; penalty.
- §49-6A-9. Establishment of child protective services; general duties and powers; cooperation of other state agencies.
- §49-6A-10. Educational programs.

**§49-6A-1. Purpose.**

1 It is the purpose of this article, through the complete  
 2 reporting of child abuse and neglect, to protect the best  
 3 interests of the child, to offer protective services in order  
 4 to prevent any further harm to the child or any other  
 5 children living in the home, to stabilize the home en-  
 6 vironment, to preserve family life whenever possible and  
 7 to encourage cooperation among the states in dealing  
 8 with the problems of child abuse and neglect.

**§49-6A-2. Persons mandated to report suspected abuse and neglect.**

1 When any medical, dental or mental health professional,  
2 christian science practitioner, religious healer, school-  
3 teacher or other school personnel, social service worker,  
4 child care or foster care worker, peace officer or law-  
5 enforcement official has reasonable cause to suspect that  
6 a child is neglected or abused or observes the child being  
7 subjected to conditions that are likely to result in abuse  
8 or neglect, such person shall immediately report the cir-  
9 cumstances or cause a report to be made to the state  
10 department child protective service: *Provided*, That any  
11 person required to report under this article who is a  
12 member of the staff of a public or private institution,  
13 school, facility or agency shall immediately notify the  
14 person in charge of such institution, school, facility or  
15 agency or a designated agent thereof, who shall report or  
16 cause a report to be made. However, nothing in this  
17 article is intended to prevent individuals from reporting  
18 on their own behalf.

19 In addition to those persons and officials specifically  
20 required to report situations involving suspected abuse or  
21 neglect of children, any other person may make a report  
22 if such person has reasonable cause to suspect that a child  
23 has been abused or neglected in a home or institution or  
24 observes the child being subjected to conditions or cir-  
25 cumstances that would reasonably result in abuse or ne-  
26 glect.

**§49-6A-3. Mandatory reporting to medical examiner or coroner; post-mortem investigation.**

1 Any person or official who is required under section two  
2 of this article to report cases of suspected child abuse or  
3 neglect and who has reasonable cause to suspect that a  
4 child has died as a result of child abuse or neglect, shall  
5 report that fact to the appropriate medical examiner or  
6 coroner. Upon the receipt of such a report, the medical  
7 examiner or coroner shall cause an investigation to be  
8 made and report his findings to the police, the appropriate

9 prosecuting attorney, the local child protective service  
10 agency and, if the institution making a report is a hospital,  
11 to the hospital.

**§49-6A-4. Photographs and X Rays.**

1 Any person required to report cases of children sus-  
2 pected of being abused and neglected may take or cause  
3 to be taken, at public expense, photographs of the areas of  
4 trauma visible on a child and, if medically indicated,  
5 cause to be performed radiological examinations of the  
6 child. Any photographs or X rays taken shall be sent to  
7 the appropriate child protective service as soon as pos-  
8 sible.

**§49-6A-5. Reporting procedures.**

1 Reports of child neglect or abuse pursuant to this  
2 article shall be made immediately by telephone to the  
3 local state department child protective service agency  
4 and shall be followed by a written report within forty-  
5 eight hours if so requested by the receiving agency. The  
6 state department may establish and maintain a twenty-  
7 four hour, seven-day-a-week toll-free telephone number  
8 to receive such calls reporting suspected or known child  
9 abuse or neglect.

10 A copy of any report of serious injury shall be  
11 made available immediately to the appropriate law-en-  
12 forcement agency, the prosecuting attorney or the coroner  
13 or medical examiner's office. All reports under this article  
14 shall be confidential, and unless there are pending pro-  
15 ceedings with regard thereto, shall be destroyed two years  
16 following their preparation. Reports of known or sus-  
17 pected institutional child abuse or neglect shall be made  
18 and received as all other reports made pursuant to this  
19 article.

**§49-6A-6. Immunity from liability.**

1 Any person, official or institution participating in good  
2 faith in any act permitted or required by this article  
3 shall be immune from any civil or criminal liability that  
4 otherwise might result by reason of such actions.



**§49-6A-7. Abrogation of privileged communications.**

1 The privileged quality of communications between  
2 husband and wife and between any professional person  
3 and his patient or his client, except that between attorney  
4 and client, is hereby abrogated in situations involving  
5 suspected or known child abuse or neglect.

**§49-6A-8. Failure to report; penalty.**

1 Any person, official or institution required by this article  
2 to report a case involving a child known or suspected to  
3 be abused or neglected, who knowingly fails to do so or  
4 knowingly prevents another person acting reasonably  
5 from doing so, shall be guilty of a misdemeanor, and,  
6 upon conviction thereof, shall be confined in the county  
7 jail not more than ten days or fined not more than one  
8 hundred dollars, or both.

**§49-6A-9. Establishment of child protective services; general duties and powers; cooperation of other state agencies.**

1 The state department shall establish or designate in  
2 every county a local child protective service to perform  
3 the duties and functions set forth in this article.

4 Except in cases involving institutional abuse or cases  
5 in which police investigation also appears appropriate,  
6 the child protective service shall be the sole public agency  
7 responsible for receiving, investigating or arranging for  
8 investigation and coordinating the investigation of all  
9 reports of child abuse or neglect. In accordance with the  
10 local plan for child protective services, it shall provide  
11 protective services to prevent further abuse or neglect  
12 of children and provide for or arrange for and coordinate  
13 and monitor the provision of those services necessary to  
14 ensure the safety of children. The local child protective  
15 service shall be organized to maximize the continuity  
16 of responsibility, care and service of individual workers  
17 for individual children and families.

18 Each local child protective service shall:

19 (1) Receive or arrange for the receipt of all reports  
20 of children known or suspected to be abused or neglected  
21 on a twenty-four hour, seven-day-a-week basis;

22 (2) Provide or arrange for emergency children's ser-  
23 vices to be available at all times; and

24 (3) Within twenty-four hours of notification of sus-  
25 pected child abuse or neglect, commence or cause to be  
26 commenced a thorough investigation of the report and  
27 the child's environment.

28 In those cases in which the local child protective service  
29 determines that the best interests of the child require  
30 court action, the local child protective service shall initi-  
31 ate the appropriate legal proceeding.

32 The local child protective service shall be responsible  
33 for providing, directing or coordinating the appropriate  
34 and timely delivery of services to any child suspected  
35 or known to be abused or neglected, including services  
36 to the child's family and those responsible for the child's  
37 care.

38 To carry out the purposes of this article, all depart-  
39 ments, boards, bureaus and other agencies of the state  
40 or any of its political subdivisions and all agencies pro-  
41 viding services under the local child protective service  
42 plan, shall, upon request, provide to the local child pro-  
43 tective service such assistance and information as will  
44 enable it to fulfill its responsibilities.

#### **§49-6A-10. Educational programs.**

1 Within available funding and as appropriate, the state  
2 department shall conduct educational programs with the  
3 staff of the state department, persons required to report,  
4 and the general public in order to encourage maximum  
5 reporting of child abuse and neglect, and to improve  
6 communication, cooperation and coordination among all  
7 agencies involved in the identification, prevention and  
8 treatment of the abuse and neglect of children.

#### **ARTICLE 7. GENERAL PROVISIONS.**

§49-7-1. Confidentiality of records.

§49-7-6. Enforcement of order for support from wages.

§49-7-27. Emancipation.

#### **§49-7-1. Confidentiality of records.**

1 All records of the state department, the court and its

2 officials, law-enforcement agencies and other agencies or  
3 facilities concerning a child as defined in this chapter shall  
4 be kept confidential and shall not be released: *Provided*,  
5 That such records, except adoption records and records  
6 disclosing the identity of a complainant of child abuse or  
7 neglect, shall be made available (1) where authorized  
8 by this chapter; (2) to the child, parent, or the attorney  
9 of the child or parent, whether or not in connection with  
10 judicial proceedings; (3) with the written consent of the  
11 child or of someone authorized to act in the child's behalf;  
12 or (4) pursuant to subpoena or order of a court of record:  
13 *Provided, however*, That a subpoena for such records  
14 may be quashed if the court determines that disclosure  
15 is not for a bona fide purpose and compromises the con-  
16 fidentiality intended by this section. The official court  
17 file pertaining to the person who is the subject of a  
18 neglect, abuse or delinquency proceeding shall be open  
19 for inspection only to the child, the child's parent or cus-  
20 todian, their counsel and other parties to the proceedings  
21 before the court: *Provided further*, That the court may,  
22 by order, open juvenile court files to inspection by mem-  
23 bers of the news media or persons doing research, on the  
24 condition that information which would identify the child  
25 or family involved in the proceeding shall not be divulged.  
26 Otherwise, no records shall be released. No record or  
27 information shall be transmitted to any federal or state  
28 agency except as specifically provided herein.

29 Except in juvenile proceedings which are transferred  
30 to criminal proceedings, law-enforcement records and  
31 files concerning a child shall be kept separate from the  
32 records and files of adults and not included within the  
33 court files. Law-enforcement records and files concerning  
34 a child shall be open to inspection by the prosecutor,  
35 probation officer, state department, the child, the child's  
36 parent or custodian, the child's counsel and to other law-  
37 enforcement agencies when the information is relevant  
38 to a specific investigation regarding that child by that  
39 agency.

40 Any person who violates this section shall be liable for

41 damages in the amount of three hundred dollars or actual  
42 damages, whichever is greater.

**§49-7-6. Enforcement of order for support from wages.**

1 If a person ordered to pay for the support, maintenance  
2 and education of a child pursuant to a proceeding under  
3 chapter forty-eight or forty-nine of this code is employed  
4 for wages, salary or commission, the court or judge may  
5 order that the sum to be paid by him shall be paid to  
6 the guardian, institution, organization or person having  
7 custody of such child, out of such wages, salary or com-  
8 mission, and that he shall execute an assignment thereof  
9 pro tanto. The court or judge may also order the person  
10 to report to the court or judge, from time to time, his  
11 place of employment and the amount earned by him.  
12 Upon his failure to obey the order of the court or judge,  
13 after proper notice and hearing, he may be punished  
14 as for contempt of court.

**§49-7-27. Emancipation.**

1 A child over the age of sixteen may petition a court  
2 to be declared emancipated. The parents or custodians  
3 shall be made respondents and, in addition to personal  
4 service thereon, there shall be publication as a Class II  
5 legal advertisement in compliance with the provisions of  
6 article three, chapter fifty-nine of this code. Upon a  
7 showing that such child can provide for his physical and  
8 financial well-being and has the ability to make decisions  
9 for himself, the court may for good cause shown declare  
10 the child emancipated. The child shall thereafter have  
11 full capacity to contract in his own right and the parents  
12 or custodians shall have no right to the custody and con-  
13 trol of such child or duty to provide the child with care  
14 and financial support. A child over the age of sixteen  
15 years who marries shall be emancipated by operation of  
16 law. An emancipated child shall have all of the privileges,  
17 rights and duties of an adult, including the right of con-  
18 tract, except that such child shall remain a child as de-  
19 fined for the purposes of articles five and five-a of this  
20 chapter.

## CHAPTER 66

(Com. Sub. for H. B. 1691—By Mr. Sattes)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to private and public child welfare agencies; procedure to terminate rights of natural father prior to adoption proceeding; petition; notice; service of process; grounds for termination; and hearing.

*Be it enacted by the Legislature of West Virginia:*

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

### Chapter

48. Domestic Relations.

49. Child Welfare.

### CHAPTER 48. DOMESTIC RELATIONS.

#### ARTICLE 4. ADOPTION.

##### §48-4-6. Revocation of adoption.

1 (a) A parent or guardian of a legitimate child, or the  
2 mother or determined father or guardian of an illegitimate  
3 child who did not consent to the adoption of such child, any  
4 parent including the determined father of an illegitimate  
5 child entitled to notice as provided in subdivision (1), sub-  
6 section (b), section one of this article who was not served  
7 with notice as provided in said subdivision (1), or any father of  
8 an illegitimate child entitled to notice as provided in sub-  
9 section (b), section one, article three of chapter forty-nine,  
10 who was not served with notice as provided in said sub-  
11 section (b), may, at any time within one year after learning  
12 of or having reasonable opportunity to learn of the adoption,

13 apply by petition to the court in which the adoption was  
14 granted, praying that the adoption be vacated. The court to  
15 which such application is made shall fix a date and time for a  
16 hearing, shall cause notice thereof to be given to the person  
17 or persons or agency who were permitted to adopt such  
18 minor, and, at the time so fixed, shall hear the petitioner and  
19 all parties interested, and may vacate or affirm the adoption  
20 in its discretion. Any party interested may appeal to the  
21 supreme court of appeals from the decision of the court in the  
22 matter, as in other civil cases.

23 (b) When any minor has been adopted, he may, within one  
24 year after becoming of age, sign, seal and acknowledge before  
25 proper authority, in the county in which the order of adoption  
26 was made, a dissent from such adoption, and file such instru-  
27 ment of dissent in the office of the clerk of the court which  
28 granted said adoption and the clerk of the county commission  
29 of such county, and such clerks shall record and index the  
30 same. Upon the filing of such instrument of dissent the  
31 adoption shall be vacated.

## CHAPTER 49. CHILD WELFARE.

### ARTICLE 3. CHILD WELFARE AGENCIES.

#### §49-3-1. Consent by agency or department to adoption of child; statement of relinquishment by parent; petition to ter- minate father's rights.

1 (a) Whenever a child welfare agency licensed to place  
2 children for adoption or the state department of welfare shall  
3 have been given the permanent care, custody and guardianship  
4 of any child and the rights of the parents of such child shall  
5 have been terminated by order of a court of competent juris-  
6 diction or by a legally executed relinquishment of parental  
7 rights, the child welfare agency or department of welfare may  
8 consent to the adoption of such child pursuant to the statutes  
9 regulating adoption proceedings. The parents or the surviving  
10 parent of a legitimate child or the mother and the determined  
11 father of an illegitimate child or the survivor may relinquish  
12 the child to a child welfare agency licensed to place children  
13 for adoption, or to the department of welfare, by a written  
14 statement acknowledged as deeds are required to be acknowl-

15 edged by law: *Provided*, That if either of the parents of such  
16 child is under eighteen years of age, such relinquishment shall  
17 not be valid unless and until the same shall have been approved  
18 in writing by a judge of a court having jurisdiction of adoption  
19 proceedings in the county in which such parent may reside or  
20 in which such relinquishment is made. Notwithstanding any  
21 other provision in this article, no minor parent or parents shall  
22 be required to go before any court in order to execute a consent  
23 to the adoption of his, her, or their child by an individual  
24 or individuals.

25 (b) Whenever the mother of an illegitimate child has execut-  
26 ed a relinquishment pursuant to this section, and the natural  
27 father has not executed a relinquishment, the child wel-  
28 fare agency or state department of welfare may, by veri-  
29 fied petition, seek to have said father's rights terminated  
30 based upon the grounds of nonsupport of said child,  
31 abandonment, desertion, or neglect of said child, or that  
32 said father is unfit to have custody of said child.

33 Upon the filing of the verified petition, the court shall set a  
34 hearing on said petition. A copy of the petition and notice of  
35 the date, time and place of the hearing on said petition shall be  
36 personally served on said father at least twenty days prior to the  
37 date set for the hearing; and if after due diligence personal  
38 service cannot be obtained, or if the father resides outside the  
39 state, the copy of the petition and the notice of the hearing shall  
40 be sent by certified mail, return receipt requested, to the last  
41 known address of said father. If the father cannot be actually  
42 notified, as provided in this section, the hearing for termination  
43 of parental rights may proceed and, upon proper proof, an  
44 order may be entered terminating the father's parental rights,  
45 subject to revocation by the determined father as provided in  
46 section six, article four, chapter forty-eight of this code.

47 A petition under this section may be instituted in the  
48 county where the child resides or where the child is living.

49 If the court finds that the said father is guilty of the alle-  
50 gations set forth in the petition, the court shall enter an order  
51 terminating said father's rights and shall award the full care,  
52 custody and control of said child to the petitioner.

## CHAPTER 67

(S. B. 346—Originating in the Senate Committee on the Judiciary)

[Passed March 11, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and twelve, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the court of claims; providing for the appointment of a deputy clerk of the court of claims; and granting the judges of the court of claims the authority to sit individually.

*Be it enacted by the Legislature of West Virginia:*

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

### ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-5. Court clerk and other personnel.

§14-2-12. General powers of the court.

#### §14-2-5. Court clerk and other personnel.

1 The court shall have the authority to appoint a clerk  
2 and a deputy clerk. The salary of the clerk and the  
3 deputy clerk shall be fixed by the joint committee on  
4 government and finance, and shall be paid out of the  
5 regular appropriation for the court. The clerk shall  
6 have custody of all records and proceedings of the court,  
7 shall attend meetings and hearings of the court, shall  
8 administer oaths and affirmations, and shall issue all  
9 official summonses, subpoenas, orders, statements and  
10 awards. The deputy clerk shall act in the place and  
11 stead of the clerk in the clerk's absence.

12 The joint committee on government and finance may  
13 employ other persons whose services shall be necessary  
14 to the orderly transaction of the business of the court,  
15 and fix their compensation.



**§14-2-12. General powers of the court.**

1 The court shall, in accordance with this article, con-  
2 sider claims which, but for the constitutional immunity  
3 of the state from suit, or for some statutory restrictions,  
4 inhibitions or limitations, could be maintained in the  
5 regular courts of the state. No liability shall be imposed  
6 upon the state or any state agency by a determination  
7 of the court of claims approving a claim and recom-  
8 mending an award, unless the claim is (1) made under  
9 an existing appropriation, in accordance with section  
10 nineteen of this article, or (2) a claim under a special  
11 appropriation, as provided in section twenty of this ar-  
12 ticle. The court shall consider claims in accordance with  
13 the provisions of this article.

14 Except as is otherwise provided in this article, a claim  
15 shall be instituted by the filing of notice with the clerk.  
16 In accordance with rules promulgated by the court, each  
17 claim shall be considered by the court as a whole, or  
18 by a judge sitting individually, and if, after consideration,  
19 the court finds that a claim is just and proper, it shall  
20 so determine and shall file with the clerk a brief state-  
21 ment of its reasons. A claim so filed shall be an approved  
22 claim. The court shall also determine the amount that  
23 should be paid to the claimant, and shall itemize this  
24 amount as an award, with the reasons therefor, in its  
25 statement filed with the clerk. In determining the amount  
26 of a claim, interest shall not be allowed unless the claim  
27 is based upon a contract which specifically provides for  
28 the payment of interest.

## CHAPTER 68

(S. B. 590—By Mr. Hanlon and Mr. Minkla)

[Passed April 7, 1977; 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 department of public institutions; board of regents; department of public safety; adjutant general; department of mental health; department of highways; workmen's compensation fund; department of mines; board of vocational education, division of vocational rehabilitation; and the department of commerce, 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  
3 concerning various claims against the state and agencies  
4 thereof, and in respect to each of the following claims the  
5 Legislature adopts those findings of fact as its own, and  
6 hereby declares it to be the moral obligation of the state  
7 to pay each such claim in the amount specified below,  
8 and directs the auditor to issue warrants for the payment  
9 thereof out of any fund appropriated and available for  
10 the purpose.

11 (a) Claims against the Department of Public Institu-  
12 tions:

13 (To be paid from General Revenue Fund)

14	(1) Randy R. Adams .....	\$ 73.15
15	(2) Louis E. Gilbert .....	375.63
16	(3) John Gough .....	982.70
17	(4) Lacy Gwinn .....	477.27
18	(5) Beecher D. Hamons .....	135.85
19	(6) William E. Hefner .....	252.06
20	(7) Edward L. Hill .....	125.40
21	(8) Robert L. Hill .....	39.54
22	(9) Robert Miller .....	296.55
23	(10) Carl Mitchell .....	828.72
24	(11) Clyde Moats .....	227.35
25	(12) William Mullins .....	621.36
26	(13) North-Central Dairy Herd	
27	Improvement Association, Inc. ....	82.04

28	(14) Ralston Purina Company	620.96
29	(15) Charles Reynolds .....	212.52
30	(16) Homer Reynolds .....	291.60
31	(17) Ronald Robinson .....	271.70
32	(18) Southern States Morgantown	
33	Cooperative, Inc. ....	7,425.98
34	(19) Melvin Stemple .....	683.36
35	(20) Harold Sybolt	33.00
36	(21) Tri-State Builders Hardware, Inc. ....	131.40
37	(22) Charles Wilson .....	222.41
38	(b) Claims against the Board of Regents:	
39	(To be paid from General Revenue Fund)	
40	(1) Marvin E. DeBoer .....	1,605.00
41	(2) Elizabeth Ann Hedges, Executrix of the	
42	Estate of A. Bruce Hedges, deceased .....	8,756.00
43	(3) Deborah Ann Landes .....	3,144.65
44	(c) Claims against the Department of Public Safety:	
45	(To be paid from General Revenue Fund)	
46	(1) Montgomery General Hospital .....	2,898.59
47	(d) Claims against the Adjutant General:	
48	(To be paid from General Revenue Fund)	
49	(1) Stonewall Casualty Company,	
50	subrogee of Lloyd Fox .....	894.00
51	(2) Louis Tabit, father and	
52	next friend of Mary Janet Tabit.....	12,150.00
53	(3) Louis Tabit .....	2,204.89
54	(e) Claims against the Department of Mental Health:	
55	(To be paid from General Revenue Fund)	
56	(1) Janice M. Neal .....	52.48
57	(f) Claims against the Department of Highways:	
58	(To be paid from State Road Fund)	
59	(1) Chester Murphy .....	350.00
60	(2) The Potomac Edison Company .....	93.41
61	(3) Harold L. Pittsenbarger .....	149.35
62	(4) Florence I. Stephy .....	1,281.53
63	(5) Lois Mullins .....	300.00
64	(6) James P. Foster, d/b/a	
65	Western Virginia Demolition Company....	499.00
66	(7) Grover A. Harmon .....	12,039.52

67	(8) Ralph Wilson .....	3,000.00
68	(9) National Engineering & Contracting Co.....	5,059.01
69	(10) Ernest L. White and Florence White .....	2,500.00
70	(11) Betty H. Dunlap .....	750.00
71	(12) Black Rock Contracting, Inc. ....	30,759.09
72	(13) State Farm Mutual Automobile Insurance	
73	Co., subrogee of Monroe Hamon .....	289.69
74	(14) Verla R. Anderson .....	15.45
75	(15) The Chesapeake and Potomac	
76	Telephone Co. of W. Va. ....	11,039.69
77	(16) James D. Linville .....	306.00
78	(17) Larry McConaha .....	31.93
79	(18) State Farm Fire & Casualty Company,	
80	subrogee of Edgar & Bessie Damewood ...	1,200.00
81	(19) Robert B. Dorsey .....	89.55
82	(20) Chloe Thompson .....	174.10
83	(21) Spencer Toppings .....	710.00
84	(22) Raymond Peak .....	9,000.00
85	(23) Liberty Mutual Insurance Company,	
86	subrogee of Charles C. Simpson .....	1,775.00
87	(24) Aetna Casualty & Surety Co.,	
88	subrogee for Jimmy L. McKinney.....	989.55
89	(25) Charles C. Simpson .....	125.00
90	(26) The American Road Insurance Company,	
91	subrogee of Shellie Morgan, Jr.....	199.26
92	(27) Lane S. Bohrer and Barbara S. Bohrer ....	9,750.00
93	(28) Richard L. Mason and Jeanne Mason .....	9,750.00
94	(29) W. E. Durig and Minnie Durig .....	28,000.00
95	(30) Kenneth L. Block and Patricia A. Block ...	2,500.00
96	(31) Virginia F. Asbury .....	89.26
97	(32) Nelson Gilbert Casto	
98	and Patricia Joyce Casto .....	15,000.00
99	(33) Robert England .....	1,000.00
100	(34) Twila Jean Giles .....	107.84
101	(35) Ina M. Hamrick .....	1,800.00
102	(36) Helen M. Kelly .....	6,000.00
103	(37) Lang Brothers, Inc. ....	27,458.16
104	(38) Romeo G. Perkins	
105	and Shelva Jean Perkins .....	3,500.00
106	(39) Alan MacKenzie Roberts .....	80.70
107	(40) Mike Romeo .....	190.00

108	(41) Fred E. Sloane, Jr.	
109	and Minnie Arlene Sloane .....	194.22
110	(42) Christine Ambrosone Smith .....	16,000.00
111	(43) Wilmer W. Teets	
112	and Sharon J. Teets .....	9,216.51
113	(44) William N. Williams .....	1,128.66
114	(45) Robert Woodley .....	55.00
115	(46) Jesse Wray .....	542.00
116	(47) Marie Yanasy .....	79.25
117	(48) Paul W. Sowards .....	11,000.00
118	(49) Gail Sowards .....	250.00
119	(50) Paul W. Sowards, as father and	
120	next friend of Christina Gail Sowards .....	500.00
121	(51) Paul Sowards, as father and	
122	next friend of Christopher Sowards .....	250.00
123	(52) Larry G. Conley and Bonita E. Conley.....	278.52
124	(g) Claims against the Workmen's Compensation Fund:	
125	(To be paid from Workmen's Compensation Fund)	
126	(1) Peck Brogan Building & Remodeling.....	14,695.00
127	(h) Claims against the Department of Mines:	
128	(To be paid from General Revenue Fund)	
129	(1) Ralph Underwood, Jr. ....	1,754.35
130	(i) Claims against the Board of Vocational Education,	
131	Division of Vocational Rehabilitation;	
132	(To be paid from General Revenue Fund)	
133	(1) Gambro, Inc. ....	536.40
134	(j) Claims against the Department of Commerce:	
135	(To be paid from General Revenue Fund)	
136	(1) Warner P. Simpson Co. ....	406.18
137	Total of all claims .....	\$290,954.34

138 The Legislature finds that the above moral obligations  
139 and the appropriation made in satisfaction thereof shall  
140 be the full compensation for all claimants, and that prior  
141 to the payments to any claimant provided for in this bill,  
142 the court of claims shall receive a release from said  
143 claimant releasing any and all claims for moral obliga-  
144 tions arising from the matters considered by the Legis-  
145 lature in the finding of the moral obligations and the

146 making of the appropriations for said claimant. The court  
147 of claims shall deliver all releases obtained from claim-  
148 ants to the department against which the claim was  
149 allowed.

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## CHAPTER 69

(S. B. 572—By Mr. Hinkle and Mr. Hanlon)

[Passed April 9, 1977; 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 department of public institutions and the department of mental health to be moral obligations of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact  
2 that the state has received the benefit of the commodities  
3 and services rendered by certain claimants herein and  
4 has considered claims against the state, the department  
5 of public institutions and the department of mental  
6 health, agencies thereof, which have arisen due to over-  
7 expenditures of departmental appropriations by officers  
8 of such state spending units, such claims having been  
9 previously considered by the court of claims which also  
10 found that the state has received the benefit of the com-  
11 modities and services rendered by each claimant, but  
12 were denied by the court of claims on the purely statu-  
13 tory grounds that to allow such claims would be con-  
14 doning illegal acts contrary to the laws of the state. The  
15 Legislature, pursuant to its findings of fact and also by  
16 the adoption of the findings of fact by the court of claims

17 as its own, and, while not condoning such illegal acts,  
 18 hereby declares it to be the moral obligation of the state  
 19 to pay each such claim in the amount specified below,  
 20 and directs the auditor to issue warrants upon receipt  
 21 of a properly executed requisition supported by an item-  
 22 ized invoice, statement or other satisfactory document  
 23 as required by section ten, article three, chapter twelve  
 24 of the code of West Virginia, one thousand nine hundred  
 25 thirty-one, as amended, for the payment thereof out of  
 26 any fund appropriated and available for the purpose.

27 (a) Claims against the department of public  
 28 institutions:

29 (To be paid from General Revenue Fund)

30	(1) Exxon Company, U.S.A. ....	\$ 514.75
31	(2) Reynolds Memorial Hospital .....	\$ 8,742.00
32	(3) Standard Exterminating .....	\$ 476.00
33	(4) Ohio Valley Drug Company .....	\$ 656.58
34	(5) Wheeling Electric Company .....	\$ 4,281.21

35 (b) Claims against the department of mental  
 36 health:

37 (To be paid from General Revenue Fund)

38	(1) St. Joseph's Hospital .....	\$ 7,946.02
39	Total .....	\$22,616.56

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## CHAPTER 70

(Com. Sub. for S. B. 570—Mr. Brotherton, Mr. President)

[Passed April 8, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to repeal section thirteen, article two, chapter forty-nine; to repeal section nine, article two and section thirty, article three, chapter twenty-eight; to amend and reenact sections one, three and eleven, article one; to amend and reenact section nine, article four, all of chapter twenty-

five; to amend and reenact sections one, two and three, article one, chapter twenty-six; and to further amend chapter twenty-six by adding thereto a new article, designated article eleven; to amend article five, chapter twenty-eight by adding thereto two new sections, designated sections twenty-seven-b and twenty-eight; and to amend and reenact sections one, two, three, four, five, six, six-a and seven, article thirteen, chapter sixty-two, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the abolition of the office of commissioner of public institutions; creating the department and commissioner of corrections; transferring certain institutions to the department of health; providing for the appointment of officers and employees by the commissioner of corrections; transferring certain institutions to the department of welfare; providing for revocation of parole of child offender.

*Be it enacted by the Legislature of West Virginia:*

That section thirteen, article two, chapter forty-nine be repealed; that section nine, article two and section thirty, article three, chapter twenty-eight be repealed; that sections one, three and eleven, article one; section nine, article four, all of chapter twenty-five be amended and reenacted; that sections one, two and three, article one, chapter twenty-six be amended and reenacted; and that chapter twenty-six be further amended by adding thereto a new article, designated article eleven; that article five, chapter twenty-eight be amended by adding thereto two new sections, designated sections twenty-seven-b and twenty-eight; that sections one, two, three, four, five, six, six-a and seven, article thirteen, chapter sixty-two be amended and reenacted, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

**Chapter**

- 25. Department of Corrections.**
- 26. State Benevolent Institutions.**
- 28. State Correctional and Penal Institutions.**
- 62. Criminal Procedure.**



**CHAPTER 25. DEPARTMENT OF CORRECTIONS.****Article**

1. **Organization and Institutions.**
4. **Centers for Housing Youthful Law Offenders.**

**ARTICLE 1. ORGANIZATION AND INSTITUTIONS.**

- §25-1-1. Office of commissioner of public institutions abolished; department and commissioner of corrections established; qualifications, oath and bond.
- §25-1-3. Institutions managed by commissioner of corrections; certain institutions transferred to department of health and welfare and state board of health; establishment of work and study release units; civil service coverage.
- §25-1-11. Officers and employees of corrections institutions.

**§25-1-1. Office of commissioner of public institutions abolished; department and commissioner of corrections established; qualifications, oath and bond.**

1 The office of state commissioner of public institutions  
2 is hereby abolished, and, except as otherwise provided  
3 in this chapter, its powers and authority are transferred  
4 to the department of corrections which is hereby estab-  
5 lished. Whenever in this code reference is made to the  
6 state commissioner of public institutions, it shall be con-  
7 strued to mean the department of corrections.

8 The executive and administrative head of the depart-  
9 ment of corrections shall be a commissioner who shall  
10 be appointed, dismissed and paid in accordance with the  
11 provisions of section two-a, article seven, chapter six of  
12 this code.

13 The commissioner shall take and subscribe to the oath  
14 prescribed by the constitution for public officials and shall  
15 execute an official bond in a penalty of fifteen thousand  
16 dollars, conditioned as required by law. Premiums on  
17 such bond shall be paid from appropriations made for  
18 the commissioner's office. Such bond shall be approved  
19 as to form by the attorney general and as to sufficiency  
20 by the governor and, when fully executed and approved,  
21 shall be filed in the office of the secretary of state.

22 Nothing herein contained shall be construed so as to  
23 give the commissioner of corrections any authority in  
24 the administration, management or control of mental in-  
25 stitutions, heretofore transferred to the department of

26 mental health by an act of the Legislature, regular ses-  
27 sion, one thousand nine hundred fifty-seven.

**§25-1-3. Institutions managed by commissioner of corrections;  
certain institutions transferred to department of  
health and welfare and state board of health;  
establishment of work and study release units;  
civil service coverage.**

1 The commissioner of corrections shall manage, direct,  
2 control and govern the following penal or correctional  
3 institutions and any others placed under his jurisdiction  
4 or control:

- 5 West Virginia Penitentiary at Moundsville;
- 6 West Virginia State Prison for Women at Pence Springs;
- 7 West Virginia Medium Security Prison at Huttonsville;
- 8 West Virginia Industrial Home for Girls at Salem;
- 9 West Virginia Industrial Home for Boys at Grafton;
- 10 Davis Center (formerly the West Virginia Forestry  
11 Camp for Boys at Davis);
- 12 Leckie Center (formerly the West Virginia Forestry  
13 Camp for Boys at Leckie); and
- 14 Anthony Center (formerly the Anthony Correctional  
15 Center).

16 Jurisdiction of and title to the West Virginia Children's  
17 Home at Elkins are hereby transferred to the department  
18 of welfare, which shall be the custodian of all deeds and  
19 other muniments of title to such property and shall cause  
20 such as are susceptible of recordation to be recorded in  
21 the proper offices. Notwithstanding any provision of this  
22 code to the contrary, the West Virginia Children's Home  
23 shall be managed and controlled by a superintendent ap-  
24 pointed by the commissioner of welfare.

25 Jurisdiction of and title to the following institutions  
26 formerly under the jurisdiction of the commissioner of  
27 public institutions are hereby transferred to and vested  
28 in the state board of health or its successor: The Andrew  
29 S. Rowan Memorial Home, Denmar State Hospital, Hope-  
30 mont State Hospital, Pinecrest Hospital, Fairmont Emer-  
31 gency Hospital and Welch Emergency Hospital. The

32 board of health or its successor shall be the custodian of  
33 all deeds and other muniments of title to such property  
34 and shall cause such as are susceptible of recordation to  
35 be recorded in the proper offices. Notwithstanding any  
36 provision of this code to the contrary, each such institu-  
37 tion shall be managed and controlled by a superintendent  
38 appointed by the director of health.

39 The commissioner is hereby authorized to establish  
40 work and study release units as extensions and subsidiaries  
41 of those state institutions under his control and authority.  
42 Such work and study release units may be coeducational  
43 and shall be managed, directed and controlled as provided  
44 for in this article.

45 Any person employed by the office of public institutions  
46 who on the effective date of this article is a classified civil  
47 service employee shall, within the limits contained in  
48 section two, article six, chapter twenty-nine of this code,  
49 remain in the civil service system as a covered em-  
50 ployee.

**§25-1-11. Officers and employees of corrections institutions.**

1 The commissioner of corrections shall appoint a  
2 superintendent or warden for each institution under the  
3 control of the department of corrections.

4 The superintendent or warden of each institution shall  
5 have the power to appoint all assistants and employees  
6 required for the management of the institution in his  
7 charge; but the number of such assistants and employees,  
8 and their compensation, shall first be approved by the  
9 state commissioner of corrections. It shall be the duty of  
10 the commissioner of corrections to investigate any  
11 complaint made against the superintendent of any insti-  
12 tution, and also against any other officer or employee  
13 thereof, if the same has not been investigated.

14 The commissioner shall fix the salaries or compensation  
15 of the officers and employees of the institutions named  
16 in section three of this article. The salaries or compensa-  
17 tion of all officers and employees of the several insti-  
18 tutions under the control of the commissioner of correc-  
19 tions shall be paid monthly, to include the last day of

20 each month. The superintendents and other officers and  
 21 employees of each of such institutions shall be paid  
 22 salaries commensurate with their duties and responsi-  
 23 bilities, but no meals or other emoluments of any kind  
 24 shall be furnished, given or paid to such superintendents,  
 25 officers or employees as all or part of their salary; how-  
 26 ever, such superintendents, officers and employees may  
 27 be provided meals, household facilities and supplies as  
 28 may be necessary for them to perform their duties, if  
 29 such superintendents, officers and employees agree to  
 30 pay the reasonable cost thereof as established by the  
 31 commissioner of corrections.

**ARTICLE 4. CENTERS FOR HOUSING YOUTHFUL LAW OFFENDERS.**

**§25-4-9. Wages of offenders.**

1 The West Virginia commissioner of corrections may  
 2 provide for the payment of wages to the offenders  
 3 assigned to centers for the work they perform, which  
 4 wages shall not exceed two dollars for each day's work  
 5 performed, the sums earned to be paid to the parents  
 6 or dependents of the offender or to the offender himself,  
 7 in such manner and in such proportions as the superin-  
 8 tendent directs.

**CHAPTER 26. STATE BENEVOLENT INSTITUTIONS.**

**Article**

**1. Children's Home.**

**11. State Extended Care and Emergency Facilities.**

**ARTICLE 1. CHILDREN'S HOME.**

§26-1-1. West Virginia Children's Home.

§26-1-2. Admission of children.

§26-1-3. Superintendent; establishment of rules.

**§26-1-1. West Virginia Children's Home.**

1 The West Virginia Children's Home, heretofore  
 2 established, shall be continued, and shall be managed,  
 3 directed and controlled by the state department of wel-  
 4 fare.

**§26-1-2. Admission of children.**

1 The state department of welfare shall admit to the  
 2 home children surrendered or otherwise placed in its

3 custody in any manner authorized by law; and the chil-  
4 dren shall be kept, maintained and educated therein  
5 until they can be placed by legal authority in suitable  
6 homes elsewhere.

**§26-1-3. Superintendent; establishment of rules.**

1 The commissioner of welfare shall appoint a superin-  
2 tendent of the children's home. The superintendent shall  
3 establish and post rules for operation of the home, sub-  
4 ject to approval of the commissioner.

**ARTICLE 11. STATE EXTENDED CARE AND EMERGENCY FACILI-  
TIES.**

§26-11-1. Management by director of health.

§26-11-2. Supervision of each facility by administrator; qualifications of admin-  
istrator; clinical director.

§26-11-3. Guidelines for admissions; fees for the maintenance of persons.

§26-11-4. Transfer of residents; rules and regulations for maintenance of  
patients.

**§26-11-1. Management by director of health.**

1 The director of health or its successor shall manage,  
2 direct, control and govern the Andrew S. Rowan Me-  
3 morial Home, Denmark Hospital, heretofore established and  
4 known as Denmark State Hospital, Hopemont Hospital,  
5 heretofore known as Hopemont State Hospital, Pine-  
6 crest Hospital, Fairmont Emergency Hospital, and Welch  
7 Emergency Hospital and such other state health care  
8 facilities as are or may hereafter be created by law.

9 The director shall designate the functions of each  
10 facility and prescribe guidelines for the admission of  
11 persons thereto, pursuant to rules and regulations  
12 promulgated by the board of health, and shall supervise  
13 the business, personnel and clinical responsibilities of  
14 each facility: *Provided*, That in prescribing admission  
15 guidelines, precedence shall be given to persons unable  
16 to pay therefor.

**§26-11-2. Supervision of each facility by administrator; quali-  
fications of administrator; clinical director.**

1 Each facility provided for in this article shall have a  
2 chief executive officer denominated an "administrator".  
3 The administrator shall be the person having the fiscal  
4 responsibility of the facility and the authority to manage

5 and administer the financial, business and personnel  
6 affairs of the facility under the direction of the director  
7 of health. The administrator shall be a college graduate  
8 and have a minimum of two years experience in either  
9 hospital administration, health services administration or  
10 business administration with broad knowledge of  
11 accounting and personnel practices as related to the ren-  
12 dering of health and health-related services. Such  
13 qualifications shall not apply to any person who has served  
14 in the capacity of a superintendent for at least six con-  
15 secutive months on the effective date of this section.

16 Each facility provided for in this article, with the  
17 exception of the Andrew S. Rowan Memorial Home, shall  
18 have a clinical director who shall have the responsibility  
19 for decisions involving clinical and medical treatment of  
20 patients and who shall be a physician having a license to  
21 practice medicine in the state of West Virginia.

**§26-11-3. Guidelines for admissions; fees for the maintenance  
of persons.**

1 Pursuant to rules and regulations promulgated by the  
2 board of health, the director of health shall prescribe  
3 guidelines for the admission of persons to the facilities  
4 provided for in this article, with precedence given to  
5 those persons who are unable to pay. The director may  
6 establish and charge reasonable fees for the maintenance  
7 of persons residing in such facilities who are able to pay.

**§26-11-4. Transfer of residents; rules and regulations for main-  
tenance of patients.**

1 The director of health may transfer residents between  
2 the facilities administered by the board of health or its  
3 successor, except as otherwise provided by article five,  
4 chapter twenty-seven of this code. The director may ac-  
5 cept transfer of residents from correctional institutions,  
6 subject to the provisions of chapter twenty-eight of this  
7 code.

8 The director shall prescribe guidelines pursuant to  
9 rules and regulations promulgated by the board of health  
10 as are necessary and proper to regulate the proper main-  
11 tenance of patients in the facilities administered by the  
12 board of health or its successor.

## CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

### ARTICLE 5. THE PENITENTIARY.

§28-5-27b. Labor of convicts.

§28-5-28. Commutation for good conduct.

#### §28-5-27b. Labor of convicts.

1 Prisoners shall be kept at work under such rules and  
2 regulations as may be adopted by the warden with the  
3 approval of the commissioner: *Provided*, That no pris-  
4 oner shall be required to work more than eight hours  
5 per day except on work necessary and essential to effi-  
6 cient organization of convict forces, which time shall  
7 include the time spent in going to and returning from  
8 their work, but not to include the intermission for  
9 dinner, which shall not be less than one hour, and in  
10 cases of such necessary and essential overtime work,  
11 said prisoners shall receive a deduction of time equal  
12 to double the hours so worked from the term or terms  
13 of sentence. This "necessary and essential work" shall  
14 be subject to the recommendation by the warden to the  
15 commissioner and shall become effective only after ap-  
16 proval by the commissioner. Sunday work on jobs ap-  
17 proved by the commissioner shall be considered as "nec-  
18 essary and essential work." A strict accounting of credit  
19 records of all overtime earned shall be kept by the  
20 person in charge of the unit on which the work is per-  
21 formed and completed; a report shall be rendered to the  
22 warden each month, who shall approve all such over-  
23 time before it is placed to the credit of the inmate.  
24 The commissioner shall have the power to designate  
25 certain fixed overtime hours which he considers suffi-  
26 cient for the efficient performance of any particular  
27 work, and no inmate shall receive any overtime at all  
28 unless it is attested by the person in charge of said in-  
29 mate, who must certify from his own knowledge that  
30 said overtime was actually earned. For each sustained  
31 charge of misconduct in violation of any rule known  
32 to the prisoner all commutation earned by such over-  
33 time work shall be subject to partial or complete for-  
34 feiture. In going to and returning from work prisoners

35 shall not be required to travel faster than a walk. No  
36 greater amount of labor shall be required of any pris-  
37 oner than his physical health and strength will reason-  
38 ably permit, nor shall any prisoner be placed at such  
39 labor as the prison physician may pronounce him un-  
40 able to perform. No prisoner upon his admission to the  
41 prison shall be assigned to any labor until first having  
42 been examined by the prison physician. Any officer or  
43 employee violating any provision of this section shall  
44 be dismissed.

**§28-5-28. Commutation for good conduct.**

1 In order to encourage prison discipline, a distinction  
2 may be made in the treatment of prisoners so as to ex-  
3 tend to all such as are orderly, industrious and obedient,  
4 comforts and privileges according to their merit. The  
5 reward to be bestowed on prisoners for good conduct  
6 shall consist of such relaxation of strict prison rules  
7 and extension of social privileges as may be consistent  
8 with proper discipline. Commutation of time for good  
9 conduct, industry and obedience shall be granted by  
10 the warden and twenty days per month deduction shall  
11 be made from the term or terms of sentences of all  
12 prisoners in class I, and ten days per month deduction  
13 shall be made from the term or terms of sentences of  
14 all prisoners in class II as hereinafter provided, when  
15 no charge of misconduct has been sustained against a  
16 prisoner. A prisoner under two or more cumulative  
17 sentences shall be allowed commutation as if they were  
18 all one sentence. For each sustained charge of miscon-  
19 duct in violation of any rule known to the prisoner,  
20 including escape or attempt to escape, any part or all  
21 of the commutation which shall have accrued in favor  
22 of the prisoner to the date of said misconduct may be  
23 forfeited and taken away by the warden upon the rec-  
24 ommendation of the classification committee or the dis-  
25 ciplinary committee which are hereinafter established  
26 unless, in case of escape, the prisoner voluntarily re-  
27 turns without expense to the state, such forfeiture shall  
28 be set aside by the warden. No overtime allowance or  
29 credits, in addition to the commutation of time herein



30 provided for good conduct, may be deducted from the  
31 term or terms of sentences with the exception that for  
32 extra meritorious conduct on the part of any prisoner,  
33 he may be recommended to the board of parole and  
34 probation and to the governor for increased commuta-  
35 tion or for a pardon or parole.

36 There is hereby established a classification committee  
37 composed of the warden, the chaplain, the director of  
38 prison industries, the prison physician and an associate  
39 warden.

40 The classification committee, as soon as practicable,  
41 shall classify all prisoners according to their industry,  
42 conduct and obedience in three classifications: Class I,  
43 Class II, Class III, and reclassify any of such prisoners  
44 from time to time as in their opinion the circumstances  
45 may require. The warden shall keep or cause to be kept  
46 a conduct record in card or ledger form and a calendar  
47 card on each inmate showing all classifications, changes  
48 of classifications and forfeitures of commutation of time  
49 and reasons therefor. As soon as practicable, the warden  
50 shall change the conduct records of prisoners now in  
51 the penitentiary to conform with said conduct record  
52 and calendar card.

53 There is hereby established a disciplinary committee  
54 composed of the warden, prison physician and the chap-  
55 lain. Should any prisoner be removed from any over-  
56 time job assignment because of misconduct, an appeal  
57 shall lie to the disciplinary committee, and in the event  
58 of an adverse decision by the disciplinary committee,  
59 the prisoner so removed by reason of misconduct shall  
60 have the right to appeal to the commissioner, whose  
61 decision shall be final.

62 When present overtime job assignments carrying more  
63 than twenty days per month credit are vacated by the  
64 present incumbent for any reason, said job assignment  
65 shall not be renewed for a credit of more than twenty  
66 days per calendar month.

**CHAPTER 62. CRIMINAL PROCEDURE.****ARTICLE 13. CORRECTIONS MANAGEMENT.**

- §62-13-1. Construction and purpose of article.
- §62-13-2. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.
- §62-13-3. Appointment and qualifications of director.
- §62-13-4. Powers and duties of commissioner or director generally; compensation and funds of inmates.
- §62-13-5. Commitments; transfers.
- §62-13-6. Compensation of director and employees fixed by commissioner; traveling and other expenses; payment of salaries, etc.
- §62-13-6a. Payment of jail fees to county commissions.
- §62-13-7. Repeal of inconsistent laws; transfer of certain functions of board of probation and parole to department of corrections.

**§62-13-1. Construction and purpose of article.**

1 This article shall be liberally construed, to the end  
2 that persons committed to institutions of the state for  
3 crime or delinquency shall be afforded individual and  
4 group treatment to reestablish their ability to live peace-  
5 ably and, consistent with the protection of the commu-  
6 nity, to release such individuals at the earliest possible  
7 date, and to establish a just, humane and efficient pro-  
8 gram, and to avoid duplication and waste of effort and  
9 money on the part of public and private agencies.

**§62-13-2. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.**

1 The commissioner of corrections shall supervise all  
2 persons released on probation and placed in the charge  
3 of a state probation and parole officer and all persons  
4 released on parole under any law of this state. The com-  
5 missioner shall have exclusive authority to revoke the  
6 parole with appropriate due process or to discharge a  
7 child from parole (as child is defined in chapter forty-  
8 nine of this code). He shall also supervise all probationers  
9 and parolees whose supervision may have been under-  
10 taken by this state by reason of any interstate compact  
11 entered into pursuant to the uniform act for out-of-state  
12 parolee supervision. The commissioner shall prescribe  
13 rules and regulations for the supervision of probationers  
14 and parolees under his supervision and control, and shall

15 succeed to all administrative and supervisory powers of  
16 the board of probation and parole and the authority of  
17 said board of probation and parole in such matters only.

18 The commissioner of corrections shall administer all  
19 other laws affecting the custody, control, treatment and  
20 employment of persons sentenced or committed to insti-  
21 tutions under the supervision of the department or affect-  
22 ing the operation and administration of institutions or  
23 functions of the department.

24 The final determination regarding the release of in-  
25 mates from penal institutions and the final determination  
26 regarding revocation of parolees from such institutions  
27 pursuant to the provisions of article twelve, chapter  
28 sixty-two of the code of West Virginia, one thousand  
29 nine hundred thirty-one, as amended, shall remain within  
30 the exclusive jurisdiction of the board of probation and  
31 parole.

**§62-13-3. Appointment and qualifications of director.**

1 To assist in the accomplishment of the purposes of this  
2 article the commissioner may appoint a director of cor-  
3 rections management who shall be duly qualified by edu-  
4 cation and experience, with a degree in sociology, psy-  
5 chology, social science or some related field, and with a  
6 minimum of three years' experience in the field of cor-  
7 rection or a related field.

**§62-13-4. Powers and duties of commissioner or director generally; compensation and funds of inmates.**

1 To accomplish the purposes of this article, the commis-  
2 sioner (or the director of corrections management if one  
3 is appointed) shall:

4 a. Exercise general supervision over the administra-  
5 tion of the institutions under the jurisdiction of the  
6 department;

7 b. Establish separate subdivisions, to be headed by  
8 deputy directors, of adult services, youth services, and  
9 other subdivisions as he deems advisable, which may be  
10 headed by the same or different deputy directors, which  
11 said deputy directors must be graduates of an accredited

12 college or university with a degree in sociology, psychol-  
13 ogy, social science or a related field;

14 c. Establish rules and regulations in writing governing  
15 all subdivisions and institutions within the department;

16 d. Establish an in-service training program for per-  
17 sonnel of the department;

18 e. Classify the institutions of the department, varying  
19 according to such factors as security features, program,  
20 age and sex of inmates, physical stature or size, character  
21 of inmates;

22 f. Establish a system of classification of inmates, through  
23 a reception and examination procedure, and in each in-  
24 stitution a classification committee and procedure for  
25 assignment of inmates within the programs of the insti-  
26 tution;

27 g. Establish, maintain and direct a varied program of  
28 education for inmates in all institutions within the  
29 department;

30 h. Supervise the treatment, custody and discipline of all  
31 inmates and the maintenance of the institutions and  
32 their industries;

33 i. Establish a system of compensation for inmates of the  
34 correctional institutions of the state who perform good and  
35 satisfactory work either within the industrial program  
36 or in the servicing and maintenance of the correctional  
37 institutions or any other institutions or camps within the  
38 state. The commissioner (or the director, with the ap-  
39 proval of the commissioner) may establish a graduated  
40 scale of compensation to be paid to inmates in accordance  
41 with their skill in industry.

42 The principal officer of any correctional institution,  
43 on request of an inmate, may expend up to one half of  
44 the money so earned by such inmate on behalf of the  
45 family of such inmate. The remainder of the money so  
46 earned, after deducting amounts expended as aforesaid,  
47 shall be accumulated to the credit of the inmate and be  
48 paid to the inmate at such times as may be prescribed  
49 by such rules and regulations. Such funds so accumulated  
50 on behalf of inmates shall be held by the principal officer

51 of each institution, under a bond approved by the at-  
52 torney general.

53 The accumulation of such total funds, not necessary  
54 for current distribution, shall be invested, with the ap-  
55 proval of the commissioner or the director (as ap-  
56 propriate), through the state sinking fund commission,  
57 in short term bonds or treasury certificates or equivalent  
58 of the United States. Bonds and certificates so purchased  
59 shall remain in the custody of the state treasurer. The  
60 earnings from investments so made shall be reported  
61 to the principal officer of each institution from time to  
62 time, as earned, and shall be credited to the respective  
63 accounts of such institutions by the sinking fund com-  
64 mission.

65 When such earnings are transferred to the respective  
66 institutions, they shall be credited by the principal of-  
67 ficer to the credit of and for the benefit of the inmates'  
68 activities account.

**§62-13-5. Commitments; transfers.**

1 All persons committed by courts of criminal and  
2 juvenile jurisdiction for custody in penal, correctional  
3 or training institutions under the jurisdiction of the com-  
4 missioner of corrections shall be committed to an appro-  
5 priate institution, but the commissioner (or the director  
6 if the commissioner so approves) shall have the authority  
7 to and may order the transfer of any person to any ap-  
8 propriate institution within the department. However,  
9 no person committed as a juvenile shall be held in any  
10 institution except one for training and care of children;  
11 and no one may be transferred to a state prison unless  
12 the crime for which such person is incarcerated was of  
13 the grade which would warrant direct commitment to the  
14 prison.

15 The commissioner (or the director if the commissioner  
16 so approves) may transfer any prisoner or inmate who  
17 is mentally disturbed and who would more appropriately  
18 be treated in an institution under the jurisdiction of the

19 department of mental health, to such department, subject  
20 to the approval of the commissioner of the department  
21 of mental health; and may transfer any prisoner or in-  
22 mate to an appropriate mental facility for specialized  
23 medical treatment.

**§62-13-6. Compensation of director and employees fixed by commissioner; traveling and other expenses; payment of salaries, etc.**

1 The commissioner of corrections shall fix the salaries  
2 of the director, deputy directors and of the other officers  
3 and employees employed pursuant to the provisions of  
4 this article. All persons employed hereunder shall re-  
5 ceive necessary traveling and other expenses. The com-  
6 pensation, salaries, expenses and appropriations provided  
7 for the director of corrections management and the em-  
8 ployees under his jurisdiction shall be paid in the same  
9 manner as are those of other state employees and agen-  
10 cies upon recommendation of the director (if any) and  
11 certification and approval of the commissioner of cor-  
12 rections.

**§62-13-6a. Payment of jail fees to county commissions.**

1 The commissioner of corrections is hereby authorized  
2 and directed to pay to the county commission of any  
3 county jail fees incurred by escapees of any West Vir-  
4 ginia center for boys, the West Virginia Industrial Home  
5 for Girls or the West Virginia Industrial School for Boys  
6 when said escapees are confined in said county jails.  
7 Said jail fee shall not exceed the sum of four dollars  
8 per diem per prisoner.

**§62-13-7. Repeal of inconsistent laws; transfer of certain functions of board of probation and parole to department of corrections.**

1 All other laws or parts of laws inconsistent with this  
2 article are hereby repealed to the extent of such incon-  
3 sistency: *Provided, however,* That nothing in this article  
4 shall be construed to affect in any way the laws relating

5 to juvenile probation. Whenever in the official code of  
6 West Virginia the words "board of probation and parole"  
7 are used and refer to specific administrative and super-  
8 visory functions and duties transferred to the department  
9 of corrections by this article, the words shall be con-  
10 strued to mean said department.

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## CHAPTER 71

(Com. Sub. for H. B. 1633—By Mrs. Neal and Mr. Shiflet)

[Passed April 2, 1977, 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 eighteen; and to amend article one, chapter seven of said code, by adding thereto a new section, designated section three-w, all relating to creating a state beautification commission; appointment of members; organization of commission; payment of expenses of commission members; employment of coordinator by commission and his compensation and powers; employment of personnel by coordinator; setting forth powers of commission; authorizing county commissions to establish county beautification councils; and setting forth duties of such councils.

*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 eighteen; and that article one, chapter seven of said code be amended by adding thereto a new section, designated section three-w, all to read as follows:

### Chapter

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

**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 18. WEST VIRGINIA BEAUTIFICATION COMMISSION.**

- §5-18-1. Commission created; purpose; appointment of members; organization; expenses.
- §5-18-2. Employment of coordinator; his compensation and powers; employment of personnel.
- §5-18-3. Commission powers.
- §5-18-4. Commission and West Virginia University school of agriculture and forestry to cooperate in carrying out purposes of article.

**§5-18-1. Commission created; purpose; appointment of members; organization; expenses.**

1 The West Virginia beautification commission is hereby  
2 created to preserve and enhance the beauty of the state  
3 by planting and nurturing native and improved flora on  
4 public property and to coordinate and provide assistance  
5 to county beautification councils in the performance of  
6 their duties as provided in section three-w, article one,  
7 chapter seven of this code. Said commission shall be a  
8 public corporation which shall be an agency of the state  
9 of West Virginia, and, as such, may sue and be sued. The  
10 commission shall consist of the commissioner of the West  
11 Virginia department of highways, the commissioner of the  
12 West Virginia department of agriculture and three additional  
13 members appointed by the governor, by and with the advice  
14 and consent of the Senate, for terms of two, four and six years,  
15 respectively. The successor of each such appointed member  
16 shall be appointed for a term of six years in the same manner  
17 the original appointments were made except that any person  
18 appointed to fill a vacancy occurring prior to the expiration  
19 of the term for which his predecessor was appointed shall be  
20 appointed only for the remainder of such term. Each board  
21 member shall serve until the appointment and qualification of  
22 his successor.



23 One of the three citizen members of the commission  
24 shall be designated by the governor to serve as the chair-  
25 person of said commission. The chairperson shall preside  
26 at meetings of the commission and may call meetings of the  
27 commission at such times and places as the chairperson deems  
28 appropriate. The chairperson shall perform such other duties  
29 and responsibilities as such commission may direct. Each mem-  
30 ber of the commission shall be reimbursed for all reasonable  
31 and necessary expenses actually incurred in the performance of  
32 his duties as a member of the commission.

**§5-18-2. Employment of coordinator; his compensation and powers;  
employment of personnel.**

1 The commission shall employ a coordinator of the commis-  
2 sion, fix his salary and instruct him regarding his duties and  
3 authority under this article. The coordinator is hereby em-  
4 powered and it shall be his duty to execute and carry out, ad-  
5 minister and enforce the provisions of this article in the manner  
6 provided herein and carry out the directions, rules and regula-  
7 tions of the commission. The coordinator may, subject to the  
8 approval of the commission, employ such personnel as may be  
9 necessary for the effective and orderly performance of the  
10 functions and services of the commission. The coordinator  
11 and other commission personnel shall be reimbursed for all  
12 reasonable and necessary expenses actually incurred in the  
13 performance of authorized commission services.

**§5-18-3. Commission powers.**

1 The powers of the commission are to:

2 (1) Evaluate and assess county beautification council  
3 policies and their impact upon aesthetic qualities of the  
4 landscape within the counties of the state and the environ-  
5 ment and make recommendations thereon;

6 (2) Promote highway beautification measures;

7 (3) Cooperate and work with federal, state and local  
8 governmental officers, units, activities and agencies in the  
9 promotion and attainment of the purposes of the commis-  
10 sion;

11 (4) Enlist the cooperation of civic and community or-  
12 ganizations, industrial and commercial organizations, labor  
13 organizations and other identifiable groups in order to develop  
14 and implement programs which further the purposes of the  
15 commission;

16 (5) Delegate to the coordinator powers necessary for the  
17 effective and orderly performance of his duties;

18 (6) For the purposes of this article, accept contributions  
19 and gifts and seek and accept aid, grants and other financial  
20 assistance from any source whatsoever;

21 (7) Expend and distribute funds and property for the  
22 functions and purposes of the commission as are appropriated  
23 for the commission by the Legislature, or which are contributed  
24 by a gift, grant or otherwise for the purposes of such com-  
25 mission. The commission may allocate and disburse aid to  
26 county beautification councils established pursuant to the  
27 provisions of section three-w, article one, chapter seven of this  
28 code, for use by the county beautification councils in accord-  
29 dance with state law and guidelines and directions prescribed  
30 for such beautification councils;

31 (8) Contract with other parties in order to effectuate the  
32 purposes of the commission;

33 (9) Conduct research in regard to flora as may be adapt-  
34 able or usable to carry out the purposes of this article and to  
35 conduct experiments in carrying out such research; and

36 (10) Seek and gather information and data necessary for  
37 the formulation of beautification policies.

**§5-18-4. Commission and West Virginia University school of agriculture and forestry to cooperate in carrying out purposes of article.**

1 The commission and the West Virginia University school  
2 of agriculture and forestry shall cooperate in all respects in  
3 carrying out the purposes of this article, and such school of  
4 agriculture and forestry shall provide direction and assistance  
5 to the commission and to county beautification councils and  
6 to the extent that plantings, seeds and other horticultural  
7 products are available, may allocate the same without cost  
8 to such commission and councils.

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3w. Authority to establish county beautification councils; organization; county commissions not obligated for debts of councils; powers and duties; expenditures of funds by councils; authority of county commissions to appropriate moneys.**

1 In addition to all other powers and duties now conferred by  
2 law upon county commissions, county commissions are hereby  
3 authorized and empowered to establish county beautification  
4 councils which shall be composed of such number of persons  
5 with such organizational requirements and limitations as the  
6 county commission creating any such council may direct.  
7 Such councils shall be deemed to be agencies of the county  
8 commissions; however, county commissions shall not be ob-  
9 ligated for any debt or obligation which may be created by  
10 such councils. The councils are empowered to employ such  
11 persons as are necessary to accomplish the undertakings as-  
12 sumed by them.

13 Each council shall be charged with the duty of improving  
14 the aesthetic qualities of the landscape within the county, and  
15 to such intent and purpose the councils may, with the approval  
16 of the commissioner of the West Virginia department of high-  
17 ways, engage in the planting, cultivation and maintenance of  
18 shrubs, trees and other plants on highway property and rights-  
19 of-way at such places and under such conditions as may be  
20 established by said commissioner.

21 County commissions may appropriate to such councils  
22 such funds as the county commissions deem appropriate.  
23 Councils may receive and expend appropriations for the pur-  
24 poses herein indicated and may, likewise, receive and expend  
25 appropriations, gifts, grants or contributions from the state of  
26 West Virginia, the federal government, or any agency of either,  
27 and from any other person, corporation or entity of whatever  
28 nature.

## CHAPTER 72

(H. B. 1426—By Mr. Goodwin and Mr. Tucker)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter seven of said code by adding thereto a new article, designated article fourteen-a, relating to bonds of county officers; providing that penalty on sheriff's bond shall be not less than one hundred thousand dollars and penalty on deputy sheriff's bond shall be not less than thirty-five thousand nor more than one hundred thousand dollars; defining deputy sheriff; relating to the general tort liability of sheriffs and certain deputy sheriffs; defining certain terms with respect thereto; requiring certain county commissions to provide for liability insurance for sheriffs and such deputies; limiting the liability of sheriffs, counties and county commissions in certain cases and defining the extent of such liability.

*Be it enacted by the Legislature of West Virginia:*

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

**Chapter**

**6. General Provisions Respecting Officers.**

**7. County Commissions and Officers.**

**CHAPTER 6. GENERAL PROVISIONS  
RESPECTING OFFICERS.**

**ARTICLE 2. OFFICIAL AND OTHER BONDS.**

**§6-2-10. Bonds of county officers.**

1 Every commissioner of a county commission and every clerk  
2 of a circuit court shall give bond with good security, to be  
3 approved by the circuit court, or the judge thereof in vacation;  
4 and every sheriff, deputy sheriff, surveyor of lands, clerk of  
5 a county commission, assessor, county superintendent of  
6 schools, notary public and magistrate shall give bond with good  
7 security, to be approved, unless otherwise provided by law,  
8 by the county commission of the county in which such officer  
9 is to act. The penalty of the bond of each commissioner of a  
10 county commission shall be not less than twenty thousand  
11 dollars and not more than two hundred thousand dollars, the  
12 amount to be fixed by the circuit court of the county, or the  
13 judge thereof in vacation, by order entered of record on the  
14 proper order books of both the county and circuit courts; of  
15 the clerk of the circuit court, not less than ten thousand nor  
16 more than fifty thousand dollars; of the sheriff, not less than  
17 one hundred thousand dollars nor more than the aggregate  
18 amount of all state, county, district, school, municipal and  
19 other moneys which will probably come into his hands during  
20 any one year of his term of office; of the deputy sheriff, not less  
21 than thirty-five thousand nor more than one hundred thousand  
22 dollars; of the surveyor of lands, not less than one thousand  
23 nor more than three thousand dollars; of the clerk of the  
24 county commission, not less than ten thousand nor more  
25 than fifty thousand dollars; of the assessor, not less than two  
26 thousand nor more than five thousand dollars; of the county  
27 superintendent of schools, not less than ten thousand nor more  
28 than fifty thousand dollars; of a notary public, not less than  
29 two hundred fifty nor more than one thousand dollars. Any  
30 public body required to pay the premiums on official bonds  
31 may provide a blanket bond policy for two or more such of-

32 ficial bonds: *Provided*, That the bond herein required to be  
 33 given by a notary public may be given before the clerk of  
 34 the county commission, in the vacation of said commission,  
 35 and approved by it at its next regular session.

36 For the purposes of this section, "deputy sheriff" shall  
 37 mean a person appointed by a sheriff as his deputy whose pri-  
 38 mary duty as such deputy is within the scope of active, general  
 39 law enforcement and as such is authorized to carry deadly wea-  
 40 pons, patrol the highways, perform police functions, make  
 41 arrests or safeguard prisoners.

## CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

### ARTICLE 14A. DEPUTY SHERIFFS' TORT LIABILITY.

§7-14A-1. Short title.

§7-14A-2. Definitions.

§7-14A-3. County commission to purchase professional liability insurance;  
 limits; additional insurance authorized; contribution from  
 deputies.

§7-14A-4. Liability of sheriff, county and county commission limited.

#### §7-14A-1. Short title.

1 This article may be cited and referred to as the "West Vir-  
 2 ginia Deputy Sheriffs' Tort Liability Act."

#### §7-14A-2. Definitions.

1 For the purpose of this article and as used in this article:

2 (a) "Deputy sheriffs" or "deputies" shall have the same  
 3 meaning as those terms are given in subdivision (2), sub-  
 4 section (a), section two, article fourteen of this chapter, and  
 5 shall, when used in this article, be limited, except when speci-  
 6 fically authorized or when the context in which used clearly re-  
 7 quires a broader or different application and meaning, to those  
 8 deputy sheriffs serving under civil service protection pursuant  
 9 to the provisions of article fourteen of this chapter.

10 (b) "County commissions" shall mean the county com-  
 11 mission, or tribunal in lieu thereof, in counties wherein a civil  
 12 service system for deputy sheriffs is required to be in effect  
 13 or wherein such system is put into effect pursuant to article  
 14 fourteen of this chapter.

15 (c) "Professional liability insurance" means an insuring  
16 agreement wherein the insurer agrees, subject to policy agree-  
17 ments, exclusions, conditions and limits, to pay all sums  
18 which the insured deputy sheriff shall or may become legally  
19 obligated to pay as damages because of bodily injury (in-  
20 cluding death) or property damages sustained by others and  
21 caused by an occurrence and arising out of such deputy sheriff's  
22 occupancy, maintenance or use of official operations or con-  
23 duct in the performance of official duties.

**§7-14A-3. County commission to purchase professional liability insurance; limits; additional insurance authorized; contribution from deputies.**

1 Effective the first day of January, one thousand nine hun-  
2 dred seventy-eight, the county commission of each county  
3 wherein the provisions of this article are applicable, shall  
4 purchase a professional liability insurance policy covering  
5 all deputy sheriffs subject to this article, which policy shall  
6 provide for minimum coverage of fifty thousand dollars for  
7 each person injured or damaged in each occurrence and one  
8 hundred thousand dollars total coverage for each occurrence.  
9 Every such policy shall be written on an occurrence basis only.  
10 Such policy shall be paid for out of the county general  
11 revenue fund. The county commission may purchase addi-  
12 tional coverage and, as to such additional coverage, may pay  
13 all or any part of the premiums as it and its sole discretion  
14 deems appropriate or, as to such additional coverage may  
15 require contributions in whole or in part from the sheriff  
16 and from the deputy sheriffs required to be covered by such  
17 insurance. Such additional insurance may not be purchased  
18 and the premiums in whole or in part paid by such deputies  
19 except with the consent of the majority of the deputies to  
20 be covered thereby.

**§7-14A-4. Liability of sheriff, county and county commission limited.**

1 Any other provision of this code or rule of law to the  
2 contrary notwithstanding, on and after the first day of Jan-  
3 uary, one thousand nine hundred seventy-eight, no sheriff  
4 shall be held jointly or severally liable on his official bond

5 or otherwise for any act or conduct of any deputies subject  
 6 to the provisions of this article committed on or after such  
 7 date, except in cases where such deputy is acting in the  
 8 presence of and under the direct, immediate and personal  
 9 supervision of such sheriff, nor shall the county commission  
 10 of a county nor the county itself be held so liable, and the  
 11 liability of such sheriff, county or county commission in such  
 12 cases shall be no greater than would be the liability of the  
 13 superintendent of the department of public safety, or such  
 14 department or the state of West Virginia under the same or  
 15 substantially similar circumstances.

## CHAPTER 73

(H. B. 1360—By Mr. Damron and Mr. Gvoyich)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deputy sheriffs; compensatory day off for required work on holidays; and prohibiting discharge of certain deputy sheriffs under certain conditions.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 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  
 2 county commission and circuit court, if any, sheriff, county  
 3 assessor and prosecuting attorney, by and with the advice  
 4 and consent of the county commission, may appoint and em-



5 ploy, to assist them in the discharge of their official duties for  
6 and during their respective terms of office, assistants, deputies  
7 and employees.

8 The county clerk, circuit clerk, joint clerk of the county  
9 commission and circuit court, if any, sheriff, county assessor  
10 and prosecuting attorney shall, prior to March second of each  
11 year, file with the county commission a detailed request for  
12 appropriations for anticipated or expected expenditures for  
13 their respective offices, including the compensation for their  
14 assistants, deputies and employees, for the ensuing fiscal year.

15 Any deputy sheriff who is required to work on a holiday as  
16 observed by county employees generally shall be compensated  
17 for such time by being given a substitute day off.

18 The county commission shall, prior to March twenty-ninth  
19 of each year by order fix the total amount of money to be  
20 expended by the county for the ensuing fiscal year, which  
21 amount shall include the compensation of county assistants,  
22 deputies and employees. Each county commission shall enter its  
23 order upon its county commission record.

24 The county clerk, circuit clerk, joint clerk of the county  
25 commission and circuit court, if any, sheriff, county assessor  
26 and prosecuting attorney shall then fix the compensation of  
27 their assistants, deputies and employees based on the total  
28 amount of money designated for expenditure by their respec-  
29 tive offices by the county commission and the amount so ex-  
30 pended shall not exceed the total expenditure designated by the  
31 county commission for each office.

32 The county officials, in fixing the individual compensation  
33 of their assistants, deputies and employees and the county  
34 commission in fixing the total amount of money to be expended  
35 by the county, shall give due consideration to the duties, re-  
36 sponsibilities and work required of the assistants, deputies and  
37 employees and their compensation shall be reasonable and  
38 proper.

39 After the county commission has fixed the total amount of  
40 money to be expended by the county for the ensuing fiscal  
41 year and after each county official has fixed the compensation  
42 of each of his assistants, deputies and employees, as provided

43 in this section, each county official shall file prior to June  
44 thirtieth, with the clerk of the county commission a budget  
45 statement for the ensuing fiscal year setting forth the name, or  
46 the position designation if then vacant, of each of his assis-  
47 tants, deputies and employees, the period of time for which  
48 each is employed, or to be employed if the position is then  
49 vacant, and his monthly or semimonthly compensation.

50 All budget statements required to be filed by this section  
51 shall be verified by an affidavit by the county official making  
52 them. Among other things contained in the affidavit shall be  
53 the statement that the amounts shown therein are the amounts  
54 actually paid or intended to be paid to the assistants, deputies  
55 and employees without rebate, and without any agreement,  
56 understanding or expectation that any part thereof shall be re-  
57 paid to him, and that, prior to the time the affidavit is made,  
58 nothing has been paid or promised him on that account, and  
59 that if he shall thereafter receive any money, or thing of value,  
60 on account thereof, he will account for and pay the same to the  
61 county. Until the statements required by this section have been  
62 filed, no allowance or payments shall be made to any county  
63 official or their assistants, deputies and employees.

64 Each county official named in this section shall have the  
65 authority to discharge any of his assistants, deputies or em-  
66 ployees by filing with the clerk of the county commission a  
67 discharge statement specifying the discharge action: *Provided*,  
68 That no deputy sheriff appointed pursuant to the provisions  
69 of article fourteen, chapter seven of this code shall be dis-  
70 charged contrary to the provisions of that article.

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## CHAPTER 74

(H. B. 1765—By Mr. Shingleton and Mr. Marasco)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen, relating to establishment of county solid waste authorities; name;

purposes; management and control of authority; appointment and terms of members; vacancies; removal of members; meetings; quorum; authority to be public corporation; powers, duties and responsibilities of authority generally; workmen's compensation coverage; severability.

*Be it enacted by the Legislature of West Virginia:*

That chapter 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 sixteen, to read as follows:

**ARTICLE 16. COUNTY SOLID WASTE AUTHORITIES.**

§7-16-1. Establishment of authorities authorized.

§7-16-2. Purposes.

§7-16-3. Management and control vested in authority; appointment and terms of members; vacancies; removal of members; meetings; quorum; compensation.

§7-16-4. Authority to be a public corporation; name; power to contract and sue; seal.

§7-16-5. Powers, duties and responsibilities of authority generally.

§7-16-6. Employees to be covered by workmen's compensation.

§7-16-7. Liberal construction of article; provisions not in derogation of other powers.

§7-16-8. Provisions severable.

**§7-16-1. Establishment of authorities authorized.**

1 The county commission of every county is hereby authorized  
 2 to create and establish a public agency to be known as a county  
 3 solid waste authority (hereinafter called the authority) to  
 4 carry out the powers and duties conferred by law upon the  
 5 county relating to disposal of solid waste, including but not  
 6 limited to, those powers authorized by sections three-e and  
 7 three-f, article one of this chapter.

**§7-16-2. Purposes.**

1 The purposes for which the authority is created are to pro-  
 2 vide for the necessary, dependable, effective and efficient col-  
 3 lection and disposal of solid waste and other hazardous waste  
 4 and to assist and cooperate with the state and local govern-  
 5 ments in achieving these purposes.

**§7-16-3. Management and control vested in authority; appointment and terms of members; vacancies; removal of members; meetings; quorum; compensation.**

1 The management and control of the authority, its property,

2 operations, business and affairs shall be lodged in an authority  
3 of seven persons who shall be known as "members of the  
4 authority," each of whom shall be appointed by the county  
5 commission for a term of three years, except that as to the first  
6 seven appointed to the first authority appointed, the term of  
7 two members shall expire on the first day of July next ensuing,  
8 the terms of the next two members shall expire on the first day  
9 of July two years thereafter, and the term of three members  
10 shall expire on the first day of July three years thereafter. Each  
11 member shall hold office until the expiration of the term for  
12 which such member is appointed or until a successor shall have  
13 been duly appointed and shall have qualified. Vacancies on the  
14 authority shall be filled by appointment of the county commis-  
15 sion for the unexpired term of the member whose office shall be  
16 vacant.

17 No member may be an elected official or employee of  
18 the county or engaged in solid waste business. Board mem-  
19 bers may be reappointed to serve additional terms. All  
20 members of the board shall be citizens of the state of West  
21 Virginia and the county.

22 The county commission may at any time remove any mem-  
23 ber of the authority by an order duly entered of record and  
24 may appoint a successor.

25 Annually the authority shall elect one of its members as  
26 chairman, another as vice chairman and appoint a secretary-  
27 treasurer, who need not be a member of the authority.

28 Four members of the authority shall constitute a quorum  
29 and the affirmative vote of a majority shall be necessary for any  
30 action taken by vote of the authority. No vacancy in the  
31 membership of the authority shall impair the rights of quorum  
32 by such vote to exercise all rights and perform all the duties  
33 of the authority. The person appointed as secretary-treasurer,  
34 including an authority member if he is so appointed, shall give  
35 bond in the sum of fifty thousand dollars.

36 Each of the seven appointed members of the authority shall  
37 receive fifty dollars for each meeting actually attended, but  
38 the total compensation paid to any member shall not exceed  
39 the aggregate sum of six hundred dollars in any fiscal year.

40 Each of the seven authority members shall also be reimbursed  
41 for all reasonable and necessary expenses actually incurred in  
42 the performance of his duties as a member of the authority.  
43 All such compensation and expenses incurred by authority  
44 members shall be payable solely from funds of the authority or  
45 from funds appropriated for such purpose by the county com-  
46 mission and no liability or obligation shall be incurred by the  
47 authority beyond the extent to which moneys are available from  
48 funds of the authority or from such appropriation.

49 The authority shall meet at least four times annually and  
50 upon the call of its chairman or upon the request in writing to  
51 the chairman of four board members.

**§7-16-4. Authority to be a public corporation; name; power to contract and sue; seal.**

1 The authority when created, and the members thereof,  
2 shall constitute and be a public corporation, the name of which  
3 shall contain the words "solid waste authority," and as such  
4 shall have perpetual succession, may contract and be con-  
5 tracted with, sue and be sued, plead and be impleaded and  
6 have and use a common seal.

**§7-16-5. Powers, duties and responsibilities of authority generally.**

1 The authority may exercise all powers necessary or  
2 appropriate to carry out and effectuate its corporate  
3 purpose. The authority may:

4 (1) Adopt, and from time to time, amend and repeal bylaws  
5 necessary and proper for the regulation of its affairs and the  
6 conduct of its business and rules and regulations to implement  
7 and make effective its powers and duties.

8 (2) Acquire, construct, reconstruct, enlarge, improve, fur-  
9 nish, equip, maintain, repair, operate, lease or rent to, or  
10 contract for operation by a governmental agency or person,  
11 solid waste disposal projects, and, adopt rules and regulations  
12 for the use of such projects.

13 (3) Make available the use or services of any solid waste  
14 disposal project to one or more persons, one or more govern-  
15 mental agencies, or any combination thereof.

16 (4) Issue solid waste disposal revenue bonds and notes and

17 solid waste disposal revenue refunding bonds payable solely  
18 from revenues of projects operated by the authority.

19 (5) Acquire by gift or purchase, hold and dispose of real  
20 and personal property in the exercise of its powers and the  
21 performance of its duties.

22 (6) Make and enter into all contracts and agreements and  
23 execute all instruments necessary or incidental to the perfor-  
24 mance of its duties and the execution of its powers.

25 (7) Employ managers, superintendents, engineers, accoun-  
26 tants, auditors and other employees, and retain or contract with  
27 consulting engineers, financial consultants, accounting experts,  
28 architects, attorneys and such other consultants and independ-  
29 ent contractors as are necessary in its judgment to carry out  
30 the provisions of this article, and fix the compensation or fees  
31 thereof.

32 (8) Receive and accept from any federal or state agency  
33 grants for or in aid of the construction of any solid waste dis-  
34 posal project or for research and development with respect to  
35 solid waste disposal projects and solid waste disposal sheds  
36 and receive and accept aid or contributions from any source  
37 of money, property, labor or other things of value, to be held,  
38 used and applied only for the purposes for which such grants  
39 and contributions are made.

40 (9) Engage in research and development with respect to  
41 solid waste disposal projects and solid waste disposal sheds.

42 (10) Purchase fire and extended coverage and liability in-  
43 surance for any solid waste disposal project and for the prin-  
44 cipal office and suboffices of the authority, insurance protect-  
45 ing the authority and its officers and employees against lia-  
46 bility, if any, for damage to property or injury to or death of  
47 persons arising from its operations and any other insurance  
48 the authority may agree to provide under any resolution autho-  
49 rizing the issuance of solid waste disposal revenue bonds or in  
50 any trust agreement securing the same.

51 (11) Charge, alter and collect rentals, fees, service charges  
52 and other charges for the use or services of any solid waste  
53 disposal project as provided in this article.

54 (12) Do all acts necessary and proper to carry out the  
55 powers expressly granted to the authority by this article and the  
56 powers conferred upon the county by sections three-e and  
57 three-f, article one of this chapter.

**§7-16-6. Employees to be covered by workmen's compensation.**

1 All employees of the authority eligible thereto shall be  
2 deemed to be within the workmen's compensation act of West  
3 Virginia and premiums on their compensation shall be paid by  
4 the authority as required by law.

**§7-16-7. Liberal construction of article; provisions not in derogation of other powers.**

1 It is the purpose of this article to encourage the proper col-  
2 lection and disposal of solid waste in a prudent and economical  
3 manner and this article shall be liberally construed as giving to  
4 the authority full and complete power reasonably required to  
5 give effect to the purposes hereof. The provisions of this  
6 article are in addition to and not in derogation of any other  
7 power and duty now conferred by law upon county commis-  
8 sions.

**§7-16-8. Provisions severable.**

1 The several sections and provisions of this article are sever-  
2 able, and if any section or provision hereof shall be held uncon-  
3 stitutional, all the remaining sections and provisions of the  
4 article shall nevertheless remain valid.

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## CHAPTER 75

(S. B. 52—By Mr. Nelson)

[Passed April 1, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the judicial circuits and creating an additional office of judge in the sixth circuit; terms of office of circuit judges;

legislative findings and declarations; election of circuit judges; terms of court; and requiring the supreme court of appeals to submit a plan rearranging the circuits.

*Be it enacted by the Legislature of West Virginia:*

That section one, 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; JUDGES.**

**§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.**

1 (a) The state shall be divided into the following judicial  
2 circuits with the following number of judges, which  
3 number shall include those judges of statutory courts of  
4 record of limited jurisdiction who became circuit court  
5 judges by virtue of the judicial reorganization amend-  
6 ment to the West Virginia constitution:

7 The counties of Brooke, Hancock and Ohio shall con-  
8 stitute the first circuit and shall have four judges; the  
9 counties of Marshall, Tyler and Wetzel shall constitute the  
10 second circuit and shall have two judges; the counties of  
11 Doddridge, Pleasants and Ritchie shall constitute the third  
12 circuit and shall have one judge; the counties of Wood and  
13 Wirt shall constitute the fourth circuit and shall have  
14 three judges; the counties of Calhoun, Jackson and Roane  
15 shall constitute the fifth circuit and shall have one judge;  
16 the county of Cabell shall constitute the sixth circuit and  
17 shall have four judges; the county of Logan shall  
18 constitute the seventh circuit and shall have two judges;  
19 the county of McDowell shall constitute the eighth circuit  
20 and shall have two judges; the county of Mercer shall  
21 constitute the ninth circuit and shall have two judges; the  
22 county of Raleigh shall constitute the tenth circuit and  
23 shall have two judges; the counties of Greenbrier, Monroe,  
24 Pocahontas and Summers shall constitute the eleventh  
25 circuit and shall have one judge; the county of Fayette  
26 shall constitute the twelfth circuit and shall have two  
27 judges; the county of Kanawha shall constitute the thir-  
28 teenth circuit and shall have seven judges; the counties of



29 Braxton, Clay, Gilmer and Webster shall constitute the  
30 fourteenth circuit and shall have two judges; the county of  
31 Harrison shall constitute the fifteenth circuit and shall  
32 have two judges; the county of Marion shall constitute the  
33 sixteenth circuit and shall have two judges; the county of  
34 Monongalia shall constitute the seventeenth circuit and  
35 shall have two judges; the county of Preston shall con-  
36 stitute the eighteenth circuit and shall have one judge;  
37 the counties of Barbour and Taylor shall constitute the  
38 nineteenth circuit and shall have one judge; the county of  
39 Randolph shall constitute the twentieth circuit and shall  
40 have one judge; the counties of Grant, Mineral and Tucker  
41 shall constitute the twenty-first circuit and shall have two  
42 judges; the counties of Hampshire, Hardy and Pendleton  
43 shall constitute the twenty-second circuit and shall have  
44 one judge; the counties of Berkeley, Jefferson and Morgan  
45 shall constitute the twenty-third circuit and shall have one  
46 judge; the county of Wayne shall constitute the twenty-  
47 fourth circuit and shall have one judge; the counties  
48 of Lincoln and Boone shall constitute the twenty-fifth  
49 circuit and shall have two judges; the counties of Lewis  
50 and Upshur shall constitute the twenty-sixth circuit and  
51 shall have one judge; the county of Wyoming shall con-  
52 stitute the twenty-seventh circuit and shall have one  
53 judge; the county of Nicholas shall constitute the twenty-  
54 eighth circuit and shall have one judge; the counties of  
55 Mason and Putnam shall constitute the twenty-ninth cir-  
56 cuit and shall have two judges; the county of Mingo shall  
57 constitute the thirtieth circuit and shall have one judge;  
58 and the counties of Berkeley, Jefferson and Morgan shall  
59 constitute the thirty-first circuit and shall have one judge.

60 (b) Except as hereinafter provided, the terms of  
61 office of all circuit court judges in office on the effective  
62 date of this section, including the terms of office of the  
63 judges of those statutory courts of record of limited  
64 jurisdiction who became circuit court judges by virtue  
65 of the judicial reorganization amendment to the West  
66 Virginia constitution, shall expire on the thirty-first day  
67 of December, one thousand nine hundred eighty-four.  
68 Thereafter, the terms of office of such circuit court judges  
69 shall be for eight years, the first commencing on the first

70 day of January, one thousand nine hundred eighty-five,  
71 and ending on the thirty-first day of December, one  
72 thousand nine hundred ninety-two. Subsequent terms  
73 of said judges shall be for eight years. The first term of  
74 office of the fourth circuit court judge of the sixth circuit  
75 created by the provisions of said subsection (a) shall  
76 commence on the first day of July, one thousand nine  
77 hundred seventy-seven, and shall end on the thirty-first  
78 day of December, one thousand nine hundred seventy-  
79 eight. The second term of office of said sixth circuit  
80 court judge shall commence on the first day of January,  
81 one thousand nine hundred seventy-nine, and shall end  
82 on the thirty-first day of December, one thousand nine  
83 hundred eighty-four. Subsequent terms of office of said  
84 sixth circuit court judge shall be for eight years.

85 (c) The Legislature hereby finds and declares that the  
86 purpose of this section is to implement the provisions of  
87 the judicial reorganization amendment to the West Vir-  
88 ginia constitution; that the terms of office of all circuit  
89 court judges, including the judges of statutory courts of  
90 record of limited jurisdiction who became circuit court  
91 judges by virtue of the judicial reorganization amend-  
92 ment to the West Virginia constitution, should expire on  
93 the same date and such judges should be elected at the  
94 same general election; that the legislative intent in pre-  
95 senting said judicial reorganization amendment to the  
96 voters of the state for ratification was that no judge of a  
97 statutory court of record of limited jurisdiction who  
98 would become a circuit court judge by virtue of said  
99 judicial reorganization amendment would have his term  
100 of office decreased by the ratification of said judicial re-  
101 organization amendment or be forced to run for reelection  
102 any sooner than he otherwise would have had to have  
103 run for reelection if said judicial reorganization amend-  
104 ment had not been ratified; and that said judicial reorga-  
105 nization amendment was ratified by the voters of the state  
106 at the same general election at which the judge of the  
107 former intermediate court of Raleigh county and the  
108 judge of the former intermediate court of Kanawha

109 county were elected. Consistent with such findings and  
110 declarations, the terms of office of the judges of the tenth  
111 and thirteenth judicial circuits who became circuit court  
112 judges by virtue of the judicial reorganization amend-  
113 ment to the West Virginia constitution, and who were,  
114 respectively, the judges of the intermediate court of  
115 Raleigh county and the intermediate court of Kanawha  
116 county, which terms commenced the first day of January,  
117 one thousand nine hundred seventy-five, shall expire on  
118 the thirty-first day of December, one thousand nine hun-  
119 dred eighty-four.

120 (d) The election of every circuit court judge, except  
121 as hereinafter provided, shall be held on the Tuesday  
122 next after the first Monday in November, one thousand  
123 nine hundred eighty-four, and every eighth year there-  
124 after. The fourth circuit court judge of the sixth circuit  
125 created by the provisions of subsection (a) of this section  
126 shall be appointed originally by the governor according  
127 to the provisions of section three, article ten, chapter  
128 three of this code. The first election of said sixth circuit  
129 court judge shall be held on the Tuesday next after the  
130 first Monday in November, one thousand nine hundred  
131 seventy-eight. The election for the third term of said  
132 sixth circuit court judge shall be held on the Tuesday  
133 next after the first Monday in November, one thousand  
134 nine hundred eighty-four, and every eighth year there-  
135 after.

136 (e) The terms of court of the circuit judges of the  
137 counties aforesaid shall commence and be held as here-  
138 inafter provided.

139 (f) On or before January one, one thousand nine  
140 hundred eighty-three, the supreme court of appeals of  
141 West Virginia shall submit to the Legislature a plan for  
142 rearranging the circuits created in subsection (a) of this  
143 section.

## CHAPTER 76

(H. B. 1672—By Mr. Shiflet and Mrs. Neal)

[Passed April 5, 1977; in effect January 1, 1978.—Approved by the Governor.]

AN ACT to amend and reenact section one-k, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terms of court of the eleventh judicial circuit.

*Be it enacted by the Legislature of West Virginia:*

That section one-k, 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 AND CIRCUIT JUDGES.

#### §51-2-1k. Eleventh circuit.

1 For the county of Pocahontas, on the third Tuesday in  
2 March, the second Tuesday in June and the fourth Tuesday  
3 in October.

4 For the county of Greenbrier, on the first Tuesday in  
5 April, the fourth Tuesday in July and the second Tuesday  
6 in November.

7 For the county of Monroe, on the first Tuesday in February,  
8 the fourth Tuesday in May and the first Tuesday in October.

9 For the county of Summers, on the second Tuesday in  
10 January, the first Tuesday in May and the first Tuesday in  
11 September.

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## CHAPTER 77

(H. B. 957—By Mrs. Spears and Mrs. Pitsenberger)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-t, article two, chapter fifty-one of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to the terms of court of the twentieth circuit.

*Be it enacted by the Legislature of West Virginia:*

That section one-t, 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 AND CIRCUIT JUDGES.**

**§51-2-1t. Twentieth circuit.**

- 1 For the county of Randolph, on the third Tuesday in
- 2 September, January and April.

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## CHAPTER 78

(H. B. 1618—By Mr. Mowery)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to credit unions; and increasing security for loans to members.

*Be it enacted by the Legislature of West Virginia:*

That section nineteen, article ten, 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 10. CREDIT UNIONS.**

**§31-10-19. Security for loans to members; installment crop loans; loan to member of credit committee; illegal to loan to nonmembers; repayment of loans.**

- 1 As provided in section eighteen of this article, a credit
- 2 union may loan to its members for such purposes and upon
- 3 such security and terms as the bylaws shall provide and the
- 4 credit committee shall approve; but security must be taken for
- 5 any loan in excess of two thousand five hundred dollars.

6 Endorsements of a note or assignment of shares in any  
7 credit union shall be deemed security within the meaning of  
8 this section.

9 A member who needs funds with which to purchase neces-  
10 sary supplies for growing crops may receive a loan in fixed  
11 monthly installments instead of in one sum.

12 If any member of the credit committee makes application  
13 to borrow money from a credit union or becomes surety for  
14 any other member whose application for a loan is under  
15 consideration, the supervisory committee shall appoint a  
16 substitute to act on the credit committee in the place of such  
17 member, during the consideration of such application. All  
18 officers and members of any committee in any way knowingly  
19 permitting or participating in making a loan of funds of a  
20 credit union to a nonmember thereof shall be guilty of a  
21 misdemeanor. The credit union shall have the right to re-  
22 cover the amount of any such illegal loan from the borrower  
23 or from any officer or member of a committee who knowingly  
24 committed or participated in the making thereof, or from all  
25 of them jointly.

26 A borrower may repay the whole or any part of his loan  
27 on any day on which the office of the corporation is open  
28 for the transaction of business.

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## CHAPTER 79

(Com. Sub. for H. B. 921—By Mr. Karras and Mr. Tomblin)

[Passed March 30, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to distinguishing between grand and petit larceny; penalties.

*Be it enacted by the Legislature of West Virginia:*

That section thirteen, article three, chapter sixty-one of the

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

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-13. Grand and petit larceny distinguished; penalties.**

1 (a) If any person commits simple larceny of goods or  
2 chattels of the value of two hundred dollars or more, such  
3 person shall be guilty of a felony, designated grand larceny,  
4 and, upon conviction thereof, shall be confined in a peniten-  
5 tiary not less than one nor more than ten years, or, in the  
6 discretion of the court, be confined in the county jail not  
7 more than one year and shall be fined not more than five  
8 hundred dollars.

9 (b) If any person commits simple larceny of goods or  
10 chattels of the value of less than two hundred dollars, such  
11 person shall be guilty of a misdemeanor, designated petit  
12 larceny, and, upon conviction thereof, shall be confined in  
13 the county jail for a term not to exceed one year or fined not  
14 to exceed five hundred dollars, or both, in the discretion of the  
15 court.

## CHAPTER 80

(H. B. 1729—Originating in the House Committee on the Judiciary)

[Passed April 7, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto eight new sections, designated sections thirty-nine-a, thirty-nine-b, thirty-nine-c, thirty-nine-d, thirty-nine-e, thirty-nine-f, thirty-nine-g and thirty-nine-h, all relating to crime of obtaining property with worthless checks when maker knows check to be worthless; subjecting person signing corporate check to provisions relating to personal checks; providing misdemeanor and felony penalties; crime of passing worthless

check and penalties; providing that payment of check acts as defense to certain prosecutions; duty of bank to indicate reason why check is dishonored and providing that such given reason is prima facie evidence of the truth thereof; relating to evidentiary requirements regarding knowledge of sufficiency of funds and identity of maker of check; providing misdemeanor penalty for giving false information; providing for notice of dishonor from payee and the imposition of a service charge; effect of payment of check; providing form of complaint for warrant; providing for notice of filing of complaint for warrant from magistrate court to maker of check; and relating to imposition of court costs.

*Be it enacted by the Legislature of West Virginia:*

That section thirty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto eight new sections, designated sections thirty-nine-a, thirty-nine-b, thirty-nine-c, thirty-nine-d, thirty-nine-e, thirty-nine-f, thirty-nine-g, and thirty-nine-h, all to read as follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

§61-3-39. Obtaining property in return for worthless check; penalty.

§61-3-39a. Making, issuing, etc., worthless checks; penalty.

§61-3-39b. Payment as defense.

§61-3-39c. Reason for dishonor; duty of drawee.

§61-3-39d. Prima facie evidence of knowledge; identity; penalty for providing false information.

§61-3-39e. Notice of dishonor by payee, service charge.

§61-3-39f. Manner of filing complaint for warrant; form.

§61-3-39g. Notice of complaint; payment procedure; costs.

§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.

**§61-3-39. Obtaining property in return for worthless check; penalty.**

1 It shall be unlawful for any person, firm or corporation to  
 2 obtain any money, services, goods or other property or thing  
 3 of value by means of a check, draft or order for the payment  
 4 of money or its equivalent upon any bank or other depository,  
 5 knowing at the time of the making, drawing, issuing, uttering  
 6 or delivering of such check, draft or order that there is not  
 7 sufficient funds on deposit in or credit with such bank or  
 8 other depository with which to pay the same upon presentation.



9 The making, drawing, issuing, uttering or delivery of any such  
10 check, draft or order, for or on behalf of any corporation, or  
11 its name, by any officer or agent of such corporation, shall  
12 subject such officer or agent to the penalties of this section  
13 to the same extent as though such check, draft or order was  
14 his own personal act, when such agent or officer knows that  
15 such corporation does not have sufficient funds on deposit in  
16 or credit with such bank or depository from which such check,  
17 draft or order can legally be paid upon presentment.

18 This section shall not apply to any such check, draft or  
19 order when the payee or holder knows or has been expressly  
20 notified prior to the acceptance of same or has reason to  
21 believe that the drawer did not have on deposit or to his  
22 credit with the drawee sufficient funds to insure payment as  
23 aforesaid, nor shall this section apply to any postdated check,  
24 draft or order.

25 No prosecution shall be confined to the provisions of this  
26 section by virtue of the fact that worthless checks, drafts or  
27 orders may be employed in the commission of some other  
28 criminal act.

29 Any person who shall violate the provisions of this section,  
30 if the amount of the check, draft or order is less than two  
31 hundred dollars, shall be guilty of a misdemeanor, and, upon  
32 conviction thereof, shall be fined not more than two hundred  
33 dollars, or imprisoned not more than six months, or both  
34 fined and imprisoned. Any person who shall violate the pro-  
35 visions of this section, if the amount of the check, draft or  
36 order is two hundred dollars or more, shall be guilty of a  
37 felony, and, if convicted thereof, shall be fined not more than  
38 five hundred dollars, or imprisoned not less than one year nor  
39 more than five years, or both fined and imprisoned.

**§61-3-39a. Making, issuing, etc., worthless checks; penalty.**

1 It shall be unlawful for any person, firm or corporation to  
2 make, draw, issue, utter or deliver any check, draft or order  
3 for the payment of money or its equivalent upon any bank or  
4 other depository, knowing or having reason to know there is  
5 not sufficient funds on deposit in or credit with such bank or  
6 other depository with which to pay the same upon presentation.

7 The making, drawing, issuing, uttering or delivering of any  
8 such check, draft or order, for or on behalf of any corporation,  
9 or its name, by any officer or agent of such corporation, shall  
10 subject such officer or agent to the penalties of this section  
11 to the same extent as though such check, draft or order was  
12 his own personal act.

13 This section shall not apply to any such check, draft or  
14 order when the payee or holder knows or has been expressly  
15 notified prior to the acceptance of same or has reason to be-  
16 lieve that the drawer did not have on deposit or to his credit  
17 with the drawee sufficient funds to insure payment as aforesaid,  
18 nor shall this section apply to any postdated check, draft or  
19 order. This section shall not apply when such insufficiency of  
20 funds or credit is caused by any adjustment to the drawer's  
21 account by the bank or other depository without notice to the  
22 drawer or is caused by the dishonoring of any check, draft or  
23 order deposited in the account unless there is knowledge or  
24 reason to believe that such check, draft or order would be so  
25 dishonored.

26 Any person who shall violate the provisions of this section  
27 shall be guilty of a misdemeanor, and, upon conviction thereof,  
28 shall be fined not more than one hundred dollars, or imprison-  
29 ed not more than ten days, or both fined and imprisoned.

**§61-3-39b. Payment as defense.**

1 Payment of a dishonored check, draft or order shall not  
2 constitute a defense or ground for dismissal of charges brought  
3 under section thirty-nine of this article. Payment of a dishonor-  
4 ed check, including any authorized charges or costs, shall  
5 constitute a defense or grounds for dismissal of charges  
6 brought under section thirty-nine-a of this article.

**§61-3-39c. Reason for dishonor; duty of drawee.**

1 It shall be the duty of the drawee of any check, draft or  
2 order, before refusing to pay the same to the holder thereof  
3 upon presentation, to cause to be written, printed or stamped  
4 in plain language thereon or attached thereto, the reason for  
5 drawee's dishonor or refusal to pay same. In all prosecutions  
6 under section thirty-nine or thirty-nine-a of this article, the

7 introduction in evidence of any unpaid and dishonored check,  
8 draft or other written order, having the drawee's refusal to pay  
9 stamped or written thereon, or attached thereto, with the  
10 reason therefor as aforesaid:

11 (a) Shall be prima facie evidence of the making or uttering  
12 of said check, draft or other written order, and the due pre-  
13 sentation to the drawee for payment and the dishonor thereof,  
14 and that the same was properly dishonored for the reasons  
15 written, stamped or attached by the drawee on such dis-  
16 honored checks, drafts or orders; and

17 (b) Shall be prima facie evidence, as against the maker or  
18 drawer thereof, of the withdrawing from deposit with the  
19 drawee named in the check, draft or other written order, of  
20 the funds on deposit with such drawee necessary to insure pay-  
21 ment of said check, draft or other written order upon presenta-  
22 tion within a reasonable time after negotiation; and

23 (c) Shall be prima facie evidence of the drawing, making,  
24 uttering or delivering of a check, draft or written order with  
25 the knowledge of insufficient funds in or credit with such  
26 drawee.

**§61-3-39d. Prima facie evidence of knowledge; identity; penalty  
for providing false information.**

1 (a) In any prosecution under section thirty-nine of this  
2 article, the making, drawing, uttering or delivery of a check,  
3 draft or order, the payment of which is refused by the drawee  
4 because of lack of funds or credit, shall be prima facie evi-  
5 dence that the drawer has knowledge at the time of making,  
6 drawing, issuing, uttering or delivering such check, draft or  
7 order that there is not sufficient funds or credit to pay the  
8 same, unless the check, draft or order is paid along with any  
9 charges or costs authorized by this article.

10 (b) In any prosecution under section thirty-nine-a of this  
11 article, it shall constitute prima facie evidence of the identity  
12 of the drawer of a check, draft or order if at the time of ac-  
13 ceptance of such check, draft or order there is obtained the  
14 following information: name and residence, business or mailing  
15 address and either a valid motor vehicle operator's number or  
16 the drawer's home or work phone number or place of employ-

17 ment. Such information may be recorded on the check, draft  
 18 or order itself or may be retained on file by the payee and  
 19 referred to on the check, draft or order by identifying number  
 20 or other similar means.

21 (c) Any person who shall provide false information when  
 22 information is requested prior to accepting a check, draft or  
 23 order either at the time such check, draft or order is presented  
 24 or for the purpose of obtaining a check cashing identification  
 25 card or similar check cashing privilege shall be guilty of a  
 26 misdemeanor, and, upon conviction thereof, shall be fined not  
 27 more than two hundred dollars, or imprisoned not more than  
 28 thirty days, or both fined and imprisoned.

**§61-3-39e. Notice of dishonor by payee; service charge.**

1 The payee or holder of a check, draft or order which has  
 2 been dishonored because of insufficient funds or credit may  
 3 send notice thereof to the drawer of the check, draft or order.  
 4 The payee or holder of any such dishonored check may im-  
 5 pose a service charge not to exceed five dollars. No service  
 6 charge shall be imposed or collected after a complaint for  
 7 warrant has been delivered to magistrate court. No payee or  
 8 holder of a check, draft or order which has been dishonored  
 9 because of insufficient funds or credit shall incur any civil or  
 10 criminal liability for the sending of a notice substantially in  
 11 the form provided herein, other provisions of law notwith-  
 12 standing. The form of such notice shall be substantially as  
 13 follows:

14 "You are hereby notified that a check, number \_\_\_\_\_,  
 15 issued by you on (date of check), drawn upon (name of bank),  
 16 and payable to \_\_\_\_\_, has been dishonored.  
 17 Pursuant to West Virginia law, you have ten days from the  
 18 date of this notice to tender payment of the full amount of  
 19 such check plus a five dollar service charge to the undersigned  
 20 at \_\_\_\_\_. You are further notified that  
 21 in the event the above amount is timely paid in full you will  
 22 not be subject to legal proceedings, civil or criminal.

23 Dated \_\_\_\_\_, 19\_\_\_\_\_ .

24 \_\_\_\_\_ (Signed) ."

25 The provisions of this section shall not authorize the  
26 making of any other written or oral threats of prosecution to  
27 enforce or enhance the collection or honoring of said dishonor-  
28 ed check, draft or order.

29 The holder or payee of any such check, draft or note shall  
30 relinquish the check, draft or order to the maker upon tender  
31 of the full amount due at any time before a complaint for  
32 warrant has been presented to magistrate court. In the event  
33 complaint for warrant has been presented to magistrate court,  
34 payment may be made only through such court and any holder  
35 or payee unlawfully accepting payment after such time shall be  
36 liable for all costs which may be imposed by magistrate court  
37 in the matter, including all costs which may have accrued by  
38 the time the magistrate court is notified of such payment.

**§61-3-39f. Manner of filing complaint for warrant; form.**

1 Notwithstanding the provisions of section one, article one,  
2 chapter sixty-two of this code, a complaint for warrant for  
3 violations of section thirty-nine-a of this article need not be  
4 made upon oath before a magistrate but may be made upon  
5 oath before any magistrate court clerk or other court officer  
6 authorized to administer oaths or before a notary public in any  
7 county of the state and may be delivered by mail or otherwise  
8 to the magistrate court of the county wherein venue lies.

9 A complaint for warrant for violations of section thirty-nine-  
10 a of this article shall be deemed sufficient if it is in form sub-  
11 stantially as follows:

12 "State of West Virginia

13 County of \_\_\_\_\_, to wit:

14 \_\_\_\_\_, upon oath com-  
15 plains that:

16 (a) Within one year past, on the \_\_\_\_\_ day of  
17 \_\_\_\_\_, 19\_\_\_\_, in the County aforesaid  
18 \_\_\_\_\_ did unlawfully issue and  
19 (maker)

20 deliver unto \_\_\_\_\_ his certain check  
21 of the words and figures as follows:

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22

\_\_\_\_\_, 19\_\_ No. \_\_\_\_\_

23

24

(Name of Bank)

25

Pay to the Order of \_\_\_\_\_ \$ \_\_\_\_\_

26

Dollars

27

For \_\_\_\_\_

28

when he the said \_\_\_\_\_ did not have

29

funds on deposit in and credit with said bank with which to

30

pay same upon presentation against the Peace and Dignity

31

of the State of West Virginia and he the said \_\_\_\_\_

32

therefore prays a warrant issue and that said \_\_\_\_\_

33

(maker)

34

may be apprehended and held to answer the said warrant and

35

dealt with in relation thereto according to the law.

36

(b) At the time said check was delivered and before the

37

same was accepted there was either on the check or on a card

38

in the possession of complainant the following information

39

regarding the identity of aforesaid maker:

40

(1) Name \_\_\_\_\_

41

(2) Residence address \_\_\_\_\_

42

(3) Business address \_\_\_\_\_

43

(4) Mailing address \_\_\_\_\_

44

(5) \* Motor vehicle operator's number \_\_\_\_\_

45

(6) Home phone \_\_\_\_\_

46

(7) Work phone \_\_\_\_\_

47

(8) Place of employment \_\_\_\_\_

48

That since the time the check was delivered complainant has

49

ascertained to the best of his knowledge and belief the follow-

50

ing facts concerning the maker of said check:

51

Full name \_\_\_\_\_

52

Home address \_\_\_\_\_

53 Home phone no. .... Business phone no. ....

54 Place of employment .....

55 Race ..... Sex ..... Height .....

56 Date of birth .....

57 Day Month Year

58 \_\_\_\_\_, Complainant

59 \_\_\_\_\_

60 Address Phone No.

61 Taken, subscribed and sworn to before me, this \_\_\_\_\_

62 day of \_\_\_\_\_, 19\_\_.

63 \_\_\_\_\_

64 \_\_\_\_\_

65 (Title)

66 My commission expires the \_\_\_\_\_ day of

67 \_\_\_\_\_, 19\_\_."

68 The failure to supply information indicated in part (b) of  
69 the foregoing complaint for warrant shall not affect the suf-  
70 ficiency thereof.

**§61-3-39g. Notice of complaint; payment procedure; costs.**

1 After receipt of a complaint for warrant for a violation of  
2 section thirty-nine or thirty-nine-a of this article no magistrate  
3 court shall issue a warrant until after the provisions of this  
4 section are complied with, unless complaint is made that the  
5 drawer of such check, draft or order is about to flee the  
6 jurisdiction. The magistrate court shall not receive or hold the  
7 check, draft or order except as evidence during trial or  
8 hearing.

9 Upon receipt of such complaint for warrant the magistrate  
10 court shall immediately prepare and mail to the drawer of such  
11 check, draft or order a notice in form substantially as follows  
12 and shall impose additional court costs in the amount of ten  
13 dollars. Such notice shall be mailed to the drawer by certified

14 mail, postpaid, return receipt requested, at the address provided  
 15 at the time of presenting such check, draft or order and service  
 16 of such notice shall be complete upon mailing. Such notice shall  
 17 be in form substantially as follows if prosecution is under  
 18 section thirty-nine of this article:

19 "You are hereby notified that a complaint for a warrant for  
 20 your arrest has been filed with this office to the following effect  
 21 and purpose by \_\_\_\_\_ who upon oath complains  
 22 that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, you did unlaw-  
 23 fully issue and deliver unto him a certain check in the amount  
 24 of \_\_\_\_\_ drawn on \_\_\_\_\_ where you did not have  
 25 \_\_\_\_\_ (Bank)  
 26 funds on deposit in or credit with said bank with which to pay  
 27 same upon presentation and pray that a warrant issue and that  
 28 you be apprehended wherever you may be found by an officer  
 29 authorized to make such an arrest and dealt with in ac-  
 30 cordance with the laws of the State of West Virginia.

31 Unless you make payment of the amount of the check plus  
 32 court costs in the amount of \_\_\_\_\_ to the Magistrate  
 33 Court Clerk at \_\_\_\_\_ on or before said  
 34 \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, you will be  
 35 presumed to have had criminal intent at the time of issuance  
 36 of the check and a warrant for your arrest will be issued on or  
 37 after the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
 38 \_\_\_\_\_ Magistrate Court of \_\_\_\_\_ County  
 39 \_\_\_\_\_  
 40 Date: \_\_\_\_\_."

41 Such notice shall be in form substantially as follows if  
 42 prosecution is under section thirty-nine-a of this article:

43 "You are hereby notified that a complaint for a warrant  
 44 for your arrest has been filed with this office to the following  
 45 effect and purpose by \_\_\_\_\_ who upon oath  
 46 complains that on the \_\_\_\_\_ day of \_\_\_\_\_,



47 19..... you did unlawfully issue and deliver unto him a certain  
48 check in the amount of \_\_\_\_\_ drawn on  
49 \_\_\_\_\_ where you did not have funds on  
50 (Bank)  
51 deposit in or credit with said bank with which to pay same  
52 upon presentation and pray that a warrant issue and that you  
53 be apprehended wherever you may be found by an officer  
54 authorized to make such an arrest and dealt with in accordance  
55 with the laws of the State of West Virginia.

56 A warrant for arrest will be issued on or after the \_\_\_\_\_  
57 day of \_\_\_\_\_, 19\_\_\_\_\_.

58 You can nullify the effect of said complaint and avoid  
59 arrest by paying to the Magistrate Court Clerk at \_\_\_\_\_  
60 the amount due on said check and the costs of this proceeding  
61 in the amount of \_\_\_\_\_ on or before said \_\_\_\_\_  
62 day of \_\_\_\_\_, 19\_\_\_\_\_, at which time you will  
63 be given a receipt with which you can obtain said check  
64 from the holder thereof. The holder of the check is forbidden  
65 by law to accept payment.

66 Magistrate Court of \_\_\_\_\_ County

67

68 Date \_\_\_\_\_

”

69 Such notice shall give the drawer of any such check, draft or  
70 order twenty days within which to make payment to magistrate  
71 court. In the event such drawer pays the amount of the check  
72 plus court costs to the magistrate court within the twenty day  
73 period no warrant shall issue. The payment may be made to  
74 the magistrate court in person or by mail by cash, certified  
75 check, bank draft or money order and, in the event such  
76 payment is made by mail, the magistrate court clerk shall  
77 forthwith mail to the maker of such check the receipt herein-  
78 below required. In the event such total amount is not so  
79 paid the court shall proceed with the issuance of the warrant as  
80 is provided by law.

81 Upon receipt of payment of such total amount the magistrate

82 court clerk shall issue to the drawer a receipt sufficiently  
83 describing such check with which receipt the drawer shall be  
84 entitled to receive the dishonored check, draft or order from  
85 the holder or payee thereof. No service charge shall be  
86 charged or collected by the holder or payee of a dishonored  
87 check, draft or order after filing a complaint for warrant. The  
88 magistrate court clerk shall forward the amount of the check to  
89 the payee or holder thereof. The magistrate court clerk is here-  
90 by authorized to establish a separate bank account for the pur-  
91 pose of facilitating such transactions. Costs collected shall be  
92 dealt with as is provided by law for other criminal pro-  
93 ceedings.

94 The drawer of a check, draft or order against whom a war-  
95 rant has been issued may at any time prior to trial pay to the  
96 court the amount of the check plus any accrued court costs  
97 plus such court costs as would be assessed if such person were  
98 found guilty of the offense charged.

**§61-3-39h. Payment of costs in worthless check cases; disposition  
of certain costs.**

1 In any prosecution under sections thirty-nine or thirty-nine-  
2 a of this article such costs as may otherwise be imposed against  
3 the drawer of any such check, draft or order shall be im-  
4 posed on the person initiating the prosecution if payment of the  
5 check, draft or order is accepted by the payee or holder there-  
6 of after the filing of a complaint for warrant; if the payee or  
7 holder had reason to believe that the check, draft or order  
8 would be dishonored or if the same was postdated; or if the  
9 matter is dismissed for failure to prosecute.

10 Costs collected by magistrate court for issuance of notice  
11 as authorized by section thirty-nine-g of this article shall be  
12 paid into the special county fund created by the provisions of  
13 section four, article three, chapter fifty of this code. Such  
14 costs shall not be included in any calculation of the amount of  
15 funds to be retained by the county but shall be accounted for  
16 separately and retained by the county notwithstanding any  
17 provision of law directing the payment of costs to the state.

## CHAPTER 81

(S. B. 510—By Mr. Gilligan)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the pecuniary interest of county and district officers, teachers and school officials in contracts; exception; offering or giving compensation; penalties.

*Be it enacted by the Legislature of West Virginia:*

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

### ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

#### §61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.

1 It shall be unlawful for any member of a county com-  
2 mission, overseer of the poor, district school officer,  
3 secretary of a board of education, supervisor or super-  
4 intendent, principal or teacher of public schools, or any  
5 member of any other county or district board, or for any  
6 county or district officer to be or become pecuniarily  
7 interested, directly or indirectly, in the proceeds of any  
8 contract or service, or in furnishing any supplies in the  
9 contract for, or the awarding or letting of, which as such  
10 member, officer, secretary, supervisor, superintendent,  
11 principal, or teacher, he may have any voice, influence or  
12 control: *Provided, however,* That nothing herein shall be  
13 construed to prevent or make unlawful the employment of  
14 the spouse of any such member, officer, secretary, super-  
15 visor, superintendent, principal or teacher as principal or  
16 teacher, auxiliary or service employee in the public  
17 schools of any county, nor to prevent or make unlawful the  
18 employment by any joint county and circuit clerk of his or  
19 her spouse. Any person or officer named who shall violate

20 any of the foregoing provisions of this section shall be  
21 guilty of a misdemeanor, and, upon conviction thereof, be  
22 fined not less than fifty nor more than five hundred dollars,  
23 and may, in the discretion of the court, be imprisoned  
24 for a period not to exceed one year. In addition to the  
25 foregoing penalties, any such officer shall be removed  
26 from his office and the certificate or certificates of any  
27 teacher, principal, supervisor and superintendent who  
28 violates any provision of this section shall upon conviction  
29 thereof, be revoked immediately. Any person, firm or  
30 corporation that offers or gives any compensation or  
31 thing of value or forebears to perform any act whatever  
32 to any of the officers or persons hereinbefore named or  
33 to or for any other person with the intent to secure the  
34 influence, support or vote of such officer or person for  
35 any contract, service, award or other matter as to which  
36 any county or school district shall become the paymaster,  
37 shall be guilty of a misdemeanor, and, upon conviction  
38 thereof, be fined not less than five hundred, nor more than  
39 twenty-five hundred dollars, and, at the discretion of the  
40 court, such person or any member of such firm, or, if it be  
41 a corporation, any agent or officer thereof, so offering or  
42 giving such compensation, may, in addition to such fine,  
43 be imprisoned for a period not to exceed one year.

44 The provisions of this section shall not apply to pub-  
45 lications in newspapers required to be made by law.

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## CHAPTER 82

(Com. Sub. for S. B. 388—Mr. Palumbo and Mr. Steptoe)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section ten, article five, chapter forty-nine; section three, article four, chapter fifty; section four, article four-a, chapter fifty-three; and section one, article three, and section twenty-two, article twelve of chapter sixty-two, all of the code of West Virginia, one

thousand nine hundred thirty-one, as amended; and to amend chapter fifty-one of said code by adding thereto a new article, designated article eleven, relating to providing a system for the defense of needy persons; statement of legislative finding and policy; definitions; providing for right to representation and defining stages of proceedings at which persons are entitled to representation; requiring notification of right to an attorney; providing procedure for appointment of counsel; requiring affidavit of indigency; duty of circuit court to determine whether person is entitled to appointed counsel; specifying factors to be considered in determining eligibility; making it unlawful for an attorney to make false statement of fees and expenses and providing penalties; making it unlawful to make false statement in affidavit and providing criminal penalty therefor; establishing procedure for payment of compensation and expenses of appointed counsel and creating special fund for payment; and requiring the director of the administrative office of the supreme court of appeals to administer the system.

*Be it enacted by the Legislature of West Virginia:*

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

## **Chapter**

- 49. Child Welfare.**
- 50. Magistrate Courts.**
- 53. Extraordinary Remedies.**
- 62. Criminal Procedure.**
- 51. Courts and Their Officers.**

**CHAPTER 49. CHILD WELFARE.****ARTICLE 5. JUVENILE PROCEEDINGS.****\*§49-5-10. Right to counsel; mandatory advice with respect thereto; appointment of counsel.**

1 In any proceeding under the provisions of this article,  
2 the child shall have the right to be represented by  
3 counsel, and the child and his parents, his guardian, his  
4 custodian, or any other person standing in loco parentis  
5 to him, or the person named in the petition, must be in-  
6 formed at the outset of the child's right to be represented  
7 by counsel, and if neither the child nor any other of the  
8 aforementioned persons can pay for the services of coun-  
9 sel, that counsel will be appointed to represent the child.  
10 Upon the presentation to the court or judge thereof of a  
11 written request for the appointment of counsel and an  
12 affidavit by the child, or by his parents, the guardian of  
13 his person, his custodian, or any other person standing in  
14 loco parentis to him, or by the person named in the  
15 petition, showing that neither the child nor any other of  
16 the aforementioned persons can pay for the services of  
17 counsel, the court or judge, upon being satisfied as to the  
18 truth of the information set forth in the affidavit, shall,  
19 by order entered of record, appoint an attorney-at-law to  
20 represent the child in any proceeding under the provi-  
21 sions of this article. The attorney so appointed shall be  
22 paid for his services and expenses in accordance with the  
23 provisions of article eleven, chapter fifty-one of this code.

**CHAPTER 50. MAGISTRATE COURTS.****ARTICLE 4. PROCEDURE BEFORE TRIAL.****§50-4-3. Appointment of counsel in criminal proceeding.**

1 In any criminal proceeding in a magistrate court in  
2 which the applicable statutes authorize a sentence of  
3 confinement the magistrate shall forthwith advise a  
4 defendant of his right to counsel and his right to have  
5 counsel appointed if such defendant cannot afford to re-

\* This section was also amended and reenacted by Chapter 65 of these Acts, and was again amended and reenacted by H. B. 114, First Extraordinary Session, 1977.

6 tain counsel. In the event a defendant requests that coun-  
7 sel be appointed and executes an affidavit that he is  
8 unable to afford counsel, the magistrate shall stay further  
9 proceedings and shall request the judge of the circuit  
10 court, or the chief judge thereof if there is more than one  
11 judge of the circuit court, to appoint counsel. Such judge  
12 shall thereupon appoint counsel. If there is no judge  
13 sitting in the county at the time of the request then the  
14 clerk of the circuit court shall appoint counsel from a list  
15 of attorneys in accordance with the rules established by  
16 such judge of the circuit court. Counsel shall be paid for  
17 his services and expenses in accordance with the pro-  
18 visions of article eleven, chapter fifty-one of this code.

### CHAPTER 53. EXTRAORDINARY REMEDIES.

#### ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.

**§53-4A-4. Inability to pay costs, etc.; appointment of counsel; obtaining copies of record or records in criminal proceedings or in a previous proceeding or proceedings to secure relief; payment of all costs and expenses; adjudging of costs.**

1 (a) A petition filed under the provisions of this article  
2 may allege facts to show that the petitioner is unable  
3 to pay the costs of the proceeding or to employ counsel,  
4 may request permission to proceed in forma pauperis  
5 and may request the appointment of counsel. If the court  
6 to which the writ is returnable (hereinafter for  
7 convenience of reference referred to simply as "the  
8 court," unless the context in which used clearly indicates  
9 that some other court is intended) is satisfied that the  
10 facts alleged in this regard are true, and that the petition  
11 was filed in good faith, and has merit or is not frivolous,  
12 the court shall order that the petitioner proceed in forma  
13 pauperis, and the court shall appoint counsel for the  
14 petitioner. If it shall appear to the court that the record  
15 in the proceedings which resulted in the conviction and  
16 sentence, including, but not limited to, a transcript of the  
17 testimony therein, or the record or records in a proceed-  
18 ing or proceedings on a prior petition or petitions filed  
19 under the provisions of this article, or the record or

20 records in any other proceeding or proceedings instituted  
21 by the petitioner to secure relief from his conviction or  
22 sentence, or all of such records, or any part or parts  
23 thereof, are necessary for a proper determination of the  
24 contention or contentions and grounds (in fact or law)  
25 advanced in the petition, the court shall, by order entered  
26 of record, direct the state to make arrangements for copies  
27 of any such record or records, or all of such records, or  
28 such part or parts thereof as may be sufficient, to be  
29 obtained for examination and review by the court, the  
30 state and the petitioner. The state may on its own initia-  
31 tive obtain copies of any record or records, or all of the  
32 records, or such part or parts thereof as may be sufficient,  
33 as aforesaid, for its use and for examination and review by  
34 the court and the petitioner. If, after judgment is entered  
35 under the provisions of this article, an appeal or writ of  
36 error is sought by the petitioner in accordance with the  
37 provisions of section nine of this article, and the court  
38 which rendered the judgment is of opinion that the review  
39 is being sought in good faith and the grounds assigned  
40 therefor have merit or are not frivolous, and such court  
41 finds that the petitioner is unable to pay the costs inci-  
42 dent thereto or to employ counsel, the court shall, upon  
43 the petitioner's request, order that the petitioner proceed  
44 in forma pauperis and shall appoint counsel for the peti-  
45 tioner. If an appeal or writ of error is allowed, whether  
46 upon application of the petitioner or the state, the re-  
47 viewing court shall, upon the requisite showing the re-  
48 quest as aforesaid, order that the petitioner proceed in  
49 forma pauperis and shall appoint counsel for the peti-  
50 tioner. If it is determined that the petitioner has the  
51 financial means with which to pay the costs incident to  
52 any proceedings hereunder and to employ counsel, or  
53 that the petition was filed in bad faith or is without  
54 merit or is frivolous, or that review is being sought or  
55 prosecuted in bad faith or the grounds assigned therefor  
56 are without merit or are frivolous, the request to  
57 proceed in forma pauperis and for the appointment of  
58 counsel shall be denied and the court making such de-  
59 termination shall enter an order setting forth the findings  
60 pertaining thereto and such order shall be final.



61 (b) Whenever it is determined that a petitioner shall  
62 proceed in forma pauperis, all necessary costs and ex-  
63 penses incident to proceedings hereunder, originally, or  
64 on appeal pursuant to section nine of this article, or both,  
65 including, but not limited to, all court costs, and the cost  
66 of furnishing transcripts, shall, upon certification by the  
67 court to the state auditor, be paid out of the treasury of  
68 the state from the appropriation for criminal charges.  
69 Any attorney appointed in accordance with the provisions  
70 of this section shall be paid for his services and expenses  
71 in accordance with the provisions of article eleven, chap-  
72 ter fifty-one of the code. All costs and expenses incurred  
73 incident to obtaining copies of any record or records, or  
74 all of the records, or such part or parts thereof as may be  
75 sufficient, as aforesaid, for examination and review by  
76 the court, the state and the petitioner, shall, where the  
77 petitioner is proceeding in forma pauperis, and the court  
78 orders the state to make arrangements for the obtaining  
79 of same or the state obtains the same on its own initia-  
80 tive, be paid out of the treasury of the state, upon certi-  
81 fication by the court to the state auditor, from the appro-  
82 priation for criminal charges. All such costs, expenses and  
83 fees shall be paid as provided in this subsection (b) not-  
84 withstanding the fact that all proceedings under the pro-  
85 visions of this article are civil and not criminal in charac-  
86 ter. In the event a petitioner who is proceeding in forma  
87 pauperis does not substantially prevail, all such costs,  
88 expenses and fees shall be and constitute a judgment of  
89 the court against the petitioner to be recovered as any  
90 other judgment for costs.

91 (c) In the event a petitioner who is not proceeding in  
92 forma pauperis does not substantially prevail, all costs  
93 and expenses incurred incident to obtaining copies of any  
94 record or records, or all of the records, or such part or  
95 parts thereof as may be sufficient, as aforesaid, for exami-  
96 nation and review by the court, the state and the peti-  
97 tioner, shall, where the court orders the state to make  
98 arrangements for the obtaining of same or the state ob-  
99 tains the same on its own initiative, be and constitute a  
100 judgment of the court against the petitioner to be re-  
101 covered as any other judgment for costs. In any case

102 where the petitioner does not proceed in forma pauperis,  
103 the court shall adjudge all costs and expenses to be paid  
104 as shall seem to the court to be right, consistent with the  
105 immediately preceding sentence of this subsection (c)  
106 and with the provisions of chapter fifty-nine of this  
107 code, as amended.

## CHAPTER 62. CRIMINAL PROCEDURE.

### Article

- 3. Trial of Criminal Cases.
- 12. Probation and Parole.

### ARTICLE 3. TRIAL OF CRIMINAL CASES.

#### **§62-3-1. Time for trial; depositions of witnesses for accused; counsel, copy of indictment, and list of jurors for accused; remuneration of appointed counsel.**

1 When an indictment is found in any county, against  
2 a person for a felony or misdemeanor, the accused, if  
3 in custody, or if he appear in discharge of his recogni-  
4 zance, or voluntarily, shall, unless good cause be shown  
5 for a continuance, be tried at the same term. If any  
6 witness for the accused be a nonresident of the state,  
7 or absent therefrom in any service or employment, so  
8 that service of a subpoena cannot be had upon him in  
9 this state, or is aged or infirm so that he cannot attend  
10 upon the court at the trial, the accused may present  
11 to the court in which the case is pending, or to the judge  
12 thereof in vacation, an affidavit showing such facts, and  
13 stating therein what he expects to prove by any such  
14 witness, his name, residence, or place of service or em-  
15 ployment; and if such court or judge be of the opinion  
16 that the evidence of any such witness, as stated in such  
17 affidavit, is necessary and material to the defense of the  
18 accused on his trial, an order may be made by such court  
19 or judge for the taking of the deposition of any such  
20 witness upon such notice to the prosecuting attorney, of  
21 the time and place of taking the same, as the court or  
22 judge may prescribe; and in such order the court or judge  
23 may authorize the employment of counsel, practicing at  
24 or near the place where the deposition is to be taken,  
25 to cross-examine the witness on behalf of the state,

26 the reasonable expense whereof shall be paid out of  
27 the treasury of the state, upon certificate of the court  
28 wherein the case is pending. Every deposition so taken  
29 may, on the motion of the defendant, so far as the evi-  
30 dence therein contained is competent and proper, be  
31 read to the jury on the trial of the case as evidence  
32 therein. A court of record may appoint counsel to assist  
33 an accused in criminal cases at any time upon request.  
34 A copy of the indictment and of the list of the jurors  
35 selected or summoned for his trial, as provided in sec-  
36 tion three of this article, shall be furnished him, upon  
37 his request, at any time before the jury is impaneled.  
38 In every case where the court appoints counsel for the  
39 accused and the accused presents an affidavit showing  
40 that he cannot pay therefor, the attorney so appointed  
41 shall be paid for his services and expenses in accor-  
42 dance with the provisions of article eleven, chapter  
43 fifty-one of this code. The amount so paid, in the  
44 event the accused shall not prevail, shall be and con-  
45 stitute a judgment of said court against the accused to  
46 be recovered as any other judgment for costs.

#### **ARTICLE 12. PROBATION AND PAROLE.**

##### **§62-12-22. Appointment of counsel for parole violators; au- thority to appoint; payment of counsel.**

1 Any person accused of a violation of his parole, as  
2 set forth in this article, may be represented by counsel  
3 at any hearing held for the purpose of determining  
4 whether his parole should be revoked. In the event the  
5 person accused of a violation of his parole is unable to  
6 pay for counsel and desires to have counsel appointed  
7 for him, he shall present his application for the appoint-  
8 ment of counsel and an affidavit reflecting his inability  
9 to pay for such counsel to the circuit court in the county  
10 in which such person is confined or in the county in which  
11 the hearing is to be held for the purpose of determining  
12 whether his parole should be revoked, or to the judge  
13 thereof in vacation. If it appears to the satisfaction of  
14 the court or judge that such person is in fact unable to  
15 pay for counsel, such court or judge may appoint counsel

16 to represent such person. Counsel so appointed shall be  
 17 paid for his services and expenses in accordance with  
 18 the provisions of article eleven, chapter fifty-one of this  
 19 code.

## **CHAPTER 51. COURTS AND THEIR OFFICERS.**

### **ARTICLE 11. DEFENSE OF NEEDY PERSONS.**

§51-11-1. Statement of legislative findings and policy.

§51-11-2. Definitions.

§51-11-3. Right to representation; stages at which representation available.

§51-11-4. Notification of right to an attorney.

§51-11-5. Appointment of counsel; procedure for determining eligibility;  
 revocation of order of appointment of counsel.

§51-11-6. Determination of eligibility; false statement prohibited; penalties.

§51-11-7. Recovery of amounts advanced; offense of making false statements,  
 and penalty therefor.

§51-11-8. Compensation of attorneys for services and expenses of defense;  
 vouchers; order of approval by circuit court; payment.

§51-11-9. Director of administrative office of supreme court of appeals;  
 duties; expenses.

#### **§51-11-1. Statement of legislative findings and policy.**

1 In order that needy persons who have been charged  
 2 with the commission of serious crimes against this state,  
 3 or who have been convicted of crimes, or who are sub-  
 4 ject to a court having jurisdiction over juveniles, or who  
 5 are incarcerated or subject to incarceration in a public  
 6 or private institution pursuant to a judicial commitment  
 7 order, be afforded the rights and privileges guaranteed  
 8 to them by the constitution of the United States of  
 9 America and by the constitution of the state of West  
 10 Virginia, it is necessary and in the public interest to  
 11 provide a system of legal representation for persons who  
 12 are financially unable to employ counsel.

#### **§51-11-2. Definitions.**

1 For the purpose of this article:

2 "Detain" means to have in custody or otherwise sig-  
 3 nificantly deprive of freedom of action;

4 "Expenses" includes the expenses of investigation,  
 5 other preparation and trial expenses and the cost of  
 6 transcripts of testimony, not otherwise provided at public  
 7 expense;

8 "Needy person" means any person, whether juvenile  
9 or adult, who at the time his need is determined is un-  
10 able to pay counsel to represent him and to pay the  
11 other necessary expenses of representation without un-  
12 due hardship;

13 "Serious crime" means:

14 (a) A felony;

15 (b) A misdemeanor or offense, the penalty for which  
16 involves the possibility of confinement or a fine of more  
17 than five hundred dollars, or any other offense in which,  
18 in the opinion of the court, either the complexity of the  
19 matter, or the youth, inexperience, or mental capacity  
20 of the accused, may require representation of the accused  
21 by an attorney; and

22 (c) An act which except for the age of the person in-  
23 volved, would otherwise be a serious crime.

24 The term "serious crime" shall not include an alleged  
25 violation which is exclusively a violation of a municipal  
26 ordinance.

**§51-11-3. Right to representation; stages at which representa-  
tion available.**

1 A needy person who is being detained by a law-enforce-  
2 ment officer, or who is under formal charge of having  
3 committed, or is being detained under a conviction of,  
4 a serious crime, is entitled to representation by an at-  
5 torney, to investigative services and other services neces-  
6 sary to his defense. The attorney, investigative services,  
7 and other services, and the cost and expense thereof,  
8 shall be provided to such needy person at all stages  
9 of the proceedings through sentencing, including  
10 direct, collateral, or post-conviction appeals to state or  
11 federal courts.

12 The right of a needy person to a benefit conferred by  
13 this section is not affected by his having provided a  
14 similar benefit at his own expense, or by his having  
15 waived it at an earlier stage.

**§51-11-4. Notification of right to an attorney.**

1 It shall be the duty of the circuit court or magistrate

2 before whom a person accused of a serious crime initially  
3 shall appear, to inform the accused of his right to an  
4 attorney and investigative and other services in and about  
5 his defense, and that an attorney and such services will  
6 be provided if the accused is financially unable to employ  
7 an attorney and otherwise to provide for his defense,  
8 without undue hardship.

**§51-11-5. Appointment of counsel; procedure for determining  
eligibility; revocation of order of appointment of  
counsel.**

1 (a) A circuit court at any time upon request, and  
2 upon the filing of an affidavit of indigency as hereinafter  
3 provided shall appoint one or more counsel, at least one  
4 of whom shall be reasonably competent in the practice of  
5 criminal law:

6 (1) to represent one accused of a felony, or of a misde-  
7 meanor punishable by imprisonment;

8 (2) to represent a juvenile under the provisions of  
9 article five of chapter forty-nine of this code;

10 (3) to represent a person in custody in seeking a writ of  
11 habeas corpus;

12 (4) to represent a person entitled to counsel under  
13 the provisions of chapter twenty-seven of this code;

14 (5) to represent a person whose order of probation or  
15 parole has been revoked under the provisions of article  
16 twelve of chapter sixty-two of this code.

17 (b) The affidavit of indigency and the attorney voucher  
18 and affidavit shall be upon such form as shall be prescribed  
19 by the supreme court of appeals, and shall be signed by  
20 the accused or other needy person or the attorney, or, in  
21 the event of his disability, by another person in his behalf.

22 (c) It shall be the duty of the circuit court, upon the  
23 basis of the affidavit of a person requesting appointment of  
24 counsel and of such evidence as may be adduced in open  
25 court, to determine whether such person is a needy person  
26 so as to be entitled to appointed counsel. If the court  
27 should determine that such person is not entitled to ap-  
28 pointed counsel, the appointment previously made shall

29 be revoked, and the attorney previously appointed shall  
30 be entitled to compensation under the provisions of this  
31 article, for services already rendered.

**§51-11-6. Determination of eligibility; false statement prohibited; penalties.**

1 In determining whether a person is a needy person,  
2 the circuit court shall consider such factors as his net  
3 worth and the liquidity of his assets, his disposable in-  
4 come, and the number and ages of his dependents, and  
5 may consider such other factors as it may deem pertinent  
6 and material, but the fact that the accused has been  
7 released on bond shall not be determinative of the ques-  
8 tion of eligibility. The court shall advise such person  
9 of the penalties for giving false information and of the  
10 possibility of a civil suit for recovery of moneys advanced  
11 under this article for his defense.

12 If any attorney shall willfully give false information to  
13 the court with respect to his services or expenses he shall  
14 be guilty of a misdemeanor, and, upon conviction thereof,  
15 shall be fined not less than one thousand dollars nor more  
16 than ten thousand dollars and may be imprisoned in the  
17 county jail not less than three months nor more than  
18 a year, or both fined and imprisoned.

**§51-11-7. Recovery of amounts advanced; offense of making false statements, and penalty therefor.**

1 To the extent that a person is financially able to pay  
2 for counsel and other services furnished him under this  
3 article, without undue hardship, the court having juris-  
4 diction over him may order that he make such payment.  
5 If such person shall willfully give false information to  
6 the court with respect to his income or resources, or  
7 obligations, he shall be guilty of a misdemeanor, and,  
8 upon conviction thereof, shall be fined not more than five  
9 hundred dollars, or imprisoned in the county jail not  
10 less than three months nor more than one year, or both  
11 fined and imprisoned.

**§51-11-8. Compensation of attorneys for services and expenses of defense; vouchers; order of approval by circuit court; payment.**

1 In each case in which an attorney is assigned under  
2 the provisions of this article to perform legal services  
3 for a needy person, he shall be compensated for actual  
4 and necessary services rendered at the rate of twenty  
5 dollars per hour for work performed out of court, and  
6 at the rate of twenty-five dollars per hour for work  
7 performed in court, but the compensation for services  
8 shall not exceed one thousand dollars. Expenses of the  
9 attorney in rendering such services, including, but not  
10 limited to, necessary expenses for travel, transcripts, in-  
11 vestigative services and expert witnesses, shall be reim-  
12 bursed to a maximum of five hundred dollars, unless the  
13 attorney, for good cause shown to the court, shall have re-  
14 ceived advance approval to incur expenses for a larger  
15 sum.

16 The attorney shall present to the circuit court an  
17 itemized voucher for such services and expenses and an  
18 affidavit certifying the same to have been actually per-  
19 formed or incurred, which shall be forwarded to the  
20 director of the administrative office of the supreme court  
21 of appeals, with an order of the circuit court approving  
22 payment of the amount of the voucher or of such lesser  
23 sum to which the circuit court shall believe the attorney  
24 to be entitled.

25 Payment shall be made by the director of the admin-  
26 istrative office of the supreme court of appeals from a  
27 fund entitled "Representation of needy persons fund,"  
28 from appropriations made by the Legislature. Such fund  
29 shall not be part of the judicial account.

**§51-11-9. Director of administrative office of supreme court of appeals; duties; expenses.**

1 It shall be the duty of the director of the administra-  
2 tive office of the supreme court of appeals to administer  
3 the program of legal representation of needy persons  
4 established by this article, and to administer the fund  
5 created by this article.



6 The director shall serve without additional compensa-  
7 tion but may employ such assistants, investigators, audi-  
8 tors, secretaries and other persons necessary to the effec-  
9 tive, uniform and prudent administration of this article,  
10 and may incur such other expenses as may be necessary  
11 for such purpose. Such expenses shall be paid from the  
12 fund established by this article.

## CHAPTER 83

(S. B. 11—By Mr. Steptoe)

[Passed March 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to disclaimer of gifts under wills or property passing by intestacy; increasing time within which such disclaimer may be made from two to six months; allowing disclaimer in whole or in part.

*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 amended and reenacted to read as follows:

### **ARTICLE 4. GENERAL PROVISIONS.**

#### **§42-4-3. Disclaimer of gifts under wills or property passing by intestacy.**

1 Any devisee or legatee who is sui juris, shall have the  
2 right, within six months from the date on which the  
3 will is admitted to probate, to disclaim such devise or  
4 bequest in whole or in part. If the will be contested, or  
5 the order admitting it to probate be appealed from, such  
6 disclaimer may be made within six months of the final  
7 decision on such contest or appeal. The devise or bequest  
8 so disclaimed shall pass as the will directs where there is

9 a provision for disclaimer contained in the will making a  
10 specific alternative disposition of such property, and, in  
11 the absence of any such provision said devise or bequest  
12 shall pass as if the person so disclaiming had immediately  
13 predeceased the testator.

14 Any heir at law or distributee under the laws of  
15 descent and distribution who is sui juris, shall have the  
16 right, within six months of the date of death of the  
17 decedent, to disclaim such real or personal property in  
18 whole or in part. The property so disclaimed shall pass by  
19 the laws of descent and distribution of this state as if the  
20 person so disclaiming had immediately predeceased the  
21 decedent.

22 Any such disclaimer shall be made by a writing signed  
23 by the person so disclaiming and acknowledged in such  
24 manner as would authorize a deed to be admitted to  
25 record and shall be filed and recorded in the office of the  
26 clerk of the county commission by which the will is  
27 admitted to probate or, in the event of intestacy, in the  
28 office of the clerk of the county commission in which the  
29 decedent's estate is administered; and in either event,  
30 such disclaimer shall be recorded with fiduciary orders  
31 or probate documents, or both. Said gift or property so  
32 disclaimed shall be considered as never having vested in  
33 any manner whatsoever in the person so disclaiming.

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## CHAPTER 84

(Com. Sub. for H. B. 806—By Mr. Damron and Mr. O'Neal)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, thirteen and fourteen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to divorce; adding additional grounds for divorce; shortening times for abandonment and living separate and apart as grounds

for divorce; maintenance of spouse and children during pendency of action and clarifying instances when a divorce shall not be granted.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.**

§48-2-4. Grounds for divorce.

§48-2-13. Maintenance of spouse and children pendente lite; control of property.

§48-2-14. When a divorce not to be granted.

**§48-2-4. Grounds for divorce.**

1 (a) A divorce may be ordered:

2 (1) For adultery; or

3 (2) When either of the parties subsequent to the mar-  
4 riage has, in or out of this state, been convicted for the  
5 commission of a crime which is a felony, and such conviction  
6 has become final; or

7 (3) To the party abandoned, when either party willfully  
8 abandons or deserts the other for six months; or

9 (4) For cruel or inhuman treatment, or reasonable appre-  
10 hension of bodily hurt, and false accusation of adultery or  
11 homosexuality by either party against the other shall be  
12 deemed cruel treatment within the meaning of this subdivision;  
13 cruel and inhuman treatment shall also be deemed to exist  
14 when the treatment by one spouse of another, or the conduct  
15 thereof, is such as to destroy or tend to destroy the mental  
16 or physical well-being, happiness and welfare of the other  
17 and render continued cohabitation unsafe or unendurable  
18 and under no circumstances whatever shall it be necessary to  
19 allege or prove acts of physical violence in order to establish  
20 cruel and inhuman treatment as a ground for divorce; or

21 (5) For habitual drunkenness of either party subsequent  
22 to the marriage; or

23 (6) For the addiction of either party, subsequent to the  
24 marriage, to the habitual use of any narcotic drug or drugs  
25 or dangerous drug or drugs as those terms are defined in this  
26 code; or

27 (7) Where the parties have lived separate and apart in  
28 separate places of abode without any cohabitation and with-  
29 out interruption for one year, whether such separation was  
30 the voluntary act of one of the parties or by the mutual con-  
31 sent of the parties; and a plea of res adjudicata or of recrimi-  
32 nation with respect to any other provision of this section shall  
33 not be a bar to either party's obtaining a divorce on this  
34 ground. If alimony is sought under the provisions of section  
35 fifteen of this article, the court may inquire into the question  
36 of who is the party at fault and may award such alimony ac-  
37 cording to the right of the matter and such determination shall  
38 not affect the right of either party to obtain a divorce on this  
39 ground; or

40 (8) For permanent and incurable insanity. No divorce shall  
41 be granted on the ground of insanity unless such permanently  
42 incurable insane person shall have been confined in a mental  
43 hospital or other similar institution for a period of not less  
44 than three consecutive years next preceding the filing of the  
45 complaint; nor shall a divorce be granted on these grounds  
46 unless the court shall have heard competent medical testi-  
47 mony that such insanity is permanently incurable. The court  
48 granting a divorce under this subdivision may in its discretion  
49 order support and maintenance for such permanently incur-  
50 able insane party by the other. Where an insane person, within  
51 the meaning of this section, is a plaintiff in an action for  
52 divorce or annulment, the defendant shall not enter a plea of  
53 recrimination which is based upon the insanity of the plaintiff;  
54 or

55 (9) For abuse of a child of the parties or of one of the  
56 parties or for neglect of a child for which the neglecting party  
57 has the legal responsibility. For purposes of this subdivision,  
58 "abuse" means any physical injury including, but not limited  
59 to, sexual molestation, or mental injury inflicted on such child;  
60 and "neglect" means willful failure to provide, by one of the  
61 parties who is legally responsible for the care and maintenance

62 of a child, the proper or necessary support, education as  
63 required by law, or medical, surgical or other care necessary  
64 for the well-being of a child. No divorce shall be granted  
65 upon this ground except upon clear and convincing evidence  
66 sufficient to justify permanently depriving the offending  
67 party of his or her parental rights to the custody and control  
68 of said abused or neglected child; or

69 (10) If one party to a marriage shall file a verified com-  
70 plaint, for divorce, against the other, alleging that irreconcil-  
71 able differences have arisen between the parties, and stating  
72 the names of the dependent children of the parties or of either  
73 of them, and if the defendant shall file a verified answer to  
74 the complaint and admit or aver that irreconcilable differences  
75 exist between the parties, the court may grant a divorce, but  
76 no order of divorce entered pursuant to the provisions of this  
77 subdivision shall be entered unless sixty days shall have  
78 elapsed after the filing of the complaint. In such case no  
79 corroboration of the grounds for divorce shall be required.  
80 The court may make such order for alimony, for the custody,  
81 support and maintenance of children, and for visitation rights  
82 as may be just and equitable, or may approve, modify, or  
83 reject any agreement between the parties pertaining to alimony,  
84 the custody, maintenance and support of children, or visitation  
85 rights; such provision shall not affect the right to obtain a  
86 divorce upon the ground of irreconcilable differences between  
87 the parties to a marriage.

88 (b) It shall not be necessary to allege the facts constituting  
89 the ground or grounds relied upon, and a complaint or counter  
90 complaint shall be sufficient if any one of the grounds is  
91 alleged in the language of such ground as set forth in subsec-  
92 tion (a) of this section.

**§48-2-13. Maintenance of spouse and children pendente lite; control of property.**

1 The court may, at any time after commencement of the  
2 action and reasonable notice to the other party, make any order  
3 that may be proper to compel either party to pay any sum  
4 necessary for the maintenance of the other party and to enable  
5 him or her to carry on or defend the action in the trial

6 court and on appeal should one be taken, or to prevent either  
7 party from imposing any restraint on the personal liberty of  
8 the other, or to provide for the custody and maintenance of  
9 the minor children of the parties, during the pendency of the  
10 action, or to preserve the estate of either party, so that it  
11 be forthcoming to meet any order which may be made in  
12 the action, or to compel either party to give security to abide  
13 such order, or to compel either party to deliver to the other  
14 any of his or her separate estate which may be in the pos-  
15 session or control of the other, or to prevent either from  
16 interfering with the separate estate of the other, or to grant  
17 exclusive use and occupancy of the marital home to one of the  
18 parties during the pendency of the action.

19 At any time after a party is abandoned or deserted or after  
20 the parties to a marriage have lived separate and apart in  
21 separate places of abode without any cohabitation, the party  
22 abandoned or either party living separate and apart may apply  
23 for relief pursuant to this section by instituting an action for  
24 divorce as provided in section ten of this article, alleging that  
25 the plaintiff reasonably believes that the period of abandonment  
26 or of living separate and apart will continue for the period  
27 prescribed by the applicable provisions of section four of this  
28 article. If the period of abandonment or living separate and  
29 apart continues for the period prescribed by the applicable  
30 provision of section four of this article, the divorce action may  
31 proceed to a hearing as provided in sections twenty-four and  
32 twenty-five of this article without a new complaint being filed:  
33 *Provided*, That the party desiring to proceed to a hearing  
34 shall give the opposing party at least twenty days' notice of the  
35 time, place and purpose of the hearing, such notice to be  
36 served in the same manner as a complaint, regardless of  
37 whether the opposing party has appeared or answered.

**§48-2-14. When a divorce not to be granted.**

1 No divorce for adultery shall be granted on the uncorrobo-  
2 rated testimony of a prostitute, or a particeps criminis, or when  
3 it appears that the parties voluntarily cohabited after the  
4 knowledge of the adultery, or that it occurred more than three  
5 years before the institution of the action; nor shall a divorce  
6 be granted for any cause when it appears that the offense

7 charged has been condoned, or was committed by the pro-  
8 curement or connivance of the plaintiff, or that the plaintiff  
9 has, within three years before the institution of action, been  
10 guilty of adultery not condoned, but such exception shall not  
11 be applicable to causes of action brought pursuant to sub-  
12 divisions (7) and (10), subsection (a), section four of this  
13 article. The defense of collusion shall not be pleaded as a bar  
14 to a divorce.

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## CHAPTER 85

(S. B. 563—By Mr. Brotherton, Mr. President, Mr. Palumbo and Mr. Hamilton)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to repeal article nine, chapter five; to amend article one, chapter five by adding thereto a new section, designated section twenty-seven; to amend and reenact sections two and three, article seventeen, chapter five; to amend and reenact section three, article thirteen, chapter seven; to amend and reenact sections one and two, article twenty-six, chapter eight; to amend and reenact sections two and eight, article eight, chapter twenty-one; to amend and reenact section one, article seventeen, chapter twenty-nine; and to amend and reenact section four, article eighteen, chapter thirty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to providing a statement of legislative policy and purpose; creating an office of economic and community development in the office of the governor; providing for the appointment of a director of such office; specifying effective date; providing for functions, duties, responsibilities, programs and personnel; abolishing former department of commerce; providing for annual reports; providing for transferring of records and property of former department of commerce; providing for continuation of contracts and obligations; relating to the composition of the West Virginia commission on energy, economy and environment; providing for the

governor to appoint citizen representative members of the commission on energy, economy and environment; relating to the duties and composition of the economic opportunity advisory committee; providing for one representative of the commission on aging to serve on the economic opportunity advisory committee; relating to the representation on interstate regional planning commissions and relating to approval for an area's inclusion in an interstate region; relating to membership on and cooperation with the West Virginia commission on manpower, technology and training; relating to the arts and humanities council; and relating to the board of directors of the West Virginia housing development fund.

*Be it enacted by the Legislature of West Virginia:*

That article nine, chapter five be repealed; that article one, chapter five be amended by adding thereto a new section, designated section twenty-seven; that sections two and three, article seventeen, chapter five be amended and reenacted; that section three, article thirteen, chapter seven be amended and reenacted; that sections one and two, article twenty-six, chapter eight be amended and reenacted; that sections two and eight, article eight, chapter twenty-one be amended and reenacted; that section one, article seventeen, chapter twenty-nine be amended and reenacted; and that section four, article eighteen, chapter thirty-one be amended and reenacted, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

## **Chapter**

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



on Energy, Economy and Environment; West Virginia Beautification Commission.

7. County Commissions and Officers.
8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.
21. Labor.
29. Miscellaneous Boards and Officers.
31. Corporations.

**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**

1. The Governor.
17. West Virginia Commission on Energy, Economy and Environment.

**ARTICLE 1. THE GOVERNOR.**

**§5-1-27. Creation of office of economic and community development; appointment and duties of director; department of commerce abolished; records and property of department of commerce transferred.**

- 1 Because of the importance to this state of a unified and
- 2 coordinated effort toward total and complete development
- 3 of its communities in order to provide for a better quality
- 4 of life for its citizens through improvement of government
- 5 services and sound economic growth, it is hereby found
- 6 and declared to be necessary: (1) To create an office of
- 7 economic and community development, within the office
- 8 of the governor; (2) to confer upon the governor and the
- 9 office the powers provided herein; and (3) to provide for
- 10 the rendering of mutual economic and community devel-

11 opment in a coordinated manner among the state, its  
12 citizens and political subdivisions.

13 Effective the first day of July, one thousand nine  
14 hundred seventy-seven, there is hereby created within  
15 the office of the governor a new office of economic and  
16 community development.

17 A director of the office of economic and community  
18 development, hereinafter called the director, shall be  
19 appointed by the governor.

20 The director shall have general administrative super-  
21 vision over the affairs of the office, and may employ such  
22 personnel and make such expenditures within the appro-  
23 priation or available funds therefor, as may be necessary  
24 to carry out the purposes of the office.

25 The director shall, prior to the thirty-first day of Jan-  
26 uary of each year, submit an annual report of activities  
27 and expenditures to the governor, which report shall be  
28 transmitted at the same time to members of the Legisla-  
29 ture and shall be made available to the public.

30 The director shall promulgate rules and regulations to  
31 carry out the purposes and programs of the office, to in-  
32 clude generally the programs available, and the procedure  
33 and eligibility of application relating to assistance under  
34 such programs; these rules and regulations shall not be  
35 subject to the provisions of chapter twenty-nine-a of this  
36 code, but shall be filed with the secretary of state.

37 The West Virginia department of commerce is hereby  
38 abolished and the governor shall, by executive order,  
39 transfer to the office of economic and community develop-  
40 ment or other state agencies, the functions, personnel and  
41 property, with any liens relative thereto, of the depart-  
42 ment of commerce, as he may deem necessary.

43 All books, papers, maps, charts, plans, literature and

44 other records and all equipment and property in the  
45 possession of the department of commerce or of any  
46 officer or employee thereof, upon the effective date of  
47 this section shall be turned over or delivered to the office  
48 of the governor.

49 All existing contracts and obligations of the depart-  
50 ment of commerce shall remain in full force and effect  
51 and shall be performed by the governor.

**ARTICLE 17. WEST VIRGINIA COMMISSION ON ENERGY,  
ECONOMY AND ENVIRONMENT.**

§5-17-2. Composition of commission.

§5-17-3. Terms of citizen representative members; vacancies.

**§5-17-2. Composition of commission.**

1 The "West Virginia Commission on Energy, Economy  
2 and Environment," heretofore created and hereinafter  
3 referred to as the "commission," is hereby continued.  
4 The commission shall consist of nineteen members, as  
5 follows: Nineteen members, herein referred to as govern-  
6 ment representatives, who shall be the tax commissioner,  
7 the commissioner of banking, the finance and adminis-  
8 tration commissioner, the oil and gas conservation com-  
9 missioner, the director of the department of mines, the  
10 director of the department of natural resources, the //  
11 director of the geological and economic survey com-  
12 mission, the director of the air pollution control com-  
13 mission, the chairman of the public service commission,  
14 a representative from the board of regents, and the gov-  
15 ernor or his duly authorized representative; and eight 8  
16 additional citizens of the state, herein referred to as  
17 citizen representatives, no more than four of whom shall  
18 belong to the same political party. The governor shall  
19 appoint the eight citizen representative members of the  
20 commission. The president of the Senate and the speaker  
21 of the House of Delegates shall appoint two members ✓  
22 of the Legislature to serve as advisory representative,  
23 members of the commission.

**§5-17-3. Terms of citizen representative members; vacancies.**

1 The citizen representative members shall be appointed  
2 for terms of one year each, and shall serve until their

3 successors have been appointed and have qualified. Any  
4 vacancy as to a citizen representative member shall be  
5 filled by appointment by the governor for the unexpired  
6 term of such citizen representative member.

## CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

### ARTICLE 13. ECONOMIC OPPORTUNITY PROGRAMS.

#### §7-13-3. Economic opportunity advisory committee.

1 To assist in the promotion and development of com-  
2 munity action program organizations, and other phases  
3 of the federal Economic Opportunity Act of 1964, the  
4 governor may consult with and request reports from a  
5 governor's economic opportunity advisory committee, on  
6 which the governor, or his designated representative,  
7 shall sit as chairman.

8 The economic opportunity advisory committee shall  
9 consist of:

- 10 (a) The governor,
- 11 (b) The state superintendent of schools,
- 12 (c) The commissioner of agriculture,
- 13 (d) The commissioner of employment security,
- 14 (e) The commissioner of welfare,
- 15 (f) The commissioner of banking,
- 16 (g) The commissioner of labor,
- 17 (h) The director of the department of natural re-  
18 sources,
- 19 (i) The commissioner of the department of highways,
- 20 (j) The director of mental health,
- 21 (k) The director of the department of health,
- 22 (l) The president of the Senate of West Virginia,
- 23 (m) The speaker of the House of Delegates of West  
24 Virginia,
- 25 (n) The director of the division of vocational rehabili-  
26 tation,
- 27 (o) One representative of the commission on aging,
- 28 (p) At least one representative, who shall be desig-

29 nated by the board of regents, from the state-supported  
30 colleges and universities of West Virginia, or their desig-  
31 nated representatives, temporary or permanent, and  
32 such other members as the governor may appoint or the  
33 committee may select by affirmative vote of a majority  
34 of the members present and voting.

35 The committee shall meet upon call of the chairman.

## CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

### ARTICLE 26. INTERGOVERNMENTAL RELATIONS—INTERSTATE REGIONAL PLANNING COMMISSIONS.

§8-26-1. Creation of commission; state may be ex officio member.

§8-26-2. "Region" defined.

#### §8-26-1. Creation of commission; state may be ex officio member.

1 Any municipality or county or any two or more municipi-  
2 palities or counties, or any combination thereof, may  
3 cooperate with the political subdivisions of other states  
4 bordering on this state for the purpose of creating, by  
5 an agreement, an interstate regional planning commis-  
6 sion, whenever such political subdivisions comprise a  
7 region which would benefit from cooperative planning.  
8 The agreement entered into by the several political sub-  
9 divisions shall specify the extent of the region included  
10 within the jurisdiction of the interstate regional planning  
11 commission; and shall fix the membership comprising  
12 the commission, the terms of office and method of ap-  
13 pointment of the members thereof, the duration of the  
14 commission, the method for terminating the commission,  
15 the method of disposal of all property belonging to the  
16 commission, the distribution of the proceeds, and the  
17 apportionment of the costs of maintaining the planning  
18 commission to be borne respectively by the various politi-  
19 cal subdivisions included within the agreement, such  
20 apportionment to be based on the population of the  
21 various participating political subdivisions. Any such  
22 agreement shall be executed on behalf of any municipi-

23 pality by the governing body thereof and on behalf of  
24 a county by the county commission.

25 The state of West Virginia may be an ex officio member  
26 of any such interstate regional planning commission  
27 formed under the provisions of this article. The governor  
28 or a representative designated by him shall represent the  
29 state in the deliberations of any interstate regional plan-  
30 ning commission or its agencies or instrumentalities but  
31 this state shall not be a voting member of any interstate  
32 regional planning commission or any agency or instru-  
33 mentality thereof.

**§8-26-2. "Region" defined.**

1 The term "region," as used in this article, shall mean  
2 a specific metropolitan interstate area designated by the  
3 proper federal agency pursuant to the "Demonstration  
4 Cities and Metropolitan Development Act of 1966" and  
5 any amendments thereto, as well as all other interstate  
6 areas which would benefit from cooperative planning.  
7 Before any area in this state is included within an inter-  
8 state region for interstate planning, it shall be approved  
9 by the governor: *Provided*, That no territory within any  
10 municipality or county not having a planning commis-  
11 sion shall be included in an interstate area.

**CHAPTER 21. LABOR.**

**ARTICLE 8. WEST VIRGINIA COMMISSION ON MANPOWER,  
TECHNOLOGY AND TRAINING.**

§21-8-2. Composition of commission.

§21-8-8. Studies by other departments.

**§21-8-2. Composition of commission.**

1 The West Virginia commission on manpower, tech-  
2 nology and training is continued. The commission shall  
3 consist of fifteen members to be appointed by the gov-  
4 ernor by and with the advice and consent of the Senate  
5 and seven ex officio members. The governor shall appoint  
6 five members who represent the employer interest of  
7 the state, five members who represent labor organiza-  
8 tions, and five members who represent the general public.  
9 The ex officio members shall be the commissioners of the

10 state departments of agriculture, employment security,  
11 labor and welfare, and the state directors of mines, the  
12 division of vocational education and the division of voca-  
13 tional rehabilitation.

**§21-8-8. Studies by other departments.**

1 The state departments of employment security, mines,  
2 labor and education shall cooperate with the commission  
3 in conducting studies, in making surveys and in per-  
4 forming similar activities whenever such is authorized  
5 under the laws, rules and regulations under which said  
6 departments operate.

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

**ARTICLE 17. THE WEST VIRGINIA ARTS AND HUMANITIES  
COUNCIL.**

**§29-17-1. Composition; appointment and terms of members;  
organization; reimbursement for expenses.**

1 There is continued an arts and humanities council to  
2 be known as "the West Virginia arts and humanities  
3 council," to consist of fifteen members, to be appointed  
4 by the governor, by and with the advice and consent of  
5 the Senate, from among the citizens of the state. The  
6 members of the council shall elect the council chairman  
7 and such other officers as it deems necessary. The mem-  
8 bers shall serve a term beginning the first day of July,  
9 one thousand nine hundred sixty-seven, five to serve for  
10 a term of one year, five to serve for a term of two years,  
11 and the remaining five to serve for a term of three  
12 years. The successors of the members initially appointed  
13 as provided herein, shall be appointed for a term of  
14 three years each in the same manner as the members  
15 initially appointed under this article, except that any  
16 person appointed to fill a vacancy occurring prior to the  
17 expiration of the term for which his predecessor was  
18 appointed shall be appointed for the remainder of such  
19 term. Each member shall serve until the appointment  
20 and qualification of his successor.

21 No member shall receive any salary for his services,  
22 but each shall be reimbursed for actual and necessary

23 expenses incurred by him in the performance of his  
24 duties.

## CHAPTER 31. CORPORATIONS.

### ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-4. Composition; board of directors; appointment, term,  
etc., of private members; chairman and vice chair-  
man; quorum.

1 (a) There is continued as a governmental instrumen-  
2 tality of the state of West Virginia, a public body  
3 corporate to be known as the West Virginia housing  
4 development fund.

5 (b) The housing development fund is created and  
6 established to serve a public corporate purpose and to  
7 act for the public benefit and as a governmental instru-  
8 mentality of the state of West Virginia, to act on behalf  
9 of the state and its people in improving and otherwise  
10 promoting their health, welfare and prosperity.

11 (c) The housing development fund shall be governed  
12 by a board of directors, consisting of eleven members,  
13 four of whom shall be the governor or his designated  
14 representative, the attorney general, the secretary of  
15 state, and the state treasurer, as public directors, and  
16 seven of whom shall be chosen from the general public  
17 residing in the state, as private directors. No more than  
18 four of the private directors shall be from the same  
19 political party.

20 (d) Upon organization of the housing development  
21 fund, the governor shall appoint, by and with the advice  
22 and consent of the Senate, the seven private directors  
23 to take office and to exercise all powers thereof imme-  
24 diately, with two each appointed for terms of two years  
25 and three year~~x~~, and with three each appointed for terms  
26 of four years, respectively, as the governor shall desig-  
27 nate; at the expiration of said terms and for all succeed-  
28 ing terms, the governor shall appoint a successor to the  
29 office of private director for a term of four years in each  
30 case.



31 (e) In cases of any vacancy in the office of a private  
32 director, such vacancy shall be filled by appointment by  
33 the governor for the unexpired term.

34 (f) The governor may remove any private director  
35 whom he may appoint in case of incompetency, neglect  
36 of duty, gross immorality, or malfeasance in office; and  
37 he may declare his office vacant and may appoint a  
38 person for such vacancy as provided in other cases of  
39 vacancy.

40 (g) The chairman and vice chairman of the board of  
41 directors shall be designated by the governor from  
42 among the directors.

43 (h) Six members of the board of directors shall con-  
44 stitute a quorum. No vacancy in the membership of the  
45 board shall impair the right of a quorum to exercise all  
46 the rights and perform all the duties of the board of  
47 directors.

48 (i) No action shall be taken by the board of directors  
49 except upon the affirmative vote of at least six of the  
50 directors.

51 (j) The directors, including the chairman, vice chair-  
52 man and the treasurer of the board of directors, and the  
53 secretary of the board of directors, shall receive no com-  
54 pensation for their services but shall be entitled to their  
55 reasonable and necessary expenses actually incurred in  
56 discharging their duties under this article.

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## CHAPTER 86

(Com. Sub. for H. B. 1393—By Mr. Farley and Mr. Albright)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by

adding thereto a new section, designated section five-a; and to amend article twenty-six of said chapter by adding thereto a new section, designated section eight-b, all relating to requiring the board of regents and the state board of education to deliver to the legislative rule-making review committee a copy of any proposed rule to be promulgated, adopted, amended or repealed; rule defined.

*Be it enacted by the Legislature of West Virginia:*

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

**Article**

**2. State Board of Education.**

**26. Board of Regents.**

**ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-5a. Board rules to be filed with Legislature.**

1 The state board of education shall file a copy of any rule  
2 that it proposes to promulgate, adopt, amend or repeal under  
3 the authority of the constitution or of this chapter with the  
4 legislative rule-making review committee created pursuant to  
5 section eleven, article three, chapter twenty-nine-a. "Rule," as  
6 used herein, means a regulation, standard, statement of policy,  
7 or interpretation of general application and future effect.

**ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**

**§18-26-8b. Board rules to be filed with Legislature.**

1 The board of regents shall file a copy of any rule that it  
2 proposes to promulgate, adopt, amend or repeal under the  
3 authority of this article with the legislative rule-making review  
4 committee created pursuant to section eleven, article three,  
5 chapter twenty-nine-a. "Rule," as used herein, means a regula-  
6 tion, standard, statement of policy, or interpretation of general  
7 application and future effect.

## CHAPTER 87

(S. B. 511—By Mr. Brotherton, Mr. President)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to education; area vocational program; and providing that the West Virginia board of education has authority to delegate its operational power for multi-county vocational centers to an administrative council.

*Be it enacted by the Legislature of West Virginia:*

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

### **ARTICLE 2B. AREA VOCATIONAL PROGRAM.**

**§18-2B-2. State board of vocational education; authority to establish programs, etc.; division of vocational education established; rules and regulations; director.**

1 For the purpose of this article, the state board of  
2 education is designated as the state board of vocational  
3 education serving and meeting as the sole agency respon-  
4 sible for the administration of vocational education and  
5 for supervision of the administration thereof by local  
6 educational agencies and is hereby authorized and em-  
7 powered to establish, operate and maintain area vocational  
8 educational programs including the acquisition by pur-  
9 chase, lease, gift or otherwise of necessary lands and the  
10 construction, expansion, remodeling, alteration and equip-  
11 ping of necessary buildings for the purpose of operating  
12 and conducting educational training centers. The state  
13 board of vocational education may delegate for such  
14 period of time as it may determine its operational  
15 authority for multi-county vocational centers to an  
16 administrative council composed of equal representa-  
17 tion from each of the participating county boards of

18 education, the superintendent of schools from each par-  
19 ticipating county, and the state director of vocational  
20 education or his representative. To this end, there is here-  
21 by expressly established in the state board of education a  
22 division of vocational education which shall establish the  
23 area or areas in which the programs are to be conducted  
24 and shall have authority to promulgate, pursuant to the  
25 provisions of chapter twenty-nine-a of this code, rules and  
26 regulations necessary to carry out the provisions of this  
27 article. The administration and supervision of the area  
28 vocational educational programs shall be administered  
29 by the director of the division of vocational education.

## CHAPTER 88

(S. B. 580—By Mr. Brotherton, Mr. President)

[Passed April 7, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-d, relating to community education in West Virginia; setting forth certain legislative findings and a legislative purpose; providing a definition of "community education"; authorizing the state board of education to promote the implementation and operation of community education programs and to promulgate rules and regulations incident thereto; and authorizing county boards of education to coordinate community education programs.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 2D. COMMUNITY EDUCATION.**

§18-2D-1. Legislative findings and purpose.

§18-2D-2. Definition.

§18-2D-3. Implementation and operation of programs.

§18-2D-4. County boards of education authorized to participate.

**§18-2D-1. Legislative findings and purpose.**

1 The Legislature hereby finds and declares that the  
2 public school system in any community is most effective  
3 when it involves and serves all of the people of that  
4 community and not just the kindergarten, elementary  
5 and secondary school students of that community; and  
6 that community education promotes a more efficient use  
7 of community facilities through an extension of buildings,  
8 personnel and equipment. In recognition of these findings  
9 and declarations, it is hereby declared to be the purpose  
10 of this article to facilitate the providing of educational,  
11 recreational, cultural, social, health and other community  
12 services, in accordance with the needs, interests and  
13 concerns of the community, through the establishment of  
14 community education programs, in cooperation with other  
15 governmental agencies and community service organiza-  
16 tions.

**§18-2D-2. Definition.**

1 For the purpose of this article "community education"  
2 means a process by which public facilities in a community  
3 are utilized as community centers operated in conjunction  
4 with governmental agencies and community service  
5 organizations to provide educational, including, but not  
6 limited to, driver education courses, recreational, cul-  
7 tural, social, health and other community services for  
8 all persons in such community in accordance with the  
9 needs, interests and concerns of such community.

**§18-2D-3. Implementation and operation of programs.**

1 The state board of education shall promote the imple-  
2 mentation and operation of community education pro-  
3 grams throughout the state, and shall, by rules and  
4 regulations promulgated pursuant to the provisions of  
5 chapter twenty-nine-a of this code, provide for the gov-  
6 ernment and supervision of such programs.

**§18-2D-4. County boards of education authorized to participate.**

- 1 Each county board of education in this state is hereby
- 2 authorized, but not obligated, to coordinate a community
- 3 education program within its county.

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## CHAPTER 89

(Com. Sub. for S. B. 599—By Mr. Brotherton, Mr. President and Mr. Susman)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation and operation of a coal and energy research bureau at West Virginia University; investigations and research concerning the mining, transporting and use of coal and developing new uses and markets for coal, other energy fuels and allied minerals; mine safety and development of the mineral industry; creation of a new advisory committee on coal and energy research.

*Be it enacted by the Legislature of West Virginia:*

That section nine-a, article eleven, 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 11. WEST VIRGINIA UNIVERSITY.**

**§18-11-9a. Coal and energy research bureau; advisory committee on coal and energy research.**

- 1 The coal research bureau, heretofore established at West
- 2 Virginia University shall be continued and be designated
- 3 as the coal and energy research bureau. Subject to such
- 4 rules and regulations as may be prescribed by the board
- 5 of regents, it shall conduct investigations and research
- 6 into the development of new, safer and more economical
- 7 ways to mine, transport and use coal, consider environ-
- 8 mental problems created through the use and production

9 of coal, develop new uses and markets for coal, other  
10 energy fuels and allied minerals, develop new methods of  
11 combustion of coal and new uses of coal in the chemical  
12 industry, develop greater efficiency and conservation in  
13 the mining and mineral industries, and make such tests  
14 and investigations as may be required by the department  
15 of mines in the prosecution of its work. It shall conduct  
16 such experiments, tests and activities as will promote the  
17 development of the mineral industries in the state, and  
18 shall cooperate with the department of mines in the in-  
19 vestigation of the causes of mine disasters and common  
20 mine accidents. It shall also initiate and carry on a pro-  
21 gram of research designed to discover and develop new  
22 uses and new processes for the utilization of West Virginia  
23 coal and other mineral resources.

24 The costs of financing the research program shall be  
25 paid from any funds appropriated by the Legislature for  
26 the purpose, from any grants or gifts received by the  
27 university, and from any income received for research  
28 carried on under contract with any federal or state agency,  
29 or with any private corporation, association or individual.  
30 Within the limits of available funds, research activities  
31 may be conducted by the university itself, or under  
32 contract with some other research group, corporation or  
33 individual.

34 In order to avoid wasteful duplication, the research pro-  
35 gram shall be carried on in close cooperation with the  
36 federal bureau of mines, the federal energy research and  
37 development agency, the Morgantown energy research  
38 center, the state department of mines, the planning and  
39 research division of the state department of commerce,  
40 and other appropriate agencies, research organizations  
41 and establishments. The university shall from time to  
42 time, but at least annually, publish and distribute to the  
43 governor, the Legislature, and to interested persons and  
44 agencies reports of its activities, findings and recommen-  
45 dations.

46 The "advisory committee on coal research," heretofore  
47 existing, is abolished and a new "advisory committee on

48 coal and energy research" is hereby created to advise and  
49 counsel with the university concerning the programs of  
50 the coal and energy research bureau and to make recom-  
51 mendations to the board of regents, the governor and the  
52 Legislature concerning the support of the programs of the  
53 coal and energy research bureau.

54 The advisory committee on coal and energy research  
55 shall consist of at least nine appointed members, and the  
56 president of the Senate or his designate, the speaker  
57 of the House of Delegates or his designate, and the presi-  
58 dent of the university or his designate as ex officio mem-  
59 bers. The chairman of the committee shall be the presi-  
60 dent of the university or his designate. Appointed mem-  
61 bers shall be specialists or experts in the various areas of  
62 energy production, conversion and utilization. Three  
63 members shall be appointed by the president of the  
64 Senate, three members shall be appointed by the speaker  
65 of the House of Delegates, and three members shall be  
66 appointed by the governor. Except for the original ap-  
67 pointments, each official shall make his appointments for  
68 overlapping terms of three years and until such members'  
69 respective successors have been appointed and qualified.  
70 For the purpose of the original appointments, the presi-  
71 dent of the Senate, the speaker of the House of Delegates  
72 and the governor shall appoint one member each for a  
73 term of one year and until his successor has been ap-  
74 pointed and qualified, one member each for a term of two  
75 years and until his successor has been appointed and  
76 qualified, and one member each for a term of three years  
77 and until his successor has been appointed and qualified.  
78 Members may be reappointed for any number of terms.  
79 Vacancies shall be filled by appointment for the unexpired  
80 term by the official who appointed such member for the  
81 term vacated. To these members may be added special-  
82 ists as deemed desirable and appropriate by a majority  
83 vote of the committee.

84 The committee shall meet at least semiannually upon  
85 the call of the chairman. The members shall be entitled  
86 to be reimbursed for all reasonable and necessary ex-  
87 penses actually incurred in the performance of their  
88 duties as such members.



## CHAPTER 90

(H. B. 1751—Originating in the House Committee on Finance)

[Passed April 9, 1977; 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 twelve-b, relating to the issuance of revenue bonds of the West Virginia board of regents; authorizing board of regents to issue revenue bonds for certain capital improvements; directing board to issue bonds for specified purposes within certain time; providing for payment of relocation costs in connection with acquisition of private property for certain projects; providing for the creation of a state system tuition fee special capital improvements fund in the state treasury; authorizing transfer of moneys from preexisting capital improvements funds to state system tuition fee special capital improvements fund; requiring payment of tuition fees into such fund; authorizing board of regents to fix, establish, maintain and collect tuition fees from students at state institutions of higher education; authorizing pledge of moneys in such fund as security for revenue bonds; authorizing board to finance projects on a cash basis; providing for the method and manner by which revenue bonds are to be issued and executed; providing for the issuance of revenue refunding bonds; authorizing the issuance of bonds for combined purposes; providing that the bonds are negotiable instruments; authorizing the board of regents to enter into trust agreements for the bondholders; providing for payments to the state sinking fund commission; providing that bonds are not obligations of the state; providing for such bonds to be exempt from taxation by the state of West Virginia, or any county, school district, municipality, or political subdivision thereof; making attorney general bond counsel; and providing that the provisions of the act supersede provisions of any other law or laws in conflict therewith.

*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 twelve-b, to read as follows:

**ARTICLE 12B. REVENUE BONDS FOR STATE INSTITUTIONS OF HIGHER EDUCATION—CAPITAL IMPROVEMENTS ON SYSTEM BASIS.**

- §18-12B-1. Board of regents authorized to issue revenue bonds for certain capital improvements; payment of relocation costs.
- §18-12B-2. State system tuition fee special capital improvements fund in state treasury; collections to be paid into special fund; authority of board of regents to pledge such collections as security for revenue bonds; authority of board to finance projects on a cash basis.
- §18-12B-3. Board of regents to fix and collect fees.
- §18-12B-4. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.
- §18-12B-5. Issuance of revenue refunding bonds; use of moneys; power to enter into escrow agreements; call for redemption.
- §18-12B-6. Bonds may be issued for combined purposes.
- §18-12B-7. Bonds shall be negotiable instruments.
- §18-12B-8. Trust agreements for holders of bonds.
- §18-12B-9. Sinking fund for payment of bond.
- §18-12B-10. Credit of state not pledged.
- §18-12B-11. Attorney general or his duly appointed legal representative to serve as bond counsel.
- §18-12B-12. Powers of board are supplemental; conflicting laws superseded.

**§18-12B-1. Board of regents authorized to issue revenue bonds for certain capital improvements; payment of relocation costs.**

1     The West Virginia board of regents shall have authority, as  
 2     provided in this article, to issue revenue bonds of the state  
 3     from time to time, either to finance the cost of major reno-  
 4     vations, repairs and safety upgrading and providing new capi-  
 5     tal improvements consisting of facilities, buildings and struc-  
 6     tures, for those state institutions of higher education as deter-  
 7     mined by resolution of the board of regents, including any  
 8     college, university or community college under its supervision,  
 9     management and control, or to refund, at the discretion of the  
 10    board of regents, bonds issued and outstanding under and  
 11    pursuant to the provisions of this article or article eleven-b of  
 12    this chapter, or both. Such major renovations, repairs and  
 13    safety upgrading and capital improvements may, in each case,  
 14    include land for current or future use in connection therewith  
 15    and equipment and machinery and other similar items essen-  
 16    tial or convenient in connection with the foregoing but shall  
 17    not include such items as books, fuel, supplies or other items  
 18    which are customarily deemed to result in a current operating

19 charge. The principal of, interest and redemption premium, if  
20 any, on such bonds shall be payable solely from the special  
21 fund herein provided for such payment. The costs of any such  
22 major renovations, repairs and safety upgrading and capital  
23 improvements shall include the cost of acquisition of land,  
24 the construction and acquisition of any such major renova-  
25 tions, repairs and safety upgrading and capital improvements  
26 and equipment and machinery therefor, and the provision  
27 of roads, utilities, and other services necessary, appurtenant or  
28 incidental to the foregoing; and shall also include all other  
29 charges or expenses necessary, appurtenant or incidental to  
30 the construction, acquisition, and financing including, but not  
31 limited to, debt service reserve requirements and capitalized  
32 interest, and placing in operation of any such major renova-  
33 tions, repairs and safety upgrading and capital improvements:  
34 *Provided*, That from time to time but not later than the first  
35 day of March, one thousand nine hundred seventy-eight, the  
36 board shall issue and sell bonds pursuant to this article in an  
37 amount which, when combined with cash available under the  
38 provisions of section two of this article, will be sufficient to  
39 finance the costs of the following purposes and projects:

40 (1) Refunding of all bonds issued and outstanding under  
41 and pursuant to the provisions of article eleven-b of this  
42 chapter;

43 (2) A building to house the music, arts and theatre pro-  
44 grams at Shepherd College, at a cost not to exceed two mil-  
45 lion five hundred thousand dollars;

46 (3) A field house at West Liberty State College at a cost  
47 not to exceed two million seven hundred thousand dollars;

48 (4) A shop and laboratory building at West Virginia State  
49 College at a cost not to exceed two million six hundred thou-  
50 sand dollars;

51 (5) A multipurpose physical education facility at Marshall  
52 University, at a cost not to exceed eighteen million dollars;

53 (6) A new football stadium at West Virginia University  
54 (at a different location than the existing stadium) at a cost not  
55 to exceed twenty million dollars; and

56 (7) An all-purpose shell building for sports and physical  
57 education at West Virginia University, at a cost not to exceed  
58 four million five hundred thousand dollars.

59 In the event that private real property is acquired in con-  
60 nection with the above enumerated projects, the board shall  
61 reimburse individuals, families and business concerns for relo-  
62 cation costs incurred as a consequence of being displaced by  
63 such acquisition. With respect to payment of such relocation  
64 costs, the board shall follow the same procedure and be  
65 subject to the same limitations as required for the commis-  
66 sioner of highways under section twenty, article two-a, chapter  
67 seventeen of this code and regulations promulgated pursuant  
68 thereto, but in no event shall such payments exceed the sum  
69 of three hundred dollars for individuals and families and two  
70 thousand five hundred dollars for business concerns.

**§18-12B-2. State system tuition fee special capital improvements  
fund in state treasury; collections to be paid into  
special fund; authority of board of regents to pledge  
such collections as security for revenue bonds;  
authority of board to finance projects on a cash  
basis.**

1 There is created in the state treasury a state system tuition  
2 fee special capital improvements fund to be expended by the  
3 board of regents for the benefit of the state institutions of  
4 higher education, which shall include any college, university  
5 or community college under its supervision, management and  
6 control.

7 On and after the first day of July, one thousand nine hun-  
8 dred seventy-seven, the board of regents may periodically  
9 transfer from the special nonrevolving West Virginia Uni-  
10 versity capital improvements fund created in the state treasury  
11 pursuant to the provisions of article eleven-b of this chapter  
12 and from the special nonrevolving Marshall University capital  
13 improvements fund created in the state treasury pursuant to  
14 the provisions of article twelve-a of this chapter, into the  
15 state system tuition fee special capital improvements fund  
16 moneys in excess of the amount pledged for the payment of  
17 the principal of, interest and redemption premium, if any,  
18 on any revenue bonds or revenue refunding bonds issued  
19 pursuant to such articles eleven-b or twelve-a prior to the  
20 first day of July, one thousand nine hundred seventy-seven.  
21 Said Marshall University capital improvements fund is hereby  
22 continued notwithstanding the retirement of outstanding bonds

23 issued pursuant to such article twelve-a, but on and after the  
24 first day of July, one thousand nine hundred seventy-seven, no  
25 bonds shall be issued pursuant to article twelve-a, nor shall any  
26 moneys be expended (unless the board of regents shall by  
27 board action have made a commitment with respect thereto)  
28 pursuant to such article twelve-a. On and after the first day of  
29 July, one thousand nine hundred seventy-seven there shall be  
30 paid directly into such state system tuition fee special capital  
31 improvements fund subject to the prior lien and pledge, if any,  
32 of outstanding bonds issued pursuant to the provisions of  
33 articles eleven-b and twelve-a of this chapter all tuition fees  
34 collected under the provisions of section one, article twenty-  
35 four, chapter eighteen of this code, from students at West  
36 Virginia and Marshall Universities; and on and after the first  
37 day of July, one thousand nine hundred seventy-eight, in addi-  
38 tion to said fees from students at West Virginia University and  
39 Marshall University (and subject to said prior lien and pledge,  
40 if any) there shall be paid directly into such state system tuition  
41 fee special capital improvements fund all tuition fees collected  
42 under the provisions of section one, article twenty-four, chap-  
43 ter eighteen of this code, from students at all other state in-  
44 stitutions of higher education which are under the supervision,  
45 management and control of the board of regents: *Provided,*  
46 That tuition fees from students at community colleges shall not  
47 be paid into the state system tuition fee special capital improve-  
48 ments fund unless the board shall otherwise determine by  
49 resolution.

50 The board of regents shall have authority to pledge all or  
51 such part of the revenues and tuition fees paid into the state  
52 system tuition fee special capital improvements fund as may  
53 be needed to meet the requirements of any revenue bond issue  
54 or issues authorized by this article, including the payment of  
55 principal of, interest and redemption premium, if any, on such  
56 revenue bonds, the establishing and maintaining of a reserve  
57 fund or funds for the payment of the principal of, interest and  
58 redemption premium, if any, on such revenue bond issue or  
59 issues when other moneys pledged may be insufficient therefor  
60 and including such additional protective pledge of revenues and  
61 fees as the board of regents in its discretion may provide by  
62 resolution authorizing the issue of such bonds and in any

63 trust agreement made in connection therewith, and the board of  
64 regents may further provide in such resolution and in such  
65 trust agreement, for such priorities on the revenues and fees  
66 paid into such state system tuition fee special capital im-  
67 provements fund as may be necessary for the protection of the  
68 prior rights of the holders of bonds issued at different times  
69 under the provisions of this article.

70 Any balance remaining in the state system tuition fee special  
71 capital improvements fund after the board of regents has  
72 issued bonds authorized by this article, and after the require-  
73 ments of all funds including reserve funds established in con-  
74 nection with the bonds issued pursuant to this article have been  
75 satisfied, may be used (i) for the redemption of any of the  
76 outstanding bonds issued hereunder which by their terms are  
77 then redeemable, or for the purchase of such bonds at the  
78 market price, but at not exceeding the price, if any, at which  
79 such bonds shall in the same year be redeemable, and all bonds  
80 redeemed or purchased shall forthwith be canceled and shall  
81 not again be issued or (ii) for any lawful purpose for which  
82 the board of regents may expend funds.

83 The board of regents, in its discretion, may use the moneys  
84 in such state system tuition fee special capital improvements  
85 fund to finance the cost of projects and purposes on a cash  
86 basis. Any pledge of moneys in such fund for revenue bonds  
87 shall be a prior and superior charge on such fund over the use  
88 of any of the moneys in such fund to pay for the cost of any  
89 project or purpose on a cash basis: *Provided*, That except  
90 for the projects and purposes expressly enumerated in section  
91 one of this article, any expenditures from such fund, other than  
92 for the retirement of revenue bonds, may only be made by  
93 the board to meet the cost of a predetermined capital improve-  
94 ments program for one or more of the state institutions of  
95 higher education, in such order or priority as shall have been  
96 agreed upon by the board of regents and presented to the  
97 governor for inclusion in the annual budget bill, and only with  
98 the approval of the Legislature as indicated by direct appro-  
99 priation for the purpose.

**§18-12B-3. Board of regents to fix and collect fees.**

1 The board of regents shall fix, establish, maintain and collect

2 the tuition fees provided for in section one, article twenty-  
3 four, chapter eighteen of this code, from students at all  
4 state institutions of higher education other than (unless the  
5 board of regents shall otherwise determine by resolution)  
6 tuition fees from students attending community colleges, in  
7 amounts at least sufficient, at all times, after depositing  
8 (subject to, or until termination of, the lien and pledge re-  
9 ferred to in section two of this article) in the special non-  
10 revolving Marshall University capital improvements fund, and  
11 the special nonrevolving West Virginia University capital  
12 improvements fund referred to in section two of this article  
13 such tuition fees as are now required to be deposited therein  
14 pursuant to section one, article twenty-four, chapter eighteen  
15 of this code, to provide revenues for deposit in the state  
16 system tuition fee special capital improvements fund which  
17 are adequate to pay the principal of, interest and redemption  
18 premium, if any, on the bonds authorized to be issued pur-  
19 suant to this article as the same mature and become due and  
20 to make all reserve and other payments to be required by the  
21 proceedings which authorize such bonds, and to provide any  
22 additional protective pledge of revenues and fees and reserve  
23 or other payments as the board of regents may in its discre-  
24 tion require by the resolution authorizing any issue of bonds  
25 pursuant to this article and any trust agreement made in con-  
26 nection therewith, and to make all other payments required by  
27 this article or any such proceedings, resolutions or trust agree-  
28 ments.

**18-12B-4. Issuance of revenue bonds; use of proceeds; bonds ex-  
empt from taxation.**

1 The issuance of revenue bonds under the provisions of this  
2 article shall be authorized from time to time by resolution  
3 or resolutions of the board of regents, which shall set forth  
4 the proposed major renovations, repairs and safety upgrading  
5 and capital improvements authorized by section one of this  
6 article; and shall provide for the issuance of bonds in amounts  
7 sufficient, when sold as hereinafter provided, to provide  
8 moneys deemed by the board of regents sufficient to pay  
9 such costs, less the amounts of any other funds available for  
10 said costs from any other moneys of the board of regents  
11 available therefor or from any appropriation, grant or gift

12 therefor. Such resolution shall prescribe the rights and duties  
13 of the bondholders and the board of regents, and for such  
14 purpose may prescribe the form of the trust agreement here-  
15 inafter referred to. The bonds may be issued from time to  
16 time, in such amounts, shall be of such series, bear such  
17 date or dates, mature at such time or times not exceeding  
18 forty years from their respective dates, bear interest at such  
19 rate or rates; be in such denominations; be in such form,  
20 either coupon or registered, carrying such registration, ex-  
21 changeability and interchangeability privileges; be payable in  
22 such medium of payment and at such place or places within  
23 or without the state; be subject to such terms of redemption at  
24 such prices not exceeding one hundred five percent of the  
25 principal amount thereof; and be entitled to such priorities  
26 on the revenues and fees paid into the state system tuition  
27 fee special capital improvements fund as may be provided  
28 in the resolution authorizing the issuance of the bonds or in  
29 any trust agreement made in connection therewith. The bonds  
30 shall be signed by the governor, and by the president or  
31 vice president of the board of regents, under the great seal  
32 of the state, attested by the secretary of state, and the coupons  
33 attached thereto shall bear the facsimile signature of the  
34 president or vice president of the board of regents. In case any  
35 of the officers whose signatures appear on the bonds or  
36 coupons cease to be such officers before the delivery of such  
37 bonds, such signatures shall nevertheless be valid and suffi-  
38 cient for all purposes the same as if such officers had remained  
39 in office until such delivery. Such revenue bonds shall be  
40 sold in such manner as the board of regents may determine  
41 to be for the best interests of the state.

42 Any pledge of funds and fees for such revenue bonds  
43 made by the board of regents shall be valid and binding  
44 between the parties from the time the pledge is made; and  
45 the funds so pledged shall immediately be subject to the  
46 lien of such pledge without any further physical delivery  
47 thereof or further act. The lien of such pledge shall be  
48 valid and binding against all parties having claims of any  
49 kind in tort, contract or otherwise, irrespective of whether  
50 such parties have notice of the lien of such pledge, and such



51 pledge shall be a prior and superior charge over any other  
52 use of such funds so pledged.

53 The proceeds of such bonds shall be used solely for the pay-  
54 ment of the cost of those major renovations, repairs and safety  
55 upgrading and capital improvements as generally and specifical-  
56 ly set forth in section one of this article, and shall be deposited  
57 in the state treasury in a special fund to be disbursed as provid-  
58 ed by law for the disbursement of any other state funds. If the  
59 proceeds of such bonds, by error in calculations or otherwise,  
60 shall be less than the cost of such major renovations, repairs  
61 and safety upgrading and capital improvements, additional  
62 bonds may in like manner be issued to provide the amount of  
63 the deficiency; and unless otherwise provided for in the resolu-  
64 tion or trust agreement hereinafter mentioned, such additional  
65 bonds shall be deemed to be of the same issue, and shall be en-  
66 titled to payment from the same fund, without preference or  
67 priority, as the bonds before issued for major renovations, re-  
68 pairs and safety upgrading and capital improvements. If the  
69 proceeds of bonds issued for such major renovations, repairs  
70 and safety upgrading and capital improvements shall exceed the  
71 cost thereof, the surplus may be used for such other capital im-  
72 provements as the board of regents may determine or in  
73 such other manner as the resolution authorizing such bonds  
74 may provide. Prior to the preparation of definitive bonds, the  
75 board may, under like restrictions, issue temporary bonds with  
76 or without coupons, exchangeable for definitive bonds upon  
77 the issuance of such definitive bonds. The term "cost," as  
78 used in this section, shall be deemed to include all of the items  
79 contemplated by the use of that term in section one of this  
80 article.

81 After the issuance of any of such revenue bonds, the tuition  
82 fees at the state institutions of higher education pledged  
83 therefor shall not be reduced as long as any of such revenue  
84 bonds are outstanding and unpaid except under such terms,  
85 provisions and conditions as shall be contained in the resolu-  
86 tion, trust agreement or other proceedings under which such  
87 revenue bonds were issued.

88 Such revenue bonds and the revenue refunding bonds, and  
89 bonds issued for combined purposes shall, together with the  
90 interest thereon, be exempt from all taxation by the state of

91 West Virginia, or by any county, school district, municipality  
92 or political subdivision thereof.

**§18-12B-5. Issuance of revenue refunding bonds; use of moneys;  
power to enter into escrow agreements; call for  
redemption.**

1 The issuance of revenue refunding bonds under the provi-  
2 sions of this article shall be authorized by resolution of the  
3 board of regents and shall otherwise be subject to the limita-  
4 tions, conditions and provisions of section four of this article.  
5 Such revenue refunding bonds may be issued in an amount at  
6 the option of the board of regents sufficient to pay either in  
7 full or together with interest earned on the investment of the  
8 proceeds thereof, whether or not at the time of the issuance  
9 of the revenue refunding bonds the hereafter mentioned bonds  
10 are payable or callable for optional redemption, (1) the prin-  
11 cipal of any outstanding bonds heretofore issued pursuant to  
12 the provisions of article eleven-b of this chapter or this article  
13 (hereinafter referred to as the "outstanding bonds"); (2) the  
14 redemption premium, if any, on such outstanding bonds or the  
15 prior redemption thereof; (3) the interest due and payable  
16 on such outstanding bonds to and including the first date  
17 upon which said outstanding bonds are callable prior to ma-  
18 turity, not exceeding, however, ten years from the date of  
19 issuance of such revenue refunding bonds, or the dates upon  
20 which the principal of said outstanding bonds mature before  
21 such first date on which the same are callable prior to maturity,  
22 including any interest theretofore accrued and unpaid; and  
23 (4) all expenses of the issuance and sale of said revenue re-  
24 funding bonds, including all necessary financial and legal  
25 expenses, and also including the creation of initial debt ser-  
26 vice reserve funds. Any moneys in funds pledged with respect  
27 to the outstanding bonds may be used for any or all of the  
28 purposes stated in (1), (2), (3) and (4) above or may be de-  
29 posited in a sinking fund or reserve fund or other funds for  
30 the issue of bonds which have been issued wholly or in part  
31 for the purpose of such refunding. Such amount of the pro-  
32 ceeds of the revenue refunding bonds as shall be sufficient for  
33 the payment of the principal of, interest and redemption  
34 premium, if any, on such outstanding bonds which will not be  
35 immediately due and payable shall be deposited in trust, for

36 the sole purpose of making such payments, with the treasurer  
37 of the state of West Virginia or the state sinking fund com-  
38 mission. Any of the moneys so deposited in trust may, prior to  
39 the date on which such moneys will be needed for the payment  
40 of principal of, interest and redemption premium, if any, on  
41 such outstanding bonds, be invested and reinvested as deter-  
42 mined by the board of regents, in whole or in part: (a) In  
43 direct obligations issued by the United States of America or one  
44 of its agencies or in direct obligations of the state of West  
45 Virginia, (b) in obligations unconditionally guaranteed by the  
46 United States of America as to principal and interest, or (c) in  
47 certificates of deposit of a banking corporation or association  
48 which is a member of the federal deposit insurance corporation,  
49 or successor; but any such certificates of deposit must be  
50 fully secured as to both principal and interest by pledged col-  
51 lateral consisting of direct obligations of or obligations guar-  
52 anteed by the United States of America, or direct obligations of  
53 the state of West Virginia, having a market value, excluding ac-  
54 crued interest, at all times at least equal to the amount of the  
55 principal of and accrued interest on such certificates of deposit.  
56 Any such investments must mature, or be payable in advance of  
57 maturity at the option of the holder, and must bear interest in  
58 such manner as to provide funds which, together with unin-  
59 vested money, will be sufficient to pay when due or called for  
60 redemption the bonds refunded, together with interest accrued  
61 and to accrue thereon and redemption premiums, if any, and  
62 such refunding bonds' proceeds or obligations so purchased  
63 therewith shall be deposited in escrow and held in trust for  
64 the payment and redemption of the bonds refunded: *Provided*,  
65 That if interest earned by any investment in such escrow is  
66 shown to be in excess of the amounts required from time to  
67 time for the payment of interest on and principal of the re-  
68 funded bonds, including applicable redemption premium, then  
69 such excess may be withdrawn from escrow and disbursed in  
70 such manner as the board of regents shall by resolution deter-  
71 mine, subject to the provisions of section two of this article.  
72 Any moneys in the sinking or reserve funds or other funds  
73 maintained for the outstanding bonds to be refunded may be  
74 applied in the same manner and for the same purpose as are the  
75 net proceeds of refunding bonds or may be deposited in the

76 special fund or any reserve funds established for account of the  
77 refunding bonds.

78 The authority to issue revenue refunding bonds shall be in  
79 addition to any other authority to refund bonds conferred by law.

80 The board of regents shall have power to enter into such  
81 escrow agreements and to insert therein such protective and  
82 other covenants and provisions as it may consider necessary  
83 to permit the carrying out of the provisions of this article  
84 and to insure the prompt payment of principal of and interest  
85 and redemption premiums on the revenue bonds refunded.

86 Where any revenue bonds to be refunded are not to be  
87 surrendered for exchange or payment and are not to be  
88 paid at maturity with escrowed obligations, but are to be  
89 paid from such source prior to maturity pursuant to call for  
90 redemption exercised under a right of redemption reserved  
91 in such revenue bonds, the board of regents shall, prior to  
92 the issuance of the refunding bonds, determine which re-  
93 demption date or dates shall be used, call such revenue bonds  
94 for redemption and provide for the giving of the notice  
95 of redemption required by the proceedings authorizing such  
96 revenue bonds. Where such notice is to be given at a time  
97 subsequent to the issuance of the refunding bonds, the neces-  
98 sary notices may be deposited with the state sinking fund  
99 commission or the bank acting as escrow agent of the refund-  
100 ing bond proceeds and the escrow agent appropriately in-  
101 structed and authorized to give the required notices at the  
102 prescribed time or times. If any officer of the public body  
103 signing any such notice shall no longer be in office at the  
104 time of the utilization of the notice, the notice shall neverthe-  
105 less be valid and effective for its intended purpose.

**§18-12B-6. Bonds may be issued for combined purposes.**

1 The board of regents may authorize by one or more resolu-  
2 tions a single issue of bonds for the combined purposes of re-  
3 funding the outstanding bonds as herein authorized and fi-  
4 nancing one or more of the major renovations, repairs and  
5 safety upgrading and capital improvements herein authorized.

**§18-12B-7. Bonds shall be negotiable instruments.**

1 The revenue bonds, revenue refunding bonds and bonds

2 issued for combined purposes under the provisions of this  
3 article shall, independently of the requirements of any other  
4 provision of law and solely by virtue of the provisions of this  
5 section, be and have all the qualities and incidents of nego-  
6 tiable instruments.

**§18-12B-8. Trust agreements for holders of bonds.**

1 The board of regents may enter into an agreement or agree-  
2 ments with any trust company, or with any bank having the  
3 powers of a trust company, either within or outside the state,  
4 to act as trustee for the holders of bonds issued hereunder,  
5 setting forth therein such duties and containing such legally  
6 binding covenants of the board of regents with the holders of  
7 the bonds in respect to the payment of the bonds, the fixing,  
8 establishing and collecting of the fees hereinbefore referred to;  
9 the acquisition, construction, improvement, maintenance, oper-  
10 ation, repair and insurance of authorized major renovations,  
11 repairs and safety upgrading and capital improvements; the  
12 custody, safeguarding and disposition of the proceeds of the  
13 bonds, and the moneys in such special funds, sinking funds,  
14 reserve funds, or any other moneys or funds, notwithstanding  
15 provisions of this article to the contrary; the security for  
16 moneys on hand or on deposit, and the rights and remedies of  
17 the trustee and the holders of the bonds, as may be agreed  
18 upon with the purchasers of such bonds; provisions restricting  
19 the individual right of action of bondholders as is customary  
20 in trust agreements respecting bonds and debentures of munic-  
21 ipal corporations, protecting and enforcing the rights and  
22 remedies of the trustee and the bondholders; and provisions  
23 as to any other matters which are deemed necessary and ad-  
24 visable by the board of regents in the best interests of the state  
25 and to enhance the marketability of the bonds. Any such agree-  
26 ment entered into by the board of regents shall be binding in  
27 all respects on such board and its successors from time to  
28 time in accordance with the terms thereof; and all the pro-  
29 visions thereof shall be enforceable by appropriate proceedings  
30 at law or in equity, or otherwise.

**§18-12B-9. Sinking fund for payment of bonds.**

1 From the state system tuition fee special capital improve-  
2 ments fund the board of regents shall make periodic payments

3 to the state sinking fund commission in an amount sufficient to  
4 meet the requirements of any issue of bonds sold under the  
5 provisions of this article, as may be specified in the resolution  
6 of the board authorizing the issue thereof and in any trust  
7 agreement entered into in connection therewith. The payments  
8 so made shall be placed by the commission in a special sink-  
9 ing fund which is hereby pledged to and charged with the  
10 payment of the principal of the bonds of such issue and the  
11 interest thereon, and to the redemption or repurchase of such  
12 bonds, such sinking fund to be a fund for all bonds of such  
13 issue without distinction or priority of one over another, ex-  
14 cept as may be provided in the resolution authorizing such  
15 issue of bonds. The moneys in the special sinking fund, less  
16 such reserve for payment of principal and interest and redemp-  
17 tion premium, if any, as may be required by the resolution of  
18 the board of regents, authorizing the issue and any trust agree-  
19 ment made in connection therewith, may be used for the re-  
20 demption of any of the outstanding bonds payable from such  
21 fund which by their terms are then redeemable, or for the  
22 purchase of bonds at the market price, but at not exceeding  
23 the price if any, at which such bonds shall in the same year be  
24 redeemable; and all bonds redeemed or purchased shall forth-  
25 with be canceled and shall not again be issued.

**§18-12B-10. Credit of state not pledged.**

1 No provisions of this article shall be construed to authorize  
2 the board of regents at any time or in any manner to pledge  
3 the credit or taxing power of the state, nor shall any of the  
4 obligations or debts created by the board under the authority  
5 herein granted be deemed to be obligations of the state.

**§18-12B-11. Attorney general or his duly appointed legal repre-  
sentative to serve as bond counsel.**

1 The attorney general, or his duly appointed legal representa-  
2 tive, shall serve as bond counsel and shall be responsible for the  
3 issuance of a final approving opinion regarding the legality of  
4 the sale of bonds under this article.

**§18-12B-12. Powers of board are supplemental; conflicting laws  
superseded.**

1 The powers conferred by this article shall be in addition

2 and supplemental to the existing powers of the board of  
3 regents. The provisions of any other law or laws conflicting  
4 with the provisions of this article shall be and the same are  
5 hereby superseded to the extent of any such conflict.

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## CHAPTER 91

(H. B. 1156—By Mr. Speaker, Mr. Kepp)

[Passed March 14, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, six, nine-a and nine-b, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to composition, terms, meetings, compensation, expenses and qualifications of members of the board of regents; providing for terms and selection of the members and chairmen of the advisory council of faculty and the advisory council of students; and providing for the chairmen of such councils to serve as voting members of the board.

*Be it enacted by the Legislature of West Virginia:*

That sections four, five, six, nine-a and nine-b, 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.**

§18-26-4. Composition of board; terms of members; qualifications of members.

§18-26-5. Commencement of terms of members; vacancies; eligibility for reappointments; oath of office; removal from office.

§18-26-6. Meetings; quorum; per diem and expenses of members.

§18-26-9a. Advisory council of faculty.

§18-26-9b. Advisory council of students.

**§18-26-4. Composition of board; terms of members; qualifications of members.**

1 The board shall consist of twelve members, of whom one  
2 shall be the state superintendent of schools, ex officio,

3 who shall not be entitled to vote, one shall be the chairman  
4 of the advisory council of students, ex officio, who shall  
5 be entitled to vote, and one shall be the chairman of  
6 the advisory council of faculty, ex officio, who shall be  
7 entitled to vote. The other nine members shall be citizens  
8 of the state, appointed by the governor, by and with the advice  
9 and consent of the Senate, for overlapping terms of six years,  
10 except that three of the original appointments shall be for  
11 terms of two years, three of the original appointments shall  
12 be for terms of four years and three of the original appoint-  
13 ments shall be for terms of six years.

14 Each of the members appointed to the board by the  
15 governor shall be especially qualified in the field of higher  
16 education by virtue of his knowledge, learning, experience  
17 or interest in the field.

18 Except for the ex officio members no person shall be  
19 eligible for appointment to membership on the board who  
20 is an officer, employee or member of an advisory board of  
21 any state college or university, or any officer or member  
22 of any political party executive committee, or the holder of  
23 any other public office or public employment under the  
24 federal government or under the government of this state or  
25 any of its political subdivisions, or any appointee or em-  
26 ployee of the board. Of the nine members appointed by the  
27 governor from the public at large, not more than five thereof  
28 shall belong to the same political party and at least two  
29 members of the board shall be appointed from each congres-  
30 sional district.

31 Except as provided in this section, no other person may be  
32 appointed to the board.

**§18-26-5. Commencement of terms of members; vacancies; eligi-  
bility for reappointments; oath of office; removal from  
office.**

1 The governor shall appoint nine members of the board to  
2 be appointed by him as soon after the effective date of  
3 this article as is practicable, and the original terms of the  
4 nine members appointed by the governor and of the one  
5 member, who is such by virtue of being the state superintendent



6 of schools, shall commence on July one, one thousand nine  
7 hundred sixty-nine. The chairman of the advisory council of  
8 students, ex officio, and the chairman of the advisory council  
9 of faculty, ex officio, shall serve the terms for which they were  
10 elected by their respective advisory councils; these members  
11 shall be eligible to succeed themselves. All members of the  
12 board of regents serving as of the effective date of this enact-  
13 ment shall continue to serve until the end of their term as pro-  
14 vided for above.

15 The governor shall appoint a member to fill any vacancy  
16 among the nine members of the board appointed by the gover-  
17 nor, by and with the advice and consent of the Senate, which  
18 member appointed to fill such vacancy shall serve for the  
19 unexpired term of the vacating member.

20 All members of the board appointed by the governor  
21 shall be eligible for reappointment. A person who has served  
22 as a member during all or any part of the two consecutive  
23 terms shall be ineligible to serve as a member for a period  
24 of three years immediately following the second of the two  
25 consecutive terms.

26 Before exercising any authority or performing any duties  
27 as a member of the board, each member shall qualify as  
28 such by taking and subscribing to the oath of office prescribed  
29 by section five, article four of the state constitution, the  
30 certificate whereof shall be filed with the secretary of state.

31 No member of the board appointed by the governor may be  
32 removed from office by the governor except for official mis-  
33 conduct, incompetence, neglect of duty or gross immorality  
34 and then only in the manner prescribed by law for the removal  
35 by the governor of state elective officers.

**§18-26-6. Meetings; quorum; per diem and expenses of members.**

1 The board shall hold at least six meetings in every fiscal  
2 year commencing July one and ending the following June  
3 thirty, one of which meetings, to be known as the annual  
4 meeting, shall be held in July, or as soon thereafter as  
5 practicable, in the year one thousand nine hundred sixty-nine  
6 and in June of each subsequent year. Annual meetings, as  
7 well as the five additional required meetings in each fiscal

8 year, shall be held on such dates and at such places as the  
9 board may prescribe, subject only to the requirement that the  
10 annual meeting shall be held in June. In addition to the  
11 statutorily required meetings, the board may meet at such  
12 other times as may be necessary, such meetings to be held  
13 upon its own resolution or at the call of the president of  
14 the board.

15 Of the twelve members, six members of the board shall  
16 constitute a quorum, and a majority vote of the quorum shall  
17 be necessary to pass upon matters before the board.

18 The members of the board shall be paid fifty dollars per  
19 diem for actual time spent in the performance of duties under  
20 this article, and shall be reimbursed for actual and necessary  
21 expenses incident to the performance of their duties, upon  
22 presentation of an itemized sworn statement thereof. The  
23 foregoing per diem and reimbursement for actual and necessary  
24 expenses shall be paid from appropriations made by the  
25 Legislature to the board.

**§18-26-9a. Advisory council of faculty.**

1 During the month of April, one thousand nine hundred  
2 seventy-seven, and annually thereafter, each state college, com-  
3 munity college, including Potomac State College of West  
4 Virginia University, and university president or other ad-  
5 ministrative head shall convene a meeting of all faculty  
6 members of his institution. At these meetings, the faculty  
7 members of each such college and university shall elect one  
8 faculty member to serve on the advisory council of faculty,  
9 which is hereby created, consisting of one faculty member,  
10 so elected, from each such college and university. Terms  
11 of the members of such council shall be for one year and  
12 shall begin on the first day of May of each year.

13 The advisory council of faculty shall meet at least once  
14 each quarter, and shall meet during each month of June,  
15 at which meeting the council shall elect a chairman, who shall  
16 be by virtue of his office a voting member of the West Vir-  
17 ginia board of regents.

18 The advisory council of faculty, through its chairman and  
19 in any other appropriate manner, shall consult and advise

20 the board of regents in matters of higher education in which  
21 the faculty members of this state's colleges and universities  
22 may have an interest.

23 Members of the advisory council shall be eligible to  
24 succeed themselves. Members of the advisory council shall  
25 serve without compensation, but shall be entitled to reim-  
26 bursement for actual and necessary expenses incurred in  
27 the performance of the duties of their office to be paid by  
28 the state college or university served.

29 The board of regents shall furnish a secretarial service  
30 to the advisory council, and the advisory council shall  
31 cause to be prepared minutes of its meetings, which minutes  
32 shall be available, upon request, to any faculty member of  
33 the state's colleges and universities.

**§18-26-9b. Advisory council of students.**

1 The student government organization at each state college,  
2 community college, including Potomac State College of West  
3 Virginia University, and university shall elect a student, who  
4 shall be a resident of the state of West Virginia and who may be  
5 the elected head, or president, of such organization, to serve on  
6 the advisory council of students which is hereby created, con-  
7 sisting of the elected representatives of each such college or  
8 university. Terms of the members of such council shall be for  
9 one year and shall begin on the first day of May of each year.

10 The advisory council of students shall meet at least once  
11 each quarter, and shall meet during each month of June, at  
12 which meeting, the council shall elect a chairman, who shall be  
13 a resident of the state of West Virginia and who shall be, by  
14 virtue of his office, a voting member of the West Virginia  
15 board of regents.

16 The advisory council of students, through its chairman  
17 and in any other appropriate manner, shall consult and  
18 advise the board of regents in matters of higher education  
19 in which the students of the state's colleges and universities  
20 may have an interest.

21 Members of the advisory council shall be eligible to suc-  
22 ceed themselves. Members of the advisory council shall

23 serve without compensation, but shall be entitled to reimburse-  
 24 ment for actual and necessary expenses incurred in the per-  
 25 formance of the duties of their office to be paid by the state  
 26 college or university served.

27 The board of regents shall furnish a secretarial service  
 28 to the advisory council, and the advisory council shall cause  
 29 to be prepared minutes of its meetings, which minutes shall  
 30 be available, upon request, to any student in this state's  
 31 colleges and universities.

## CHAPTER 92

(Com. Sub. for H. B. 1547—By Mr. Prunty)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five, relating to tenure of position with respect to tenured professional and other teaching personnel at higher educational institutions; tenure of position; insuring tenure when on leave to accept governmental appointments.

*Be it enacted by the Legislature of West Virginia:*

That article twenty-six, 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 twenty-five, to read as follows:

### **ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**

#### **§18-26-25. Effect of leave of absence on academic tenure, rank, etc.**

1 Any other provision of law to the contrary notwithstanding,  
 2 any tenured professional or other teaching personnel at any  
 3 higher educational institution subject to the control and super-  
 4 vision of the West Virginia board of regents, who shall, with the  
 5 consent of the governing authority of the higher educational in-

stitutions by which he is employed, absent himself from his duties at such institution to accept employment in any nonelected governmental capacity shall be afforded such benefits of academic tenure, rank and position as if such person had remained continuously in the position retained and held at such higher educational institutions immediately preceding any such absence: *Provided*, That in no event shall such leave of absence exceed four years: *Provided, however*, That any individual who remains in governmental employment which exceeds the limitations imposed by this section shall forfeit all rights to academic tenure, rank and position formerly held by him at such institution.

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## CHAPTER 93

(Com. Sub. for S. B. 356—By Mr. Gilligan)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the assignment, transfer, promotion, demotion, suspension and recommendation and dismissal of school personnel by school superintendent; preliminary notice required; reasons required for transfer; notice; hearing and proof required.

*Be it enacted by the Legislature of West Virginia:*

That section seven, article two, 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 2. SCHOOL PERSONNEL.**

**§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.**

1 The superintendent, subject only to approval of the

2 board, shall have authority to assign, transfer, promote,  
3 demote or suspend school personnel and to recommend  
4 their dismissal pursuant to provisions of this chapter.  
5 However, an employee shall be notified in writing by  
6 the superintendent on or before the first Monday in April  
7 if he is being considered for transfer or to be transferred.  
8 Any teacher or employee who desires to protest such  
9 proposed transfer may request in writing a statement of  
10 the reasons for the proposed transfer. Such statement of  
11 reasons shall be delivered to the teacher or employee  
12 within ten days of the receipt of the request. Within ten  
13 days of the receipt of the statement of the reasons, the  
14 teacher or employee may make written demand upon the  
15 superintendent for a hearing on the proposed transfer  
16 before the county board of education. The hearing on the  
17 proposed transfer shall be held on or before the first  
18 Monday in May. At the hearing, the reasons for the pro-  
19 posed transfer must be shown.

20 The superintendent at a meeting of the board on or  
21 before the first Monday in May, shall furnish in writing  
22 to the board a list of teachers and other employees to  
23 be considered for transfer and subsequent assignment  
24 for the next ensuing school year. All other teachers and  
25 employees not so listed shall be considered as reassigned  
26 to the positions or jobs held at the time of this meeting.  
27 The list of those recommended for transfer shall be in-  
28 cluded in the minute record of such meeting and all  
29 those so listed shall be notified in writing, which notice  
30 shall be delivered in writing, by certified mail, return  
31 receipt requested, to such persons' last known addresses  
32 within ten days following said board meeting, of their  
33 having been so recommended for transfer and subsequent  
34 assignment and the reasons therefor. The superinten-  
35 dent's authority to suspend school personnel shall be  
36 temporary only pending a hearing upon charges filed by  
37 the superintendent with the board of education and such  
38 period of suspension shall not exceed thirty days unless  
39 extended by order of the board.

40 The provisions of this section respecting hearings upon  
41 notice of transfer shall not be applicable in emergency

42 situations where the school building becomes damaged or  
43 destroyed through an unforeseeable act and which act  
44 necessitates a transfer of such school personnel because  
45 of the aforementioned condition of the building.

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## CHAPTER 94

(S. B. 429—By Mr. Galperin)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, 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 eight-a, relating to the hiring of probationary personnel and providing for notice in the event they are not hired or not recommended to be rehired and the reasons therefor; and hearing before board.

*Be it enacted by the Legislature of West Virginia:*

That article two, 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 eight-a, to read as follows:

### **ARTICLE 2. SCHOOL PERSONNEL.**

**§18A-2-8a. Notice to probationary personnel of rehiring or nonrehiring; hearing.**

1 The superintendent at a meeting of the board on or  
2 before the first Monday in May of each year shall provide  
3 in writing to the board a list of all probationary teachers  
4 that he recommends to be rehired for the next ensuing  
5 school year. The board shall act upon the superinten-  
6 dent's recommendations at that meeting in accordance  
7 with section one of this article. The board at this same  
8 meeting shall also act upon the retention of other proba-  
9 tionary employees as provided in sections four and five  
10 of this article. Any such probationary teacher or other

11 probationary employee who is not rehired by the board  
 12 at that meeting shall be notified in writing, by certified  
 13 mail, return receipt requested, to such persons' last-  
 14 known addresses within ten days following said board  
 15 meeting, of their not having been rehired or not having  
 16 been recommended for rehiring.

17 Any probationary teacher who receives notice that he  
 18 has not been recommended for rehiring or other proba-  
 19 tionary employee who has not been reemployed may  
 20 within ten days after receiving the written notice request  
 21 a statement of the reasons for not having been rehired and  
 22 may request a hearing before the board. Such hearing  
 23 shall be held at the next regularly scheduled board of  
 24 education meeting or a special meeting of the board called  
 25 within thirty days of the request for hearing. At the  
 26 hearing, the reasons for the nonrehiring must be shown.

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## CHAPTER 95

(Com. Sub. for S. B. 461—By Mr. Brotherton, Mr. President)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section eight, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum monthly pay for school auxiliary and service employees; rights, privileges and benefits for such employees; and providing additional class titles.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.**

**§18A-4-8. Minimum monthly pay for service and auxiliary personnel.**

1 The purpose of this section is to establish a state minimum



2 monthly pay scale and employment term for auxiliary and  
3 service personnel. The employment term for auxiliary and  
4 service personnel shall be no less than ten months, a month  
5 being defined as twenty employment days: *Provided*, That the  
6 county board of education may contract with all or part of such  
7 personnel for a longer term. The beginning and closing dates  
8 of the ten-month term shall not exceed forty-three weeks.  
9 Auxiliary and service personnel employed on a yearly or  
10 twelve-month basis may be employed by calendar months.  
11 Whenever there is a change in job assignment during the  
12 school year, the minimum pay scale and any county supple-  
13 ment shall be applicable.

14 Auxiliary and service personnel employed in the same  
15 classification for more than the two hundred day minimum  
16 employment term shall be paid for such additional employment  
17 at a daily rate of no less than the daily rate paid for the two  
18 hundred day minimum employment term.

19 Upon the change in classification or upon meeting the  
20 requirements of an advanced classification of or by any  
21 employee, his salary shall be made to comply with the re-  
22 quirements of this article, and to any county salary schedule  
23 in excess of the minimum requirements of this article, based  
24 upon his advanced classification and allowable years of em-  
25 ployment.

26 An employee's contract as provided in sections four and five,  
27 article two of this chapter shall state the appropriate monthly  
28 salary the employee is to be paid based on the class title as  
29 provided in this article and any county salary schedule in  
30 excess of the minimum requirements of this article.

31 The column heads of the state minimum pay scale and class  
32 titles, set forth below are defined as follows:

33 "Pay grade" means the monthly salary applicable to class  
34 titles of auxiliary and service personnel.

35 "Years of employment" means the number of years which  
36 an employee classified as auxiliary or service personnel has  
37 been employed by a board of education in any position prior to  
38 or subsequent to the effective date of this section and in-  
39 cluding service in the armed forces of the United States if the

40 employee were employed at the time of his induction. For the  
41 purpose of this section, years of employment shall be limited  
42 to the number of years shown and allowed under the state  
43 minimum pay scale set forth hereinafter.

44 "Class title" means the name of the position or job held by  
45 auxiliary and service personnel.

46 "Accountant I" means personnel employed to maintain  
47 payroll records and reports and perform one or more opera-  
48 tions relating to a phase of the total payroll.

49 "Accountant II" means personnel employed to maintain  
50 accounting records and to be responsible for the accounting  
51 process associated with billing, budgets, purchasing and related  
52 operations.

53 "Accountant III" means personnel who are employed in the  
54 county board of education office to manage and supervise  
55 accounts payable and/or payroll procedures.

56 "Aide I" means auxiliary personnel as defined in section  
57 one, article one of this chapter.

58 "Aide II" means auxiliary personnel as defined in section  
59 one, article one of this chapter who have completed a training  
60 program approved by the state board of education.

61 "Audiovisual technician" means personnel employed to  
62 perform minor maintenance on audiovisual equipment, films,  
63 supplies and the filling of requests for equipment.

64 "Bus operator" means personnel employed to operate  
65 school buses and other school transportation vehicles as  
66 provided by the state board of education.

67 "Buyer" means personnel employed to review and write  
68 specifications, negotiate purchase bids and recommend pur-  
69 chase agreements for materials and services that meet predeter-  
70 mined specifications at the lowest available costs.

71 "Cabinet maker" means personnel employed to construct  
72 cabinets, tables, bookcases and other furniture.

73 "Cafeteria manager" means personnel employed to direct

- 74 the operation of a food services program in a school, including  
75 assigning duties to employees, approving requisitions for  
76 supplies and repairs, keeping inventories, inspecting areas to  
77 maintain high standards of sanitation, preparing financial  
78 reports and keeping records pertinent to food services of a  
79 school.
- 80 "Carpenter I" means personnel classified as a carpenter's  
81 helper.
- 82 "Carpenter II" means personnel classified as a journeyman  
83 carpenter.
- 84 "Chief mechanic" means personnel employed to be respon-  
85 sible for directing activities which ensure that student trans-  
86 portation or other board-owned vehicles are properly and  
87 safely maintained.
- 88 "Clerk I" means personnel employed to perform clerical  
89 tasks.
- 90 "Clerk II" means personnel employed to perform general  
91 clerical tasks, prepare reports and tabulations and operate  
92 office machines.
- 93 "Computer operator" means qualified personnel employed  
94 to operate computers.
- 95 "Cook I" means personnel employed as a cook's helper.
- 96 "Cook II" means personnel employed to interpret menus, to  
97 prepare and serve meals in a food service program of a school  
98 system.
- 99 "Cook III" means personnel employed to prepare and serve  
100 meals, make reports, prepare requisitions for supplies, order  
101 equipment and repairs for a food service program of a school  
102 system.
- 103 "Crew leader" means personnel employed to organize the  
104 work for a crew of maintenance employees to carry out  
105 assigned projects.
- 106 "Custodian I" means personnel employed to keep buildings  
107 clean and free of refuse.
- 108 "Custodian II" means personnel employed as a watchman or  
109 groundsman.

110 "Custodian III" means personnel employed to keep buildings  
111 clean and free of refuse, to operate the heating or cooling  
112 systems and to make minor repairs.

113 "Custodian IV" means personnel employed as head custo-  
114 dians. In addition to providing services as defined in "Custo-  
115 dian III," their duties may include supervising other custodian  
116 personnel.

117 "Director or coordinator of services" means personnel not  
118 defined as professional personnel or professional educators in  
119 section one, article one of this chapter, who are assigned to  
120 direct a department or division.

121 "Draftsman" means personnel employed to plan, design and  
122 produce detailed architectural/engineering drawings.

123 "Electrician I" means personnel employed as an apprentice  
124 electrician helper or who holds an electrician helper license  
125 issued by the state fire marshal.

126 "Electrician II" means personnel employed as an electrician  
127 journeyman or who holds a journeyman electrician license  
128 issued by the state fire marshal.

129 "Electronic technician I" means personnel employed at the  
130 apprentice level to repair and maintain electronic equipment.

131 "Electronic technician II" means personnel employed at the  
132 journeyman level to repair and maintain electronic equip-  
133 ment.

134 "Executive secretary" means personnel employed as the  
135 county school superintendent's secretary or as a secretary who  
136 is assigned to a position characterized by significant ad-  
137 ministrative duties.

138 "Food services supervisor" means qualified personnel not  
139 defined as professional personnel or professional educators as  
140 in section one, article one of this chapter, employed to manage  
141 and supervise a county school system's food service program.  
142 The duties would include preparing in-service training pro-  
143 grams for cooks and food service employees, instructing per-  
144 sonnel in the areas of quantity cooking with economy and  
145 efficiency, and keeping aggregate records and reports.

146 "Foreman" means skilled persons employed for supervision  
147 of personnel who work in the areas of repair and maintenance  
148 of school property and equipment.

149 "General maintenance" means personnel employed as  
150 helpers to skilled maintenance employees and to perform  
151 minor repairs to equipment and buildings of a county school  
152 system.

153 "Glazier" means personnel employed to replace glass or  
154 other materials in windows and doors and to do minor  
155 carpentry tasks.

156 "Graphic artist" means personnel employed to prepare  
157 graphic illustrations.

158 "Groundsman" means personnel employed to perform duties  
159 that relate to the appearance, repair and general care of school  
160 grounds in a county school system. Additional assignments  
161 may include the operation of a small heating plant and routine  
162 cleaning duties in buildings.

163 "Handyman" means personnel employed to perform  
164 routine manual tasks in any operation of the county school  
165 system.

166 "Heating and air conditioning mechanic I" means personnel  
167 employed at the apprentice level to install, repair and main-  
168 tain heating and air conditioning plants and related electrical  
169 equipment.

170 "Heating and air conditioning mechanic II" means per-  
171 sonnel employed at the journeyman level to install, repair and  
172 maintain heating and air conditioning plants and related electri-  
173 cal equipment.

174 "Heavy equipment operator" means personnel employed to  
175 operate heavy equipment.

176 "Inventory supervisor" means personnel who are employed  
177 to supervise or maintain operations in the receipt, storage,  
178 inventory and issuance of materials and supplies.

179 "Key punch operator" means qualified personnel employed  
180 to operate key punch machines or verifying machines.

181 "Locksmith" means personnel employed to repair and  
182 maintain locks and safes.

183 "Lubrication man" means personnel employed to lubricate  
184 and service gasoline or diesel-powered equipment of a county  
185 school system.

186 "Machinist" means personnel employed to perform ma-  
187 chinist tasks which include the ability to operate a lathe,  
188 planer, shaper, threading machine and wheel press. Such  
189 personnel should also have ability to work from blueprints and  
190 drawings.

191 "Maintenance clerk" means personnel employed to main-  
192 tain and control a stocking facility to keep adequate tools and  
193 supplies on hand for daily withdrawal for all school main-  
194 tenance crafts.

195 "Mason" means personnel employed to perform tasks con-  
196 nected with brick and block laying and carpentry tasks related  
197 to such laying.

198 "Mechanic" means personnel employed who can inde-  
199 pendently perform skilled duties in the maintenance and repair  
200 of automobiles, school buses and other mechanical and mobile  
201 equipment to use in a county school system.

202 "Mechanic assistant" means personnel employed as a me-  
203 chanic apprentice and helper.

204 "Office equipment repairman I" means personnel employed  
205 as an office equipment repairman apprentice or helper.

206 "Office equipment repairman II" means personnel respon-  
207 sible for servicing and repairing all office machines and equip-  
208 ment. Such personnel shall be responsible for parts being  
209 purchased necessary for the proper operation of a program  
210 of continuous maintenance and repair.

211 "Painter" means personnel employed to perform duties of  
212 painting, finishing and decorating of wood, metal and concrete  
213 surfaces of buildings, other structures, equipment, machinery  
214 and furnishings of a county school system.

215 "Plumber I" means personnel employed as an apprentice  
216 plumber and helper.

- 217      “Plumber II” means personnel employed as a journeyman  
218 plumber.
- 219      “Printing operator” means personnel employed to operate  
220 duplication equipment, and as required, to cut, collate, staple,  
221 bind and shelve materials.
- 222      “Printing supervisor” means personnel employed to super-  
223 vise the operation of a print shop.
- 224      “Programmer” means personnel employed to design and  
225 prepare programs for computer operation.
- 226      “Roofing/sheet metal mechanic” means personnel employed  
227 to install, repair, fabricate and maintain roofs, gutters, flashing  
228 and duct work for heating and ventilation.
- 229      “School bus supervisor” means qualified personnel em-  
230 ployed to assist in selecting school bus operators and routing  
231 and scheduling of school buses, operate a bus when needed,  
232 relay instructions to bus operators, plan emergency routing  
233 of buses and promoting good relationships with parents, pupils,  
234 bus operators and other employees.
- 235      “Secretary I” means personnel employed to transcribe from  
236 notes or mechanic equipment, receive callers, perform clerical  
237 tasks, prepare reports and operate office machines.
- 238      “Secretary II” means personnel employed as school, office  
239 or program secretaries to perform general clerical tasks,  
240 transcribe, prepare reports, receive callers and refer them to  
241 proper persons, operate office machines, keep records and  
242 handle routine correspondence.
- 243      “Secretary III” means personnel assigned to the county  
244 board of education office administrators in charge of various  
245 instructional, maintenance, transportation, food services, opera-  
246 tions and health departments, federal programs or departments  
247 with particular responsibilities of purchasing and financial  
248 control.
- 249      “Supervisor of maintenance” means skilled personnel not  
250 defined as professional personnel or professional educators as

251 in section one, article one of this chapter. His responsibilities  
252 would include directing the upkeep of buildings and shops,  
253 issuing instructions to subordinates relating to cleaning, repairs  
254 and maintenance of all structures, mechanical and electrical  
255 equipment of a board of education.

256 "Supervisor of transportation" means qualified personnel  
257 employed to direct school transportation activities, properly  
258 and safely, and to supervise the maintenance and repair of  
259 vehicles, buses, and other mechanical and mobile equipment  
260 used by the county school system.

261 "Switchboard operator-receptionist" means personnel em-  
262 ployed to refer incoming calls, to assume contact with the  
263 public, to direct and to give instructions as necessary, to  
264 operate switchboard equipment, call director or other super-  
265 vising personnel, and to provide clerical assistance.

266 "Truck driver" means personnel employed to operate light  
267 or heavy duty gasoline and diesel-powered vehicles.

268 "Warehouse clerk" means personnel employed to be  
269 responsible for receiving, storing, packing and shipping  
270 goods.

271 "Watchman" means personnel employed to protect school  
272 property against damage or theft. Additional assignments may  
273 include operation of a small heating plant and routine cleaning  
274 duties.

275 "Welder" means personnel employed to provide acetylene  
276 or electric welding services for a school system.

277 On and after the first day of July, one thousand nine hundred  
278 seventy-seven, the minimum monthly pay for each auxiliary  
279 and service employee whose employment is for a period of  
280 more than three and one-half hours a day shall be at least the  
281 amounts indicated in the following "State Minimum Pay  
282 Scale," and the minimum monthly pay for each auxiliary or  
283 service employee whose employment is for a period of three  
284 and one-half hours or less a day shall be at least one half the  
285 amount indicated in the following "State Minimum Pay  
286 Scale":



**STATE MINIMUM PAY SCALE**

**YEARS OF EMPLOYMENT**

<b>PAY GRADE</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>
A. Monthly .....	475	485	495	505	515	525	535	545	555	565	575	585	595	605
B. Monthly .....	495	505	515	525	535	545	555	565	575	585	595	605	615	625
C. Monthly .....	535	545	555	565	575	585	595	605	615	625	635	645	655	665
D. Monthly .....	585	595	605	615	625	635	645	655	665	675	685	695	705	715
E. Monthly .....	635	645	655	665	675	685	695	705	715	725	735	745	755	765
F. Monthly .....	695	705	715	725	735	745	755	765	775	785	795	805	815	825
G. Monthly .....	725	735	745	755	765	775	785	795	805	815	825	835	845	855
H. Monthly .....	795	805	815	825	835	845	855	865	875	885	895	905	915	925

<b>CLASS TITLE</b>	<b>PAY GRADE</b>	<b>CLASS TITLE</b>	<b>PAY GRADE</b>
Accountant I .....	D	Chief Mechanic .....	G
Accountant II .....	E	Clerk I .....	B
Accountant III .....	F	Clerk II .....	C
Aide I .....	A	Computer Operator .....	E
Aide II .....	B	Cook I .....	A
Audiovisual Technician .....	C	Cook II .....	B
Bus Operator .....	D	Cook III .....	C
Buyer .....	F	Crew Leader .....	F
Cabinet Maker .....	G	Custodian I .....	A
Cafeteria Manager .....	D	Custodian II .....	B
Carpenter I .....	E	Custodian III .....	C
Carpenter II .....	F	Custodian IV .....	D

CLASS TITLE	PAY GRADE
Director or Coordinator Services	H
Draftsman	D
Electrician I	F
Electrician II	G
Electronic Technician I	F
Electronic Technician II	G
Executive Secretary	F
Food Services Supervisor	E
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
Maintenance Clerk	C

CLASS TITLE	PAY GRADE
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
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

287 In addition to the compensation herein provided for  
288 auxiliary and service personnel, each auxiliary and service  
289 employee shall, notwithstanding any provisions in this code to  
290 the contrary, be entitled to all auxiliary and service personnel  
291 employee rights, privileges and benefits provided under this  
292 or any other chapter of this code without regard to such  
293 employee's hours of employment or the methods or sources of  
294 compensation.

295 Auxiliary and service personnel whose years of employment  
296 exceed the number of years shown and provided for under the  
297 state minimum pay scale heretofore set forth shall not be paid  
298 less than the amount shown for the maximum years of em-  
299 ployment shown and provided for in the classification in which  
300 he is employed.

301 The county board of education may establish salary sched-  
302 ules which shall be in excess of the state minimum fixed  
303 by this article, such county schedules to be uniform through-  
304 out the county with regard to any training classification,  
305 experience, years of employment, responsibility, duties,  
306 pupil participation, pupil enrollment, size of buildings, opera-  
307 tion of equipment or other requirements. Uniformity shall  
308 apply to any additional salary increments or compensation  
309 for all persons performing like assignments and duties with-  
310 in the county. In establishing such local salary schedules,  
311 no county, from the effective date of this article, shall re-  
312 duce local funds allocated for auxiliary and service personnel  
313 salaries used for supplementing federal and state funds pro-  
314 vided for such salaries.

315 The state board of education is hereby authorized to estab-  
316 lish other class titles of auxiliary and service personnel positions  
317 and jobs not listed in this section. The state board of education  
318 is further authorized to provide appropriate pay grades for  
319 such positions and jobs but pay shall be established within the  
320 minimum salary scale of this section.

321 No auxiliary or service employee, without his written con-  
322 sent, shall be reclassified by class title or relegated to any  
323 condition of employment which would result in a reduction of  
324 his salary earned during the current fiscal year or which would  
325 result in a reduction of his salary for which he would qualify by

326 continuing in the same job position and classification held  
327 during said fiscal year.

328 Any board failing to comply with the provisions of this  
329 article may be compelled to do so by mandamus, and shall be  
330 liable to any party prevailing against the board for court costs  
331 and his reasonable attorney fee, as determined and established  
332 by the court.

333 The provisions of this section shall become effective July  
334 one, one thousand nine hundred seventy-seven.

## CHAPTER 96

(S. B. 521—By Mr. Brotherton, Mr. President)

[Passed April 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the issuance and sale, subsequent to the first day of February, one thousand nine hundred seventy-eight, by the governor of bonds of the state of West Virginia, under authority of the better school buildings amendment of 1972, in the amount not exceeding fifty million dollars, for the sole purpose of raising funds for distribution to county boards of education that qualify by meeting conditions, qualifications and requirements as are prescribed by general law and used and appropriated by such county boards of education solely for the construction, renovation or remodeling of elementary or secondary public school buildings or facilities, the equipping of the same in connection with any such construction, renovation or remodeling, and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such

bonds from taxation by the state, or by any county, district or municipality thereof; setting forth the form of coupon and registered bonds and coupons; establishing a special account designated state school buildings bond debt service account and stating what moneys shall be deposited therein and disposition thereof; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of the bonds shall be paid into a separate and distinct account and for expenditures from such account and investment of the proceeds in such account; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; providing for the state treasurer to be financial advisor; providing for the attorney general or his duly appointed legal representative to serve as bond counsel; and providing that all necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be paid out of the state school buildings bond debt service account on warrants of the auditor of the state drawn on the state treasurer.

*Be it enacted by the Legislature of West Virginia:*

**ISSUANCE AND SALE OF SCHOOL BUILDINGS BONDS.**

- §1. School buildings bonds; amount; when may issue.
- §2. Transfer fee; registration fee; where payable; interest rate; tax exempt.
- §3. Form of bond.
- §4. Form of coupon.
- §5. Listing by auditor.
- §6. Establishment of state school buildings bond debt service account; deposit therein.
- §7. Covenants of state.
- §8. Sale by governor; minimum price.
- §9. Proceeds paid into separate account; expenditures.
- §10. Plates, etc., property of state.
- §11. Auditor to be custodian of unsold bonds.
- §12. Interim certificates.
- §13. State treasurer to be financial advisor.
- §14. Attorney general or his duly appointed legal representative to serve as bond counsel.
- §15. Approval and payment of all necessary expenses.

**§1. School buildings bonds; amount; when may issue.**

- 1 Bonds of the state of West Virginia, under authority of

2 the better school buildings amendment of 1972, of the  
3 par value not to exceed fifty million dollars, are hereby  
4 authorized to be issued and sold, at some date subse-  
5 quent to the first day of February, one thousand nine hun-  
6 dred seventy-eight, for the sole purpose of raising funds  
7 for distribution to county boards of education that qualify  
8 by meeting conditions, qualifications and requirements  
9 as are prescribed by general law and used and appropri-  
10 ated by such county boards of education solely for the  
11 construction, renovation or remodeling of elementary or  
12 secondary public school buildings or facilities, the equip-  
13 ping of the same in connection with any such construc-  
14 tion, renovation or remodeling, and the acquisition and  
15 preparation of sites for elementary or secondary public  
16 school buildings or facilities. Such bonds may be issued  
17 by the governor in such amounts, in coupon or registered  
18 form, in such denominations, at such time, after the first  
19 day of February, one thousand nine hundred seventy-  
20 eight, bearing such date or dates, as the governor may de-  
21 termine, based upon an examination of the needs of the  
22 various county boards of education which justify the  
23 issuance by the governor of said bonds, and shall become  
24 due and payable serially, annually or semiannually, in  
25 such amounts and mature in such years as the governor  
26 may determine. Such bonds shall mature within and not  
27 exceeding twenty-five years from their date. The gov-  
28 ernor must offer said bonds for competitive bids from  
29 recognized financial investment institutions before said  
30 bonds may be sold.

**§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.**

1 The auditor and the treasurer are hereby authorized  
2 to arrange for the transfer of registered bonds and for  
3 each such transfer a fee of one dollar shall be charged by  
4 and paid to the state of West Virginia, to the credit of the  
5 state school buildings bond debt service account. Bonds  
6 taken in exchange shall be canceled by the auditor and  
7 treasurer and be carefully preserved by the treasurer.  
8 The treasurer shall make provisions for registering "pay-  
9 able to bearer" bonds and for each bond registered a

10 fee of one dollar shall likewise be charged by and paid  
11 to the state of West Virginia, to the credit of the state  
12 school buildings bond debt service account. All such  
13 bonds shall be payable at the office of the treasurer of  
14 the state of West Virginia, or, at the option of the holder,  
15 at a bank in the city of New York to be designated by  
16 the governor, or, at the option of the holder at such other  
17 bank or banks, within the state, as may be designated or  
18 approved by the governor. The bonds shall bear interest,  
19 payable semiannually, to bearer, at the office of the  
20 treasurer of the state of West Virginia, at the capitol of  
21 the state, or at the banks designated and approved by the  
22 governor, upon presentation and surrender of interest  
23 coupons, then due, in the case of coupon bonds. For the  
24 payment of interest on registered bonds, the treasurer of  
25 the state of West Virginia shall requisition a warrant  
26 from the auditor of the state to be drawn on the state  
27 treasurer, and shall mail such warrant to the registered  
28 owner at the address as shown by the record of regis-  
29 tration. Both the principal and interest of the bonds shall  
30 be payable in lawful money of the United States of  
31 America and the bonds shall be exempt from taxation  
32 by the state of West Virginia, or by any county, district  
33 or municipality thereof, which facts shall appear on the  
34 face of the bonds as part of the contract with the holder  
35 thereof.

### §3. Form of bond.

1 The bonds shall be executed on behalf of the state of  
2 West Virginia, by the manual or facsimile signature of  
3 the treasurer thereof, under the great seal of the state  
4 or a facsimile thereof, and countersigned by the manual  
5 or facsimile signature of the auditor of the state: *Pro-*  
6 *vided*, That one of said signatures on said bonds shall be  
7 a manual signature and said bonds shall be in the fol-  
8 lowing form or to the following effect, as nearly as may  
9 be, namely:

10                   COUPON SCHOOL BUILDINGS BOND  
 11 (or registered school buildings bond, as the case may be)  
 12                   OF THE  
 13                   STATE OF WEST VIRGINIA

14 \$ \_\_\_\_\_ No. \_\_\_\_\_

15 The state of West Virginia, under and by virtue of  
 16 authority of an amendment to the constitution, which  
 17 was proposed by Senate Joint Resolution No. 4, adopted  
 18 the ninth day of March, one thousand nine hundred  
 19 seventy-two, and was ratified by a vote of the people at  
 20 the general election on the seventh day of November,  
 21 one thousand nine hundred seventy-two, which is hereby  
 22 made a part hereof as fully as if set forth at length  
 23 herein, acknowledges itself to be indebted to and hereby  
 24 promises to pay to the bearer hereof (in case of a coupon  
 25 bond) or to \_\_\_\_\_ or assigns (the owner of  
 26 record, in case of registered bonds) on the \_\_\_\_\_ day  
 27 of \_\_\_\_\_, 19\_\_\_\_, in lawful money of the United  
 28 States of America at the office of the treasurer of the  
 29 state of West Virginia at the capitol of said state, or,  
 30 at \_\_\_\_\_ bank in the city of New York,  
 31 or at \_\_\_\_\_ bank, within the state, at the  
 32 option of the holder, the sum of \_\_\_\_\_ dollars,  
 33 with interest thereon at \_\_\_\_\_ percent a year from the  
 34 date, payable semiannually in like lawful money of the  
 35 United States of America at the treasurer's office or  
 36 banks aforesaid, on the first day of \_\_\_\_\_ and the  
 37 first day of \_\_\_\_\_ of each year (and in the case of  
 38 coupon bonds) according to the tenor of the annexed  
 39 coupons bearing the facsimile signature of the treasurer  
 40 of the state of West Virginia, upon surrender of such  
 41 coupons. This bond (in case of a coupon bond) may be  
 42 exchanged for a registered bond of like tenor upon  
 43 application to the treasurer of the state of West Virginia.

44 (Redemption provisions, if any, to be inserted here.)

45 To secure the payment of the principal and interest  
 46 of this bond, the state of West Virginia covenants and  
 47 agrees with the holder as follows: (1) That this bond



48 shall constitute a direct and general obligation of the  
 49 state of West Virginia; (2) that the full faith and credit  
 50 of the state is pledged to secure the payment of the  
 51 principal and interest of this bond; (3) that an annual  
 52 state tax shall be collected in an amount sufficient to  
 53 pay as it may accrue the interest on this bond and the  
 54 principal as the same mature; and (4) that to the full  
 55 extent permitted by the constitution of West Virginia  
 56 any of the covenants, agreements and provisions of this  
 57 act may be enforced in any court of competent jurisdic-  
 58 tion by any holder of such bonds or of any interest coupon  
 59 appertaining thereto.

60 This bond is hereby made exempt from any taxation  
 61 by the state of West Virginia, or by any county, district  
 62 or municipal corporation thereof.

63 In testimony whereof, witness the manual or facsimile  
 64 signature of the treasurer of the state of West Virginia,  
 65 and the manual or facsimile countersignature of the audi-  
 66 tor of the state, hereto affixed according to law, dated  
 67 the.....day of....., one thousand nine hun-  
 68 dred ....., and the seal of the state of West Vir-  
 69 ginia or a facsimile thereof.

70

Treasurer of the State of West Virginia

72 (SEAL)

73 Countersigned:

74 .....

75 Auditor of the State of West Virginia

§4. Form of coupon.

1 The form of coupon shall be substantially as follows,  
 2 to wit:

3 STATE OF WEST VIRGINIA

4 Bond No..... Coupon No.....

5 On the first day of....., 19....., the state  
 6 of West Virginia will pay to the bearer, in lawful money  
 7 of the United States of America, at the office of the  
 8 treasurer of the state, or, at.....

9 bank in the city of New York, or, at.....  
 10 bank, within the state, at the option of the holder, the  
 11 sum of.....dollars, the same being semi-  
 12 annual interest on School Buildings Bond No.....

13

14 Treasurer of the State of West Virginia

15 The signature of the treasurer to such coupon shall be  
 16 by his facsimile signature and the coupons shall be  
 17 numbered in the order of their maturity, from number  
 18 one consecutively. The bonds and coupons may be signed,  
 19 as provided in this act, by the present treasurer and  
 20 auditor, or by any of their respective successors in office,  
 21 and the bonds signed by the persons now in the office  
 22 may be sold by the governor or his successor in office  
 23 without being signed by the successor in office of the  
 24 present treasurer or auditor.

**§5. Listing by auditor.**

1 All coupons and registered bonds issued under this act  
 2 shall be separately listed by the auditor of the state in  
 3 books provided for the purpose, in each case giving the  
 4 date, number, character and amount of obligations issued,  
 5 and in the case of registered bonds, the name and post-  
 6 office address of the person, firm or corporation registered  
 7 as the owner thereof.

**§6. Establishment of state school buildings bond debt service account; deposit therein.**

1 The treasurer shall establish in his office a special ac-  
 2 count designated state school buildings bond debt service  
 3 account. Into such account and from the appropriation  
 4 made by the Legislature for such purpose there shall be  
 5 transferred sufficient moneys to pay the interest as the  
 6 same may accrue and the principal as the same mature  
 7 on such bonds. Moneys received from transfer and regis-  
 8 tration fees shall likewise be deposited into said special  
 9 account.

**§7. Covenants of state.**

1 The state of West Virginia covenants and agrees with  
 2 the holders of the bonds issued pursuant hereto as fol-

3 lows: (1) That such bonds shall constitute a direct and  
4 general obligation of the state of West Virginia; (2) that  
5 the full faith and credit of the state is hereby pledged  
6 to secure the payment of the principal and interest of  
7 such bonds; (3) that an annual state tax shall be collected  
8 in an amount sufficient to pay as it may accrue the  
9 interest on this bond and the principal as the same  
10 mature; and (4) that to the full extent permitted by  
11 the constitution of West Virginia any of the covenants,  
12 agreements and provisions of this act may be enforced  
13 in any court of competent jurisdiction by any holder of  
14 such bonds or of any interest coupon appertaining  
15 thereto.

**§8. Sale by governor; minimum price.**

1 The governor shall sell the bonds herein authorized  
2 at such time or times as he may determine necessary  
3 to provide funds for the construction, renovation, re-  
4 modeling and equipping of elementary or secondary pub-  
5 lic school buildings or facilities as herein provided, and  
6 subject to the limitations contained in this act. All sales  
7 shall be at not less than par and accrued interest. All  
8 interest coupons becoming payable prior to the sale date  
9 shall be canceled by the treasurer and rendered ineffec-  
10 tive, before the delivery of the bonds so sold.

**§9. Proceeds paid into separate account; expenditures.**

1 The proceeds of all sales of bonds herein authorized  
2 shall be paid into a separate and distinct account and  
3 shall be used and appropriated solely for the construc-  
4 tion, renovation, remodeling and equipping of elemen-  
5 tary and secondary public school buildings or facilities  
6 as provided for by the state constitution and the laws  
7 enacted thereunder. Except for such sums necessary for  
8 current operating balances, such account shall be invested  
9 and reinvested in short-term obligations of the United  
10 States treasury: *Provided*, That no such investment or  
11 reinvestment shall adversely affect the current operating  
12 balances of such account.

**§10. Plates, etc., property of state.**

1 The plates, casts, dies or other forms from which the

2 bonds authorized by this act are produced or made shall  
3 be the property of the state of West Virginia.

**§11. Auditor to be custodian of unsold bonds.**

1 The state auditor shall be the custodian of all unsold  
2 bonds issued pursuant to the provisions of this act.

**§12. Interim certificates.**

1 The governor may authorize the issuance of interim  
2 certificates to be issued to the purchasers of such bonds  
3 to be held by them in lieu of permanent bonds. When  
4 interim certificates are so issued, they shall become full  
5 and legal obligations of the state of West Virginia under  
6 all of the provisions of this act just as fully and com-  
7 pletely as the permanent bonds.

**§13. State treasurer to be financial advisor.**

1 The state treasurer shall serve as financial advisor to  
2 the governor for the issuance and sale of such bonds.

**§14. Attorney general or his duly appointed legal representa-  
tive to serve as bond counsel.**

1 The attorney general or his duly appointed legal rep-  
2 resentative, shall serve as bond counsel and shall be re-  
3 sponsible for the issuance of a final approving opinion  
4 regarding the legality of the sale of such bonds.

**§15. Approval and payment of all necessary expenses.**

1 All necessary expenses, including legal expenses ap-  
2 proved by the attorney general, incurred in the execution  
3 of this act shall be chargeable to and paid out of the state  
4 school buildings bond debt service account on warrants  
5 of the auditor of the state drawn on the state treasurer.

**CHAPTER 97**

(S. B. 328—By Mr. Palumbo)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Vir-  
ginia, one thousand nine hundred thirty-one, as amended,

by adding thereto a new article, designated article eighteen-a, relating to the creation and establishment of the West Virginia energy conservation revolving loan fund; short title; legislative findings; declaration of policy and responsibility; purpose and intent of article; definitions of terms; administration of revolving loan fund; powers and duties of the housing development fund respecting the revolving loan fund; creation of the revolving loan fund; purpose; investment of funds; loan agreements; expenditures from the revolving loan fund; terms and conditions of loans; prohibition on funds inuring to the benefit of directors, officers or private persons; termination or dissolution; annual audit; and rule of construction of provisions of this article.

*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-a, to read as follows:

**ARTICLE 18A. WEST VIRGINIA ENERGY CONSERVATION REVOLVING LOAN FUND.**

- §31-18A-1. Short title.
- §31-18A-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.
- §31-18A-3. Definitions.
- §31-18A-4. Administration of revolving loan fund by West Virginia housing development fund.
- §31-18A-5. Powers and duties of housing development fund regarding revolving loan fund.
- §31-18A-6. Revolving loan fund created; purpose; investment of funds; loan agreements; expenditures.
- §31-18A-7. Terms and conditions of loans from revolving loan fund.
- §31-18A-8. Prohibition on funds inuring to the benefit of or being distributable to the directors or officers.
- §31-18A-9. Termination or dissolution.
- §31-18A-10. Annual audit.

**§31-18A-1. Short title.**

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Energy Conservation Revolving Loan
- 3 Fund."

**§31-18A-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.**

1 It is hereby determined and declared as a matter of  
2 legislative finding: (a) That an energy shortage exists  
3 within the state of West Virginia; (b) that the energy  
4 shortage is severe in certain areas of the state and may  
5 become severe, from time to time, in other areas of the  
6 state; (c) that the cost to the consumer for energy usage  
7 continues to increase at an accelerated rate; (d) that the  
8 energy shortage has produced widespread unemploy-  
9 ment, threatening the economic stability of this state;  
10 and (e) that these conditions are inimical to the health,  
11 welfare and prosperity of all residents of the state and to  
12 the sound growth of the state.

13 It is hereby declared to be the public policy and a  
14 responsibility of this state to assist its residents in im-  
15 proving the energy efficiency of their residential dwell-  
16 ings. It is the purpose and intent of the Legislature in  
17 enacting this article to provide low interest loans to  
18 residents of this state of low and moderate income, who  
19 own and occupy single family residential dwellings, as an  
20 incentive for the improvement of the energy efficiency  
21 of such dwellings.

22 The Legislature finds that the public policy and respon-  
23 sibility of the state as set forth in this section cannot be  
24 effectively attained without the funding, establishment,  
25 operation and maintenance of the energy conservation  
26 revolving loan fund.

**§31-18A-3. Definitions.**

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

3 (1) "Residential dwelling" means a single family resi-  
4 dence located in the state of West Virginia, which it is  
5 determined by the housing development fund can be  
6 substantially aided in the conservation of energy by the  
7 making of improvements financed with a loan under this  
8 article;

9 (2) "Eligible owner of a residential dwelling" means:

- 10 (a) Person or persons of low and moderate income who  
11 own and occupy a residential dwelling; or
- 12 (b) Person or persons of higher income who own and  
13 occupy a residential dwelling in such area or areas of this  
14 state which are determined by the West Virginia housing  
15 development fund, in consultation with the public service  
16 commission, by resolution, to be a critical energy shortage  
17 area; or
- 18 (c) Person or persons who own and occupy a residential  
19 dwelling and who because of age or disability are found  
20 and determined by the West Virginia housing develop-  
21 ment fund, by resolution, to require assistance in improv-  
22 ing the energy efficiency of such dwellings to insure their  
23 health, safety and welfare;
- 24 (3) "Housing development fund" means the West Vir-  
25 ginia housing development fund created and established  
26 by section four, article eighteen, chapter thirty-one of this  
27 code;
- 28 (4) "Revolving loan fund" means the West Virginia  
29 energy conservation revolving loan fund which is created  
30 and established by section six of this article;
- 31 (5) "Person or persons of low and moderate income"  
32 means a person or persons, irrespective of race, creed,  
33 national origin or sex, determined by the housing develop-  
34 ment fund to require such assistance as is made available  
35 by this article on account of personal or family income  
36 not sufficient to afford to implement or install energy con-  
37 servation materials or equipment designed to improve the  
38 energy efficiency of residential dwellings, and in making  
39 such determination the housing development fund shall  
40 take into account the following: (a) The amount of the  
41 total income of such persons and families for housing  
42 energy needs; (b) the size of the family; (c) the cost and  
43 condition of the residential dwelling; and (d) the eligi-  
44 bility of such persons or families for federal housing  
45 energy conservation assistance of any type based upon  
46 low or moderate income basis.

**§31-18A-4. Administration of revolving loan fund by West Virginia housing development fund.**

1 The West Virginia energy conservation revolving loan  
2 fund, established and authorized by section six of this  
3 article, shall be administered by the board of directors of  
4 the West Virginia housing development fund, a public  
5 corporate body, created and established by section four,  
6 article eighteen, chapter thirty-one of this code.

**§31-18A-5. Powers and duties of housing development fund regarding revolving loan fund.**

1 The West Virginia housing development fund is hereby  
2 authorized and empowered:

3 (1) To accept appropriations, gifts, grants, bequests and  
4 devises, and to utilize or dispose of the same to carry out  
5 the purposes of this article;

6 (2) To make and execute contracts, releases, compro-  
7 mises, compositions and other instruments necessary or  
8 convenient for the exercise of its powers, or to carry out  
9 its purposes under this article;

10 (3) To collect reasonable fees and charges in connec-  
11 tion with making and servicing loans, notes, obligations,  
12 commitments and other evidences of indebtedness, which  
13 fees shall be limited to the amounts required to pay the  
14 costs of the housing development fund, including operating  
15 and administrative costs;

16 (4) To invest funds not required for immediate dis-  
17 bursement in any of the following securities:

18 (i) Direct obligations of or obligations guaranteed by  
19 the United States of America;

20 (ii) Bonds, debentures, notes or other evidences of  
21 indebtedness issued by any of the following agencies:  
22 Bank for cooperatives; federal intermediate credit banks;  
23 federal home loan bank system; Export-Import Bank of  
24 the United States; federal land banks; the Federal Na-  
25 tional Mortgage Association or the Government National  
26 Mortgage Association;

27 (iii) Public housing bonds issued by public agencies



28 or municipalities and fully secured as to the payment of  
29 both principal and interest by a pledge or annual con-  
30 tributions under an annual contributions contract or con-  
31 tracts with the United States of America; or temporary  
32 notes issued by public agencies or municipalities or pre-  
33 liminary loan notes issued by public agencies or munici-  
34 palities, in each case, fully secured as to the payment of  
35 both principal and interest by a requisite or payment  
36 agreement with the United States of America;

37 (iv) Certificates of deposit secured by obligations of  
38 the United States of America;

39 (v) Direct obligations of or obligations guaranteed by  
40 the state of West Virginia;

41 (vi) Direct and general obligations of any other state  
42 within the territorial United States, to the payment of  
43 the principal of and interest on which the full faith and  
44 credit of such state is pledged: *Provided, That* at the  
45 time of their purchase, such obligations are rated in either  
46 of the two highest rating categories by a nationally rec-  
47 ognized bond rating agency; and

48 (vii) Any fixed interest bond, note or debenture of any  
49 corporation organized and operating within the United  
50 States: *Provided, That* such corporation shall have a  
51 minimum net worth of fifteen million dollars and its  
52 securities or its parent corporation's securities are listed  
53 on one or more of the national stock exchanges: *Pro-*  
54 *vided, however, That* (1) such corporation has earned a  
55 profit in eight of the preceding ten fiscal years as reflected  
56 in its statements, and (2) such corporation has not de-  
57 faulted in the payment of principal or interest on any of  
58 its outstanding funded indebtedness during its preceding  
59 ten fiscal years, and (3) the bonds, notes or debentures  
60 of such corporation to be purchased are rated "AA" or  
61 the equivalent thereof or better than "AA" or the equiva-  
62 lent thereof by at least two or more nationally recognized  
63 rating services such as Standard and Poor's, Dun & Brad-  
64 street or Moody's;

65 (5) To sue and be sued;

66 (6) To promulgate and publish rules and regulations  
67 not inconsistent with the provisions of this article;

68 (7) To appoint such employees and consultants as it  
69 deems advisable and to fix their compensation and pre-  
70 scribe their duties;

71 (8) To acquire, hold and dispose of personal property  
72 for its purposes under this article;

73 (9) To enter into agreements or other transactions with  
74 any federal or state agency, any person, or any domestic  
75 or foreign partnership, corporation, association or organi-  
76 zation;

77 (10) To sell, at public or private sale, any mortgage or  
78 other negotiable instrument or obligation securing a loan  
79 made under the provisions of this article;

80 (11) To establish guidelines to be complied with by any  
81 person, firm, association, partnership or corporation, en-  
82 gaged in supplying, retailing or installing energy conser-  
83 vation materials or equipment designed to improve the  
84 energy efficiency of residential dwellings to be improved  
85 with financing under this article;

86 (12) To approve any person, firm, association, partner-  
87 ship or corporation who shall enter into any bargain,  
88 agreement or contract to furnish or install energy conser-  
89 vation materials or equipment for a residential dwelling,  
90 the cost and expense of which shall be defrayed by a loan  
91 made pursuant to this article;

92 (13) To make loans in the manner and under the terms  
93 and conditions prescribed by this article to eligible owners  
94 of residential dwellings to defray the costs of financing  
95 the purchase and installation of energy conservation ma-  
96 terials and equipment, designed to improve the energy  
97 efficiency of such dwelling;

98 (14) To establish and supervise an inspection program  
99 to assure the satisfactory nature of all materials and  
100 workmanship for energy efficiency improvements financed  
101 by loans made pursuant to this article and to utilize to  
102 the extent possible the services of municipal building  
103 inspectors;

104 (15) To enter into agreements with banks, public util-  
105 ities and other entities for advertising the energy con-  
106 servation revolving loan fund, for taking applications  
107 for loans from such fund, for supervising the execution  
108 of promissory notes, deeds of trust and other papers  
109 associated with the energy conservation revolving loan  
110 fund, for approving and inspecting energy conservation  
111 loan contracts to insure compliance with the provisions  
112 of this article, for accepting and transmitting loan pay-  
113 ments, for the operation and administration of any other  
114 aspect of the energy conservation revolving loan fund  
115 established by this article and for reimbursing such  
116 banks, public utilities and other entities for any reason-  
117 able and necessary expenses incurred in the implementa-  
118 tion of any such agreements.

**§31-18A-6. Revolving loan fund created; purpose; investment of funds; loan agreements; expenditures.**

1 (a) The board of directors of the housing develop-  
2 ment fund shall create and establish a special revolving  
3 fund of moneys made available by appropriations, grants,  
4 contributions, bequests, devises, loan payments, interest  
5 and investment income, to be known as the energy con-  
6 servation revolving loan fund and to be governed, ad-  
7 ministered and accounted for by the directors, officers  
8 and managerial staff of the housing development fund as  
9 a special purpose trust account separate and distinct  
10 from any other moneys, fund or funds owned and man-  
11 aged by the housing development fund.

12 (b) The purpose of the energy conservation revolving  
13 loan fund shall be to provide a source from which the  
14 housing development fund may make loans to eligible  
15 owners of residential dwellings.

16 (c) The housing development fund may invest and  
17 reinvest all moneys in the revolving loan fund in any  
18 investments authorized by section five of this article,  
19 pending the disbursement thereof in connection with  
20 loans made pursuant to this article.

21 (d) The housing development fund may expend any

22 income from loans or investments authorized by this  
23 article in payment or reimbursement of all expenses of  
24 the housing development fund which, as determined in  
25 accordance with procedures approved by the board of  
26 directors, are fairly allocable to such financing or activ-  
27 ities authorized by this article: *Provided*, That no funds  
28 shall be used to carry on propaganda or otherwise at-  
29 tempt to influence legislation.

**§31-18A-7. Terms and conditions of loans from revolving  
loan fund.**

1 No loans shall be made by the housing development  
2 fund except to eligible owners of residential dwellings  
3 who meet reasonable criteria of credit worthiness as de-  
4 fined by the housing development fund and in accordance  
5 with a written loan agreement which shall include, but  
6 not be limited to, the following terms and conditions:

7 (1) No loan shall be made under the provisions of this  
8 article, unless an affidavit shall be executed by the eligi-  
9 ble owner asserting his title to the residential dwelling  
10 and submitted to the housing development fund together  
11 with evidence of his source of title;

12 (2) The proceeds of all such loans shall be used only  
13 for financing the cost of improving the energy efficiency  
14 of residential dwellings through the installation or up-  
15 grading of insulation, storm windows and doors, caulking,  
16 weather stripping, heat pumps, or other energy conser-  
17 vation materials or equipment in such dwellings;

18 (3) All such loans shall be repaid in full over a period  
19 of time not to exceed three years and at a rate of interest  
20 not to exceed three percent;

21 (4) All such loans shall be limited to a maximum  
22 amount of two thousand dollars for each residential  
23 dwelling: *Provided*, That in no event shall the amount  
24 of the loan exceed the actual cost of materials purchased,  
25 or the actual cost of materials and labor furnished or  
26 supplied by any person, firm, association, partnership  
27 or corporation certified by the housing development  
28 fund;

29 (5) Each such loan shall be evidenced by a nego-  
30 tiable promissory note executed and delivered by the  
31 eligible owner or owners and shall be secured by a deed  
32 of trust upon the property and dwelling improved by the  
33 proceeds of the loan: *Provided*, That in no event shall  
34 a certificate of title, title insurance or other title security  
35 be required;

36 (6) All notes and deeds of trust accepted as security  
37 for loans under this article shall be payable to the order  
38 of and for the use and benefit of the West Virginia  
39 housing development fund;

40 (7) Payment of the loan proceeds shall be made by  
41 the housing development fund jointly to the owner and  
42 any person, firm, association, partnership or corporation  
43 supplying and furnishing materials or labor and materials  
44 upon a determination by the housing development fund  
45 and certification by the eligible owner that the work-  
46 manship and materials for energy efficiency improve-  
47 ments are satisfactory.

**§31-18A-8. Prohibition on funds inuring to the benefit of or  
being distributable to the directors or officers.**

1 No part of the funds of the energy conservation re-  
2 volving loan fund shall inure to the benefit of or be dis-  
3 tributable to the directors or officers of the housing de-  
4 velopment fund except that the housing development  
5 fund shall be authorized and empowered to pay reason-  
6 able compensation for services rendered and to make  
7 loans as previously specified in furtherance of its purposes  
8 under this article.

**§31-18A-9. Termination or dissolution.**

1 Upon termination or dissolution of the housing de-  
2 velopment fund or the energy conservation revolving  
3 loan fund, all rights and properties held pursuant to the  
4 provisions of this article shall pass to and be vested in  
5 the state of West Virginia, subject to the rights of lien-  
6 holders and other creditors.

**§31-18A-10. Annual audit.**

1 The housing development fund shall cause an annual  
2 audit to be made of the energy conservation revolving  
3 loan fund by a resident independent certified public ac-  
4 countant of its books, accounts, and records, with respect  
5 to its receipts, disbursements, contracts, mortgages or  
6 deeds of trust, assignments, loans and all other matters  
7 relating to its financial operations of the revolving loan  
8 fund. The person, firm, association, partnership or cor-  
9 poration performing such audit shall furnish copies of  
10 the audit report to the commissioner of finance and ad-  
11 ministration, where they shall be placed on file and  
12 made available for inspection by the general public.

**§31-18A-11. Severability clause.**

1 If any provision of this article or the application thereof  
2 to any person or circumstance is held invalid, such in-  
3 validity shall not affect other provisions or applications  
4 of the article which can be given effect without the in-  
5 valid provision or application, and to this end the pro-  
6 visions of this article are severable.

## CHAPTER 98

(S. B. 56—By Mr. Steptoe)

[Passed March 2, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article two, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to number of times legal advertisement must be published for summary proceeding to sell or lease estate subject to future interests when nonresidents or unknown or unascertainable parties are defendants.

*Be it enacted by the Legislature of West Virginia:*

That section twelve-a, article two, chapter thirty-six of the

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

**ARTICLE 2. DISPOSITION OF ESTATES SUBJECT TO FUTURE INTERESTS.**

**§36-2-12a. Summary proceedings for sale or lease; petition.**

1 In addition to the proceedings authorized by the first  
2 section of this article, any person having any interest  
3 mentioned in section two of this article in the personal  
4 property, land, timber, oil, gas, coal or other minerals  
5 sought to be sold, leased or otherwise conveyed, may apply  
6 by petition, in a summary way, to the circuit court, or to  
7 any court of concurrent jurisdiction with the circuit  
8 court, of the county in which the estate proposed to be  
9 sold, leased or otherwise conveyed, or some part thereof,  
10 may be. Such petitions shall describe the property sought  
11 to be sold, leased or otherwise conveyed with reasonable  
12 certainty and shall set forth the names of all persons  
13 interested in such property, together with their respective  
14 interests or estates, either vested, contingent or executory,  
15 so far as is known by the plaintiff. Such petition shall  
16 also set forth the facts which, in the opinion of the plain-  
17 tiff, would justify the sale, lease or other conveyance of  
18 such property. The petition shall be verified by the oath  
19 of the plaintiff or one of the plaintiffs, and all persons  
20 interested shall be made defendants, and ten days' notice  
21 shall be given to such defendants before such petition can  
22 be heard: *Provided*, That in the case of nonresident de-  
23 fendants, or unknown or unascertainable parties, or both,  
24 an order of publication may be entered, on proper affi-  
25 davit as in any other chancery proceeding, requiring  
26 publication of such notice with respect to any nonresident  
27 defendants, or any unknown or unascertainable parties,  
28 or both, who may have or claim any interest or estate in  
29 such property, as a Class III legal advertisement in com-  
30 pliance with the provisions of article three, chapter fifty-  
31 nine of this code, and the publication area for such  
32 publication shall be the county in which the property or  
33 the greater part of the property concerned is situate. Such  
34 published notice, with the certificate of publication, when  
35 filed with the record in said proceedings, shall be and

36 constitute valid and sufficient notice herein. All other  
 37 provisions of this article not inconsistent herewith shall  
 38 apply to and implement the procedures provided in this  
 39 section.

## CHAPTER 99

(S. B. 416—By Mr. Palumbo)

[Passed April 7, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, requiring reference of an estate, by a county commission, to a commissioner of accounts; providing division of work among commissioners of accounts; providing that estates appraised at ten thousand dollars or less exclusive of property held in joint tenancy with survivorship may be withdrawn from reference to a commissioner of accounts; allowing the clerk of the county commission to collect a fee for recordation of report and publication of notice; requiring such clerk to publish notice of filing of estate accounts and providing the form therefor; and allowing the county commission to confirm the report of the personal representative or refer the estate to a commissioner of accounts if request therefor or objection to the report is made.

*Be it enacted by the Legislature of West Virginia:*

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

### **ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.**

#### **§44-2-1. Reference of decedents' estates; proceedings thereon.**

1 Upon the qualification of any personal representative,  
 2 the estate of his decedent shall, by order of the county  
 3 commission to be then made, be referred to a commis-



4 sioner of accounts for proof and determination of debts  
 5 and claims, establishment of their priority, determination  
 6 of the amount of the respective shares of the legatees and  
 7 distributees, and any other matter necessary and proper  
 8 for the settlement of the estate: *Provided*, That in coun-  
 9 ties where there are two or more such commissioners, the  
 10 estates of decedents shall be referred to such commis-  
 11 sioners in rotation, in order that, so far as possible, there  
 12 may be an equal division of the work: *Provided, however*,  
 13 That if and when the personal representative shall de-  
 14 liver to the clerk an appraisalment of the assets of the  
 15 estate showing their value to be ten thousand dollars or  
 16 less, exclusive of property held by the decedent and an-  
 17 other person or other persons as joint tenants with rights  
 18 of survivorship, the clerk shall record said appraisalment  
 19 and shall notify the commissioner of accounts that refer-  
 20 ence of said estate to the commissioner of accounts has  
 21 been withdrawn; the personal representative shall, within  
 22 two months from the date of recordation of the appraise-  
 23 ment in such case, make report to the clerk of his receipts,  
 24 disbursements, and distribution, and shall make affidavit  
 25 that all claims against the estate, for expenses of ad-  
 26 ministration, taxes, and debts of the decedent, have been  
 27 been paid in full; the clerk shall be entitled to collect and  
 28 receive a fee of ten dollars for recording such report and  
 29 affidavit, and for publication of the notice hereinafter  
 30 provided, said fee to be in lieu of any other fee provided  
 31 by law for recording a report of settlement of the ac-  
 32 counts of a decedent's personal representative; it shall be  
 33 the duty of the clerk, at least once a month, to cause to  
 34 be published once a week for two successive weeks in a  
 35 newspaper of general circulation within the county of  
 36 the administration of the estate, a notice substantially as  
 37 follows:

38 NOTICE OF FILING OF ESTATE ACCOUNTS

39 I have before me the accounts of the executor (s) or  
 40 administrator (s) of the estates of the following deceased  
 41 persons:

42 \_\_\_\_\_  
 43 \_\_\_\_\_  
 44 \_\_\_\_\_

45 Any person having a claim against the estate of any  
 46 such deceased person, or who has any beneficial interest  
 47 therein, may appear before me or the county commission  
 48 at any time within thirty days after first publication of  
 49 this notice, and request reference of said estate to a  
 50 commissioner of accounts, or object to confirmation of  
 51 said accounting. In the absence of such request or ob-  
 52 jection, the accounting may be approved by the county  
 53 commission.

54

55

Clerk of the County Commission  
 of .....County, W. Va.

56

57 If no such request or objection be made to the clerk or  
 58 to the county commission, the county commission may  
 59 confirm the report of the personal representative, and  
 60 thereupon the personal representative and his surety shall  
 61 be discharged; but if such objection or request be made,  
 62 the county commission may confirm the accounting or  
 63 may refer the estate to one of its commissioners of ac-  
 64 counts.

## CHAPTER 100

(S. B. 546—By Mr. Brotherton, Mr. President)

[Passed March 28, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the leasing of space by commissioner of finance and administration and delegation of authority when rental and costs do not exceed two thousand dollars in any one fiscal year or in an emergency.

*Be it enacted by the Legislature of West Virginia:*

That section two, article five, 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 5. LEASING OF GROUNDS, BUILDINGS, OFFICE OR OTHER SPACE BY STATE GOVERNMENT.****§5A-5-2. Leasing of space by commissioner; delegation of authority when rental and costs do not exceed two thousand dollars in fiscal year or in emergency.**

1 The commissioner is authorized to lease, in the name  
2 of the state, any grounds, buildings, office or other space  
3 required by any department, agency or institution of  
4 state government: *Provided*, That the commissioner may  
5 expressly delegate, in writing, the authority granted to  
6 him by this article to the appropriate department, agency  
7 or institution of state government when the rental and  
8 other costs to the state do not exceed the sum of two  
9 thousand dollars in any one fiscal year or when necessary  
10 to meet bona fide emergencies arising from unforeseen  
11 causes.

**CHAPTER 101**

(S. B. 547—By Mr. Brotherton, Mr. President)

[Passed March 28, 1977; in effect ninety days from passage. Approved by the Governor.]

**AN ACT** to amend and reenact section three, article five, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to approval by the commissioner of finance and administration for permanent changes to premises leased by state agencies.

*Be it enacted by the Legislature of West Virginia:*

That section three, article five, 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 5. LEASING OF GROUNDS, BUILDINGS, OFFICE OR OTHER SPACE BY STATE GOVERNMENT.****§5A-5-3. Selection of grounds, etc.; acquisition by contract or lease; requiring approval of commissioner for permanent changes.**

1 The commissioner shall have sole authority to select and

2 to acquire by contract or lease, in the name of the state,  
3 all grounds, buildings, office space or other space, the  
4 rental of which is necessarily required by any spending  
5 unit, upon a certificate from the chief executive officer  
6 of said spending unit that the grounds, buildings, office  
7 space or other space requested is necessarily required  
8 for the proper function of said spending unit and that  
9 satisfactory grounds, buildings, office space or other space  
10 is not available on grounds and in buildings now owned  
11 or leased by the state. The commissioner shall, before  
12 executing any rental contract or lease, determine the  
13 fair rental value for the rental of the requested grounds,  
14 buildings, office space or other space, in the condition in  
15 which they exist, and shall contract for or lease said  
16 premises at a price not to exceed the fair rental value  
17 thereof.

18 A spending unit which is granted any grounds, build-  
19 ings, office space or other space leased in accordance with  
20 this section may not order or make permanent changes  
21 of any type thereto, unless the commissioner has first  
22 determined that the change is necessary for the proper,  
23 efficient and economically sound operation of the spending  
24 unit. For purposes of this section, a "permanent change"  
25 means any addition, alteration, improvement, remodeling,  
26 repair or other change involving the expenditure of state  
27 funds for the installation of any tangible thing which  
28 cannot be economically removed from the grounds, build-  
29 ings, office space or other space when vacated by the  
30 spending unit.

## CHAPTER 102

(Com. Sub. for S. B. 585—By Mr. Brotherton, Mr. President,  
Mr. Palumbo and Mr. Hamilton)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to repeal sections eighteen and nineteen, article one,  
chapter sixteen; to repeal section six, article four-d of

said chapter sixteen; to repeal section nine, article five-b of said chapter sixteen; to repeal article five-d of said chapter sixteen; to repeal article five-e of said chapter sixteen; to repeal section one, article six of said chapter sixteen; to repeal sections four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article fourteen of said chapter sixteen; to repeal article twenty-four of said chapter sixteen; to amend and reenact sections one, two, three, five, six, seven, eight, ten, eleven, thirteen, fourteen, fifteen and seventeen, article one; sections one, two, three and four, article two; sections three, seven and eight, article two-a; section one, article two-b; sections one, two, five, six, ten and twelve, article three; sections six, seven and twenty-one, article four; section three, article four-a; sections two, four, five, six, nine and ten, article four-c; sections three and four, article four-d; sections two, three, four, five, six, twenty-eight and thirty-two, article five; sections one, two, three, four and five, article five-a; sections one, two, four, six, eight, eleven and twelve, article five-b; sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article five-c; sections two, four, five, seven, eight, nine, ten and twenty-four, article six; section three, article seven; and sections one and three, article fourteen, all of said chapter sixteen; to amend and reenact sections six and nine, article one; sections one, three, four and five, article two; section one, article two-a; section one, article four; sections three, seven and nine, article five; section one, article six-a; section five, article seven; sections one, two-a and three, article eight; section one, article nine; section two, article fourteen; and section two, article fifteen, all of chapter twenty-seven; and to further amend said chapter twenty-seven by adding thereto a new section, designated section six, article two; and to further amend said chapter twenty-seven by adding thereto a new article, designated article three; to amend and reenact section fifteen, article one, chapter thirty; section two, article three-b; sections one and three, article six; and section two, article seventeen; to further amend said chapter thirty by adding

thereto a new section, designated section four-a, article one; to further amend said chapter thirty by adding thereto three new articles, designated articles twenty-five, twenty-six and twenty-seven; and to amend and reenact sections three, four, five, six, seven and fourteen, article twelve, chapter sixty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reorganizing and consolidating health and mental health services in the state; increasing the membership of the board of health; providing that the board of health have rule-making power; transferring certain administrative powers from the board of health to the director of health; increasing rule-making authority of the board of health; authorizing the board of health to establish certain advisory councils; providing for the appointment of the director of health by the governor with Senate confirmation; consolidating the functions of the present department of mental health into the department of health; requiring the director of health to report to the governor and the Legislature as to consolidation and reorganization; establishing an executive secretary to consolidate the administrative functions of professional medical-related licensing boards; abolishing the nursing home licensing board and transferring its powers to the department of health; establishing a health resources advisory council to be headed by a chairman appointed by the governor with Senate confirmation; transferring certain state hospitals from the commissioner of public institutions to the department of health; setting forth a legislative purpose; providing for composition of the department of health; continuing civil service coverage; relating to membership, appointment, removal and composition of the board of health; relating to powers and duties of the board of health; relating to appointment, compensation, qualifications, term, oath, bond and vacancy of the director of health; relating to the powers and duties of the director of health, including the power of condemnation; relating to the state hygienic laboratory and branches; relating to disposition of moneys received by the director, reports to auditor compliance; authorizing the director of health

to cooperate with state health planning and development agency and federal government; relating to receipt and disbursement of federal aid and other moneys for health purposes; relating to employees of the department of health; relating to county and municipal boards of health and officers; reports by physicians; relating to full-time county and municipal officers and nurse; relating to counties and municipalities combining in employment of officers, equipment and boards; relating to director of health's supplanting local health authority; relating to family planning and child spacing; relating to prevention and control of communicable and other infectious diseases; relating to venereal diseases; relating to prenatal examination; providing that the director and board of health be given authority with respect to emergency medical service; providing that the office of emergency medical services become a part of the department of health; providing the director and board of health with the authority to supervise vital statistics; providing the director and board of health with the authority in cancer control; providing the director and board of health authority to license and oversee hospitals and health facilities including those for ambulatory health care and ambulatory surgical care; providing for the director to license, inspect and oversee nursing homes and personal care homes; requiring the department of health to publish certain information about nursing homes in the state; providing for enforcement of provisions relating to nursing homes and personal care homes; providing the director with authority to license and oversee personal care facilities; relating to revising the general laws regarding the regulation of nursing homes by expanding the board's jurisdiction to include personal care homes, expanding the powers and duties of the board, and revising the rights, duties and obligations of nursing homes, personal care homes and patients; transferring to the director of health authority previously vested in the hotel inspector; providing the director of health with authority concerning pure food and drugs; the committee of barbers and beauticians and transferring some of its authority to the department

of health; transferring certain benevolent institutions from the commissioner of public institutions to the department of welfare or the department of health; providing for management supervision fees and transfers of residents in benevolent institutions transferred to the department of health; providing that certain state hospitals and mental health facilities operated by the department of mental health shall be transferred to the department of health; continuing civil service coverage; relating to operation and administration of such state hospitals and mental health facilities; authorizing the department of health to establish, maintain, and operate comprehensive health centers, and providing how such institutions are to be operated; restricting the department of health from operating certain comprehensive health centers; relating to defining confidential medical information; relating to the authority of the department of health concerning voluntary hospitalization; concerning custody for medical examinations; relating to hospitalization by agency of the United States; relating to authority of department of health for commitment of persons charged or convicted of a crime; relating to authority of department of health concerning escapees and veterans in mental health facilities; relating to funding of state hospitals; relating to authority of department of health in local mental health programs; relating to authority of director of health in providing care of patients in boarding homes; relating to authority of director of health in licensing of institutions providing care and treatment of the mentally ill or mentally retarded; providing that the director of health shall be compact administrator for the Interstate Compact on Mental Health; relating to the Interstate Compact on the Mentally Disordered Offender; providing lay members on health profession boards; establishing an office of executive secretary for health profession licensing boards; relating to mobile intensive care paramedics; and funeral directors; relating to the board of sanitarians; creating a nursing home administrators licensing board to provide for licensing of nursing home administrators, including provisions for suspensions and revocations; relating to the board of hearing-aid dealers and fitters within the depart-



ment of health including suspension, removal, prohibited acts, offenses and penalties; extending requirements for examinations before anyone can be fitted for a hearing aid; creating a board of barbers and beauticians with certain powers and duties including licensing provisions, violations, penalties and validity of prior certificates; providing that the office of medical examinations is to be operated under the control and supervision of the director of health; and providing penalties for violations of the sections, articles and chapters amended or enacted within.

*Be it enacted by the Legislature of West Virginia:*

That sections eighteen and nineteen, article one, chapter sixteen be repealed; that section six, article four-d of said chapter sixteen be repealed; that section nine, article five-b of said chapter sixteen be repealed; that article five-d of said chapter sixteen be repealed; that article five-e of said chapter sixteen be repealed; that sections three, five and six, article five-c of said chapter sixteen be repealed; that article five-d of said chapter sixteen be repealed; that section one, article six of said chapter sixteen be repealed; that sections four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article fourteen of said chapter sixteen be repealed; that article twenty-four of said chapter sixteen be repealed; that sections one, two, three, four, five, six, seven, eight, ten, eleven, thirteen, fourteen, fifteen and seventeen, article one; sections one, two, three and four, article two; sections three, seven and eight, article two-a; section one, article two-b; sections one, two, five, six, ten and twelve, article three; sections six, seven and twenty-one, article four; section three, article four-a; sections two, four, five, six, nine and ten, article four-c; sections three and four, article four-d; sections two, three, four, five, six, twenty-eight and thirty-two, article five; sections one, two, three, four and five, article five-a; sections one, two, four, six, eight, eleven and twelve, article five-b; sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article five-c; sections two, four, five, seven, eight, nine, ten and twenty-four, article six; section three, article seven; and sections one and three, article fourteen, all of said chapter sixteen be amended and re-

enacted; that sections six and nine, article one; sections one, three, four and five, article two; section one, article two-a; section one, article four; sections three, seven and nine, article five; section one, article six-a; section five, article seven; sections one, two-a and three, article eight; section one, article nine; section two, article fourteen; and section two, article fifteen, all of chapter twenty-seven, be amended and reenacted; that said chapter twenty-seven be further amended by adding thereto a new section, designated section six, article two; that said chapter twenty-seven be further amended by adding thereto a new article, designated article three; that section fifteen, article one, chapter thirty be amended and reenacted; that section two, article three-b; sections one and three, article six; and section two, article seventeen; and that said chapter thirty be further amended by adding thereto a new section, designated section four-a, article one; that said chapter thirty be further amended by adding thereto three new articles, designated articles twenty-five, twenty-six and twenty-seven; and that sections three, four, five, six, seven and fourteen, article twelve, chapter sixty-one be amended and reenacted, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

### **Chapter**

- 16. Public Health**
- 27. Mentally Ill Persons.**
- 30. Professions and Occupations.**
- 61. Crimes and Their Punishment.**

### **CHAPTER 16. PUBLIC HEALTH.**

#### **Article**

- 1. State Department of Health.**
- 2. Local Health Officers.**
- 2A. Alternative Method of Organizing Local Health Agencies.**
- 2B. Family Planning and Child Spacing.**
- 3. Prevention and Control of Communicable and Other Infectious Diseases.**
- 4. Venereal Diseases.**
- 4A. Prenatal Examination.**
- 4C. Emergency Medical Service.**
- 4D. Emergency Medical Services Act.**
- 5. Vital Statistics.**
- 5A. Cancer Control.**

- 5B. Hospitals and Similar Institutions.
- 5C. Nursing and Personal Care Homes.
- 6. Hotels and Restaurants.
- 7. Pure Food and Drugs.
- 14. Barbers and Beauticians.

#### **ARTICLE 1. STATE DEPARTMENT OF HEALTH.**

- §16-1-1. Purpose.
- §16-1-2. Health resources advisory council created; composition; terms; vacancies; meetings, etc.
- §16-1-3. Powers of health resources advisory council; report; duration.
- §16-1-5. Composition of department.
- §16-1-6. Board of health; membership; appointment and removal of members; compensation.
- §16-1-7. Promulgation of rules and regulations; references to board to mean director of health.
- §16-1-8. Director of health—Appointment; compensation; qualifications; term; oath and bond; vacancy.
- §16-1-10. Powers and duties of the director of health.
- §16-1-11. State hygienic laboratory; branches thereof.
- §16-1-13. Disposition of moneys received by state director of health; report to auditor; noncompliance.
- §16-1-14. Director authorized to cooperate with the state health planning and development agency and federal government in hospital and other health facility programs.
- §16-1-15. Receipt and disbursement of federal aid and other moneys for health purposes.
- §16-1-17. Administrative and other employees of department; interfering with inspectors, etc.

#### **§16-1-1. Purpose.**

1 It is the policy of this state to effect a significant  
2 improvement in the delivery of health and mental health  
3 services for the benefit of the citizens of this state; to  
4 develop and implement a coordinated and comprehen-  
5 sive continuum of health and mental health services to  
6 meet current and future needs at a reasonable cost; to  
7 promote the delivery of preventive care by emphasis on  
8 primary care and community based services; to achieve  
9 equal access to all types of quality care for all citizens of  
10 the state; to encourage the active participation of the  
11 citizens of this state in matters relating to the delivery  
12 of health and mental health services; to avoid dupli-  
13 cation of services and costs created and fostered by  
14 separation of such services; to review and regulate the  
15 delivery of health care services to contain the spiraling  
16 costs of health care; to integrate a broad variety of health  
17 services and functions and to reorganize and innovatively

18 modify existing responsibilities, and where necessary,  
19 plan and develop new responsibilities for the most ef-  
20 fective and efficient delivery of services; and thereby,  
21 to provide quality health and mental health services to  
22 the citizens of this state.

**§16-1-2. Health resources advisory council created; composi-  
tion; terms; vacancies; meetings, etc.**

1 There is hereby created the "Health Resources Advisory  
2 Council", hereinafter referred to as the "council." The  
3 council shall be made up of twenty-nine members, all of  
4 whom are citizens and residents of this state appointed  
5 by the governor, by and with the advice and consent of  
6 the Senate. Members of the council shall include:

7 (1) Fourteen representatives of the health professions  
8 licensed and certified in the state and of the allied health  
9 professions;

10 (2) Five representatives of health professional schools  
11 and programs;

12 (3) Five representatives of voluntary health agencies;  
13 and

14 (4) Five representatives of the consumer public.

15 Members shall be representative of the geographic areas  
16 and congressional districts of the state. Members shall be  
17 appointed so that each of the congressional districts shall  
18 have at least five representatives on the advisory council  
19 who shall be residents of the district. No more than fifteen  
20 members of the council shall belong to the same political  
21 party.

22 Members of the council, except for the chairman, shall  
23 be appointed for terms of three years each, except that  
24 of the members first appointed, nine members shall be  
25 appointed for terms of one year, ten members for terms  
26 of two years, and nine members for terms of three  
27 years. Members shall be eligible for reappointment for a  
28 second three-year term. Vacancies shall be filled in the  
29 same manner as the original appointments, for the dura-  
30 tion of the unexpired term. The governor shall appoint,  
31 by and with the advice and consent of the Senate, a chair-

32 man of the council who shall serve at the pleasure of the  
33 governor.

34 A majority of the members of the council shall consti-  
35 tute a quorum for the transaction of business. The coun-  
36 cil shall elect from among its members a vice chairman  
37 and such other officers as it shall deem necessary. The  
38 council shall meet at least four times during the calendar  
39 year, and meetings shall be held upon a call of the chair-  
40 man or a majority of the members.

**§16-1-3. Powers of health resources advisory council; report;  
duration.**

1 The council shall serve as an advisory body to the  
2 governor on the development of guidelines for the supply,  
3 distribution, and organization of health resources.  
4 Recognizing that it is critical to identify current and  
5 prospective health manpower needs, the council shall  
6 study and advise the governor on the supply of health  
7 manpower including consideration of the interrelation-  
8 ship among the different types of health manpower; shall  
9 study and advise the governor on the distribution of health  
10 manpower within and without institutions and geo-  
11 graphically in the state; and shall study and advise the  
12 governor on the most effective organization of health  
13 manpower, including consideration of the relationship  
14 of health manpower to institutions and the relationship  
15 among different types of health manpower.

16 The council shall also undertake a study of national  
17 standards for health resources, determine the appro-  
18 priateness of such standards for the citizens of this state,  
19 and make recommendations for such additional standards  
20 as it may deem necessary in order to best serve the needs  
21 of the citizens of this state.

22 On or before January first of each year, the council  
23 shall submit a written report to the governor and the  
24 Legislature, summarizing its activities and findings of  
25 the preceding year, in addition to such other recommenda-  
26 tions and studies as it may submit from time to time.  
27 Unless hereinafter extended by the Legislature, the  
28 provisions of section two and three of this article shall

29 expire and be of no further force and effect on or after  
30 the first day of July, one thousand nine hundred eighty-  
31 three.

**§16-1-5. Composition of department.**

1 There shall be a state department of health which shall  
2 consist of the board of health, the director of the depart-  
3 ment, the subdivisions of the board of health and other  
4 employees as hereinafter provided. Any person em-  
5 ployed by the state department of health or any local  
6 boards of health who on the effective date of this article  
7 is a classified civil service employee shall, within the  
8 limits contained in section two, article six of chapter  
9 twenty-nine of this code, remain in the civil service sys-  
10 tem as a covered employee.

**§16-1-6. Board of health; membership; appointment and re-  
removal of members; compensation.**

1 There shall be a state board of health, to be known  
2 as the West Virginia board of health. The state board  
3 of health shall consist of fifteen members, who shall be  
4 appointed by the governor, by and with the advice and  
5 consent of the Senate. Three members of the board shall  
6 be physicians or surgeons holding the degree of doctor  
7 of medicine, one shall be a dentist, one shall be an osteo-  
8 pathic physician, one shall be a registered nurse, one  
9 shall be a pharmacist, three shall be from mental health  
10 disciplines, one shall be an administrator of a li-  
11 censed hospital, one shall be an optometrist and three  
12 shall be representative citizens, none of which repre-  
13 sentative citizens shall be an employee of, spouse of an  
14 employee of, or receive any other financial benefit from  
15 any health facility located in this state, and none of  
16 whom shall be a member of, or the spouse, child, or  
17 parent of, or connected in any way with, any of the pro-  
18 fessions named.

19 All persons appointed to membership on the state  
20 board of health shall be citizens of this state and  
21 shall have been such citizens and residents of the  
22 state for at least five years prior to the date of their  
23 appointment. Every professional member of the said

24 board shall be duly licensed to practice such profession  
25 on the date of appointment and shall have been so  
26 licensed and in active practice of the profession for  
27 at least five years immediately preceding the date of  
28 such appointment. Before appointing any professional  
29 member, the governor shall request any professional  
30 society of the profession practiced by the proposed ap-  
31 pointee to furnish to the governor a full and complete  
32 report concerning the qualifications and suitability of  
33 the proposed appointee. All members of the board  
34 shall be appointed for terms of five years each: *Pro-*  
35 *vided*, That persons appointed prior to the effective  
36 date of this section shall continue until the comple-  
37 tion of their terms of original appointment: *Pro-*  
38 *vided, however*, That in the case of the initial appoint-  
39 ments of the representative citizens, one shall be desig-  
40 nated to serve for a term of one year, one for a term of  
41 two years and one for a term of four years; and in the case  
42 of the initial appointments of the members from mental  
43 health disciplines, one shall be designated to serve for  
44 a term of two years, one for a term of three years and  
45 one for a term of five years. Thereafter, the term of each  
46 new appointee shall be five years except in the case of  
47 any vacancy on the board which shall be filled by the  
48 governor by appointment for the unexpired term. No  
49 member shall be eligible for more than two terms.

50 No more than eight of the members of the board shall  
51 belong to the same political party. At least one member,  
52 but not more than four, shall be appointed from each  
53 congressional district. No person shall be eligible for  
54 appointment to membership on the state board who is a  
55 member of any political party executive committee, or  
56 who holds any public office or employment under the  
57 federal government or under the government of this  
58 state or any of its political subdivisions.

59 No member may be removed from office by the gov-  
60 ernor except for official misconduct, incompetence,  
61 neglect of duty or gross immorality and then only in the  
62 manner prescribed by law for the removal by the gov-  
63 ernor of state elective officers: *Provided*, That the expira-

64 tion, suspension or revocation of the professional license  
65 of any professional member of the board shall be cause  
66 for removal.

67 The members of the board shall be paid the sum of  
68 thirty-five dollars for each day actually served in atten-  
69 dance at official meetings of the board. Each member  
70 shall be reimbursed for travel at the rate of fifteen cents  
71 per mile if by private automobile and actual cost if  
72 travel is by common carrier. Each member shall also be  
73 reimbursed for other actual expenses incurred in the  
74 performance of the duties of his office; except that in  
75 the event the expenses are paid, or are to be paid, by a  
76 third party, the member shall not be reimbursed by  
77 the state.

78 The director of health shall serve as secretary to the  
79 board, but shall not be entitled to vote. He shall be in  
80 charge of the offices of the board and shall be respon-  
81 sible to the board for the preparation of reports and the  
82 collection and dissemination of data and other public  
83 information relating to the development of drafts and  
84 other materials concerning rules and regulations promul-  
85 gated by the board.

**§16-1-7. Promulgation of rules and regulations; references to board to mean director of health.**

1 The state board of health shall have the power to  
2 promulgate such rules and regulations, in accordance  
3 with the provisions of chapter twenty-nine-a of the code,  
4 as are necessary and proper to effectuate the purposes of  
5 this chapter and prevent the circumvention and evasion  
6 thereof. The board shall have the power to appoint or  
7 designate advisory councils of professionals in the areas  
8 of hospitals, nursing homes, barbers and beauticians, post-  
9 mortem examinations, mental health and mental retarda-  
10 tion centers and such other areas as it deems necessary to  
11 advise the board on rules and regulations. Such rules and  
12 regulations shall include, but not be limited to, the regu-  
13 lation of:

14 (1) The sanitary condition of all institutions and schools,  
15 whether public or private, public conveyances, dairies,  
16 slaughterhouses, workshops, factories, labor camps, all



17 other places open to the general public and inviting public  
18 patronage or public assembly, or tendering to the public  
19 any item for human consumption, and places where trades  
20 or industries are conducted;

21 (2) Occupational and industrial health hazards, the  
22 sanitary conditions of streams, sources of water supply,  
23 sewerage facilities, and plumbing systems, and the qual-  
24 ifications of personnel connected with any of such facili-  
25 ties, without regard to whether such supplies or systems,  
26 are publicly or privately owned; and the design of all  
27 water systems, plumbing systems, sewerage systems,  
28 sewage treatment plants, excreta disposal methods,  
29 swimming pools in this state, whether publicly or private-  
30 ly owned;

31 (3) Food and drug standards, including cleanliness,  
32 proscription of additives, proscription of sale, and other  
33 requirements in accordance with article seven of this  
34 chapter, as are necessary to protect the health of the  
35 citizens of this state;

36 (4) The training and examination requirements for  
37 emergency medical service attendants and mobile in-  
38 tensive care paramedics; the designation of the health  
39 care facilities, health care services, and the industries  
40 and occupations in the state which must have emergency  
41 medical service attendants and mobile intensive care  
42 paramedics employed, and the availability, communica-  
43 tions, and equipment requirements with respect thereto;

44 (5) The collection of data on health status, the health  
45 system and the costs of health care;

46 (6) Other health-related matters which the depart-  
47 ment of health is authorized to supervise, and for which  
48 the rule-making authority has not been otherwise as-  
49 signed.

50 Notwithstanding any other provision of this code to  
51 the contrary, whenever in this code there is a reference  
52 to the state board of health and such reference does not  
53 relate to the making or promulgation of rules and regula-  
54 tions, it shall be construed to mean and shall be a refer-  
55 ence to the director of the state department of health.

**§16-1-8. Director of health—Appointment; compensation; qualifications; term; oath and bond; vacancy.**

1 The chief executive officer and administrative head of  
2 the department shall be appointed by the governor, with  
3 the advice and consent of the Senate, and shall serve  
4 in the manner prescribed by section two-a, article seven,  
5 chapter six of this code and shall hereafter be referred to  
6 as the director. The annual salary of the director shall be  
7 not more than forty-five thousand dollars. In addition  
8 thereto, the director shall be reimbursed for all necessary  
9 travel incurred in the performance of his duties; except  
10 that in the event the expenses are paid, or are to be paid,  
11 by a third party, the director shall not be reimbursed  
12 by the state. The director so appointed shall be a phy-  
13 sician licensed under the laws of this state to practice  
14 medicine or a person holding a doctorate degree in public  
15 health administration. Such a person shall have not less  
16 than four years' experience in health services administra-  
17 tion or a related field. The director shall serve at the will  
18 and pleasure of the governor and shall not be actively  
19 engaged or employed in any other business, vocation or  
20 employment, serving full time in the duties of the office  
21 as prescribed by this article.

22 Before entering upon the duties of the office, the director  
23 shall take and subscribe to the oath of office prescribed  
24 by section five, article four of the constitution of this  
25 state, and shall execute a bond with surety approved as  
26 to form by the attorney general and as to sufficiency by the  
27 governor in the penal sum of fifteen thousand dollars,  
28 which executed oath and bond shall be filed in the office  
29 of the secretary of state. If a vacancy occurs in the  
30 position of director, the governor shall make a temporary  
31 appointment until the next session of the Legislature, at  
32 which time the governor shall present to the Senate the  
33 nomination for the office.

34 As used in this chapter, the term "director" shall mean  
35 director of the state department of health or his designee.

**§16-1-10. Powers and duties of the director of health.**

1 The director shall be the chief executive, administra-  
2 tive, and fiscal officer of the department of health and

3 shall have the following powers and duties:

4 (1) To supervise and control the business, fiscal, ad-  
5 ministrative and health affairs of the department of health,  
6 and in that regard and in accordance with law, employ, fix  
7 the compensation of, and discharge all persons necessary  
8 for the proper execution of the laws of this state relating to  
9 health and mental health, and the efficient and proper dis-  
10 charge of the duties imposed upon, and execution of powers  
11 vested in the director by law; to that end the director may  
12 promulgate such written rules as are necessary and  
13 proper to delegate functions, establish divisions, specify  
14 duties and responsibilities, prescribe qualifications of di-  
15 vision directors and otherwise administer or supervise  
16 the department, subject to the safeguards of the state  
17 civil service system as it now exists;

18 (2) To enforce all laws of this state concerning public  
19 health, health, and mental health; to that end, the direc-  
20 tor shall make, or cause to be made, sanitary investiga-  
21 tions and inquiries respecting the cause of disease, espe-  
22 cially of epidemics and endemic conditions, and the  
23 means of prevention, suppression or control of such con-  
24 ditions; the source of sickness and mortality, and the  
25 effects of environment, employment, habits and circum-  
26 stances of life on the public health. The director  
27 shall further make, or cause to be made, inspec-  
28 tions and examinations of food, drink and drugs offered  
29 for sale or public consumption, in such manner as he  
30 shall deem necessary to protect the public health and  
31 shall report all violations of laws and regulations relating  
32 thereto to the prosecuting attorney of the county in which  
33 such violations occur;

34 (3) To make complaint or cause proceedings to be  
35 instituted against any person, corporation or other entity  
36 for the violation of any health law before any court or  
37 agency, without being required to give security for costs;  
38 such action may be taken without the sanction of the  
39 prosecuting attorney of the county in which the proceed-  
40 ings are instituted or to which the proceedings relate;

41 (4) To supervise and coordinate the administration  
42 and operation of the state hospitals named in article two,

43 chapter twenty-seven of this code, and any other state  
44 facility hereafter created for the mentally ill, mentally  
45 retarded or addicted;

46 (5) To supervise and coordinate the administration  
47 and operation of the health and other facilities named  
48 in chapter twenty-six of this code, except as otherwise  
49 therein provided, and any other state facility hereafter  
50 created relating to health, not otherwise provided for;

51 (6) To supervise and coordinate the administration  
52 and operation of the county and municipal boards of health  
53 and health officers;

54 (7) To develop and maintain a state plan of operation  
55 which sets forth the needs of the state in the areas of health  
56 and mental health; goals and objectives for meeting those  
57 needs; methods for achieving the stated goals and objec-  
58 tives; and needed personnel, funds, and authority for  
59 achieving the goals and objectives;

60 (8) To collect data as may be required to foster  
61 knowledge on the citizenry's health status, the health  
62 system and costs of health care;

63 (9) To delegate to any appointee, assistant or employee  
64 any and all powers and duties vested in the director, in-  
65 cluding, but not limited to, the power to execute contracts  
66 and agreements in the name of the department: *Provided,*  
67 That the director shall be responsible for the acts of such  
68 appointees, assistants and employees;

69 (10) To transfer any patient or resident between hospi-  
70 tals and facilities under the control of the director and, by  
71 agreement with the state commissioner of public institu-  
72 tions or his successor and otherwise in accord with law,  
73 accept a transfer of a resident of a facility under the juris-  
74 diction of the state commissioner of public institutions or  
75 his successor;

76 (11) To make periodic reports to the governor and to  
77 the Legislature relative to specific subject areas of public  
78 health or mental health, the state facilities under the  
79 supervision of the director, or other matters affecting the  
80 health or mental health of the people of the state;

81 (12) To accept and use for the benefit of the state,  
82 for the benefit of the health of the people of this state, any  
83 gift or devise of any property or thing which is lawfully  
84 given: *Provided*, That if any gift is for a specific purpose or  
85 for a particular state hospital or facility, it shall be used  
86 as specified. Any profit which may arise from any such  
87 gift or devise of any property or thing shall be deposited  
88 in a special revenue fund with the state treasurer, and  
89 shall be used only as specified by the donor or donors;

90 (13) To acquire by condemnation or otherwise any  
91 interest, right, privilege, land or improvement and hold  
92 title thereto, for the use or benefit of the state or a state  
93 hospital or facility, and, by and with the consent of the  
94 governor, to sell, exchange, or otherwise convey any  
95 interest, right, privilege, land or improvement acquired  
96 or held by the state, state hospital or state facility; which  
97 condemnation proceedings shall be conducted pursuant  
98 to chapter fifty-four of this code;

99 (14) To inspect, and enforce rules and regulations to  
100 control the sanitary conditions of and license all institu-  
101 tions and health care facilities as set forth in this chapter,  
102 including, but not limited to, schools, whether public or  
103 private, public conveyances, dairies, slaughterhouses,  
104 workshops, factories, labor camps, places of entertain-  
105 ment, hotels, motels, tourist camps, all other places open  
106 to the general public and inviting public patronage or  
107 public assembly, or tendering to the public any item for  
108 human consumption, and places where trades or indus-  
109 tries are conducted;

110 (15) To make inspections, conduct hearings, and to  
111 enforce the rules and regulations of the board concerning  
112 occupational and industrial health hazards, the sanitary  
113 condition of streams, sources of water supply, sewerage  
114 facilities, and plumbing systems, and the qualifications of  
115 personnel connected with such supplies, facilities or sys-  
116 tems without regard to whether they are publicly or  
117 privately owned; and to make inspections, conduct hear-  
118 ings and enforce the rules and regulations of the board  
119 concerning the design of chlorination and filtration facil-  
120 ities and swimming pools;

121 (16) To reorganize the functions and divisions of the  
122 department of health, structuring all functions previously  
123 assigned to the board of health, department of health,  
124 department of mental health, and otherwise assigned to  
125 the department of health by this chapter, to the end of  
126 establishing the most efficient and economic delivery  
127 of health services in accord with the purposes of this  
128 chapter; to achieve such goal the director shall establish  
129 such divisions, and delegate and assign such responsibili-  
130 ties and functions as he deems necessary to accomplish  
131 such reorganization. On or before the first day of Febru-  
132 ary, one thousand nine hundred seventy-eight, the di-  
133 rector shall submit to the Legislature a report on the  
134 reorganization of such department and the effect thereof,  
135 including, but not limited to, the cost, the administrative  
136 results, and the effect on the delivery of health services;

137 (17) To direct and supervise the provision of dental  
138 services in all state institutions;

139 (18) To provide for, except as otherwise specified herein,  
140 a comprehensive system of community mental health and  
141 mental retardation supportive services to the end of pre-  
142 venting the unnecessary institutionalization of persons and  
143 promoting the community placement of persons presently  
144 residing in mental health and mental retardation facilities  
145 and other institutions and for the planning of the provi-  
146 sions of comprehensive mental health and mental retarda-  
147 tion services throughout the state;

148 (19) To provide for a comprehensive program for the  
149 care, treatment and rehabilitation of alcoholics and drug  
150 abusers; for research into the cause and prevention of  
151 alcoholism and drug abuse; for the training and employ-  
152 ment of personnel to provide the requisite rehabilitation  
153 of alcoholics and drug abusers; and for the education  
154 of the public in relation thereto.

155 The department's program for the care, treatment,  
156 and rehabilitation of alcoholics and drug abusers may  
157 include, when intended for such purposes, the establish-  
158 ment of special clinics or wards within, attached to, or  
159 upon the grounds of, one or more of the state hospitals

160 under the control of the department of health; the acqui-  
161 sition in the name of the department of real and personal  
162 property and the construction of buildings and other  
163 facilities; the leasing of suitable clinics, hospitals, or other  
164 facilities; and the utilization, through contracts or other-  
165 wise, of the available services and assistance of any pro-  
166 fessional or nonprofessional persons, groups, organiza-  
167 tions or institutions in the development, promotion and  
168 conduct of the department's program.

169 The department of health shall not be required to  
170 accept any alcoholic or drug abuser voluntarily seeking  
171 hospitalization for clinical or hospital care, treatment, or  
172 rehabilitation; but the department may accept, pursuant  
173 to its adopted and promulgated rules and regulations,  
174 responsibility for clinical or hospital care, treatment, or  
175 rehabilitation of any alcoholic or drug abuser through  
176 arrangements made voluntarily with the department by  
177 him or some person acting in his behalf: *Provided*, That  
178 any such person accepted by the department on a volun-  
179 tary basis shall be charged a minimum fee unless he  
180 shows, to the satisfaction of the department, that he is  
181 unable to pay the fee.

182 The department's program of research into the causes,  
183 prevention, and treatment of alcoholism and drug abuse  
184 may include the utilization, through contracts or other-  
185 wise, of the available services and assistance of any pro-  
186 fessional or nonprofessional persons, groups, organiza-  
187 tions or institutions, as well as cooperation with private  
188 and public agencies engaged in research in alcoholism or  
189 drug abuse or rehabilitation of alcoholics or drug  
190 abusers.

191 The department's programs shall also provide for the  
192 training of personnel to work with alcoholics and drug  
193 abusers and the informing of the public as well as inter-  
194 ested groups and persons concerning alcoholism and  
195 drug abuse and the prevention and treatment thereof.

196 The department may employ such medical, psychiatric,  
197 psychological, secretarial and other assistance as may be  
198 necessary to carry out the provisions of this section.

199 As used in this subdivision (19):

200 (a) "Alcoholic" shall mean any person who chronically  
201 and habitually uses alcoholic beverages to the extent  
202 that he has lost the power of self-control as to the use  
203 of such beverages, or, while chronically and habitually  
204 under the influence of alcoholic beverages, endangers  
205 public morals, health, safety or welfare.

206 (b) "Alcoholism" shall mean the condition of abnormal  
207 behavior or illness resulting directly or indirectly from  
208 the chronic and habitual use of alcoholic beverages.

209 (c) "Drug abuser" shall mean a person who is in a  
210 state of psychic or physical dependence, or both, arising  
211 from the administration of any controlled substance, as  
212 that term is defined in chapter sixty-a of this code, on a  
213 continuous basis.

214 (d) "Drug abuse" shall mean the use of any controlled  
215 substance, as that term is defined in said chapter sixty-a,  
216 until such time as the user has become dependent upon  
217 or addicted to the same; and

218 (20) To exercise all other powers delegated to the de-  
219 partment by this chapter or otherwise in this code, to  
220 enforce all health laws and the rules and regulations  
221 promulgated by the board, and to pursue all other activi-  
222 ties necessary and incident to the authority and area of  
223 concern entrusted to the department or director.

**§16-1-11. State hygienic laboratory; branches thereof.**

1 The director may establish and maintain a state hygienic  
2 laboratory as an aid in performing the duties imposed  
3 upon the director of the department of health, and may  
4 employ chemists, bacteriologists, and other employees  
5 that may be necessary to properly operate such laboratory.  
6 The director may establish branches of the state labora-  
7 tory at such points within the state as the director may  
8 deem necessary in the interest of the public health.

**§16-1-13. Disposition of moneys received by state director of health; report to auditor; noncompliance.**

1 The state director of health shall receive and account  
2 for all moneys required to be paid as fees for permits,



3 licenses or registrations, pursuant to the provisions of  
4 this code, and shall pay such moneys into the state trea-  
5 sury monthly, on or before the tenth day of the month  
6 succeeding the month in which such moneys were re-  
7 ceived. The director of health shall, on the first day of  
8 January and the first day of July in each year, or within  
9 five days thereafter, certify to the state auditor a detailed  
10 statement of all such moneys received by him during the  
11 preceding six months. If the director of health shall fail  
12 or refuse to comply with the provisions of this section,  
13 he shall be guilty of a misdemeanor, and, upon conviction  
14 thereof, shall be fined for each offense not less than fifty  
15 dollars, nor more than two hundred dollars.

**§16-1-14. Director authorized to cooperate with the state health  
planning and development agency and federal  
government in hospital and other health facility  
programs.**

1 The director is hereby authorized to cooperate with the  
2 state health planning and development agency and the  
3 federal government in their programs for construction of  
4 public or private hospitals, diagnostic or treatment cen-  
5 ters, chronic disease hospitals, rehabilitation facilities,  
6 nursing homes, and similar or related facilities and in-  
7 stitutions; and is authorized to make such inventories of  
8 existing public health centers, public and private hospitals,  
9 diagnostic or treatment centers, chronic disease hospitals,  
10 rehabilitation facilities, nursing homes, and similar or  
11 related facilities and institutions, and the laboratories and  
12 other facilities thereof, to make surveys of the need for  
13 construction of such health facilities, and to adopt,  
14 develop, and supervise the administration of such state-  
15 wide plans or programs for the construction of additional  
16 public and private hospitals, public health centers, public  
17 or private diagnostic or treatment centers, chronic disease  
18 hospitals, rehabilitation facilities, nursing homes, and  
19 similar or related facilities and institutions, as may be  
20 necessary to comply with the requirements and condi-  
21 tions of federal law in respect to the granting of federal  
22 aid for such purposes. The director shall promulgate  
23 standards to assure that all requirements to obtain

24 federal funds and meet the commitments therefor are  
25 met.

26 The state health plan of operation set forth in section  
27 ten of this article and the state medical facilities plan  
28 shall be a part of the state health plan developed by the  
29 state health planning and development agency.

**§16-1-15. Receipt and disbursement of federal aid and other moneys for health purposes.**

1 The director is authorized to accept, receive and receipt  
2 for federal moneys and other moneys, either public or  
3 private, for and in behalf of this state or any county or  
4 municipality thereof, for public health purposes, or for  
5 the establishment or construction of public health facilities,  
6 whether such work is to be done by the state, or by  
7 such county or municipality, or jointly, aided by grants of  
8 aid from the United States, upon such terms and conditions  
9 as are, or may be, prescribed by the laws of the  
10 United States and any rules or regulations made there-  
11 under. The director is authorized to, and may, act as the  
12 agent of the state or any of its agencies, or of any county  
13 or municipality of this state, upon the request of any  
14 agency of the state or of any such county or municipality,  
15 in accepting, receiving, and receipting for such moneys in  
16 its behalf, for public health facilities financed either in  
17 whole or in part by federal moneys.

18 The state, or any agency thereof, or any county or  
19 municipality is authorized to, and may, designate the di-  
20 rector as its agent for the purposes above set forth, and  
21 any such agency, county or municipality may enter into  
22 an agreement with the director prescribing the terms and  
23 conditions of such agency in accordance with federal  
24 laws, rules and regulations, and with the laws of this  
25 state. Such moneys as are paid over by the United  
26 States government shall be retained by the state or paid  
27 over to said counties or municipalities under such terms  
28 and conditions as may be imposed by the United States  
29 government in making such grants.

30 All moneys accepted for disbursement pursuant to  
31 this section shall be deposited in the state treasury, and

32 unless otherwise prescribed by the authority from which  
33 the money is received, kept in separate funds, designated  
34 according to the purpose for which the moneys were made  
35 available, and held by the state in trust for such purposes.  
36 All such moneys are hereby appropriated for the purposes  
37 for which the same were made available and shall be  
38 expended in accordance with federal laws and regula-  
39 tions and with the laws of this state. The director is  
40 authorized, whether acting for the state or one of its  
41 agencies, or as the agency for any county or municipality,  
42 when requested by the United States government or any  
43 agency or department thereof, or when requested by the  
44 state, a state agency, or any county or municipality for  
45 which the moneys have been made available, to disburse  
46 such moneys for the designated purposes, but this shall  
47 not include any other authorized method of disbursement.

**§16-1-17. Administrative and other employees of department;  
interfering with inspectors, etc.**

1 The director at such time or times as deemed necessary  
2 may employ such administrative employees, inspectors,  
3 examiners, or other persons as may be necessary to prop-  
4 erly carry out the provisions of the public health laws of  
5 this state. Such inspectors, examiners, and other employ-  
6 ees shall act as the director's representatives and, under  
7 the direction of the director of health, shall enforce the  
8 provisions of the public health laws and all duly promul-  
9 gated rules and regulations of the board of health, and  
10 in the discharge of official duties, shall have the right of  
11 entry into any institution or school, whether public or  
12 private, public conveyances, dairy, creamery, slaughter-  
13 house, workshop, factory, labor camp, place of entertain-  
14 ment, hotel, tourist camp, all other places open to the  
15 general public and inviting public patronage or public  
16 assembly, or tendering to the public any item for human  
17 consumption, and places where hazardous trades or indus-  
18 tries are conducted.

19 Any person interfering with or attempting to interfere  
20 with any inspector, examiner, or other duly authorized  
21 employee of the department of health in the discharge of  
22 his duties under this section shall be guilty of a misde-

23 meanor, and, upon conviction thereof, shall be fined not  
24 less than ten dollars, nor more than five hundred dollars.

#### ARTICLE 2. LOCAL HEALTH OFFICERS.

- §16-2-1. County and municipal health officers; reports by physicians; county board of health; penalty for noncompliance.
- §16-2-2. Full-time county and municipal health officers; full-time public health nurse; levy.
- §16-2-3. Counties, or counties and municipalities, may combine in employment of officers and installation and maintenance of equipment; combined local boards of health.
- §16-2-4. State director of health may supplant local health authority; removal of delinquent local officer.

#### §16-2-1. County and municipal health officers; reports by physicians; county board of health; penalty for noncompliance.

1 It shall be the duty of the director of the West Virginia  
2 department of health, upon the recommendation of the  
3 county commission of the county, to appoint in each  
4 county of this state a legally qualified physician, who shall  
5 be known as the county health officer. It shall also be the  
6 duty of such director, upon the recommendation of the  
7 municipal council or other governing body of any  
8 municipality, to appoint in such municipality a legally  
9 qualified physician, who shall be known as the municipal  
10 health officer: *Provided*, That no municipality organized  
11 and existing without a special charter from the Legisla-  
12 ture and located within a county which maintains a full-  
13 time county health officer, shall appoint a part-time  
14 municipal health officer. The county and municipal health  
15 officers in office on the date this section becomes effective  
16 shall, unless sooner removed, continue to serve until  
17 their respective terms expire, and until their successors  
18 have been appointed and have qualified. Beginning on  
19 the first day of July, one thousand nine hundred thirty-  
20 three, and on the first day of July of each fourth year  
21 thereafter, a county health officer shall be appointed as  
22 aforesaid to serve for a term of four years, unless sooner  
23 removed by the said county commission or by the West  
24 Virginia director of health. Beginning on the first day of  
25 July, one thousand nine hundred thirty-one, and on the  
26 first day of July of each alternate year thereafter, a  
27 municipal health officer shall be appointed as aforesaid to

28 serve for a term of two years, unless sooner removed by  
29 the said municipality or by the West Virginia director of  
30 health. Should the West Virginia director of health fail  
31 to confirm the nomination of the person recommended as  
32 county or municipal health officer, or should the West  
33 Virginia director of health or the county or municipal  
34 authority remove any such officer, another nomination  
35 shall at once be made to the West Virginia director of  
36 health by the nominating authority.

37 The county health officer shall receive an official salary  
38 of not less than three hundred dollars per annum, and  
39 such other amount as the county commission may add  
40 for additional services, and actual necessary traveling  
41 expenses, unless for work specially done under orders of  
42 the state department of health. The salary of the county  
43 health officer shall be paid out of the treasury of the  
44 county. It shall be the duty of every practicing physician  
45 to report to the municipal or county health officer, where  
46 there is such official, immediately on diagnosis, every case  
47 of communicable or infectious disease that may arise or  
48 come under his treatment within the municipality, and to  
49 the county health officer cases occurring outside of the  
50 municipality, and also, where there is no municipal health  
51 officer, cases occurring within such municipality. The  
52 health officer receiving such reports shall make to the  
53 state health department a weekly report of all such cases,  
54 stating the number of each kind of disease reported, the  
55 action taken to arrest the infection, and the result.

56 The county health officer together with the president of  
57 the county commission and the prosecuting attorney shall  
58 constitute the county board of health, of which the county  
59 health officer shall be the executive officer. The county  
60 board of health shall exercise all the powers, and enforce  
61 all the rules and regulations of the West Virginia board  
62 of health, so far as applicable to such county. In a county  
63 which has a full-time county health officer, the jurisdic-  
64 tion of the county board of health and of the county  
65 health officer shall be coextensive with the county, and  
66 shall include every city, town and village therein which  
67 does not have a full-time health officer of its own, but

68 shall not include any city, town or village therein which  
69 has such full-time health officer. But in a county which  
70 has a part-time health officer only, the jurisdiction of  
71 the county board of health and of such part-time health  
72 officer shall not extend to any city, town or village there-  
73 in having a full-time or part-time health officer of its own.  
74 All county and municipal boards of health and health  
75 officers shall be secondary to the West Virginia board of  
76 health, and the director of the West Virginia department  
77 of health, and subject to all orders of the director of the  
78 West Virginia department of health, who may, if deemed  
79 expedient, act through the county and municipal boards.

80 Any failure to comply with any of the provisions of  
81 this section shall constitute a misdemeanor, and, upon  
82 conviction thereof, the offender shall be fined not more  
83 than one hundred dollars.

**§16-2-2. Full-time county and municipal health officers; full-time public health nurse; levy.**

1 The county commission of any county or the municipal  
2 council or other governing body of any municipality shall  
3 have the power and authority to provide for a full-time  
4 county or municipal health officer and the expenses of  
5 his administration, and for that purpose may levy a county  
6 or municipal tax, as the case may be, of not exceeding  
7 three cents on each one hundred dollars' assessed valua-  
8 tion of the taxable property in such county or municipi-  
9 pality according to the last assessment thereof. Such health  
10 officer shall be a legally qualified physician, and shall be  
11 nominated and appointed in the manner provided in  
12 section one of this article. He shall serve full time  
13 in the duties of his office in protecting and supervising the  
14 general health and sanitation of his county or municipi-  
15 pality, including medical attendance by the county health  
16 officer upon the indigent of the county in the infirmary,  
17 and shall perform such duties in relation thereto as may  
18 be prescribed by order of the county commission or ordi-  
19 nance of the municipality duly entered or enacted, or by  
20 order of the director of the department of health.

21 The county commission of any county or the municipal  
22 council or other governing body of any municipality

23 which has not provided for a full-time health officer,  
24 may provide for a full-time public health nurse and the  
25 expenses of administration, and for that purpose may levy  
26 a county or municipal tax, as the case may be, of not  
27 exceeding two cents on each one hundred dollars  
28 assessed valuation of the taxable property in such county  
29 or municipality according to the last assessment thereof.  
30 Such public health nurse shall be a legally qualified nurse  
31 suitably trained in sanitary science and the nurse's  
32 qualifications shall be satisfactory to the director of the  
33 state department of health. The nurse shall be nominated  
34 and appointed in the manner provided in section one of  
35 this article. The nurse shall serve full time in protecting  
36 and supervising the general health and sanitation of the  
37 county or municipality, and shall perform such duties  
38 in relation thereto as may be prescribed by order of the  
39 county commission or ordinance of the municipality  
40 duly entered or enacted, or by order of the director of  
41 the state department of health.

**§16-2-3. Counties, or counties and municipalities, may combine  
in employment of officers and installation and  
maintenance of equipment; combined local boards  
of health.**

1 Any two or more counties, or any county or counties  
2 and any one or more municipalities within or partially  
3 within the said county or counties, may combine to  
4 cooperate with the state department of health, by vote of  
5 the county commission in the case of a county and by  
6 vote of the council or other governing body in the case  
7 of a municipality, and may participate in the employ-  
8 ment of trained health officers and other agents and  
9 employees, or in the installation and maintenance of a  
10 common laboratory and other equipment. Whenever any  
11 such units shall decide so to cooperate and shall appro-  
12 priate a sum or sums of money for such joint or coopera-  
13 tive action, the state department of health is authorized  
14 and empowered to pay over and contribute to such co-  
15 operating units, and the cooperating units are authorized  
16 and empowered to receive and expend for public purposes,  
17 such sum or sums of money as may be available from

18 funds included in appropriations made for the state  
19 department of health for such purposes: *Provided*, That  
20 the general plan of cooperation, as well as the principal  
21 health officers, executive agent or laboratory director  
22 employed by the cooperating units, shall first have been  
23 approved by the director of the department of health.  
24 The amount of any such payment or contribution by the  
25 state department of health to such cooperating units shall  
26 be determined in accordance with regulations established  
27 by the state board of health. Such regulations shall pro-  
28 vide a method for determining the amount of any pay-  
29 ment or contribution, and this method shall be uniformly  
30 applied in determining the amount of any payment or  
31 contribution to any such local governmental unit or  
32 units.

33 Each county or municipality participating in any such  
34 cooperative action shall select and appoint by vote of the  
35 county commission in the case of a county, and by vote  
36 of the council or other governing body in the case of a  
37 municipality, not less than one nor more than three per-  
38 sons to be members of a combined board of health. No such  
39 person shall be selected by, nor represent on, any such  
40 combined board, more than one such county or munici-  
41 pality. The number of persons to be selected by each  
42 participating county or municipality as members of such  
43 board, subject to the limitation contained in the two  
44 preceding sentences, shall be agreed upon by the several  
45 counties or municipalities participating.

46 All members of such combined board of health shall be  
47 appointed for terms of five years each, except that the  
48 persons first appointed pursuant to the provisions of this  
49 section, if more than one such person is appointed at the  
50 same time by any one county commission or municipal  
51 governing body, shall be individually designated to serve  
52 for terms of one, two and three years, respectively, and if  
53 only one such person is appointed at such time by each  
54 participating county or municipality, the several partici-  
55 pating counties or municipalities shall initially appoint  
56 such persons to serve for individually designated terms,  
57 which shall be agreed upon by the several appointing



58 authorities, of one, two, three, four and five years, respec-  
59 tively. Upon the expiration of the term of such initial  
60 appointments, the term of each new appointee shall be  
61 five years. Any vacancy on such board shall be filled by  
62 appointment, by the original appointing authority, for the  
63 unexpired term. All members shall serve until their duly  
64 qualified successors have been appointed. The number of  
65 members of such board belonging to one political party  
66 shall not exceed by more than one the number of mem-  
67 bers of such board belonging to any other political party.

68 All members of any such board shall be citizens and  
69 residents of the county or municipality they are appointed  
70 to represent. All members shall be eligible for reappoint-  
71 ment.

72 No member of such board may be removed from office  
73 during the term for which he is appointed, except for  
74 official misconduct, incompetence, neglect of duty or gross  
75 immorality.

76 No member of such board shall receive any compen-  
77 sation for his services, but each may be reimbursed for  
78 all reasonable and necessary travel and other expenses  
79 actually incurred by him in the performance of his duties  
80 as a member of such board.

81 Any such combined board of health shall consist of the  
82 several members so selected. Such board shall organize by  
83 electing a chairman from among its members. It shall  
84 have the power to adopt, and from time to time amend,  
85 such rules and regulations as it may deem necessary con-  
86 cerning the time and place of its meetings, the procedure  
87 and method of conducting its meetings or business, and  
88 any other matters affecting, or necessary to, the orderly  
89 and efficient discharge of its duties or exercise of its  
90 powers. All powers and duties belonging to or  
91 vested in county boards of health or municipal  
92 boards of health under any provision of the code  
93 are hereby vested in, conferred upon, and declared  
94 to be, the powers and duties of any combined board of  
95 health created pursuant to the provisions of this section.  
96 All powers and duties belonging to or vested in county  
97 or municipal health officers, so far as they are applicable

98 and not in conflict with the provisions of this section,  
99 are hereby vested in, conferred upon, and declared to be,  
100 the powers and duties of any health officer appointed  
101 and employed by any combined board of health. Any  
102 health officer or other employee appointed or employed  
103 by any combined board of health shall be employed and  
104 serve, and may be discharged, at the will and pleasure  
105 of such board. The territorial jurisdiction of any such  
106 combined board of health shall be coextensive with the  
107 boundaries of all of the counties and municipalities which  
108 have been combined to cooperate as herein provided.

109 Upon the formation of a combined local board of health  
110 as herein provided, and during the period that it continues  
111 to exist, there shall be no separate county board of health  
112 or municipal board of health in any county or municipi-  
113 pality represented on the combined board of health.

**§16-2-4. State director of health may supplant local health authority; removal of delinquent local officer.**

1 When, in the opinion of the director of the state health  
2 department, any local health authority shall fail or re-  
3 fuse to enforce necessary laws and regulations to prevent  
4 and control the spread of communicable or infectious  
5 disease declared to be dangerous to the public health, or  
6 when, in the opinion of the said director, a public health  
7 emergency exists, the director may enforce the rules  
8 and regulations of the state board of health within the  
9 territorial jurisdiction of such local health authorities,  
10 and for that purpose shall have and may exercise all the  
11 powers given by law to local health authorities. All  
12 expenses so incurred shall be a charge against the  
13 counties, cities or towns concerned. And in such cases  
14 the failure or refusal of any local health officer or local  
15 health body to carry out the lawful orders and regula-  
16 tions of the state board of health shall be sufficient cause  
17 for the removal of such local health officer or the mem-  
18 bers of such local health body from office, and upon such  
19 removal the proper county or municipal authorities shall  
20 at once nominate a successor, other than the person re-  
21 moved, as provided by law.

**ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL HEALTH AGENCIES.**

- §16-2A-3. Powers and duties of county and municipal boards of health; filing of rules and regulations.
- §16-2A-7. Charges by local boards of health for inspection of milk distribution, production or pasteurization facilities outside of state.
- §16-2A-8. State director of health may supplant local health authority; removal of delinquent local officers.

**§16-2A-3. Powers and duties of county and municipal boards of health; filing of rules and regulations.**

1 County or municipal boards of health created and  
2 established pursuant to the provisions of this article  
3 shall direct, supervise, and control all matters relating  
4 to the general health and sanitation of their respective  
5 counties or municipalities, and shall possess and exercise  
6 such power in relation thereto as may be exercised and  
7 is possessed by the state board of health or the director,  
8 as the case may be, so far as such powers are applicable  
9 to such county or municipality. Such local boards of  
10 health shall also have the power and authority to adopt  
11 and promulgate and from time to time amend such rules  
12 and regulations, consistent with the laws of this state  
13 and the rules and regulations of the state board of health,  
14 as may be necessary and proper for the protection of  
15 the general health of the county or municipality and the  
16 prevention of the introduction, propagation and spread  
17 of disease therein. All such rules and regulations shall  
18 be filed, in the case of a county board, with the clerk of  
19 the county commission, and in the case of a municipal  
20 board, with the clerk, recorder, or similar officer of the  
21 municipality. Such rules and regulations shall be kept  
22 by such clerk or recording officer in a separate book and  
23 shall be public records.

24 It shall be the duty of such local boards of health to  
25 protect the general health and supervise and control the  
26 sanitation of their respective counties and municipalities;  
27 to enforce the laws of this state pertaining to public  
28 health, and the rules and regulations of the state board  
29 of health, insofar as they are applicable to such counties  
30 or municipalities, and to perform such duties in relation  
31 to public health as may be prescribed by order of the

32 county commission of such counties or ordinances of  
33 such municipalities, consistent with the public health  
34 laws of this state and the regulations duly adopted by  
35 the state board of health. All such local boards of health  
36 receiving state or federal funds for health purposes shall  
37 first receive approval by the director of the state depart-  
38 ment of health of their general plans of operation for  
39 health purposes. Such director may, if deemed necessary  
40 or expedient by him, act through any county or municipal  
41 board of health created, established and operated pur-  
42 suant to the provisions of this article.

**§16-2A-7. Charges by local boards of health for inspection of  
milk distribution, production or pasteurization  
facilities outside of state.**

1 Any local board of health, whether created and main-  
2 tained pursuant to the provisions of this article or article  
3 two of this chapter, may cause an inspection to be made  
4 of the physical plant and facilities of any distributor,  
5 producer, or pasteurizer of milk whose milk distribution,  
6 production, or pasteurization plant or facilities are located  
7 outside this state but who sells or distributes in this  
8 state, or transports, or causes or permits to be transported,  
9 into this state, milk, or milk products, for resale, use or  
10 consumption in this state and within the territorial juris-  
11 diction of such local board of health. The local board of  
12 health may charge to, and collect from such distributor,  
13 producer, or pasteurizer of milk, all of the expense of  
14 such inspection.

15 The amount of such charge for expense of inspection  
16 shall be based on the number of inspections made, mile-  
17 age traveled, and time consumed by the inspecting offi-  
18 cial in traveling to and from the place of the inspection  
19 and in actually making the inspection: *Provided*, That in  
20 any case in which such milk distribution, production, or  
21 pasteurization plant or facilities are regularly inspected in  
22 the course of a regular inspection schedule or itinerary  
23 by any duly authorized representative of any agency of  
24 this state or its governmental subdivisions, or any agency  
25 of any other state or its governmental subdivisions, which  
26 has been certified as an approved inspection agency by

27 the director of the state department of health, no charge  
28 for expense of inspection shall be made by any local  
29 board of health unless it is the agency making the regular  
30 inspection. In any event, not more than one local board  
31 of health shall act as and be deemed, the regular inspec-  
32 tion agency for any such milk distribution, production, or  
33 pasteurization plant or facility. Where two or more  
34 agencies each include any such plant or facility in a  
35 regular inspection schedule or itinerary, the director of  
36 the health department shall designate one of such agencies  
37 as the regular inspection agency for such plant or facility.

**§16-2A-8. State director of health may supplant local health authority; removal of delinquent local officers.**

1 When, in the opinion of the director of the health de-  
2 partment, any local health authority shall fail or refuse  
3 to enforce laws and regulations necessary to prevent and  
4 control the spread of communicable or infectious disease  
5 declared to be dangerous to the public health, or when,  
6 in the opinion of the director, a public health emergency  
7 exists, the director may enforce the rules and regulations  
8 of the state board of health within the territorial juris-  
9 diction of such local health authority, and for that pur-  
10 pose shall have and may exercise all the powers given by  
11 law to local health authorities. All expenses so incurred  
12 shall be a charge against the counties, cities or towns  
13 concerned. And in such cases the failure or refusal of any  
14 local health officer or local health body to carry out the  
15 lawful orders and regulations of the state board of health  
16 shall be sufficient cause for the removal of such local  
17 health officer, or local health body or its members, from  
18 office, and upon such removal a successor or successors to  
19 the person or persons removed shall immediately be ap-  
20 pointed in the manner, and for the term, provided for in  
21 this article.

**ARTICLE 2B. FAMILY PLANNING AND CHILD SPACING.**

**§16-2B-1. Family planning and child spacing; authorized functions; funds.**

1 The state department of health is authorized to pro-  
2 vide printed material, guidance, advice, financial assis-

3 tance, appliances, devices, drugs, approved methods, and  
 4 medicines to local boards of health requesting the same  
 5 for use in the operation of family planning and child  
 6 spacing clinics to the extent of funds appropriated by  
 7 the Legislature and any federal funds made available for  
 8 such purpose.

**ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE  
 AND OTHER INFECTIOUS DISEASES.**

- \$16-3-1. State director of health authority to quarantine and to enforce regulations; state board of health authority to issue regulations to control infectious or contagious diseases.
- \$16-3-2. Powers of county and municipal boards of health to establish quarantine; penalty for violation.
- \$16-3-5. Free serum or vaccine preventives of disease.
- \$16-3-6. Nuisances affecting public health.
- \$16-3-10. Inflammation of eyes of newborn; use of silver nitrate drops as prophylactic; birth report.
- \$16-3-12. Same—Duties of the state director of health, duties of board of health.

**§16-3-1. State director of health authority to quarantine and to enforce regulations; state board of health authority to issue regulations to control infectious or contagious diseases.**

1 The state director of health is empowered to establish  
 2 and strictly maintain quarantine at such places as he  
 3 may deem proper and forbid and prevent the assembling  
 4 of the people in any place, when the state director of  
 5 health or any county or municipal health officer deems  
 6 that the public health and safety so demand, and the  
 7 state board of health may adopt rules and regulations  
 8 to obstruct and prevent the introduction or spread of  
 9 smallpox or other communicable or infectious diseases  
 10 into or within the state, and the state director of health  
 11 shall have the power to enforce these regulations by  
 12 detention and arrest, if necessary. The state director of  
 13 health shall have power to enter into any town, city,  
 14 factory, railroad train, steamboat or other place whatso-  
 15 ever, and enter upon and inspect private property for  
 16 the purpose of investigating the sanitary and hygienic  
 17 conditions and the presence of cases of infectious diseases,  
 18 and may, at his discretion, take charge of any epidemic  
 19 or endemic conditions, and enforce such regulations as  
 20 the state board of health may prescribe. All expenses

21 incurred in controlling any endemic or epidemic condi-  
22 tions shall be paid by the county or municipality in which  
23 such epidemic occurs.

**§16-3-2. Powers of county and municipal boards of health to  
establish quarantine; penalty for violation.**

1 The county board of health of any county may declare  
2 quarantine therein, or in any particular district or place  
3 therein, whenever in their judgment it is necessary to  
4 prevent the spread of any communicable or infectious  
5 disease prevalent therein, or to prevent the introduction  
6 of any communicable or infectious disease prevailing in  
7 any other state, county or place, and of any and all per-  
8 sons and things likely to spread such infection. As soon  
9 as such quarantine is established such board shall, in  
10 writing, inform the director of health thereof, the duty  
11 of whom it shall be to ascertain, as soon as practicable,  
12 the necessity therefor, if any exists, and if the state di-  
13 rector of health finds that no such necessity exists, the  
14 same shall, by the said director, be declared raised. The  
15 said county board of health shall have power and au-  
16 thority to enforce such quarantine until the same is  
17 raised as aforesaid, or by themselves, and may confine  
18 any such infected person, or any person liable to spread  
19 such infection, to the house or premises in which he re-  
20 sides, or if he has no residence in the county, at a place  
21 to be provided by them for the purpose; and if it shall  
22 become necessary to do so, they shall summon sufficient  
23 guard for the enforcement of their orders in the premises.  
24 Every person who shall fail or refuse to comply with any  
25 order made by such board under this section, and every  
26 person summoned as such guard who shall, without a  
27 lawful excuse, fail or refuse to obey the orders and direc-  
28 tions of such board in enforcing said quarantine, shall  
29 be guilty of a misdemeanor, and, upon conviction thereof,  
30 shall be fined not less than twenty-five nor more than two  
31 hundred dollars. In cases of emergency or actual necessity,  
32 and when the county commission or corporate authorities  
33 are from any cause unable to meet or to provide for the  
34 emergency or the necessity of the case, all actual expendi-  
35 tures necessary for local and county quarantine, as pro-

36 vided for in this section, shall be certified by the county  
37 board of health to the county commission, and the whole,  
38 or as much thereof as the said commission may deem  
39 right and proper, shall be paid out of the county treasury.  
40 The board of health of any city, town or village shall  
41 have, within the municipality, the same powers and per-  
42 form the same duties herein conferred upon and required  
43 of the county board of health in their county. So far as  
44 applicable the provisions of this section shall apply to  
45 any quarantine established and maintained by the state  
46 director of health pursuant to section one of this article.

**§16-3-5. Free serum or vaccine preventives of disease.**

1 The state director of health shall purchase vaccine  
2 lymph, diphtheria antitoxin, tetanus antitoxin and such  
3 other forms of serum or vaccine preventives of disease as  
4 he may deem necessary, and shall distribute the same,  
5 free of charge, in such quantities as he may deem neces-  
6 sary, to county and municipal health officers, to be used  
7 by them for the benefit of, and without expense to the  
8 indigent within their respective jurisdictions, and in other  
9 cases where it may be urgently necessary to check con-  
10 tagions and control epidemics.

11 The state director of health shall also deliver, free of  
12 charge, to such drugstores or other stores within each  
13 county as the health officer of such county may designate  
14 as proper depositories, such quantities of diphtheria anti-  
15 toxin as said director may deem necessary for the use of  
16 the indigent of such county, and such antitoxin shall be  
17 kept at said drugstores or other stores at all times and in  
18 sufficient quantities to permit immediate delivery to any  
19 licensed physician who may require the same for the  
20 treatment of any indigent person infected with diphtheria,  
21 or to prevent such infection, without cost to the patient  
22 so treated. The state director of health shall take a receipt  
23 from the proprietor of each drugstore or other store for  
24 any antitoxin delivered as herein provided.

25 The auditor of the state shall pay the actual cost of  
26 all said serum and vaccine preventives and the cost of  
27 delivering said diphtheria antitoxin to any drugstore or



28 other store, upon the presentation of the original invoices  
29 thereof, duly verified by affidavit and approved by the  
30 state director of health, and shall in addition pay to said  
31 drugstores or other stores, for delivery of said diphtheria  
32 antitoxin to the physicians aforesaid, a commission of ten  
33 percent of the original cost of said antitoxin so de-  
34 livered.

**§16-3-6. Nuisances affecting public health.**

1 The state director of health or any county or municipal  
2 health officer shall inquire into and investigate all nui-  
3 sances affecting the public health within his jurisdiction;  
4 and the said director or any such officer or the county  
5 commission of any county or any municipality is autho-  
6 rized and empowered to apply to the circuit court of the  
7 county in which any such nuisance exists, or to the judge  
8 thereof in vacation, for an injunction forthwith to re-  
9 strain, prevent or abate such nuisance.

**§16-3-10. Inflammation of eyes of newborn; use of silver nitrate drops as prophylactic; birth report.**

1 It shall be unlawful for any physician, or midwife,  
2 practicing midwifery, to neglect or otherwise fail to in-  
3 still or have instilled, immediately upon its birth, in the  
4 eyes of the newborn babe, one or two drops of a one  
5 percent solution of silver nitrate, furnished by the West  
6 Virginia director of health. Every physician or midwife  
7 shall, in making a report of a birth, state whether or not  
8 the above solution was instilled into the eyes of said  
9 infant.

**§16-3-12. Same—Duties of the state director of health; duties of board of health.**

1 It shall be the duty of the state director of health:  
2 (a) To enforce the provisions of sections seven through  
3 thirteen, inclusive, of this article;  
4 (b) To provide for the gratuitous distribution of one  
5 percent solution of silver nitrate outfits, together with  
6 proper directions for the use and administration thereof,

7 to all physicians and midwives who may be engaged in  
8 the practice of obstetrics, or assisting at childbirth;

9 (c) To publish and promulgate such further advice and  
10 information concerning the dangers of inflammation of  
11 the eyes of the newborn as is necessary for prompt and  
12 effective treatment;

13 (d) To furnish copies of sections seven through thir-  
14 teen, inclusive, of this article to all physicians and mid-  
15 wives who may be engaged in the practice of obstetrics,  
16 or assisting at childbirth;

17 (e) To keep a proper record of any and all cases of  
18 inflammation of the eyes of the newborn of which reports  
19 are filed with the state director of health pursuant to law,  
20 or which may come to his attention in any way, and to  
21 constitute such records a part of the annual report to the  
22 governor; and

23 (f) To report any and all violations of the public health  
24 laws or of any rules or regulations lawfully adopted pur-  
25 suant thereto that may come to his attention, to the prose-  
26 cuting attorney of the county wherein said violations may  
27 have occurred, and to assist said official in any way pos-  
28 sible in the prosecution of such cases.

29 It shall be the duty of the state board of health to  
30 promulgate such rules and regulations as shall be neces-  
31 sary for the purpose of enforcing said provisions, and as  
32 the state director of health may deem necessary for the  
33 further and proper guidance of local health officers.

#### ARTICLE 4. VENEREAL DISEASES.

§16-4-6. Reports by physicians.

§16-4-7. False report or information.

§16-4-21. Quarantine.

#### §16-4-6. Reports by physicians.

1 It shall be the duty of every practicing physician or  
2 other person who makes a diagnosis in, or treats a case  
3 of, syphilis, gonorrhoea or chancroid, to make two reports  
4 of the case, as follows: One report shall be made to the  
5 local municipal health officer, if the party for whom the  
6 diagnosis was made or case treated lives within any

7 municipality having a health officer, and if the municipi-  
8 pality has no health officer, or if the party lives outside  
9 of a municipality, then to the health officer of the county  
10 in which such person lives; the second report shall be  
11 made to the director of health of the state. And every  
12 superintendent or manager of a hospital, dispensary, or  
13 charitable or penal institution in which there is a case of  
14 venereal disease shall report the same under like condi-  
15 tions.

16 The reports above required shall state the street num-  
17 ber and address of the person reported as diseased, the  
18 age, sex, color, marital state and occupation of such per-  
19 son, the date of the onset of the disease, the source of  
20 infection, whether said disease is in an infectious state,  
21 and whether the person reported is at the time of making  
22 report engaged in any occupation forbidden under this  
23 article and hereafter mentioned. The reports, when made  
24 out, shall be mailed or handed to the parties to whom  
25 they are directed to be made within forty-eight hours  
26 after a diagnosis is made or treatment started; and the  
27 municipal health officer or county health officer, as the  
28 case may be, shall file and preserve said reports, and  
29 they shall be open to inspection by the director of the  
30 state department of health, and by local health officers,  
31 or officers whose duties are connected with executing the  
32 laws against these diseases.

**§16-4-7. False report or information.**

1 Any physician or other person required to make re-  
2 ports of a venereal disease hereunder, or who is re-  
3 quired to report the failure of any patient to return for  
4 further treatment, who fails or refuses to make any  
5 such reports, or who knowingly reports a person under  
6 a false or fictitious name or address, or who makes any  
7 other statements on any report which he has reason to  
8 believe are untrue, shall be guilty of a misdemeanor,  
9 and shall be punished as hereinafter provided; and each  
10 report that should have been made, and each name that  
11 should have been given, and each address that should  
12 have been given, or has been wrongfully reported or

13 given, shall be a separate offense; and a second conviction of a physician for failure to comply with any provision of this section shall be sufficient ground and reason for the director of health, upon the recommendation of the medical licensing board, to revoke the license of such physician. Any person suffering with a venereal disease, whose name is required to be reported hereunder, who gives to the physician or person required to make reports herein required a false or fictitious name or address, or who shall fail or refuse to answer any proper question required to be reported hereunder, or who makes any false statement in answer to any such question, shall be guilty of a misdemeanor, and shall be punished as hereinafter provided.

**§16-4-21. Quarantine.**

1 In establishing quarantine for a venereal disease under the provisions of this article, the health officer establishing said quarantine may confine any person infected, or reasonably suspected of having such venereal disease, or any other person liable to spread such disease, to the house or premises in which such infected person lives, or he may require any such person to be quarantined in any other place, hospital or institution in his jurisdiction that may have been provided. If no such place has been provided, then such person shall be confined in the county or city jail under a quarantine order, and such jails shall always be available for such purposes. But if such person is to be quarantined in his home, then said health officer shall designate the area, room or rooms, that such person is to occupy while so confined, and no one except the attending physician or his immediate attendants shall enter or leave such room or rooms so designated without permission of said health officer, and no one except the local health officer shall terminate said quarantine, and this shall not be done until the diseased person has become noninfectious as determined by thorough clinical tests, or permission has been given by the West Virginia state director of health. If, to make any quarantine effective as provided herein, it becomes necessary, the

25 local health officer may summon a sufficient guard for  
26 the enforcement of his orders in the premises. And every  
27 person who fails or refuses to obey or comply with any  
28 order made by said health officer hereunder, or under  
29 any other section concerning quarantine, and every per-  
30 son summoned as a guard who shall, without a lawful  
31 excuse therefor, fail or refuse to obey the orders and  
32 directions of the health officer in enforcement of said  
33 quarantine, shall be guilty of a misdemeanor, and shall  
34 be punished as hereinafter provided.

#### ARTICLE 4A. PRENATAL EXAMINATION.

##### §16-4A-3. Identification of specimen; report.

1 Any physician who takes or causes to be taken from a  
2 woman in pregnancy or suspected pregnancy a blood test  
3 for syphilis shall identify such specimen as being from a  
4 pregnant woman, and the laboratory shall provide a  
5 report in triplicate on forms prepared and furnished by  
6 the state department of health showing the results of  
7 such tests. The original of each such report shall be sent  
8 at once to the physician submitting the specimen, a dupli-  
9 cate shall be forwarded to the state department of health  
10 during the week that the test was performed, and the  
11 triplicate shall be retained by the laboratory for its files.  
12 All laboratory reports shall be confidential and shall not  
13 be open to public inspection. The laboratory test for  
14 syphilis in compliance with this article shall be performed  
15 free of charge by the state hygienic laboratory on the  
16 application of any municipal or county health officer or  
17 other physician, or any other person permitted by law to  
18 secure such specimens.

#### ARTICLE 4C. EMERGENCY MEDICAL SERVICE.

§16-4C-2. Definitions.

§16-4C-4. Standards for emergency medical service attendants; issuance, renewal, suspension and revocation of emergency medical service attendant certificates; issuance of temporary certificates.

§16-4C-5. Suspension or revocation of certificate or temporary certificate.

§16-4C-6. Notice of refusal, suspension or revocation of certificate; appeals to director; judicial review.

§16-4C-9. Violations; criminal penalties.

§16-4C-10. Actions to enjoin violations; injunctive relief.

**§16-4C-2. Definitions.**

1 As used in this article, unless the context clearly re-  
2 quires a different meaning:

3 "Ambulance" means any privately or publicly owned  
4 vehicle or aircraft which is designed, constructed or modi-  
5 fied; equipped or maintained; and operated for the trans-  
6 portation of patients.

7 "Ambulance service" means the transportation, and  
8 treatment at the site of pickup and en route, of a patient  
9 to or from a place where medical, hospital or clinical  
10 service is normally available.

11 "Emergency medical service attendant" means any per-  
12 son who is responsible for attending, caring for and  
13 giving life-saving or life-preserving treatment to a patient  
14 transported in an ambulance. This term includes both  
15 the driver of an ambulance and any person assigned to  
16 the ambulance to attend patients.

17 "Governing body" shall have the meaning ascribed  
18 to it as applied to a municipality in subsection (b), sub-  
19 division (1), section two, article one, chapter eight of this  
20 code.

21 "Municipality" shall have the meaning ascribed to it  
22 in subsection (a), subdivision (1), section two, article  
23 one, chapter eight of this code.

24 "Patient" means any sick, injured, wounded or other-  
25 wise incapacitated or helpless person, or an expectant  
26 mother who needs medical, hospital or clinical service  
27 under an existing or imminent emergency situation.

28 "State board" means the state board of health.

29 "Director" means the director of the state department  
30 of health.

**§16-4C-4. Standards for emergency medical service attendants;  
issuance, renewal, suspension and revocation of  
emergency medical service attendant certificates;  
issuance of temporary certificates.**

1 After the first day of January, one thousand nine hun-  
2 dred seventy-five, every ambulance, except those vehicles

3 and aircraft exempted in section three of this article,  
4 shall have at least one physician, osteopathic physician,  
5 any state licensed health provider qualified to render first  
6 aid or mobile intensive care paramedic duly licensed to  
7 serve in such capacity under the laws of this state or one  
8 person who possesses a valid emergency medical service  
9 attendant certificate issued hereunder by the director in  
10 its patient compartment at all times when a patient is  
11 being transported.

12 In accordance with the provisions of chapter twenty-  
13 nine-a of this code, the state board shall promulgate rules  
14 regarding the age, training and physical requirements of  
15 emergency medical service attendants. As a minimum  
16 training requirement, every emergency medical service at-  
17 tendant shall have earned and possess a valid American  
18 red cross advanced first aid certificate, or an advanced first  
19 aid certificate issued by the United States bureau of mines  
20 (now referred to as the mining enforcement and safety  
21 administration, United States department of the interior)  
22 or the equivalent thereof; or have successfully completed  
23 the course on emergency care and transportation of the  
24 sick and injured recommended by the American academy  
25 of orthopedic surgeons or the equivalent thereof, before  
26 he is issued a certificate: *Provided*, That any member of a  
27 rescue unit organized and engaged in providing ambulance  
28 service prior to the first day of January, one thousand  
29 nine hundred seventy-five, which is operated by a rescue  
30 squad, fire department, police department, county or  
31 municipality of this state, who on that date is certified  
32 by the respective county health officer of the county  
33 wherein such unit is based, or, if there is no county health  
34 officer, by the county commission or governing body of  
35 the jurisdiction wherein such unit is based, that he is  
36 adequately trained and is capable of performing the ser-  
37 vice required of an emergency medical service attendant  
38 shall be issued an original emergency medical service  
39 attendant certificate by the director upon his submitting  
40 proper application for such certificate. The state board  
41 may promulgate rules for emergency medical service  
42 attendants which exceed this minimum training require-  
43 ment.

44 Any person desiring certification as an emergency  
45 medical service attendant shall apply to the director  
46 using forms and procedures prescribed by the director.  
47 Upon receipt of such application, the director shall  
48 determine if the applicant meets the requirements for  
49 certification and examine the applicant as, in his dis-  
50 cretion, is necessary to make such determination. If it  
51 is determined that the applicant meets all of the require-  
52 ments, the director shall issue an emergency medical  
53 service attendant certificate to the applicant. Emergency  
54 medical service attendant certificates issued by the direc-  
55 tor shall be valid for two years from the date of their is-  
56 suance unless sooner suspended or revoked by the di-  
57 rector. Certificates may be renewed for additional two-  
58 year periods after examination of the certificate holder  
59 and determination by the director that such holder meets  
60 the requirements established for emergency medical ser-  
61 vice attendants: *Provided*, That if any county health  
62 officer of any county, or, if there is no county health  
63 officer, the county commission or governing body of the  
64 jurisdiction concludes that any area of that jurisdiction  
65 has not been afforded the necessary training or equip-  
66 ment to implement this section, then this section shall  
67 not apply.

68 The director may issue a temporary emergency medical  
69 service attendant certificate to an applicant, with or with-  
70 out examination of the applicant, when it finds such is-  
71 suance to be in the public interest. Unless sooner sus-  
72 pended or revoked, a temporary certificate shall be valid  
73 initially for a period not exceeding one hundred twenty  
74 days and it shall not be renewed thereafter unless it be  
75 in the public interest: *Provided*, That the expiration  
76 date of any such temporary certificate issued shall be  
77 extended until the holder of such certificate is afforded  
78 at least one opportunity to take an emergency medical  
79 care attendant training course within the general area  
80 where he serves as an emergency medical service atten-  
81 dant, but the expiration date shall not be extended for  
82 any longer period of time or for any other reason.

83 There shall be no fee or other payment required of an



84 applicant for original certification as an emergency medi-  
85 cal service attendant, renewal of such certificate or of an  
86 applicant for temporary certification as an emergency  
87 medical service attendant.

**§16-4C-5. Suspension or revocation of certificate or temporary certificate.**

1 (a) The director may at any time upon his own motion,  
2 and shall, upon the verified written complaint of any  
3 person, conduct an investigation to determine whether  
4 there are any grounds for the suspension or revocation of  
5 a certificate or temporary certificate issued under the  
6 provisions of this article.

7 (b) The director shall suspend or revoke any certificate  
8 or temporary certificate when he finds the holder thereof  
9 has:

10 (1) Obtained a certificate or temporary certificate by  
11 means of fraud or deceit; or

12 (2) Been incompetent, grossly negligent, or guilty of  
13 other malpractice as defined by the state board by rules  
14 and regulations; or

15 (3) Failed or refused to comply with the provisions of  
16 this article or any reasonable rule and regulation promul-  
17 gated by the state board hereunder or any order or final  
18 decision of the director.

19 (c) The director shall also suspend or revoke any  
20 certificate or temporary certificate if he finds the existence  
21 of any grounds which would justify the denial of an  
22 application for such license or temporary permit if appli-  
23 cation were then being made for it.

**§16-4C-6. Notice of refusal, suspension or revocation of certificate; appeals to director; judicial review.**

1 An application for an original emergency medical ser-  
2 vice attendant certificate, for the renewal of an emergency  
3 medical service attendant certificate or for a temporary  
4 emergency medical service attendant certificate, shall be  
5 acted upon by the director and the director's certificate  
6 delivered or mailed, or a copy of any order of the director

7 denying any such application delivered or mailed to the  
8 applicant, by the director within fifteen days after the  
9 date upon which such application was received from the  
10 applicant.

11 Whenever the director shall refuse to issue an emer-  
12 gency medical service attendant certificate or a temporary  
13 emergency medical service attendant certificate, or shall  
14 suspend or revoke an emergency medical service attendant  
15 certificate, or a temporary emergency medical service at-  
16 tendant certificate, he shall make and enter an order to  
17 that effect, which order shall specify the reasons for  
18 such denial, suspension or revocation, and shall cause a  
19 copy of such order to be served in person or by certified  
20 mail, return receipt requested, on the applicant or cer-  
21 tificate holder, as the case may be.

22 Whenever a certificate is suspended or revoked, the  
23 director shall in the order of suspension or revocation  
24 direct the holder thereof to return his certificate to the  
25 director. It shall be the duty of such certificate holder to  
26 comply with any such order following expiration of the  
27 period provided for an appeal to the director.

28 Any applicant or certificate holder, as the case may be,  
29 adversely affected by an order made and entered by the  
30 director may appeal to the director for an order vacating  
31 or modifying such order or for such order as the director  
32 should have entered. The person so appealing shall be  
33 known as the appellant. An appeal shall be perfected by  
34 filing a notice of appeal with the director within ten days  
35 after the date upon which the appellant received the copy  
36 of such order. Said notice of appeal shall be in such form  
37 and contain such information as may be prescribed by the  
38 director, but in all cases shall contain a description of any  
39 order appealed from and the grounds for said appeal. The  
40 filing of the notice of appeal shall operate to automatically  
41 stay or suspend execution of any order which is the subject  
42 matter of said appeal. All of the pertinent provisions of  
43 article five, chapter twenty-nine-a of this code shall apply  
44 to and govern the hearing on appeal and the adminis-  
45 trative procedures in connection with and following such

46 hearing, with like effect as if the provisions of said article  
47 five were set forth in extenso herein.

48 The director shall set a hearing date which shall be  
49 not less than ten days after he received the notice of  
50 appeal unless there is a postponement or continuance. The  
51 director may postpone or continue any hearing on his own  
52 motion, or for good cause shown upon the application of  
53 the appellant. The appellant shall be given notice of said  
54 hearing in person or by certified mail, return receipt  
55 requested. Any such hearing shall be held in Charleston,  
56 Kanawha County, West Virginia, unless another place is  
57 specified by the director.

58 After such hearing and consideration of all of the testi-  
59 mony, evidence and record in the case, the director shall  
60 make and enter an order affirming, modifying or vacating  
61 his initial order or shall make and enter any new order.  
62 Such order shall be accompanied by findings of fact and  
63 conclusions of law as specified in section three, article  
64 five, chapter twenty-nine-a of this code, and a copy of  
65 such order and accompanying findings and conclusions  
66 shall be served upon the appellant, in person or by  
67 certified mail, return receipt requested. The order of the  
68 director shall be final unless vacated or modified upon  
69 judicial review thereof.

70 Any appellant adversely affected by a final order made  
71 and entered by the director is entitled to judicial review  
72 thereof. All of the pertinent provisions of section four,  
73 article five, chapter twenty-nine-a of this code shall apply  
74 to and govern such review with like effect as if the provi-  
75 sions of said section four were set forth in extenso herein.  
76 The judgment of the circuit court shall be final unless  
77 reversed, vacated or modified on appeal to the supreme  
78 court of appeals in accordance with the provisions of  
79 section one, article six, chapter twenty-nine-a of this  
80 code.

#### **§16-4C-9. Violations; criminal penalties.**

1 Any person who operates an ambulance or who provides  
2 ambulance service not in compliance with the provisions  
3 of this article or the rules promulgated by the state board

4 of health pursuant to this article, or who operates an  
5 ambulance with uncertified emergency medical service  
6 attendants aboard when not lawfully permitted to do so  
7 shall be guilty of a misdemeanor, and, upon conviction  
8 thereof, shall be fined not less than one hundred dollars  
9 nor more than three hundred dollars, or imprisoned in  
10 the county jail not more than one month, or both fined  
11 and imprisoned.

**§16-4C-10. Actions to enjoin violations; injunctive relief.**

1 Whenever it appears to the director that any person  
2 has been or is violating or is about to violate any pro-  
3 visions of this article or any final order of the director,  
4 the director may apply in the name of the state, to the  
5 circuit court of the county in which the violation or  
6 violations or any part thereof has occurred, is occurring  
7 or is about to occur, for an injunction against such person  
8 and any other persons who have been, are or are about  
9 to be, involved in, or in any way participating in, any  
10 practices, acts or omissions, so in violation, enjoining  
11 such person or persons from any such violation or viola-  
12 tions. Such application may be made and prosecuted  
13 to conclusion whether or not any such violation or viola-  
14 tions have resulted or shall result in prosecution or con-  
15 viction under the provisions of section eight of this  
16 article.

17 Upon application by the director, the circuit courts of  
18 this state may by mandatory or prohibitory injunction  
19 compel compliance with the provisions of this article and  
20 all final orders of the state board.

21 The court may issue a temporary injunction in any  
22 case pending a decision on the merits of any application  
23 filed.

24 The judgment of the circuit court upon any applica-  
25 tion permitted by the provisions of this section shall be  
26 final unless reversed, vacated or modified on appeal to  
27 the supreme court of appeals. Any such appeal shall be  
28 sought in the manner and within the time provided by  
29 law for appeals from circuit courts in other civil cases.

**ARTICLE 4D. EMERGENCY MEDICAL SERVICES ACT.**

§16-4D-3. Definitions.

§16-4D-4. Office of emergency medical services created; staffing.

**§16-4D-3. Definitions.**

1 For the purposes of this article:

2 (a) The term "director" shall mean the director of  
3 health;

4 (b) The term "council" shall mean the emergency  
5 medical services advisory council created pursuant to  
6 article four-c of this chapter;

7 (c) The term "emergency medical services" shall  
8 mean all services which are included in and made a  
9 part of the emergency medical services plan as herein  
10 provided for and shall include attending, caring for and  
11 giving life-saving or life-preserving treatment to a pa-  
12 tient transported in an ambulance; and

13 (d) The term "patient" means any sick, injured,  
14 wounded, or otherwise incapacitated person or an ex-  
15 pectant mother who needs medical, hospital or clinical  
16 services under existing or imminent emergency situa-  
17 tions.

**§16-4D-4. Office of emergency medical services created;  
staffing.**

1 There is hereby created within state government under  
2 the director of the department of health an office to be  
3 known as the office of emergency medical services.

4 The director may employ such technical, clerical,  
5 stenographic and other personnel as may be necessary  
6 to carry out the purposes of this article. Such personnel  
7 may be paid from funds appropriated therefor or from  
8 such other funds as may be made available for carrying  
9 out the purposes of this article.

**ARTICLE 5. VITAL STATISTICS.**

§16-5-2. Vital statistics; statewide system; supervision by the director of health; offices, etc.

§16-5-3. Rules and regulations of state board of health.

§16-5-4. Appointment of state registrar of vital statistics.

§16-5-5. Duties of state registrar of vital statistics; enforcement of article.

§16-5-6. Registration districts.

§16-5-28. Fees for copies and searches.

§16-5-32. Uniform system of registration of marriage, divorce and annulment of marriage.

**§16-5-2. Vital statistics; statewide system; supervision by the director of health; offices, etc.**

1 The director of the department of health shall have  
2 general supervision over the system of vital statistics,  
3 which shall be under the immediate supervision of the  
4 state registrar of vital statistics. The director shall pro-  
5 vide for such clerical and other assistants as may be  
6 necessary for the purposes of this article. Suitable  
7 offices shall be provided at the seat of state government  
8 and such offices shall be properly equipped with a fire-  
9 proof vault and filing cases for the permanent and safe  
10 preservation of all official records made, maintained or  
11 filed under the provisions of this article.

**§16-5-3. Rules and regulations of state board of health.**

1 The state board of health is authorized to adopt,  
2 amend and repeal rules and regulations for the pur-  
3 pose of carrying out the specific provisions of this  
4 article.

**§16-5-4. Appointment of state registrar of vital statistics.**

1 The state director of the department of health shall  
2 appoint and prescribe the qualifications of the state  
3 registrar of vital statistics.

**§16-5-5. Duties of state registrar of vital statistics; enforce-  
ment of article.**

1 a. The state registrar of vital statistics shall:

2 (1) Administer and enforce the provisions of this arti-  
3 cle and all other applicable laws of this state and all  
4 lawful rules and regulations adopted and promulgated  
5 thereunder;

6 (2) Direct and supervise the statewide system of vital  
7 statistics and the operation of the division of vital sta-  
8 tistics, and act as custodian of its records;

9 (3) Direct, supervise and control the activities of

10 local registrars and the activities of public officers in  
11 relation to the operation of the vital statistics system  
12 and provide them with the postage necessary for them  
13 to carry out their duties under this article;

14 (4) Prescribe, provide and distribute, subject to the  
15 rules and regulations promulgated by the board of health,  
16 all forms necessary to carry out the provisions of this  
17 article and of the rules and regulations adopted and  
18 promulgated thereunder; and

19 (5) Prepare and publish annual reports of vital sta-  
20 tistics of this state, and such other reports as may be  
21 required by the director of the state health department.

22 b. The state registrar of vital statistics may delegate  
23 such functions and duties as are hereby vested in him  
24 to officers and employees of the division of vital sta-  
25 tistics and to local registrars as the state registrar may  
26 deem necessary or expedient.

27 c. The state registrar, either personally or by a duly  
28 delegated representative, shall have authority to inves-  
29 tigate cases of irregularity or violation of law arising  
30 under the provisions of this article, and all local regis-  
31 trars, deputy local registrars and subregistrars shall  
32 aid him, upon request, in such investigations. When he  
33 shall deem it necessary, he shall report cases of viola-  
34 tion of any of the provisions of this article to the prose-  
35 cuting attorney of the county, with a statement of the  
36 facts and circumstances. When any such case is reported  
37 to him by the state registrar, the prosecuting attorney  
38 shall forthwith initiate and promptly prosecute the  
39 necessary court proceedings against the person or corpo-  
40 ration responsible for the alleged violation of law. Upon  
41 request of the state registrar, the attorney general shall  
42 assist in the enforcement of the provisions of this article.

#### §16-5-6. Registration districts.

1 For the purposes of this article, subject to the rules  
2 and regulations promulgated by the state board of  
3 health, the director of the state health department may  
4 establish registration districts throughout the state. The

5 director may eliminate, or change the boundaries of,  
6 any district and may consolidate two or more districts  
7 or subdivide any district to facilitate registration.

**§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 col-  
3 lected by the state registrar of vital statistics for certi-  
4 fied copies of certificates or records, not to exceed two  
5 dollars per copy, or for a search of the files or records  
6 when no copy is made: *Provided*, That the state regis-  
7 trar 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  
11 securing employment: *Provided, however*, That the state  
12 registrar 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 need-  
15 ed in presenting claims to the federal government, or  
16 to the state department of welfare, and an accurate  
17 record shall be made of all such certificates so furnished.

18 b. Fees collected under this section by the state regis-  
19 trar of vital statistics shall be deposited to the state  
20 general fund.

**§16-5-32. Uniform system of registration of marriage, divorce  
and annulment of marriage.**

1 To the end that an efficient and uniform system of  
2 registration of marriage, divorce and annulment of mar-  
3 riage shall be established in this state, the state regis-  
4 trar of vital statistics shall provide for the registration  
5 of each marriage, divorce and annulment of marriage  
6 which shall occur in this state. In so doing, the state  
7 director of health subject to rules and regulations pro-  
8 mulgated by the board of health shall have the authority  
9 and duty to:

10 a. Install a statewide system of registering, indexing,  
11 and preserving records of marriage, divorce and annul-  
12 ment of marriage.



13     b. Make and amend necessary rules and regulations,  
14 give instructions, and prescribe and furnish forms, for  
15 collecting, transcribing, compiling and preserving records  
16 and statistics of marriage, divorce and annulment of  
17 marriage.

18     c. Make and publish a statistical report of marriage,  
19 divorce and annulment of marriage in this state.

#### **ARTICLE 5A. CANCER CONTROL.**

§16-5A-1. Cancer control.

§16-5A-2. Educational program.

§16-5A-3. Establishment of clinics.

§16-5A-4. Tissue diagnostic service.

§16-5A-5. Care of needy patients.

##### **§16-5A-1. Cancer control.**

1     The director of the state department of health shall  
2 execute and administer the provisions of this article  
3 relating to the diagnosis, treatment and care of persons  
4 suffering from cancer. The director shall have authority  
5 to direct, control, govern and provide for the manage-  
6 ment of any state institution for the care and treatment  
7 of cancer patients which may hereafter be created by law.

##### **§16-5A-2. Educational program.**

1     The director shall formulate and put into effect through-  
2 out the state an educational program for the purpose of  
3 preventing cancer and of aiding in its early diagnosis,  
4 and for the purpose of giving information to hospitals  
5 and cancer patients concerning the proper treatment. In  
6 furtherance of this program, the director may assist and  
7 cooperate with any state or national organization con-  
8 ducting an educational program for the prevention of  
9 cancer.

##### **§16-5A-3. Establishment of clinics.**

1     The director shall have authority to prescribe stan-  
2 dard minimum requirements for the organization, equip-  
3 ment and conduct of cancer units or clinics in general  
4 hospitals of the state. The director shall establish and  
5 maintain, or aid in the establishment and maintenance  
6 of, a sufficient number of cancer diagnostic and treat-

7 ment clinics meeting such requirements, so located that  
8 they are within reasonable traveling distance of any  
9 citizen of the state in need of treatment. In the establish-  
10 ment and operation of such clinics and in the fixing of  
11 such minimum requirements, the director shall consult  
12 and cooperate with the West Virginia state medical  
13 association.

14 In order to determine the progress of the disease and  
15 the success of the treatment being used, the director  
16 shall insofar as practicable provide a method for follow-  
17 ing up each case and bringing the patient back to the  
18 clinic at frequent intervals.

**§16-5A-4. Tissue diagnostic service.**

1 The director shall furnish, within the limits of available  
2 funds, free tissue diagnostic service to all needy patients.  
3 In providing this service the director may use either the  
4 state-owned laboratory in the department of health, or  
5 privately owned laboratories approved by the department.

**§16-5A-5. Care of needy patients.**

1 The board of health shall prescribe rules and regula-  
2 tions specifying to what extent and on what terms and  
3 conditions needy cancer patients may receive financial  
4 aid for the diagnosis and treatment of cancer in any  
5 approved hospital in this state. The director is authorized  
6 to furnish aid, within the limits of available funds, to such  
7 patients and shall have the power to administer such aid  
8 in any manner which in his judgment will afford the  
9 greatest benefit to cancer patients throughout the state.

10 In determining whether a particular patient is entitled  
11 to such assistance the director may call upon the depart-  
12 ment of welfare for such investigation as may be re-  
13 quired. In order to receive such aid, however, the patient  
14 need not qualify for public assistance as administered by  
15 the department of welfare.

**ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**

§16-5B-1. Health facilities and certain other facilities operated in connection therewith to obtain license; exemptions; meaning of hospital, etc.

- §16-5B-2. Hospitals and institutions to obtain license; qualifications of applicants.
- §16-5B-4. License fees.
- §16-5B-6. State director of health to issue licenses; suspension or revocation.
- §16-5B-8. State board of health to establish standards; director enforces.
- §16-5B-11. Violations; penalties.
- §16-5B-12. Injunction; severability.

**§16-5B-1. Health facilities and certain other facilities operated in connection therewith to obtain license; exemptions; meaning of hospital, etc.**

1 No person, partnership, association, corporation, or any  
2 local governmental unit or any division, department,  
3 board or agency thereof shall establish, conduct, or main-  
4 tain in the state of West Virginia any ambulatory health  
5 care facility, ambulatory surgical facility, freestanding  
6 or operated in connection with a hospital, hospital or ex-  
7 tended care facility operated in connection with a hos-  
8 pital, without first obtaining a license therefor in the  
9 manner hereinafter provided: *Provided*, That only one  
10 license shall be required for any person, partnership,  
11 association, corporation or any local governmental unit  
12 or any division, department, board or agency thereof  
13 who operates any combination of an ambulatory health  
14 care facility, ambulatory surgical facility, hospital, ex-  
15 tended care facility operated in connection with a hos-  
16 pital, or more than one thereof, at the same location.  
17 Ambulatory health care facilities, ambulatory surgical  
18 facilities, hospitals, or extended care facilities operated  
19 in connection with a hospital operated by the federal  
20 government or the state government shall be exempt  
21 from the provisions of this article.

22 A hospital or extended care facility operated in con-  
23 nection with a hospital, within the meaning of this  
24 article, shall mean any institution, place, building or  
25 agency in which an accommodation of five or more beds  
26 is maintained, furnished or offered for the hospitaliza-  
27 tion of the sick or injured: *Provided*, That nothing con-  
28 tained in this article shall apply to nursing homes, rest  
29 homes, personal care facilities, homes for the aged, ex-  
30 tended care facilities not operated in connection with a

31 hospital, boarding homes, homes for the infirm or chroni-  
32 cally ill, convalescent homes, hotels or other similar  
33 places that furnish to their guests only board and room, or  
34 either of them: *Provided, however,* That the hospitaliza-  
35 tion, care or treatment in a household, whether for com-  
36 pensation or not, of any person related by blood or mar-  
37 riage, within the degree of consanguinity of second cousin  
38 to the head of the household, or his or her spouse, shall not  
39 be deemed to constitute the premises a hospital or ex-  
40 tended care facility operated in connection with a hos-  
41 pital, within the meaning of this article.

42 An "ambulatory health care facility" shall include any  
43 facility which provides health care or mental health  
44 care to noninstitutionalized persons on an outpatient  
45 basis. This definition does not include the legally  
46 authorized practice of medicine by any one or more  
47 persons in the private office of any health care provider.

48 "Ambulatory surgical facility" means a facility which  
49 provides surgical treatment to patients not requiring  
50 hospitalization. This definition does not include the le-  
51 gally authorized practice of surgery by any one or more  
52 persons in the private office of any health care provider.

53 Nothing in this article or the rules and regulations  
54 adopted pursuant to the provisions of this article shall  
55 be construed to authorize the licensure, supervision, regu-  
56 lation or control in any manner of (1) private offices of  
57 physicians, dentists or other practitioners of the healing  
58 arts; (2) dispensaries and first aid stations located within  
59 business or industrial establishments maintained solely  
60 for the use of employees: *Provided,* That such facility  
61 does not contain inpatient or resident beds for patients  
62 or employees who generally remain in the facility for  
63 more than twenty-four hours.

64 Nothing in this article shall authorize any person, part-  
65 nership, association, corporation, or any local govern-  
66 mental unit or any division, department, board or agency  
67 thereof to engage in any manner in the practice of medi-  
68 cine, as defined by law. This article shall not be con-  
69 strued to restrict or modify any statute pertaining to the  
70 placement or adoption of children.

**§16-5B-2. Hospitals and institutions to obtain license; qualifications of applicant.**

1 No person, partnership, association, corporation, or any  
2 local governmental unit or any division, department,  
3 board or agency thereof may continue to operate an  
4 existing ambulatory health care facility, ambulatory  
5 surgical facility, hospital or extended care facility  
6 operated in connection with a hospital, or open an am-  
7 bulatory health care facility, ambulatory surgical  
8 facility, a hospital or extended care facility operated in  
9 connection with a hospital, unless such operation shall  
10 have been approved and regularly licensed by the  
11 state as hereinafter provided. Licenses shall be issued  
12 for a particular number by type of beds and/or type of  
13 services. Any change in the number by type of bed  
14 and/or type of services shall require the issuance of a  
15 new license.

16 Before a license shall be issued under this article, the  
17 person applying, if an individual, shall submit evidence  
18 satisfactory to the state department of health that he is  
19 not less than eighteen years of age, of reputable and  
20 responsible character, and otherwise qualified. In the  
21 event the applicant is an association, corporation or gov-  
22 ernmental unit, like evidence shall be submitted as to  
23 the members thereof and the persons in charge.

24 Every applicant shall, in addition, submit satisfactory  
25 evidence of his ability to comply with the minimum  
26 standards and with all rules and regulations lawfully  
27 promulgated.

**§16-5B-4. License fees.**

1 The application of any person, partnership, association,  
2 corporation, or local governmental unit for a license to  
3 operate a hospital or extended care facility operated  
4 in connection with a hospital, shall be accompanied  
5 by a fee to be determined by the number of beds  
6 available for patients, according to the following schedule  
7 of fees: Those with five beds but less than fifty beds shall  
8 pay a fee of twenty dollars; those with fifty beds or more  
9 and less than one hundred beds shall pay a fee of thirty

10 dollars; those with one hundred beds or more and less  
11 than two hundred beds shall pay a fee of forty dollars;  
12 and those with two hundred beds or more shall pay a fee  
13 of fifty dollars. The application of any person, partner-  
14 ship, association, corporation, or local governmental unit  
15 for a license to operate an ambulatory health care facility  
16 or ambulatory surgical facility shall be accompanied by a  
17 reasonable fee to be determined by the director, based on  
18 the number of patients served by the facility. No such  
19 fee shall be refunded. All licenses issued under this article  
20 shall expire on the thirtieth day of June following their  
21 issuance, shall be on a form prescribed by the state  
22 department of health, shall not be transferable or assign-  
23 able, shall be issued only for the premises named and  
24 described in the application, shall be posted in a con-  
25 spicuous place on the licensed premises, and may be  
26 renewed from year to year upon application, investiga-  
27 tion, and payment of the license fee, as in the case of the  
28 procurement of an original license: *Provided*, That any  
29 such license in effect on the thirtieth day of June of any  
30 year, for which timely application for renewal, together  
31 with payment of the proper fee, has been made to the  
32 state department of health in conformance with the pro-  
33 visions of this article and the rules and regulations issued  
34 thereunder, and prior to the expiration date of such li-  
35 cense, shall continue in effect until (a) the thirtieth day  
36 of June next following the expiration date of such license,  
37 or (b) the date of the revocation or suspension of such  
38 license pursuant to the provisions of this article, or (c)  
39 the date of issuance of a new license, whichever date first  
40 occurs. All fees received by the state department of health  
41 under the provisions of this article shall be paid into the  
42 state treasury general revenue fund.

**§16-5B-6. State director of health to issue licenses; suspension  
or revocation.**

1 The state director of health is hereby authorized to  
2 issue licenses for the operation of ambulatory health care  
3 facilities, ambulatory surgical facilities, hospitals or ex-  
4 tended care facilities operated in connection with hos-  
5 pitals, which are found to comply with the provisions of

6 this article and with all regulations lawfully promulgated  
7 by the department.

8 The state director of health is hereby authorized to  
9 suspend or revoke a license issued hereunder, on any of  
10 the following grounds:

11 (1) Violation of any of the provisions of this article  
12 or the rules and regulations issued pursuant thereto;

13 (2) Knowingly permitting, aiding or abetting the com-  
14 mission of any illegal act in such institution;

15 (3) Conduct or practices detrimental to the health  
16 or safety of the patients and employees of such institu-  
17 tion; or

18 (4) Operation of beds or services not specified in the  
19 license.

20 Before any such license is suspended or revoked, how-  
21 ever, written notice shall be given the licensee, stating  
22 the grounds of the complaint, and the date, time and  
23 place set for the hearing on the complaint, which date  
24 shall not be less than thirty days from the time notice  
25 is given. Such notice shall be sent by registered mail  
26 to the licensee at the address where the institution con-  
27 cerned is located. The licensee shall be entitled to be  
28 represented by legal counsel at the hearing.

29 If a license is revoked as herein provided, a new appli-  
30 cation for a license shall be considered by the director  
31 of health if, when, and after the conditions upon which  
32 revocation was based have been corrected and evidence  
33 of this fact has been furnished. A new license shall then  
34 be granted after proper inspection has been made and  
35 all provisions of this article and rules and regulations  
36 promulgated hereunder have been satisfied.

37 All of the pertinent provisions of article five, chapter  
38 twenty-nine-a of this code shall apply to and govern any  
39 hearing authorized and required by the provisions of  
40 this article and the administrative procedure in connec-  
41 tion with and following any such hearing, with like ef-  
42 fect as if the provisions of said article five were set forth  
43 in extenso in this section.

**§16-5B-8. State board of health to establish standards; director enforces.**

1 The board of health shall have the power to promul-  
2 gate rules and regulations and the director shall have  
3 the power to enforce such rules and regulations, as the  
4 board of health may establish, not in conflict with any  
5 provision of this article, as it finds necessary, or in the  
6 public interest, in order to protect patients in institu-  
7 tions required to be licensed under this article from det-  
8 rimental practices and conditions, or to ensure adequate  
9 provision for their accommodations and care. No rule  
10 or regulation or standard of the board shall be adopted  
11 or enforced which would have the effect of denying a  
12 license to a hospital or other institution required to be  
13 licensed hereunder, solely by reason of the school or sys-  
14 tem of practice employed or permitted to be employed by  
15 physicians therein: *Provided*, That such school or system  
16 of practice is recognized by the laws of this state.

**§16-5B-11. Violations; penalties.**

1 Any person, partnership, association or corporation,  
2 and any local governmental unit or any division, depart-  
3 ment, board or agency thereof establishing, conducting,  
4 managing or operating an ambulatory health care facility,  
5 ambulatory surgical facility, a hospital, or extended care  
6 facility operated in connection with a hospital, without  
7 first obtaining a license therefor as herein provided, or  
8 violating any provision of this article or any rule or reg-  
9 ulation lawfully promulgated thereunder, shall be guilty  
10 of a misdemeanor, and, upon conviction thereof, shall be  
11 punished for the first offense by a fine of not more than  
12 one hundred dollars, or by imprisonment in the county  
13 jail for a period of not more than ninety days, or by both  
14 such fine and imprisonment, in the discretion of the  
15 court. For each subsequent offense the fine may be in-  
16 creased to not more than five hundred dollars, with im-  
17 prisonment in the county jail for a period of not more  
18 than ninety days, or both such fine and imprisonment,  
19 in the discretion of the court. Each day of a continuing  
20 violation after conviction shall be considered a separate  
21 offense.



**§16-5B-12. Injunction; severability.**

1 Notwithstanding the existence or pursuit of any other  
2 remedy, the director may, in the manner provided by  
3 law, maintain an action in the name of the state for an  
4 injunction against any person, partnership, association,  
5 corporation, or any local governmental unit, or any divi-  
6 sion, department, board or agency thereof, to restrain  
7 or prevent the establishment, conduct, management or  
8 operation of any ambulatory health care facility, am-  
9 bulatory surgical facility, hospital or extended care fa-  
10 cility operated in connection with a hospital without  
11 first obtaining a license therefor in the manner herein-  
12 before provided.

13 If any part of this article shall be declared unconsti-  
14 tutional, such declaration shall not affect any other part  
15 thereof.

**ARTICLE 5C. NURSING AND PERSONAL CARE HOMES.**

- §16-5C-1. Purpose.
- §16-5C-2. Definitions.
- §16-5C-3. Powers, duties and rights of director.
- §16-5C-4. Administrative and inspection staff.
- §16-5C-5. Rules and regulations; minimum standards for facilities; rating of facilities.
- §16-5C-6. License required; application; fees; duration; renewal.
- §16-5C-7. Cost disclosure, surety for patient funds.
- §16-5C-8. Investigation of complaints.
- §16-5C-9. Inspections.
- §16-5C-10. Reports of inspections; plans of correction; assessment of penalties for failure to correct violations.
- §16-5C-11. License limitation, suspension, revocation; continuation of disciplinary proceedings.
- §16-5C-12. Administrative appeals for facility ratings, civil assessments, license limitation, suspension or revocation.
- §16-5C-13. Judicial review.
- §16-5C-14. Legal counsel and services for the director.
- §16-5C-15. Unlawful acts; penalties; injunctions; private right of action.
- §16-5C-16. Availability of reports and records.
- §16-5C-17. Licenses and regulations in force on effective date of article.

**§16-5C-1. Purpose.**

1 It is the policy of this state to encourage and promote  
2 the development and utilization of resources to ensure the  
3 effective care and treatment of persons who are con-  
4 valescing or whose physical or mental condition requires

5 them to receive a degree of nursing or related health care  
6 greater than that necessary for well individuals, but not  
7 so acute as to require hospitalization. Such care and  
8 treatment requires a living environment for such persons  
9 which, to the extent practicable, will approximate a nor-  
10 mal home environment. To this end, the guiding principle  
11 for administration of the laws of the state is that such  
12 persons shall be encouraged and assisted in securing ne-  
13 cessary care and treatment in noninstitutional surround-  
14 ings. In recognition that for many such persons effective  
15 care and treatment can only be secured from proprietary,  
16 voluntary and governmental nursing homes or personal  
17 care homes it is the policy of this state to encourage,  
18 promote and require the maintenance of institutions other  
19 than hospitals offering nursing or related health care or  
20 personal care so as to ensure protection of the rights and  
21 dignity of those using the services of such facilities.

22 The provisions of this article are hereby declared to be  
23 remedial and shall be liberally construed to effectuate its  
24 purposes and intents.

**§16-5C-2. Definitions.**

1 As used in this article, unless a different meaning ap-  
2 pears from the context:

3 (a) The term "director" means the director of the West  
4 Virginia state department of health or his designee;

5 (b) The term "facility" means any nursing home or  
6 personal care home as defined in subdivisions (c) and (d)  
7 of this section: *Provided*, That the care or treatment in a  
8 household, whether for compensation or not, of any per-  
9 son related by blood or marriage, within the degree of  
10 consanguinity of second cousin to the head of the house-  
11 hold, or his or her spouse, may not be deemed to con-  
12 stitute a nursing home or personal care home within the  
13 meaning of this article. Nothing contained in this article  
14 shall apply to hospitals, as defined under section one,  
15 article five-b of this chapter, or state institutions as  
16 defined under section six, article one, chapter twenty-  
17 seven or section three, article one, chapter twenty-five,  
18 all of this code, or institutions operated for the treatment

19 and care of alcoholic patients, or offices of physicians, or  
20 hotels, boarding homes or other similar places that furnish  
21 to their guests only board and room, or extended care  
22 facilities operated in conjunction with a hospital;

23 (c) The term "nursing home" means any institution,  
24 residence or place, or any part or unit thereof, however  
25 named, in this state which is advertised, offered, main-  
26 tained or operated by the ownership or management,  
27 whether for a consideration or not, for the express or  
28 implied purpose of providing accommodations and care,  
29 for a period of more than twenty-four hours, for three or  
30 more persons who are ill or otherwise incapacitated and  
31 in need of nursing care due to physical or mental im-  
32 pairment, or which provides services for the rehabilitation  
33 of persons who are convalescing from illness or incapaci-  
34 tation;

35 (d) The term "personal care home" means any institu-  
36 tion, residence or place, or any part or unit thereof, how-  
37 ever named, in this state which is advertised, offered,  
38 maintained or operated by the ownership or management,  
39 whether for a consideration or not, for the express or  
40 implied purpose of providing accommodations and per-  
41 sonal assistance, for a period of more than twenty-four  
42 hours, to six or more persons who are dependent upon the  
43 services of others by reason of physical or mental impair-  
44 ment but who do not require nursing care;

45 (e) The term "nursing care" means those procedures  
46 commonly employed in providing for the physical,  
47 emotional and rehabilitational needs of the ill or other-  
48 wise incapacitated which require technical skills and  
49 knowledge beyond that which the untrained person  
50 possesses, including, but not limited to, such procedures  
51 as: Irrigations, catheterizations, application of dressings;  
52 supervision of special diets; objective observation of  
53 changes in patient condition as a means of analyzing and  
54 determining nursing care required and the need for  
55 further medical diagnosis and treatment; special pro-  
56 cedures contributing to rehabilitation; administration of  
57 medication by any method ordered by a physician such  
58 as hypodermically, rectally, or orally; and carrying out

59 other treatments prescribed by a physician which involve  
60 a like level of complexity and skill in administration;

61 (f) The term "personal assistance" means personal  
62 services, including, but not limited to, the following: Help  
63 in walking, bathing, dressing, feeding, or getting in or  
64 out of bed, or supervision required because of the age or  
65 mental impairment of the patient;

66 (g) The term "mental impairment" excludes mental  
67 illness and mental retardation as defined in sections two  
68 and three, article one, chapter twenty-seven of this code;

69 (h) The term "patient" means an individual under care  
70 in a nursing home or personal care home;

71 (i) The term "sponsor" means the person or agency  
72 legally responsible for the welfare and support of a  
73 patient;

74 (j) The term "person" means an individual and every  
75 form of organization, whether incorporated or unin-  
76 corporated, including any partnership, corporation, trust,  
77 association or political subdivision of the state.

78 The director may define in regulations any term used  
79 herein which is not expressly defined.

### §16-5C-3. Powers, duties and rights of director.

1 In the administration of this article, the director shall  
2 have the following powers, duties and rights:

3 (a) To enforce regulations and standards for nursing  
4 homes adopted, promulgated, amended or modified by  
5 the board of health;

6 (b) To exercise as sole authority all powers relating to  
7 the issuance, suspension and revocation of licenses of  
8 nursing homes;

9 (c) To enforce rules adopted, promulgated, amended  
10 or modified by the board of health governing the qualifi-  
11 cation of applicants for nursing home licenses including,  
12 but not limited to, educational requirements, financial  
13 requirements, personal and ethical requirements;

14 (d) To receive and disburse federal funds and to take  
15 whatever action not contrary to law as may be proper

16 and necessary to comply with the requirements and con-  
17 ditions for the receipt of such federal funds;

18 (e) To receive and disburse for authorized purposes  
19 any moneys appropriated to the department of health by  
20 the Legislature;

21 (f) To receive and disburse for purposes authorized by  
22 this article, any funds that may come to the department  
23 of health by gift, grant, donation, bequest or devise,  
24 according to the terms thereof, as well as funds derived  
25 from the department of health's operation, or otherwise;

26 (g) To make contracts, and to execute all instruments  
27 necessary or convenient in carrying out the director's  
28 functions and duties; and all such contracts, agreements  
29 and instruments shall be executed by the director;

30 (h) To appoint officers, agents, employees and other  
31 personnel and fix their compensation;

32 (i) To offer and sponsor educational and training  
33 programs for nursing home and personal care home ad-  
34 ministrative, management and operational personnel;

35 (j) To undertake survey, research and planning projects  
36 and programs relating to administration and operation  
37 of nursing homes and personal care homes, and to the  
38 health, care, treatment and service in general of patients  
39 of such homes;

40 (k) To assess civil penalties for violations of facility  
41 standards, in accordance with section ten of this article;

42 (l) To classify nursing homes into care cate-  
43 gories such as skilled nursing facilities, intermediate  
44 care facilities, and other comparable categories un-  
45 der the terms of this article if, in the opinion of  
46 the director, the best interest of the public is served by  
47 so doing;

48 (m) To inspect any facility and any records maintained  
49 therein, subject to the provisions of section ten of this  
50 article;

51 (n) To establish and implement procedures, including  
52 informal conferences, investigations and hearings, subject  
53 to applicable provisions of article three, chapter twenty-

54 nine-a of this code, and to enforce compliance with the  
55 provisions of this article and with regulations issued here-  
56 under, by the board of health;

57 (o) To subpoena witnesses and documents, administer  
58 oaths and affirmations, and to examine witnesses under  
59 oath for the conduct of any investigation or hearing. Upon  
60 failure of a person without lawful excuse to obey a  
61 subpoena or to give testimony and upon reasonable notice  
62 to all persons affected thereby, the director may apply  
63 to the circuit court of the county in which the hearing  
64 is to be held for an order compelling compliance;

65 (p) To make complaint or cause proceedings to be  
66 instituted against any person or persons for the violation  
67 of the provisions of this article or of regulations issued  
68 hereunder, by the board of health. Such action may be  
69 taken by the director without the sanction of the prosecut-  
70 ing attorney of the county in which proceedings are  
71 instituted, if said officer fails or refuses to discharge his  
72 duty. In no such case shall the director or any person act-  
73 ing under the director's direction be required to give  
74 security for costs;

75 (q) To delegate authority to the director's employees  
76 and agents to perform all functions of the director except  
77 the making of final decisions in adjudications; and

78 (r) To submit a report to the governor, the Legislature  
79 and the public, on or before the first day of December,  
80 one thousand nine hundred seventy-eight, and annually  
81 thereafter. The report shall describe the licensing and  
82 investigatory activities of the department during the  
83 year, and the nature and status of other activities of the  
84 department, and may include comment on the acts,  
85 policies, practices or procedures of any public or private  
86 agency that affect the rights, health or welfare of patients  
87 or residents of nursing homes and personal care homes.  
88 The annual report shall include a list of all nursing homes  
89 and personal care homes in the state; whether such homes  
90 are proprietary or nonproprietary; the classification of  
91 each such home; the name of the owner or owners; the  
92 total number of beds, the number of private and semi-

93 private rooms; the costs per diem for private patients;  
94 the number of full-time employees and their professions;  
95 recreational programs; services and programs available  
96 as well as the costs thereof, the rating assigned to the  
97 home by the department pursuant to section five of this  
98 article, and whether or not those nursing homes listed  
99 accept medicare and medicaid patients. The report shall  
100 also contain the department's recommendations as to  
101 changes in law or policy which it deems necessary or  
102 appropriate for the protection of the rights, health or wel-  
103 fare of patients of nursing homes and personal care homes  
104 in the state.

**§16-5C-4. Administrative and inspection staff.**

1 The director may, at such time or times as he may  
2 deem necessary, employ such administrative employees,  
3 inspectors, or other persons as may be necessary to  
4 properly carry out the provisions of this article. All  
5 employees of the department shall be members of the  
6 state civil service system. Such inspectors and other  
7 employees as may be duly designated by the director  
8 shall act as the director's representatives and, under the  
9 direction of the director, shall enforce the provisions of  
10 this article and all duly promulgated regulations of the  
11 board of health and, in the discharge of official duties, shall  
12 have the right of entry into any place maintained as a  
13 nursing home or personal care home.

**§16-5C-5. Rules and regulations; minimum standards for facilities; rating of facilities.**

1 (a) All rules and regulations shall be approved by the  
2 board of health and promulgated in the manner provided  
3 by the provisions of article three, chapter twenty-nine-a  
4 of this code. The board of health shall adopt, amend or  
5 repeal such rules and regulations as may be necessary  
6 or proper to carry out the purposes and intent of this  
7 article and to enable the director to exercise the powers  
8 and perform the duties conferred upon the director by  
9 this article.

10 (b) The board of health shall promulgate regulations  
11 establishing minimum standards for categories of opera-

12 tion of facilities including, but not limited to, the follow-  
13 ing:

14 (1) Administrative policies, including (i) an affirmative  
15 statement of the right of access to facilities by members  
16 of recognized community organizations and community  
17 legal services programs whose purposes include rendering  
18 assistance without charge to patients, consistent with  
19 the right of patients to privacy, and (ii) a statement of  
20 the rights and responsibilities of patients in facilities  
21 which prescribes, as a minimum, such a statement of  
22 patients' rights as included in the United States depart-  
23 ment of health, education and welfare regulations, in  
24 force on the effective date of this article, governing  
25 participation of intermediate care facilities in the medi-  
26 care and medicaid programs pursuant to titles eighteen  
27 and nineteen of the Social Security Act;

28 (2) Minimum numbers and qualifications of personnel,  
29 including management, medical and nursing, aides,  
30 orderlies and support personnel, according to the size  
31 and classification of the facility;

32 (3) Safety requirements;

33 (4) Sanitation requirements;

34 (5) Protective and personal services to be provided;

35 (6) Dietary services to be provided;

36 (7) Maintenance of health records;

37 (8) Social and recreational activities to be made avail-  
38 able; and

39 (9) Such other categories as the board of health deter-  
40 mines to be appropriate to ensure patient's health, safety  
41 and welfare.

42 (c) The board of health shall include in its regulations  
43 detailed standards for each of the categories established  
44 pursuant to subsection (b) of this section, and shall  
45 classify such standards as follows: Class I standards are  
46 standards the violation of which, the board of health  
47 determines, would present either an imminent danger



48 to the health, safety or welfare of any patient or a sub-  
49 substantial probability that death or serious physical harm  
50 would result; Class II standards are standards which the  
51 board of health determines have a direct or immediate  
52 relationship to the health, safety or welfare of any patient,  
53 but which do not create imminent danger; Class III  
54 standards are standards which the board of health deter-  
55 mines have an indirect or a potential impact on the health,  
56 safety or welfare of any patient.

57 (d) The board of health shall assign a range of  
58 numerical values to each standard, based on its classifi-  
59 cation pursuant to subsection (c) of this section, represent-  
60 ing compliance with the standard, lack of compliance, as  
61 well as performance significantly exceeding such standard.  
62 The board of health shall determine, for each category  
63 established pursuant to subsection (b) of this section, the  
64 minimum number of accumulated value points which con-  
65 stitutes an acceptable level of compliance with the overall  
66 standards of such category, and a facility must accumulate  
67 such established number for each and every category to  
68 be deemed in substantial compliance with this article.

69 (e) Not later than the first day of March, one thousand  
70 nine hundred seventy-eight, the board of health shall  
71 establish a system of rating facilities, as part of the  
72 licensing procedure, in accordance with the criteria  
73 established pursuant to this section. Such system shall  
74 include four rating categories entitled, from highest to  
75 lowest, "A", "B", "C" and "F". A rating of "F" shall be  
76 assigned to those facilities whose performance is not in  
77 substantial compliance with this article and regulations  
78 promulgated hereunder, and shall be the basis for is-  
79 suance of a provisional license pursuant to subsection  
80 (d), section six of this article, or the limitation, suspension,  
81 revocation or denial of a license. The rating assigned  
82 to each facility shall be on the basis of its immediately  
83 prior inspection, and shall be deemed a part of the results  
84 and findings of that inspection, and shall be included on  
85 the license issued to the facility pursuant to section six  
86 of this article.

**§16-5C-6. License required; application; fees; duration; renewal.**

1 Subject to the provisions of section seventeen of this  
2 article, no person may establish, operate, maintain, offer  
3 or advertise a nursing home or personal care home within  
4 this state unless and until he obtains a valid license there-  
5 for as hereinafter provided, which license remains un-  
6 suspended, unrevoked and unexpired. No public official  
7 or employee may place any person in, or recommend  
8 that any person be placed in, or directly or indirectly  
9 cause any person to be placed in any facility, as defined  
10 in section two of this article, which is being operated  
11 without a valid license from the director. The procedure  
12 for obtaining a license shall be as follows:

13 (a) The applicant shall submit an application to the  
14 director on a form to be prescribed by the director, con-  
15 taining such information as may be necessary to show  
16 that the applicant is in compliance with the standards for  
17 nursing homes or personal care homes as established by  
18 this article and the rules and regulations lawfully promul-  
19 gated by the board of health hereunder. The application  
20 and any exhibits thereto shall provide the following in-  
21 formation:

22 (1) The name and address of the applicant;

23 (2) The name, address and principal occupation (i) of  
24 each person who, as a stockholder or otherwise, has a  
25 proprietary interest of ten percent or more in the appli-  
26 cant, (ii) of each officer and director of a corporate ap-  
27 plicant, (iii) of each trustee and beneficiary of an  
28 applicant which is a trust, and (iv) where a corporation  
29 has a proprietary interest of fifty percent or more in an  
30 applicant, the name, address and principal occupation of  
31 each officer and director of such corporation;

32 (3) The name and address of the owner of the  
33 premises or the facility or proposed facility, if he is  
34 a different person from the applicant; and in such  
35 case, the name and address (i) of each person who,  
36 as a stockholder or otherwise, has a proprietary in-  
37 terest of ten percent or more in such owner, (ii) of

38 each officer and director of a corporate applicant, (iii)  
39 of each trustee and beneficiary of such owner if he is  
40 a trust, and (iv) where a corporation has a proprietary  
41 interest of fifty percent or more in such owner, the name  
42 and address of each officer and director of such corpora-  
43 tion;

44 (4) Where the applicant is the lessee or the assignee  
45 of the facility or the premises of the proposed facility,  
46 a signed copy of the lease and any assignment thereof;

47 (5) The name and address of the facility or the prem-  
48 ises of the proposed facility;

49 (6) The type of institution to be operated;

50 (7) The proposed bed quota of the facility and the  
51 proposed bed quota of each unit thereof;

52 (8) (i) An organizational plan for the facility indi-  
53 cating the number of persons employed or to be employed,  
54 the positions and duties of all employees; (ii) the name  
55 and address of the individual who is to serve as adminis-  
56 trator; and (iii) such evidence of compliance with appli-  
57 cable laws and regulations governing zoning, buildings,  
58 safety, fire prevention and sanitation as the director may  
59 require;

60 (9) Such additional information as the director may  
61 require; and

62 (10) Assurances that the nursing home was reviewed  
63 and found to be needed by the state health planning and  
64 development agency.

65 (b) Upon receipt and review of an application for  
66 license made pursuant to subdivision (a) of this section,  
67 and inspection of the applicant facility pursuant to section  
68 ten of this article, the director shall issue a license if he  
69 finds:

70 (1) That an individual applicant, and every partner,  
71 trustee, officer, director and controlling person of an  
72 applicant which is not an individual, be a person respon-  
73 sible and suitable to operate or to direct or participate in  
74 the operation of a facility by virtue of financial capacity,  
75 appropriate business or professional experience, a record

76 of compliance with lawful orders of the department (if  
77 any) and lack of revocation of a license during the previ-  
78 ous five years;

79 (2) That the facility be under the supervision of an  
80 administrator who is qualified by training and experience:  
81 *Provided*, That every facility classified as a nursing home  
82 shall have an administrator licensed pursuant to the pro-  
83 visions of article twenty-five, chapter thirty of this code;  
84 and

85 (3) That the facility is in substantial compliance with  
86 standards established pursuant to section five of this  
87 article, and such other requirements for a license as the  
88 board of health may establish by regulation under this  
89 article.

90 Any license granted by the director shall state the  
91 maximum bed capacity for which it is granted, the date  
92 the license was issued, the expiration date, and the rating  
93 assigned to the facility pursuant to section five of this  
94 article. Such licenses shall be issued for a period of one  
95 year: *Provided*, That during the twelve-month period  
96 following the effective date of this article, the director  
97 may issue licenses or renewals for periods of less than  
98 one year in order to distribute the expiration dates of  
99 such licenses throughout the calendar year, and fees for  
100 such licenses shall be prorated on the basis of the portion  
101 of a year for which they are issued. Each license shall  
102 be issued only for the premises and persons named in the  
103 application and shall not be transferable or assignable:  
104 *Provided, however*, That in the case of the transfer of  
105 ownership of a facility with an unexpired license, the  
106 application of the new owner for a license shall have the  
107 effect of a license for a period of three months when  
108 filed with the director. Every license shall be posted in  
109 a conspicuous place in the facility for which it is issued  
110 so as to be accessible to and in plain view of all patients  
111 and visitors of the facility.

112 (c) An original license shall be renewable, conditioned  
113 upon the licensee filing timely application for the exten-  
114 sion of the term of the license accompanied by the fee,

115 and contingent upon evidence of compliance with the pro-  
116 visions of this article and regulations promulgated by the  
117 board of health hereunder. Any such application for re-  
118 newal of a license shall include a report by the licensee in  
119 such form and containing such information as shall be  
120 prescribed by the director, including the following:

121 (1) A balance sheet of the facility as of the end of the  
122 licensing term, setting forth assets and liabilities at such  
123 date, including all capital, surplus, reserve, depreciation  
124 and similar accounts;

125 (2) A statement of operations of the facility for such  
126 licensing term, setting forth all revenues, expenses, taxes,  
127 extraordinary items and other credits or charges; and

128 (3) A statement of any changes in the name, address,  
129 management or ownership information on file with the  
130 director.

131 All holders of facility licenses as of the effective date of  
132 this article shall include, in the first application for renew-  
133 al filed thereafter, such information as is required for ini-  
134 tial applicants under the provisions of subsection (a) of  
135 this section.

136 (d) In the case of an application for a renewal license, if  
137 all requirements of section five of this article are not met,  
138 the director may in his discretion issue a provisional li-  
139 cense, provided that care given in the facility is adequate  
140 to patient needs and the facility has demonstrated im-  
141 provement and evidences potential for substantial compli-  
142 ance within the term of said license: *Provided*, That a  
143 provisional renewal may not be issued for a period greater  
144 than one year, shall not be renewed, and that no such  
145 license shall be issued to any facility with uncorrected  
146 violations of any Class I standard, as defined in subsec-  
147 tion (c), section five of this article.

148 (e) A nonrefundable application fee in the amount of  
149 one hundred dollars for an original nursing home license  
150 or fifty dollars for an original personal care facility license  
151 shall be paid at the time application is made for such  
152 license. The license fee for renewal of a license shall

153 be four dollars per bed for nursing homes and two dollars  
154 per bed for personal care homes. The bed capacity for  
155 the holder of each license shall be determined by the  
156 director. All such license fees shall be due and payable  
157 to the director, annually, and in such manner as set forth  
158 in the rules and regulations promulgated by the board  
159 of health. Such fee and application shall be submitted  
160 to the director who shall retain both the application  
161 and fee pending final action on the application. There-  
162 after, upon order of the auditor of the state, all such  
163 fees shall be transmitted to the state treasurer to be  
164 deposited to the credit of the general revenue fund.

**§16-5C-7. Cost disclosure; surety for patient funds.**

1 (a) Each nursing home and personal care home shall  
2 disclose in writing to all prospective patients a complete  
3 and accurate list of all costs which may be incurred by  
4 them; and such facility shall display or cause to be dis-  
5 played copies of such list in conspicuous places therein.  
6 Patients may not be liable for any cost not so disclosed.

7 (b) If the facility handles any money for patients within  
8 the facility, the licensee or his authorized representative  
9 shall give a bond in an amount consistent with this sub-  
10 section and with such surety as the director shall approve.  
11 Such bond shall be upon condition that the licensee shall  
12 hold separately and in trust all patients' funds deposited  
13 with the licensee, shall administer the funds on behalf of  
14 the patient in the manner directed by the depositor, shall  
15 render a true and complete account to the depositor and  
16 the director when requested, and at least quarterly to the  
17 patient, and upon termination of the deposit, shall ac-  
18 count for all funds received, expended, and held on hand.  
19 The licensee shall file a bond in a sum to be fixed by the  
20 director based upon the magnitude of the operations of  
21 the applicant, but which sum may not be less than two  
22 thousand five hundred dollars.

23 Every person injured as a result of any improper or  
24 unlawful handling of the money of a patient of a facility  
25 may bring an action in a proper court on the bond re-  
26 quired to be posted by the licensee pursuant to this sub-  
27 section for the amount of damage suffered as a result there-

28 of to the extent covered by the bond. Whenever the di-  
29 rector determines that the amount of any bond which is  
30 filed pursuant to this subsection is insufficient to adequate-  
31 ly protect the money of patients which is being handled,  
32 or whenever the amount of any such bond is impaired  
33 by any recovery against the bond, the director may re-  
34 quire the licensee to file an additional bond in such  
35 amount as necessary to adequately protect the money of  
36 patients being handled.

37 The provisions of this subsection may not apply if the  
38 licensee handles less than twenty-five dollars per patient  
39 and less than five hundred dollars for all patients in any  
40 month.

#### **§16-5C-8. Investigation of complaints.**

1 The board of health shall establish by regulation pro-  
2 cedures for prompt investigation of all complaints of  
3 alleged violations by nursing homes or personal care  
4 homes of applicable requirements of state law or regula-  
5 tions, except for such complaints that the director deter-  
6 mines are willfully intended to harass a licensee or are  
7 without any reasonable basis. Such procedures shall in-  
8 clude provisions for ensuring the confidentiality of the  
9 complainant and of any other person so named in the  
10 complaint, and for promptly informing the complainant  
11 and the facility involved of the results of the investigation.

12 If, after its investigation, the director determines that  
13 the complaint has merit, the director shall take appro-  
14 priate disciplinary action and shall advise any injured  
15 party of the possibility of a civil remedy under this  
16 article.

17 No facility may discharge or in any manner discriminate  
18 against any patient or employee for the reason that such  
19 patient or employee has filed a complaint or participated  
20 in any proceeding specified in this article. Violation of  
21 this prohibition by any facility constitutes ground for the  
22 suspension or revocation of the license of the facility as  
23 provided in section eleven of this article. Any type of  
24 discriminatory treatment of a patient by whom, or upon  
25 whose behalf, a complaint has been submitted to the di-

26 rector, or any proceeding instituted under this article,  
27 within one hundred twenty days of the filing of the com-  
28 plaint or the institution of such action, shall raise a  
29 rebuttable presumption that such action was taken by  
30 the facility in retaliation for such complaint or action.

**§16-5C-9. Inspections.**

1 The director and any duly designated employee or agent  
2 thereof shall have the right to enter upon and into the  
3 premises of any facility for which a license has been is-  
4 sued, for which an application for license has been filed  
5 with the director, or which the director has reason to  
6 believe is being operated or maintained as a nursing  
7 home or personal care home without a license. If such  
8 entry is refused by the owner or person in charge of  
9 any such facility, the director shall apply to the circuit  
10 court of the county in which the facility is located for a  
11 warrant authorizing inspection, and such court shall issue  
12 an appropriate warrant if it finds good cause for inspec-  
13 tion.

14 The director, by the director's authorized employees or  
15 agents, shall conduct at least one inspection prior to is-  
16 suance of a license pursuant to section six of this article,  
17 and shall conduct at least one unannounced inspection an-  
18 nually thereafter, to determine compliance by the facility  
19 with applicable statutes and regulations promulgated  
20 thereunder. The state fire marshal, by his employees or  
21 authorized agents, shall make all fire, safety and like in-  
22 spections. The director may provide for such other inspec-  
23 tions as the director may deem necessary to carry out the  
24 intent and purpose of this article.

**§16-5C-10. Reports of inspections; plans of correction; assess-  
ment of penalties for failure to correct viola-  
tions.**

1 (a) Reports of all inspections made pursuant to section  
2 nine of this article shall be in writing and filed with the  
3 director, and shall list all deficiencies in the facility's com-  
4 pliance with the provisions of this article and the regula-  
5 tions adopted by the board of health hereunder. The di-  
6 rector shall send a copy of such report to the facility and



7 shall specify a time within which the facility shall submit  
8 a plan for correction of such deficiencies, which plan shall  
9 be approved, rejected or modified by the director.

10 (b) Upon failure by a facility with deficiencies to submit  
11 a plan of correction which is approved by the director, or  
12 to correct any deficiency within the time specified in  
13 an approved plan of correction, the director may assess  
14 civil penalties as hereinafter provided or may initiate  
15 any other legal or disciplinary action as provided by this  
16 article.

17 Nothing in this section shall be construed to prohibit  
18 the director from enforcing a regulation, administratively  
19 or in court, without first affording formal opportunity to  
20 make correction under this section, where, in the opinion  
21 of the director, the violation of such regulation jeopardizes  
22 the health or safety of patients or where the violation of  
23 such regulation is the second or subsequent such violation  
24 occurring during a period of twelve full months.

25 Civil penalties assessed shall be classified according to  
26 the nature of the violation as defined in subsection (c),  
27 section five of this article and regulations promulgated  
28 thereunder by the board of health, as follows: For each  
29 violation of a Class I standard, a civil penalty of not less  
30 than one hundred nor more than one thousand dollars  
31 shall be imposed; for each violation of a Class II standard,  
32 a civil penalty of not less than fifty nor more than one  
33 hundred dollars shall be imposed; for each violation of a  
34 Class III standard, a civil penalty of not less than twenty-  
35 five nor more than fifty dollars shall be imposed. Each day  
36 a violation continues, after the date by which correction  
37 was required under an approved plan of correction or, if  
38 an approved plan of correction is not submitted, the date  
39 on which such plan was due, shall constitute a separate  
40 violation.

41 The director shall, in a civil judicial proceeding, recover  
42 any unpaid assessment which has not been contested  
43 under section twelve of this article, or which has been  
44 affirmed under the provisions of that section and not ap-  
45 pealed, or which has been affirmed on judicial review, as  
46 provided in section thirteen of this article. All money col-

47 lected by assessments of civil penalties shall be paid into  
48 the general revenue fund.

**§16-5C-11. License limitation, suspension, revocation; continuation of disciplinary proceedings.**

1 (a) The director shall by order reclassify a facility, or  
2 reduce the bed quota of the facility, or both, where he  
3 finds upon inspection of the facility that the licensee is not  
4 providing adequate care under the facility's existing  
5 classification or quota, and that reclassification, reduction  
6 in quota or both would place the licensee in a position to  
7 render adequate care. Any notice to a licensee of reclassi-  
8 fication, reduction in quota or both shall include the terms  
9 of such order, the reasons therefor, and the date set for  
10 compliance.

11 (b) The director may suspend or revoke a license is-  
12 sued under this article if he finds upon inspection that  
13 there has been a substantial failure to comply with the  
14 provisions of this article or the standards or regulations  
15 promulgated pursuant hereto.

16 (c) Whenever a license is limited, suspended or re-  
17 voked pursuant to this section, the director shall file a  
18 complaint stating facts constituting a ground or grounds  
19 for such limitation, suspension or revocation. Upon the  
20 filing of the complaint, the director shall notify the li-  
21 censee in writing of the filing of the complaint, enclosing  
22 a copy of the complaint, and shall advise the licensee of  
23 the availability of a hearing pursuant to section twelve  
24 of this article. Such notice and copy of the complaint  
25 shall be served on such licensee by certified mail, return  
26 receipt requested.

27 (d) The suspension, expiration, forfeiture or cancella-  
28 tion by operation of law or order of the director of a license  
29 issued by the director, or the withdrawal of an applica-  
30 tion for a license after it has been filed with the director,  
31 may not deprive the director of the director's authority  
32 to institute or continue a disciplinary proceeding, or a  
33 proceeding for the denial of a license application, against  
34 the licensee or applicant upon any ground provided by  
35 law or to enter an order denying the license application

36 or suspending or revoking the license or otherwise taking  
37 disciplinary action on any such ground.

**§16-5C-12. Administrative appeals for facility ratings, civil assessments, license limitation, suspension or revocation.**

1 (a) Any licensee or applicant aggrieved by an order  
2 issued pursuant to sections five, six, ten or eleven of this  
3 article shall, upon timely written request, have the op-  
4 portunity for a hearing by the director at which he may  
5 contest such order as contrary to law or unwarranted by  
6 the facts or both. All of the pertinent provisions of article  
7 five, chapter twenty-nine-a of this code shall apply to  
8 and govern such hearing and the administrative proce-  
9 dures in connection with such hearing.

10 Following such hearing the director shall make and  
11 enter a written order either dismissing the complaint or  
12 taking such action as is authorized in this article. The  
13 written order of the director shall be accompanied by  
14 findings of fact and conclusions of law as specified in  
15 section three, article five, chapter twenty-nine-a of this  
16 code, and a copy of such order and accompanying find-  
17 ings and conclusions shall be served upon the licensee  
18 and his attorney of record, if any, by certified mail, re-  
19 turn receipt requested. If the director suspends a facility's  
20 license, it shall also specify the conditions giving rise to  
21 such suspension, to be corrected by the licensee during  
22 the period of suspension in order to entitle the licensee  
23 to reinstatement of his license. If the director revokes  
24 a license, the director may stay the effective date of  
25 revocation by not more than ninety days upon a showing  
26 that such delay is necessary to assure appropriate place-  
27 ment of patients. The order of the director shall be  
28 final unless vacated or modified upon judicial review  
29 thereof in accordance with the provisions of section thir-  
30 teen of this article.

31 (b) In addition to all other powers granted by this  
32 chapter, the director may hold the case under advise-  
33 ment and make a recommendation as to requirements  
34 to be met by said licensee in order to avoid either sus-

35 pension or revocation. In such a case, the director shall  
36 enter an order accordingly and so notify the licensee  
37 and his attorney of record, if any, by certified mail, return  
38 receipt requested. If the licensee meets the requirements  
39 of such order, the director shall enter an order showing  
40 satisfactory compliance and dismissing the complaint and  
41 shall so notify the licensee and his attorney of record,  
42 if any, by certified mail, return receipt requested.

**§16-5C-13. Judicial review.**

1 Any licensee adversely affected by an order of the di-  
2 rector rendered after a hearing held in accordance with  
3 the provisions of section twelve of this article is entitled  
4 to judicial review thereof. All of the pertinent provisions  
5 of section four, article five, chapter twenty-nine-a of this  
6 code shall apply to and govern with like effect as if the  
7 provisions of said section four were set forth in extenso  
8 in this section.

9 The judgment of the circuit court shall be final unless  
10 reversed, vacated or modified on appeal to the supreme  
11 court of appeals in accordance with the provisions of  
12 section one, article six, chapter twenty-nine-a of this code.

**§16-5C-14. Legal counsel and services for the director.**

1 (a) Legal counsel and services for the director in all  
2 administrative hearings and all proceedings in any circuit  
3 court and the supreme court of appeals shall be provided  
4 by the attorney general or his assistants, in proceedings  
5 in any circuit court by the prosecuting attorney of the  
6 county as well, all without additional compensation.

7 (b) The governor may appoint counsel for the director,  
8 who shall perform such legal services in representing  
9 the interests of patients in nursing homes and personal  
10 care homes in matters under the jurisdiction of the  
11 director as the governor shall direct. It shall be the duty  
12 of such counsel to appear for the patients in all cases  
13 where they are not represented by counsel. The com-  
14 pensation of such counsel shall be fixed by the governor.

**§16-5C-15. Unlawful acts; penalties; injunctions; private right of action.**

1 (a) Whoever advertises, announces, establishes or  
2 maintains, or is engaged in establishing or maintaining  
3 a nursing home or personal care home without a license  
4 granted under section six of this article, or who prevents,  
5 interferes with or impedes in any way the lawful enforce-  
6 ment of this article shall be guilty of a misdemeanor,  
7 and, upon conviction thereof, shall be punished for the  
8 first offense by a fine of not more than one hundred dol-  
9 lars, or by imprisonment in the county jail for a period  
10 of not more than ninety days, or by both such fine and  
11 imprisonment, at the discretion of the court. For each  
12 subsequent offense, the fine may be increased to not more  
13 than two hundred fifty dollars, with imprisonment in  
14 the county jail for a period of not more than ninety days,  
15 or both such fine and imprisonment at the discretion of  
16 the court. Each day of a continuing violation after con-  
17 viction shall be considered a separate offense.

18 (b) The director may in his discretion bring an action  
19 to enforce compliance with this article or any rule, regula-  
20 tion or order hereunder, whenever it shall appear to  
21 the director that any person has engaged in, or is en-  
22 gaging in, an act or practice in violation of this article  
23 or any rule, regulation or order hereunder, or whenever  
24 it shall appear to the director that any person has aided,  
25 abetted, or caused, or is aiding, abetting or causing such  
26 an act or practice. Upon application by the director, the  
27 circuit court of the county in which the conduct has oc-  
28 curred or is occurring shall have jurisdiction to grant  
29 without bond a permanent or temporary injunction, de-  
30 cree or restraining order.

31 Whenever the director shall have refused to grant or  
32 renew a license, or shall have revoked a license required  
33 by law to operate or conduct a nursing home or personal  
34 care home, or shall have ordered a person to refrain from  
35 conduct violating the rules and regulations of the board  
36 of health, and the person deeming himself aggrieved by  
37 such refusal or revocation or order shall have appealed

38 the action of the director, the court may, during pen-  
39 dency of such appeal, issue a restraining order or injunc-  
40 tion upon proof that the operation of the facility or its  
41 failure to comply with the order of the director adversely  
42 affects the well-being or safety of the patients of the  
43 facility. Should a person who is refused a license or the  
44 renewal of a license to operate or conduct a nursing  
45 home or personal care home or whose license to operate  
46 is revoked or who has been ordered to refrain from con-  
47 duct or activity which violates the rules and regulations  
48 of the board of health, fail to appeal or should such  
49 appeal be decided favorably to the director, then the  
50 court shall issue a permanent injunction upon proof that  
51 the person is operating or conducting a nursing home or  
52 personal care home without a license as required by law,  
53 or has continued to violate the rules and regulations of  
54 the board of health.

55 (c) Any facility that deprives a patient of any right  
56 or benefit created or established for the well-being of  
57 the patient by the terms of any contract, by any state  
58 statute or regulation, or by any applicable federal statute  
59 or regulation, shall be liable to said patient for injuries  
60 suffered as a result of such deprivation. Upon a finding  
61 that a patient has been deprived of such a right or bene-  
62 fit, and that the patient has been injured as a result of  
63 such deprivation, and unless there is a finding that the  
64 facility exercised all care reasonably necessary to pre-  
65 vent and limit the deprivation and injury to the patient,  
66 compensatory damages shall be assessed in an amount  
67 sufficient to compensate such patient for such injury.  
68 In addition, where the deprivation of any such right or  
69 benefit is found to have been willful or in reckless dis-  
70 regard of the lawful rights of the patient, punitive dam-  
71 ages may be assessed. A patient may also maintain an  
72 action pursuant to this section for any other type of  
73 relief, including injunctive and declaratory relief, per-  
74 mitted by law. Exhaustion of any available administra-  
75 tive remedies shall not be required prior to commence-  
76 ment of suit hereunder.

77 The amount of damages recovered by a patient, in an

78 action brought pursuant to this section, shall be exempt  
79 for purposes of determining initial or continuing eligi-  
80 bility for medical assistance under article four, chapter  
81 nine of this code, and shall neither be taken into con-  
82 sideration nor required to be applied toward the pay-  
83 ment or part payment of the cost of medical care or  
84 services available under said article.

85 Any waiver by a patient or his legal representative of  
86 the right to commence an action under this section,  
87 whether oral or in writing, shall be null and void as  
88 contrary to public policy.

89 (d) The penalties and remedies provided in this sec-  
90 tion are cumulative and shall be in addition to all other  
91 penalties and remedies provided by law.

**§16-5C-16. Availability of reports and records.**

1 The director shall make available for public inspection  
2 and at a nominal cost provide copies of all inspections  
3 and other reports of facilities filed with or issued by the  
4 director. Nothing contained in this section may be con-  
5 strued or deemed to allow the public disclosure of con-  
6 fidential medical, social, personal or financial records of  
7 any patient. The board of health shall adopt such reg-  
8 ulations as may be necessary to give effect to the provi-  
9 sions of this section and to preserve the confidentiality of  
10 medical, social, personal or financial records of patients.

**§16-5C-17. Licenses and regulations in force on effective date  
of article.**

1 All licenses for nursing homes and personal care  
2 homes which are in force upon the effective date of this  
3 article shall continue in full force and effect during the  
4 period for which issued unless sooner revoked as pro-  
5 vided in this article.

6 All regulations in effect on the effective date of this  
7 article, which were adopted by the board relating to  
8 licensing nursing homes or personal care homes, shall  
9 remain in full force and effect until altered, amended or  
10 repealed by the board of health.

**ARTICLE 6. HOTELS AND RESTAURANTS.**

- §16-6-2. Regulations by state board of health; enforcement of orders and laws respecting pure food.
- §16-6-4. Application for inspection of hotel or restaurant; temporary permit; certificate of inspection; fee.
- §16-6-5. Form and content of application for inspection; payment of fee.
- §16-6-7. Certificate or permit prerequisite to license.
- §16-6-8. Annual inspection of hotels and restaurants; powers and duties of director of health.
- §16-6-9. Alterations and changes by owner; penalty for refusal or failure to make.
- §16-6-10. Notices by director of health.
- §16-6-24. Prosecution.

**§16-6-2. Regulations by state board of health; enforcement of orders and laws respecting pure food.**

1 The West Virginia board of health shall make such  
2 rules and regulations, not inconsistent with law, as in  
3 their judgment are necessary to carry out the provisions  
4 of this article. The director of the state department of  
5 health shall enforce any orders made by the board of  
6 health and any laws of the state respecting pure food,  
7 so far as they relate to hotels and restaurants.

**§16-6-4. Application for inspection of hotel or restaurant; temporary permit; certificate of inspection; fee.**

1 Every person, firm or corporation proposing to operate  
2 a hotel or restaurant shall apply to the director of health  
3 for an inspection and certificate thereof, and said in-  
4 spector shall inspect the premises described in such ap-  
5 plication as soon thereafter as may be practicable; but  
6 if it be impracticable to do so within ten days after  
7 receiving such application, said director may issue to  
8 such applicant a temporary permit which shall be valid  
9 until a regular inspection is made. Only one certificate or  
10 permit shall be issued where a hotel and restaurant are  
11 combined and operated in the same building and under  
12 the same management. Each certificate or permit shall  
13 expire on the thirtieth day of June next following its  
14 issuance, and no hotel or restaurant shall be maintained  
15 and operated in this state without the certificate of  
16 inspection thereof as herein prescribed, which certificate  
17 shall be posted in the main public room of such hotel or  
18 restaurant, and shall show the date of each inspection



19 and the notations relating thereto by the director of  
20 health. No such certificate shall be transferable. The  
21 fee for such inspection and certificate or permit shall be,  
22 for a hotel, two dollars, and twenty-five cents additional  
23 for each bedroom in excess of seven; and for a restaurant,  
24 two dollars, and twenty-five cents additional for each  
25 five chairs or stools, or spaces where persons are fed, in  
26 excess of ten, but no fee shall exceed ten dollars. Such  
27 director shall, on the first of each month, pay into the state  
28 treasury all fees collected for inspections during the pre-  
29 ceding month. Every certificate of inspection or permit  
30 under this article shall be made and issued in duplicate.

**§16-6-5. Form and content of application for inspection; pay-  
ment of fee.**

1 The applicant for inspection of a hotel or restaurant  
2 shall file with the department of health a written ap-  
3 plication, in form to be prescribed by the director of  
4 health, which shall set forth the name and address of  
5 the owner of the building or property to be occupied,  
6 and of the agent of any such owner; the name and address  
7 of the lessee and manager, if any, of the hotel or restau-  
8 rant; the location of such hotel or restaurant and a full  
9 description of the building or property to be occupied  
10 and such other matters as may be required by the  
11 director of health. The fee for inspection shall be paid  
12 to the director of health when the application is filed  
13 by him.

**§16-6-7. Certificate or permit prerequisite to license.**

1 No license to keep a hotel or restaurant, or certifi-  
2 cate for such license, shall hereafter be authorized or  
3 issued unless there be first filed with the county commis-  
4 sion to which application therefor is made, a certificate of  
5 inspection or permit, granted by the director of health,  
6 as provided in this article. Every such license shall bear  
7 on its face a reference to such certificate of inspection or  
8 permit.

**§16-6-8. Annual inspection of hotels and restaurants; powers  
and duties of director of health.**

1 The director of health shall inspect or cause to be in-

2 spected, at least once annually, every hotel and restaurant  
3 in the state. For that purpose he, or any person designated  
4 by him, shall have the right of entry and access at any  
5 reasonable time to inspect kitchens where food is pre-  
6 pared, pantry and storage rooms pertaining thereto,  
7 dining rooms, lunch counters, and every place where  
8 articles pertaining to the serving of the public are kept  
9 or prepared. The said director shall prohibit the use of  
10 any article not in keeping with cleanliness and good  
11 sanitary conditions. He shall also have the right to enter  
12 any and all parts of a hotel at all reasonable hours to  
13 make such inspection, and every person in the manage-  
14 ment or control thereof shall afford free access to every  
15 part of the hotel and render all assistance necessary to  
16 enable the director to make full, thorough and complete  
17 examination thereof, but the privacy of any guest in any  
18 room occupied by him shall not be invaded without his  
19 consent.

**§16-6-9. Alterations and changes by owner; penalty for refusal  
or failure to make.**

1 Whenever, upon such inspection, it shall be found that  
2 any such hotel or restaurant is not equipped or oper-  
3 ated in the manner and under the conditions re-  
4 quired by the provisions of this article, the director of  
5 health shall notify the owner, manager or agent in charge  
6 of such hotel or restaurant of such changes or alterations  
7 as, in the judgment of the director, may be necessary to  
8 effect a complete compliance with said provisions. Such  
9 owner, manager or agent shall thereupon make such  
10 alterations or changes as may be necessary to put such  
11 buildings and premises in a condition, and operate it in  
12 a manner, that will fully comply with the requirements  
13 of this article: *Provided*, That due time after receiving  
14 such notice shall be allowed for conforming to the re-  
15 quirements thereof, which time shall be specified in the  
16 notice. Should the changes or alterations directed by  
17 such notice not be made in the time specified therein, the  
18 said director shall proceed against the person or persons  
19 in default in any court having jurisdiction to enforce  
20 the provisions of this article against him or them. Every

21 person, firm or corporation which shall fail or refuse  
22 to comply with the provisions of this section shall be  
23 guilty of a misdemeanor, and, upon conviction thereof,  
24 shall be fined five dollars for each and every day such  
25 failure or refusal may continue. If such failure or re-  
26 fusal shall continue for thirty days after the time speci-  
27 fied in the notice from the director for conforming to  
28 the requirements thereof, the director may proceed in the  
29 circuit court of the county wherein such hotel or restau-  
30 rant is located, for an order closing it. After such order is  
31 issued, the building or property shall not again be used  
32 as a hotel or restaurant until a certificate or permit  
33 therefor shall have been issued by the director, and any  
34 disobedience of such order may be punished as other  
35 contempts of court. Reasonable notice shall be given of  
36 the application for such order.

**§16-6-10. Notices by director of health.**

1 All notices given under this article shall be in writing  
2 and shall either be delivered in person or sent by regis-  
3 tered mail.

**§16-6-24. Prosecution.**

1 The prosecuting attorney of each county in this state  
2 is hereby authorized and required, upon complaint under  
3 oath of the director of health, or other person or persons,  
4 to prosecute to termination before any court of competent  
5 jurisdiction, in the name of the state, a proper action or  
6 proceeding against any person or persons violating the  
7 provisions of this article.

**ARTICLE 7. PURE FOOD AND DRUGS.**

**§16-7-3. Inspection and analysis of foods and drugs; certificate  
of result as prima facie evidence in prosecution.**

1 Whenever the director of health, the West Virginia  
2 board of pharmacy, or any county or municipal health  
3 officer has reason to believe that any food or drug manu-  
4 factured for sale, offered for sale, or sold within this  
5 state, is adulterated, such director or board of pharmacy,  
6 by its authorized agents, or such county or municipal

7 health officer shall have the power, and it shall be his  
8 duty, to enter, during the usual hours of business, into  
9 any creamery, factory, store, salesroom, drugstore, labora-  
10 tory or other place where he has reason to believe such  
11 food or drug is manufactured, prepared, sold or offered  
12 for sale, within the county or municipality, as the same  
13 may be, and to open any case, tub, jar, bottle or package  
14 containing, or supposed to contain, any such food or  
15 drug, and take a specimen thereof for examination and  
16 analysis. If less than a whole package is taken, the  
17 specimen shall be sealed and properly prepared for ship-  
18 ment to the person who shall make the analysis here-  
19 inafter provided for. No whole or less than a whole  
20 package taken and prepared for shipment shall be opened  
21 before it has been received by the analyst aforesaid.

22 It shall be the duty of a qualified chemist of the state  
23 health department to test and analyze any such specimen,  
24 to record the result of his analysis among the records of  
25 the department, and to certify such findings to the  
26 director of health, the West Virginia board of pharmacy,  
27 or to the county or municipal health officers, as the case  
28 may be. If the analysis indicates that the said food or  
29 drug is adulterated, a certificate of such result, sworn to  
30 by the person making the analysis, who shall also state  
31 in his certificate the reasonable cost and expense of such  
32 analysis, shall be prima facie evidence of such adultera-  
33 tion in any prosecution under this article.

#### **ARTICLE 14. BARBERS AND BEAUTICIANS.**

§16-14-1. Jurisdiction over barbers and beauticians; powers and duties of director of health.

§16-14-3. Regulations to be promulgated by board of health; enforcement.

#### **§16-14-1. Jurisdiction over barbers and beauticians; powers and duties of director of health.**

1 (a) There is hereby vested in the state department of  
2 health, jurisdiction over barbers and beauticians, except  
3 as otherwise specifically provided in this code.

4 (b) The director of health or a designee shall be re-  
5 sponsible for the enforcement of all laws, rules and regu-  
6 lations pertaining to sanitary conditions of barbering  
7 and beauty shops.

8 (c) The director or a designee shall provide administra-  
9 tive support to the board of barbers and beauticians as  
10 may be appropriate and reasonable.

11 (d) The director of health shall appoint not more than  
12 six inspectors, who shall be licensed barbers and beauti-  
13 cians of this state, as herein provided, and it shall be their  
14 duty to make frequent inspections of all barber and beauty  
15 shops, and all schools of barbering and beauty culture in  
16 this state, and to report all violations to the director of  
17 health. The salaries and allowances for expenses of such  
18 inspectors shall be that fixed and allowed by the director  
19 of health.

**§16-14-3. Regulations to be promulgated by board of health;  
enforcement.**

1 The board of health shall promulgate rules and regula-  
2 tions pertaining to the sanitary conditions of barbering and  
3 beauty shops, licensure, and qualifications of barbers,  
4 beauticians and manicurists, and curricula and standards  
5 of instruction for schools of barbering and beauty culture.  
6 The enforcement of all rules and regulations promulgated  
7 by the board of health shall be under the supervision and  
8 direction of the director.

**CHAPTER 27. MENTALLY ILL PERSONS.**

**Article**

1. **Words and Phrases Defined.**
2. **Mental Health Facilities.**
- 2A. **Mental Health—Mental Retardation Centers.**
3. **Confidential Patient Information.**
4. **Voluntary Hospitalization.**
5. **Involuntary Hospitalization.**
- 6A. **Commitment of Persons Charged or Convicted of a Crime.**
7. **Release, Discharge and Readmission of Patients; Escapees.**
8. **Maintenance of Mentally Ill or Mentally Retarded Patients.**
9. **Licensing of Hospitals.**
14. **Interstate Compact on Mental Health.**
15. **Interstate Compact on the Mentally Disordered Offender.**

**ARTICLE 1. WORDS AND PHRASES DEFINED.**

§27-1-6. State hospital.

§27-1-9. Mental health facility.

**§27-1-6. State hospital.**

1 "State hospital" means any hospital, center or institu-  
 2 tion, or part thereof, established, maintained and oper-  
 3 ated by the department of health, or by the department  
 4 of health in conjunction with a political subdivision of  
 5 the state, to provide inpatient or outpatient care and  
 6 treatment for the mentally ill, mentally retarded or  
 7 addicted.

**§27-1-9. Mental health facility.**

1 "Mental health facility" means any inpatient, resi-  
 2 dential or outpatient facility for the care and treatment  
 3 of the mentally ill, mentally retarded or addicted, which  
 4 is operated, or licensed to operate, by the department of  
 5 health and shall include state hospitals as defined in  
 6 section six of this article. The term shall also include  
 7 veterans administration hospitals.

**ARTICLE 2. MENTAL HEALTH FACILITIES.**

§27-2-1. State hospitals and other facilities; transfer of control and property from department of mental health to department of health; civil service coverage.

§27-2-3. Rules as to patients.

§27-2-4. Forms for committing patients; other records.

§27-2-5. Reports by superintendents; records of director of health.

§27-2-6. Moneys received by state hospitals and facilities.

**§27-2-1. State hospitals and other facilities; transfer of control and property from department of mental health to department of health; civil service coverage.**

1 The state hospitals heretofore established at Weston,  
 2 Spencer, Huntington, Barboursville, Lakin, Guthrie,  
 3 Roney's Point, St. Marys and Lewisburg shall be continued  
 4 and known respectively as the Weston Hospital, Spencer  
 5 Hospital, Huntington Hospital, Barboursville Hospital,  
 6 Lakin Hospital, Guthrie Center, Roney's Point Center,  
 7 Colin Anderson Center and the Greenbrier School for Re-  
 8 tarded Children. Said state hospitals and centers shall be  
 9 managed, directed and controlled by the department of  
 10 health. Any person employed by the department of mental  
 11 health who on the effective date of this article is a classified  
 12 civil service employee shall, within the limits contained in

13 section two, article six of chapter twenty-nine of this code,  
14 remain in the civil service system as a covered employee.  
15 The director of the department of health is hereby autho-  
16 rized to bring said hospitals into structural compliance  
17 with appropriate fire and health standards. All references  
18 in this code or elsewhere in law to the "West Virginia  
19 training school" shall be taken and construed to mean and  
20 refer to the "Colin Anderson Center."

21 The control of the property, records, and financial and  
22 other affairs of state mental hospitals and other state  
23 mental health facilities is hereby transferred from the  
24 department of mental health to the department of health.  
25 As the chief executive officer, the director of health  
26 shall, in respect to the control and management of such  
27 state hospitals and other state mental health facilities,  
28 perform the same duties and functions as were hereto-  
29 fore exercised or performed by the department of mental  
30 health. The title to all property of such state hospitals  
31 and other state facilities is hereby transferred to and  
32 vested in the department of health.

33 Notwithstanding any other provisions of this code to  
34 the contrary, whenever in this code there is a reference  
35 to the department of mental health, it shall be construed  
36 to mean and shall be a reference to the director of the  
37 department of health.

#### §27-2-3. Rules as to patients.

1 The director of health shall implement rules and regu-  
2 lations as promulgated by the board of health in regard to  
3 the admission of patients to mental health facilities, the  
4 care, maintenance and treatment of inpatients, residents  
5 and outpatients of such facilities and the release, trial  
6 visit and discharge of patients therefrom.

7 No patient under eighteen years of age in any state  
8 hospital shall be housed in any area also occupied by  
9 any patient over eighteen years of age. Any patient  
10 adjudged by the chief medical officer to have a likelihood  
11 of seriously harming others shall be confined in a secure  
12 area of a health facility.

**§27-2-4. Forms for committing patients; other records.**

1 The director of health shall have authority to prepare,  
2 prescribe and have printed forms to be used for com-  
3 mitment to and discharge from the state hospitals.

**§27-2-5. Reports by superintendents; records of director of health.**

1 The superintendent of each state hospital shall furnish  
2 to the director of health such information as he may re-  
3 quire concerning admissions, discharges, deaths and other  
4 matters. From this and other information available to  
5 the director of health, he shall keep such records as are  
6 necessary to enable him to have current information con-  
7 cerning the extent of mental illness in the state. The  
8 names of individuals shall not be accessible to anyone  
9 except by permission of the director of health or by  
10 order of a judge of a court of record.

**§27-2-6. Moneys received by state hospitals and facilities.**

1 All moneys and funds belonging to the state which  
2 shall come into the possession or under the control of  
3 the superintendent or other officer of a state hospital or  
4 facility under the control of the department of health  
5 shall be paid to the director or his designee twice a  
6 month, on or before the first and fifteenth of every month,  
7 but not more than twenty days from the time such  
8 moneys or funds were received under such rules and reg-  
9 ulations as the director shall prescribe. The director or his  
10 designee shall pay such moneys and funds into the state  
11 treasury immediately in the manner provided in article  
12 two, chapter twelve of this code.

**ARTICLE 2A. MENTAL HEALTH—MENTAL RETARDATION CENTERS.****§27-2A-1. Comprehensive community mental health-mental retardation centers; establishment, operation and location; access to treatment.**

1 (a) The director of health is authorized and directed  
2 to establish, maintain and operate comprehensive com-  
3 munity mental health centers and comprehensive mental



4 retardation facilities, at such locations within the  
5 state as may be determined by the director in accordance  
6 with the state's comprehensive mental health plan  
7 and the state's comprehensive mental retardation plan.  
8 Such facilities may be integrated with a general  
9 health care or other facility or remain separate as  
10 the board of health may by rules and regulations  
11 prescribe: *Provided*, That nothing contained herein shall  
12 be construed to allow the department of health to as-  
13 sume the operation of comprehensive regional mental  
14 health centers or comprehensive mental retardation  
15 facilities which have been heretofore established  
16 according to law and which, as of the effec-  
17 tive date of this article, are being operated by local non-  
18 profit organizations.

19 (b) Any new mental health centers and comprehen-  
20 sive mental retardation facilities herein provided  
21 for may be operated and controlled by the department  
22 of health or operated, maintained and controlled by  
23 local nonprofit organizations and licensed according  
24 to rules and regulations promulgated by the board  
25 of health. All comprehensive regional mental health  
26 and mental retardation facilities licensed in the state  
27 shall:

28 (1) Have a written plan for the provision of diagnostic,  
29 treatment, supportive and aftercare services, and written  
30 policies and procedures for implementing these services;

31 (2) Have sufficient employees appropriately qualified  
32 to provide these services;

33 (3) Maintain accurate medical and other records for  
34 all patients receiving services;

35 (4) Render outpatient services in the aftercare of any  
36 patient discharged from an inpatient hospital, consistent  
37 with the needs of the individual. No person who can be  
38 be treated as an outpatient at a community mental health  
39 center shall be admitted involuntarily into a state hospital.

40 (5) Have a chief administrative officer directly re-  
41 sponsible to a legally constituted board of directors of a

42 comprehensive mental health or mental retardation  
43 facility operated by a local nonprofit organization, or to  
44 the director of the department of health if the comprehen-  
45 sive mental health or mental retardation center or facility  
46 is operated by the department of health; and

47 (6) Have a written plan for the referral of patients  
48 for evaluation and treatment for services not provided.

49 The state's share of costs of operating such facilities  
50 may be provided from funds appropriated for this pur-  
51 pose within the budget of the department of health. The  
52 director shall administer these funds among all com-  
53 prehensive mental health and mental retardation facili-  
54 ties as may be required to best provide comprehensive  
55 community mental health care and services to the citizens  
56 of the state.

57 After the first day of July, but not later than the first  
58 day of August of each year, the chief administrative officer  
59 of each comprehensive regional mental health center and  
60 mental retardation facility shall submit a report to the  
61 director of the department of health and to the legislative  
62 auditor containing a listing of:

63 (1) All funds received by the center or facility;

64 (2) All funds expended by the center or facility;

65 (3) All funds obligated by the center or facility;

66 (4) All services provided by the center or facility;

67 (5) The number of persons served by the center or  
68 facility; and

69 (6) Other information as the board of health shall by  
70 regulation prescribe.

### ARTICLE 3. CONFIDENTIAL PATIENT INFORMATION.

#### §27-3-1. Definition of confidential information; disclosure.

1 (a) Communications and information obtained in the  
2 course of treatment or evaluation of any client or patient  
3 shall be deemed to be "confidential information" and  
4 shall include the fact that a person is or has been a client  
5 or patient, information transmitted by a patient or client

6 or family thereof for purposes relating to diagnosis or  
7 treatment, information transmitted by persons participat-  
8 ing in the accomplishment of the objectives of diagnosis  
9 or treatment, all diagnoses or opinions formed regarding  
10 a client's or patient's physical, mental or emotional condi-  
11 tion; any advice, instructions or prescriptions issued in  
12 the course of diagnosis or treatment, and any record or  
13 characterization of the matters hereinbefore described. It  
14 does not include information which does not identify a  
15 client or patient, information from which a person ac-  
16 quainted with a client or patient would not recognize such  
17 client or patient, and uncoded information from which  
18 there is no possible means to identify a client or patient.

19 (b) Confidential information may be disclosed:

20 (1) In a proceeding under section four, article five of  
21 this chapter to disclose the results of an involuntary  
22 examination made pursuant to sections two, three or  
23 four, article five of this chapter;

24 (2) In a proceeding under article six-a of this chapter to  
25 disclose the results of an involuntary examination made  
26 pursuant thereto;

27 (3) Pursuant to an order of any court based upon a  
28 finding that said information is sufficiently relevant to a  
29 proceeding before the court to outweigh the importance  
30 of maintaining the confidentiality established by this sec-  
31 tion;

32 (4) To protect against a clear and substantial danger of  
33 imminent injury by a patient or client to himself or an-  
34 other; and

35 (5) For treatment or internal review purposes, to staff  
36 of the mental health facility where the patient is being  
37 cared for or to other health professionals involved in  
38 treatment of the patient.

#### **ARTICLE 4. VOLUNTARY HOSPITALIZATION.**

##### **§27-4-1. Authority to receive voluntary patients.**

1 The chief medical officer of a mental health facility,  
2 subject to the availability of suitable accommodations

3 and to the rules and regulations promulgated by the  
4 board of health, shall admit for diagnosis, care and  
5 treatment any individual:

6 (a) Over eighteen years of age who is mentally ill,  
7 mentally retarded or addicted or who has manifested  
8 symptoms of mental illness, mental retardation or addic-  
9 tion and who makes application for hospitalization; or

10 (b) Under eighteen years of age who is mentally ill,  
11 mentally retarded or addicted or who has manifested  
12 symptoms of mental illness, mental retardation or addic-  
13 tion and there is application for hospitalization therefor  
14 in his behalf (1) by the parents of such person, or (2) if  
15 only one parent is living, then by such parent, or (3) if  
16 the parents are living separate and apart, by the parent  
17 who has the custody of such person, or (4) if there is  
18 a guardian who has custody of such person, then by such  
19 guardian. Such admission shall be conditioned upon the  
20 consent of the prospective patient if he is twelve years of  
21 age or over.

22 (c) No person under eighteen years of age shall be  
23 admitted under this section to any state hospital unless  
24 said person has first been reviewed and evaluated by  
25 a local mental health facility and recommended for ad-  
26 mission.

#### **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

§27-5-3. Custody for medical examination.

§27-5-7. Hospitalization by agency of the United States.

§27-5-9. Rights of patients.

#### **§27-5-3. Custody for medical examination.**

1 When any person, health officer, caseworker or law-  
2 enforcement officer has reason to believe that an indi-  
3 vidual is mentally ill, mentally retarded or addicted and  
4 because of his mental illness, mental retardation or ad-  
5 diction is likely to cause serious harm to himself or  
6 others if allowed to remain at liberty while awaiting an  
7 examination and certification by a physician, or physicians,  
8 as the case may be, pursuant to section two of this article,  
9 such person, health officer, caseworker or law-enforce-

10 ment officer may make application under oath to the  
11 circuit court or mental hygiene commissioner of the county  
12 of which the individual is a resident or to the circuit  
13 court or mental hygiene commissioner of the county  
14 where he may be found, giving such information and  
15 stating such facts therein as may be required, upon the  
16 form provided by the department of health and the  
17 circuit court or mental hygiene commissioner shall there-  
18 upon enter an order for the individual named in such ap-  
19 plication to be taken into custody and detained, but not  
20 incarcerated in a jail or penal institution, for the purpose  
21 of an examination by at least one physician to take place  
22 within fourteen hours after the individual is taken into  
23 custody. Not later than fourteen hours after the indi-  
24 vidual is taken into custody, the individual shall be re-  
25 leased from custody, unless proceedings have been insti-  
26 tuted pursuant to section two of this article.

**§27-5-7. Hospitalization by agency of the United States.**

1 If an individual ordered to be hospitalized pursuant to  
2 section four of this article is eligible for hospital care  
3 or treatment by any agency of the United States, then,  
4 upon receipt of a certificate from such agency showing  
5 that facilities are available and that the individual is  
6 eligible for care or treatment therein, the circuit court  
7 or mental hygiene commissioner may order him to be  
8 placed in the custody of such agency for hospitalization.  
9 When any such individual is admitted pursuant to the  
10 order of such circuit court or mental hygiene commissioner  
11 to any hospital or institution established, maintained or  
12 operated by any agency of the United States within or  
13 without the state, he shall be subject to the rules and  
14 regulations of such agency. The chief officer of any  
15 hospital or institution operated by such agency and in  
16 which the individual is so hospitalized shall, with respect  
17 to such individual, be vested with the same powers as  
18 the chief medical officers of mental health facilities or  
19 the director of health within this state with respect to  
20 detention, custody, transfer, conditional release or dis-  
21 charge of patients. Jurisdiction is retained in the ap-  
22 propriate circuit court or mental hygiene commissioner

23 of this state at any time to inquire into the mental  
24 condition of an individual so hospitalized, and to deter-  
25 mine the necessity for continuance of his hospitalization,  
26 and every order of hospitalization issued pursuant to this  
27 section is so conditioned.

**§27-5-9. Rights of patients.**

1 (a) No person shall be deprived of any civil right  
2 solely by reason of his receipt of services for mental ill-  
3 ness, mental retardation or addiction, nor shall the receipt  
4 of such services modify or vary any civil right of such  
5 person, including, but not limited to, civil service status  
6 and appointment, the right to register for and to vote at  
7 elections, the right to acquire and to dispose of property,  
8 the right to execute instruments or rights relating to the  
9 granting, forfeiture or denial of a license, permit, privilege  
10 or benefit pursuant to any law, but a person who has  
11 been adjudged incompetent pursuant to article eleven of  
12 this chapter and who has not been restored to legal com-  
13 petency may be deprived of such rights. Involuntary  
14 commitment pursuant to this article shall not of itself  
15 relieve the patient of legal capacity.

16 (b) Each patient of a mental health facility receiving  
17 services therefrom shall receive care and treatment that  
18 is suited to his needs and administered in a skillful, safe  
19 and humane manner with full respect for his dignity and  
20 personal integrity.

21 (c) Every patient shall have the following rights re-  
22 gardless of adjudication of incompetency:

23 (1) Treatment by trained personnel;

24 (2) Careful and periodic psychiatric reevaluation no  
25 less frequently than once every three months;

26 (3) Periodic physical examination by a physician no  
27 less frequently than once every six months; and

28 (4) Treatment based on appropriate examination and  
29 diagnosis by a staff member operating within the scope of  
30 his professional license.

31 (d) The chief medical officer shall cause to be developed  
32 within the clinical record of each patient a written treat-

33 ment plan based on initial medical and psychiatric ex-  
34 amination not later than seven days after he is admitted  
35 for treatment. The treatment plan shall be updated  
36 periodically, consistent with reevaluation of the patient.  
37 Failure to accord the patient the requisite periodic exam-  
38 inations or treatment plan and reevaluations shall entitle  
39 the patient to release.

40 (e) A clinical record shall be maintained at a mental  
41 health facility for each patient treated by the facility.  
42 The record shall contain information on all matters re-  
43 lating to the admission, legal status, care and treatment  
44 of the patient and shall include all pertinent documents  
45 relating to the patient. Specifically, the record shall con-  
46 tain results of periodic examinations, individualized  
47 treatment programs, evaluations and reevaluations, orders  
48 for treatment, orders for application for mechanical re-  
49 straint and accident reports, all signed by the personnel  
50 involved.

51 A patient's clinical record shall be confidential and shall  
52 not be released by the department of health or its  
53 facilities or employees to any person or agency outside  
54 of the department except as follows:

55 (1) Pursuant to an order of a court of record.

56 (2) To the attorney of the patient, whether or not in  
57 connection with pending judicial proceedings.

58 (3) With the written consent of the patient or of some-  
59 one authorized to act on the patient's behalf and of the  
60 director to:

61 (i) Physicians and providers of health, social  
62 or welfare services involved in caring for or reha-  
63 bilitating the patient, such information to be kept  
64 confidential and used solely for the benefit of the  
65 patient.

66 (ii) Agencies requiring information necessary to make  
67 payments to or on behalf of the patient pursuant to con-  
68 tract or in accordance with law. Only such information  
69 shall be released to third-party payers as is required to  
70 certify that covered services have been provided.

71 (iii) Other persons who have obtained such consent.

72 No patient record, or part thereof, obtained by any  
73 agency or individual shall be released in whole or in part  
74 to any other individual or agency, unless authorized by  
75 the written consent of the patient or his legal representa-  
76 tive.

77 (f) Every patient, upon his admission to a hospital and  
78 at any other reasonable time, shall be given a copy of the  
79 rights afforded by this section.

80 (g) The board of health shall promulgate rules and  
81 regulations to protect the personal rights of patients  
82 not inconsistent with this section.

**ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CON-  
VICTED OF A CRIME.**

**§27-6A-1. Determination of competency of defendant to stand  
trial and of criminal responsibility; examination;  
commitment.**

1 (a) Whenever a court of record believes that a de-  
2 fendant in a felony case or a defendant in a misdemeanor  
3 case in which an indictment has been returned may be  
4 incompetent to stand trial or is not criminally re-  
5 sponsible by reason of mental illness, mental retarda-  
6 tion or addiction, it may at any stage of the pro-  
7 ceedings after the return of an indictment or the issu-  
8 ance of a warrant against the defendant, order an exam-  
9 ination of such defendant to be conducted by one  
10 or more psychiatrists, or a psychiatrist and a psy-  
11 chologist.

12 (b) After the examination described in subsection  
13 (a) of this section, the court of record may order that  
14 the person be admitted to a mental health facility desig-  
15 nated by the director of health for a period not to exceed  
16 twenty days for observation and further examination  
17 if the court has reason to believe that such further  
18 observation and examination are necessary in order to  
19 determine whether mental illness, mental retardation  
20 or addiction have so affected a person that he is not  
21 competent to stand trial or not criminally responsible  
22 for the crime or crimes with which he has been charged.



23 If, before the expiration of such twenty-day period, the  
24 examining physician believes that observation for more  
25 than twenty days is necessary, he shall make a written  
26 request to the court of record for an extension of the  
27 twenty-day period specifying the reason or reasons for  
28 which such further observation is necessary. Upon the  
29 receipt of such request, the court of record may by  
30 order extend said observation period, but in no event  
31 shall the period exceed forty days from the date of  
32 the initial court order of observation.

33 (c) At the conclusion of each examination or observa-  
34 tion period provided for herein, the examining psychia-  
35 trists, or psychiatrist and psychologist, shall forthwith  
36 give to the court of record a written signed report of  
37 their findings on the issue of competence to stand trial  
38 or criminal responsibility. Such report shall contain  
39 an opinion, supported by clinical findings, as to whether  
40 the defendant is in need of care and treatment.

41 (d) Within five days after the receipt of the report on  
42 the issue of competency to stand trial, or if no observa-  
43 tion pursuant to subsection (b) of this section has been  
44 ordered, within five days after the report on said issue  
45 following an examination under subsection (a) of this  
46 section, the court of record shall make a finding on the  
47 issue of whether the defendant is competent for trial.  
48 A finding of incompetence for trial shall require proof  
49 by a preponderance of the evidence. Notice of such  
50 findings shall be sent to the prosecuting attorney, the  
51 defendant and his counsel. If the court of record orders  
52 or if the defendant or his counsel on his behalf within  
53 a reasonable time requests a hearing on such findings, a  
54 hearing in accordance with section two of this article  
55 shall be held by the court of record within ten days  
56 of the date such finding or such request has been made.

57 (e) After a conviction and prior to sentencing, the  
58 court of record may order a psychiatric or other  
59 clinical examination and, after such examination, may  
60 further order a period of observation in a mental health  
61 facility designated by the director of health. Such a

62 period of observation or examination shall not exceed  
63 forty days.

64 If after hearing conducted pursuant to the procedures  
65 prescribed in subsection (c), section four, article five  
66 of this chapter, the court of record makes the findings  
67 specified in section four, article five of this chapter or  
68 finds that the convicted individual would benefit from  
69 treatment in a mental health facility, the court may  
70 enter an order of commitment in accord with section  
71 four, article five for treatment in a mental health facility  
72 designated by the director of health.

73 (f) In like manner, in accordance with procedures  
74 set forth in subsections (a), (b) and (c) of this section,  
75 a juvenile court may order a psychiatric examination  
76 or a period of observation for an alleged delinquent or  
77 neglected juvenile in a mental health facility to aid the  
78 court in its disposition. The period of observation shall  
79 not exceed forty days.

#### **ARTICLE 7. RELEASE, DISCHARGE AND READMISSION OF PATIENTS; ESCAPEES.**

##### **§27-7.5. Return of escapees; veterans.**

1 If any person confined in a mental health facility,  
2 pursuant to article five or six-a of this chapter, escapes  
3 therefrom, the chief medical officer thereof may issue a  
4 notice, giving the name and description of the person  
5 escaping and requesting the patient's apprehension and  
6 return to the mental health facility. The chief medical  
7 officer may issue an order directed to the sheriff of the  
8 county in which the patient is a resident, commanding  
9 him to take into custody and transport such escaped  
10 person back to the mental health facility, which order  
11 the sheriff may execute in any part of the state. If  
12 such person goes to another state, the chief medical  
13 officer may notify the director of health and the director  
14 may take such action as he may deem proper for the  
15 return of such person to the mental health facility.

16 If any veteran duly committed to a veterans' hospital  
17 or other veterans' institution, either within or without  
18 the state, escapes therefrom and any person makes com-

19    plaint, under oath, to the clerk of the circuit court  
20    of the county from which such veteran was so com-  
21    mitted upon the order of the circuit court, giving  
22    such information and stating such facts therein as may  
23    be required, or if any veteran duly committed to a vet-  
24    erans' hospital or other veterans' institution, either within  
25    or without the state, escapes therefrom and the chief  
26    medical officer of such hospital or institution issues a  
27    notice to the clerk of the circuit court of the county  
28    from which such veteran was so committed upon the  
29    order of the circuit court, giving the name and descrip-  
30    tion of such veteran and requesting his apprehension  
31    and return to such hospital or institution, the circuit  
32    court upon receipt of such complaint or of such notice,  
33    may issue an order directed to the sheriff of the county  
34    from which the veteran was so committed commanding  
35    him to take into custody and transport such veteran  
36    back to such hospital or institution, which order the  
37    sheriff may execute in any part of the state.

38    The sheriff or other person taking any person into  
39    custody under this section shall be paid such compensa-  
40    tion as is provided for like services in other cases.

41    A person who is taken into custody under this section  
42    may be detained, but not incarcerated in a jail or penal  
43    institution, for a period not in excess of fourteen hours,  
44    pending return to the appropriate mental health facility.

#### **ARTICLE 8. MAINTENANCE OF MENTALLY ILL OR MENTALLY RETARDED PATIENTS.**

- §27-8-1.   Maintenance of patients; patient assets; reimbursement procedures.  
§27-8-2a.   Local mental health programs—Approval; credits to amount due to  
                  state under section two, article eight, chapter twenty-seven.  
§27-8-3.   Care of patients in boarding homes.

#### **§27-8-1. Maintenance of patients; patient assets; reimburse- ment procedures.**

1    The cost of the maintenance of patients admitted to  
2    the state hospitals shall be paid out of funds appro-  
3    priated for the department, but the state hospitals, through  
4    the director of health, shall have a right of reimbursement,  
5    for all or any part of such maintenance from each patient  
6    or from the committee or guardian of the estate of the

7 patient, or the estate of the patient if deceased, or if  
8 that be insufficient, then from the patient's husband or  
9 wife, or if the patient be an unemancipated child, the  
10 father and mother, or any of them. If such a relative so  
11 liable does not reside in this state and has no estate or  
12 debts due him within the state by means of which the  
13 liability can be enforced against him, the other relatives  
14 shall be liable as provided by this section. In exercising  
15 this right of reimbursement, the director of health may,  
16 whenever it is deemed just and expedient to do so,  
17 exonerate any person chargeable with such maintenance  
18 from the payment thereof in whole or in part, if the di-  
19 rector finds that such person is unable to pay or that pay-  
20 ment would work an undue hardship on him or on those  
21 dependent upon him.

22 There shall be no discrimination on the part of the state  
23 hospitals as to food, care, protection, treatment or re-  
24 habilitation, between patients who pay for their main-  
25 tenance and those who are unable to do so.

26 It shall be the responsibility of the director of health  
27 as provided by rules promulgated by the board of health  
28 to determine the ability of the patient or of his relative  
29 to pay for his maintenance: *Provided*, That any such  
30 determination shall be in writing and shall be considered  
31 an "order" under the provisions of chapter twenty-nine-a  
32 of this code: *Provided, however*, That any such deter-  
33 mination shall be subject to review upon application of  
34 any such patient, relative or personal representative in  
35 the manner provided in chapter twenty-nine-a of this  
36 code.

**§27-8-2a. Local mental health programs—Approval; credits to amount due to state under section two, article eight, chapter twenty-seven.**

1 Any county commission which elects to establish a local  
2 mental health program and has a completed comprehen-  
3 sive program ready for implementation, which is approved  
4 in advance by the state director of health, shall be allowed  
5 to deduct from its annual debt for the maintenance of  
6 resident patients in state mental institutions, as set forth

7 in section two of this article, an amount equal to the sum  
8 annually budgeted by said county commission for the es-  
9 tablishment and maintenance of said approved local men-  
10 tal health program.

11 Any county commission which desires to establish a  
12 local mental health program may make application for  
13 approval of such program to the director of health on  
14 forms to be provided by the director and in accordance  
15 with procedures and standards which have been estab-  
16 lished by the director.

17 On or before the fifteenth day of January of each year  
18 the director of the department of health shall certify to  
19 the auditor a statement of the amount budgeted by each  
20 county commission for the establishment, operation and  
21 maintenance of a local mental health program. The audi-  
22 tor shall deduct such certified sums from the amount  
23 determined to be due the state of West Virginia, as pro-  
24 vided in section two: *Provided*, That on or before the  
25 fifth day of July of each year, each county commission  
26 which has established an approved local mental health  
27 program shall certify to the director a detailed statement  
28 of its expenditures made for such local programs on a  
29 form to be provided by the director and the director  
30 shall have authority to delete or refuse to approve any  
31 expenditures made by any county commission which were  
32 not made in accordance with the approved comprehen-  
33 sive plan for that county: *Provided, however*, That any  
34 sums budgeted by a county commission and credited by  
35 the auditor as hereinabove provided which are not ac-  
36 tually expended by the county commission for the estab-  
37 lishment of a local mental health program by the end of  
38 the fiscal year for which it was budgeted shall be charged  
39 as a debt against the county due the state for the main-  
40 tenance of its patients. The director, after determining  
41 the amount of such debt, if any, shall immediately certify  
42 the same to the auditor, who shall add said sum to the  
43 amount determined to be due the state, as provided in  
44 section two of this article, for the current year.

**§27-8-3. Care of patients in boarding homes.**

1 The director of health may, upon the recommendation

2 of the superintendent of the state hospital, provide care  
3 in a suitable boarding home for any patient in a state  
4 hospital, if the condition of the patient is such that his  
5 and the public welfare will not be prejudiced thereby. A  
6 patient in a boarding home shall be deemed to be a  
7 patient of the state hospital from which he was removed  
8 and shall, on the approval of the superintendent, be  
9 placed under the supervision of a psychiatric social  
10 worker employed by the state hospital. All patients  
11 in such homes shall be visited at least once every three  
12 months and if upon the visitation they are found to be  
13 abused, neglected or improperly cared for, they shall be  
14 returned to the state hospital or placed in a better board-  
15 ing home. The cost of the boarding home care shall be  
16 paid by the state hospital from which he was removed.

#### **ARTICLE 9. LICENSING OF HOSPITALS.**

##### **§27-9-1. License from director of health; regulations.**

1 No hospital, center or institution, or part thereof, to  
2 provide inpatient, outpatient or other service designed  
3 to contribute to the care and treatment of the mentally  
4 ill or mentally retarded, or prevention of such disorders,  
5 shall be established, maintained or operated by any politi-  
6 cal subdivision or by any person, persons, association or  
7 corporation unless a license therefor shall be first ob-  
8 tained from the director of health. The application for  
9 such license shall be accompanied by a plan of the  
10 premises to be occupied, and such other data and facts  
11 as the director may require. He may make such terms  
12 and regulations in regard to the conduct of such hospital,  
13 center or institution, or part thereof, as he may think  
14 proper and necessary. He, or any person authorized by  
15 him, shall have authority to investigate and inspect such  
16 hospital, center or institution, or part thereof; and the  
17 director of health may revoke the license of any such  
18 hospital, center or institution, or part thereof, for good  
19 cause after reasonable notice to the superintendent or  
20 other person in charge thereof.

**ARTICLE 14. INTERSTATE COMPACT ON MENTAL HEALTH.****§27-14-2. Compact administrator.**

1 The director of health shall be the compact adminis-  
2 trator and, acting jointly with like officers of other party  
3 states, shall have power to promulgate rules and regu-  
4 lations to carry out more effectively the terms of the  
5 compact. The compact administrator is hereby autho-  
6 rized, empowered and directed to cooperate with all de-  
7 partments, agencies and officers of and in the government  
8 of this state and its subdivisions in facilitating the proper  
9 administration of the compact or of any supplementary  
10 agreement or agreements entered into by this state  
11 thereunder.

**ARTICLE 15. INTERSTATE COMPACT ON THE MENTALLY DIS-  
ORDERED OFFENDER.****§27-15-2. Who may enter into contracts under compact.**

1 The governor, the state commissioner of public institu-  
2 tions, the state board of education, the state board of  
3 vocational education, the division of vocational rehabili-  
4 tation, the state commission on higher education, the  
5 West Virginia board of regents, the state department  
6 of welfare, the department of public safety, the state  
7 department of health and the West Virginia board of  
8 probation and parole may negotiate and enter into con-  
9 tracts on behalf of this state pursuant to Article III of  
10 the compact and may perform such contracts: *Provided*,  
11 That no funds, personnel, facilities, equipment, supplies  
12 or materials shall be pledged for, committed or used  
13 on account of any such contract, unless legally available  
14 therefor.

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.****Article**

1. **General Provisions Applicable to All State Boards of Examination or Registration Referred to in Chapter.**
- 3B. **Mobile Intensive Care Paramedics.**
6. **Embalmers and Funeral Directors.**
17. **Sanitarians.**
25. **Nursing Home Administrators.**
26. **Hearing-Aid Dealers and Fitters.**
27. **Board of Barbers and Beauticians.**

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE  
BOARDS OF EXAMINATION OR REGISTRATION RE-  
FERRED TO IN CHAPTER.**

§30-1-4a. Lay members of health profession boards.

§30-1-15. Office of executive secretary of the health profession licensing boards; appointment of executive secretary; duties.

**§30-1-4a. Lay members of health profession boards.**

1 Notwithstanding any provisions of this code to the  
2 contrary, the governor shall appoint at least one lay  
3 person to represent the interests of the public on every  
4 health professional licensing board, enumerated in sec-  
5 tion fifteen of this article. If the total number of  
6 members on any of such boards after the appoint-  
7 ment of one such lay person is an even number,  
8 one additional lay person shall be appointed. Said lay  
9 members shall serve in addition to any other mem-  
10 bers otherwise provided for by law or regulation. Such  
11 lay members shall be of the age of eighteen years  
12 or over, of good moral character, and competent to  
13 represent and safeguard the interests of the public.  
14 The lay member is empowered to participate in and  
15 vote on all transactions and business of the board,  
16 committee or group to which he is appointed.

17 Any person whose addition to a board as a lay member  
18 under the provisions of this section results in the addition  
19 of an odd number of lay additions to the board, shall  
20 serve for a term ending in an odd-numbered year  
21 on the date in that year on which terms of the pro-  
22 fessional members expire; of such members first ap-  
23 pointed, each shall serve for a term ending on such  
24 date in the year one thousand nine hundred seventy-nine,  
25 and the successor to each such person shall serve for a  
26 term equal in length to the terms of the other professional  
27 members of the board. Any person whose addition to a  
28 board as a lay member under the provisions of this sec-  
29 tion results in the addition of an even number of lay  
30 additions to the board, shall serve for a term ending in  
31 an even-numbered year on the date in that year on which  
32 terms of the professional members expire; of such mem-  
33 bers first appointed, each shall serve for a term ending  
34 on such date in the year one thousand nine hundred



35 seventy-eight, and the successor to each such person  
36 shall serve for a term equal in length to the terms of  
37 the other professional members of the board.

**§30-1-15. Office of executive secretary of the health profession licensing boards; appointment of executive secretary; duties.**

1 The office of the executive secretary of the health  
2 profession licensing boards is hereby created. The health  
3 profession licensing boards shall include those boards  
4 provided for in articles two-a, four, five, six, seven,  
5 seven-a, eight, ten, fourteen, sixteen, seventeen, twenty,  
6 twenty-one, twenty-five and twenty-six of chapter thirty  
7 of this code. Notwithstanding any other provision of  
8 this code to the contrary, the office space, personnel, rec-  
9 ords and like business affairs of the health profession  
10 licensing boards shall be within the office of the execu-  
11 tive secretary of the health profession licensing boards.  
12 The secretaries of each of the health profession licensing  
13 boards shall coordinate purchasing, record keeping, per-  
14 sonnel, use of reporters and like matters under the  
15 executive secretary in order to achieve the most efficient  
16 and economical fulfillment of their functions. The  
17 executive secretary shall be appointed by the director  
18 of health and shall report to the director. The execu-  
19 tive secretary shall keep the fiscal records and accounts  
20 of each of the boards. The executive secretary shall  
21 keep the director informed as to the needs of each of  
22 the boards. The executive secretary shall coordinate  
23 the activities and efforts of the boards with the activities  
24 of the health resources advisory council and shall see  
25 that the needs for health manpower perceived by the  
26 boards are communicated to the health resources ad-  
27 visory council. The executive secretary shall keep any  
28 statistics and information on health professions, collected  
29 by or for the boards and shall make such statistics and  
30 information available to the health resources advisory  
31 council to aid it in carrying out its responsibilities.

**ARTICLE 3B. MOBILE INTENSIVE CARE PARAMEDICS.**

**§30-3B-2. Definition of mobile intensive care paramedics.**

1 As used in this article, "mobile intensive care para-

2 medics" means personnel who have been specially  
 3 trained in emergency care in a training program certified  
 4 and supervised by the West Virginia state department  
 5 of health and who are certified by the West Virginia  
 6 medical licensing board as qualified to render the ser-  
 7 vices enumerated in this article.

**ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.**

§30-6-1. Board of embalmers and funeral directors created; membership.

§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.

**§30-6-1. Board of embalmers and funeral directors created; membership.**

1 There is hereby created a state board to be known and  
 2 designated as the "West Virginia board of embalmers  
 3 and funeral directors," which shall consist of seven mem-  
 4 bers, who shall be appointed by the governor, by and  
 5 with the advice and consent of the Senate, six of whom  
 6 shall be licensed embalmers and practicing funeral direc-  
 7 tors with a minimum of five consecutive years' experi-  
 8 ence in West Virginia immediately preceding their ap-  
 9 pointment; the seventh member shall be a lay member  
 10 as provided in section four-a, article one of this chapter.

**§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.**

1 Members of said board, before entering upon their  
 2 duties, shall take and subscribe to the oath of office pre-  
 3 scribed by the secretary of state.

4 Said board shall select from its own members a presi-  
 5 dent, a secretary and a treasurer. Each member shall  
 6 be reimbursed for his traveling expenses, incident to  
 7 his attendance upon the business of the board, and in  
 8 addition thereto, the sum of fifty dollars per day for  
 9 each day actually spent by such member upon the busi-  
 10 ness of the board. The secretary shall receive an annual  
 11 salary of not to exceed one thousand dollars, the amount  
 12 and payment of which shall be fixed by said board, and

13 in addition thereto shall receive traveling and other inci-  
14 dental expenses incurred in the performance of his  
15 duties.

16 The board may employ an executive secretary and  
17 such clerks, inspectors and assistants as it shall deem  
18 necessary to discharge the duties imposed by the pro-  
19 visions of this article and duly promulgated rules and  
20 regulations of the board and to effect its purposes, and  
21 the board shall determine the duties and fix the com-  
22 pensation of such executive secretary, clerks, inspectors  
23 and assistants, subject to the general laws of the state.  
24 Any inspector employed by the board shall have either  
25 a West Virginia embalmer's license or a West Virginia  
26 funeral director's license. Any inspection shall be con-  
27 ducted in such a manner so as not to interfere with the  
28 conduct of business within the funeral establishment, and  
29 the inspector shall be absolutely prohibited from examin-  
30 ing any books and records of the funeral establishment.

31 All such expenses, per diem and compensation shall  
32 be paid out of the receipts of the board, but such allow-  
33 ances shall at no time exceed the receipts of the board.

34 The treasurer of the board shall give bond to the state  
35 of West Virginia in such sum as the board shall direct  
36 with two or more sureties or a reliable surety company  
37 approved by the board, and such bond shall be condi-  
38 tioned for the faithful discharge of the duties of such  
39 officer. Such bond, with approval of the board endorsed  
40 thereon, shall be deposited with the treasurer of the  
41 state of West Virginia.

42 The board shall hold not less than two meetings during  
43 each calendar year, one during the month of April and  
44 one during the month of November, for the purpose of  
45 examining applicants for licenses, such meeting or meet-  
46 ings to be held at such time and place as the board shall  
47 determine. The time and place of such meeting shall be  
48 announced by publication in three daily newspapers of  
49 general circulation in different locations in the state, and  
50 publication to be once a week for two consecutive weeks  
51 immediately preceding each such meeting.

52 The board may hold such other meetings as it may  
53 deem necessary and may transact any business at such  
54 meetings. Three or more members shall comprise a  
55 quorum authorizing the board to transact such business  
56 as is prescribed under this article.

57 The board shall have the power and it shall be its  
58 duty to make and enforce all necessary rules and regula-  
59 tions, not inconsistent with this article, for the examina-  
60 tion and licensing of funeral directors, and the general  
61 practice of funeral directing; the examination and licens-  
62 ing of embalmers and the general practice of embalming  
63 and the registration and regulation of apprentices; the  
64 licensing and general operation of funeral establishments,  
65 except that no rules and regulations issued by the board  
66 shall require that an applicant for a license to operate  
67 a funeral establishment shall be required to have either  
68 an embalmer's or funeral director's license.

69 The board shall publish in its rules and regulations  
70 the subjects to be covered in the said examinations and  
71 the standards to be attained thereon. Changes in the  
72 rules and regulations shall be published and shall be  
73 given due publicity at least ninety days before becoming  
74 effective.

75 The board shall conduct annually a school of instruc-  
76 tions to apprise funeral directors and embalmers of the  
77 most recent scientific knowledge and developments affect-  
78 ing their profession. Qualified lecturers and demonstra-  
79 tors may be employed by the board for this purpose. The  
80 board shall give notice of the time and place at which  
81 such school will be held for all licensed funeral directors  
82 and embalmers, and it shall be the duty of every licensed  
83 funeral director and embalmer to attend at least one such  
84 school in every three years.

85 The board, any of its members or any duly authorized  
86 employee of the board shall have the authority to enter  
87 at all reasonable hours for the purpose of inspecting the  
88 premises in which the business or profession of funeral  
89 directing is conducted or practiced or where embalming  
90 is practiced.

**ARTICLE 17. SANITARIANS.****§30-17-2. Board of sanitarians.**

1 There is hereby established a state board for the ex-  
2 amination and registration of professional sanitarians, to  
3 be known as the "West Virginia board of sanitarians."  
4 The board shall consist of four professional sanitarians,  
5 to be appointed by the governor, by and with the advice  
6 and consent of the Senate, at least one of whom shall be  
7 employed in the field of industrial sanitation. Each pro-  
8 fessional member shall have been engaged in active  
9 practice as a professional sanitarian in this state for at  
10 least five years prior to his appointment, and, except in  
11 the case of the original members of the board, shall have  
12 been registered in this state as a professional sanitarian  
13 as provided in this article. On or before the first day  
14 of July, one thousand nine hundred fifty-seven, the  
15 governor shall name the four original appointive members  
16 for terms of one, two, three and four years, respectively,  
17 beginning on that date. Thereafter, each appointment  
18 shall be for a term of four years, except that an ap-  
19 pointment to fill a vacancy shall be for the unexpired  
20 term.

21 All expenses of the board shall be paid solely from  
22 registration fees and renewal fees collected as provided  
23 in this article.

**ARTICLE 25. NURSING HOME ADMINISTRATORS.**

- §30-25-1. Definitions.
- §30-25-2. West Virginia nursing home administrators licensing board; crea-  
tion; appointment, qualification, term, etc., of members; vacan-  
cies; meetings, quorum; chairman; salaries and expenses.
- §30-25-3. Administrator's license required.
- §30-25-4. Qualifications for license; exceptions; application; fees.
- §30-25-5. Issuance of license; renewal of license; renewal fee; display of  
license.
- §30-25-6. Emergency permit.
- §30-25-7. Powers and duties of board.
- §30-25-8. Suspension or revocation of license or emergency permit.
- §30-25-9. Procedure for hearings.
- §30-25-10. Judicial review; appeal to supreme court of appeals; legal repre-  
sentation for board.
- §30-25-11. Severability.

**§30-25-1. Definitions.**

1 As used in this article, unless a different meaning  
2 appears from the context:

3 (1) The term "nursing home" means a nursing home  
4 as that term is defined in subdivision (a), section two,  
5 article five-c of chapter sixteen.

6 (2) The term "nursing home administrator" means  
7 an individual responsible for planning, organizing, di-  
8 recting and controlling a nursing home, or who in fact  
9 performs such functions, whether or not such indi-  
10 vidual has an ownership interest in the nursing home  
11 and whether or not such functions are shared with one  
12 or more other persons.

13 (3) The term "board" shall mean the West Virginia  
14 nursing home administrators licensing board created by  
15 this article.

16 (4) The term "person" or "applicant" shall mean an  
17 individual.

**§30-25-2. West Virginia nursing home administrators licensing board; creation; appointment, qualification, term, etc., of members; vacancies; meetings, quorum; chairman; salaries and expenses.**

1 There is hereby created a state board to be known  
2 and designated as the "West Virginia nursing home ad-  
3 ministrators licensing board" which shall consist of seven  
4 members, all of whom except a lay member, as provided  
5 for in section four-a, article one, chapter sixteen of this  
6 code, shall be appointed by the governor, by and with  
7 the advice and consent of the Senate. One of the members  
8 shall be a member of the medical profession whose prac-  
9 tice involves gerontology, one member shall be a licensed  
10 pharmacist, one member shall be a registered nurse with  
11 experience in the care of elderly patients, one member  
12 shall be a person with experience or education in the  
13 field of aging, and two such members shall be persons  
14 who have been engaged in the management of an operat-  
15 ing nursing home for four years immediately prior to the  
16 date of appointment, who shall hereinafter be referred  
17 to as nursing home administrators. The seventh member

18 shall be a lay member. No member of the board, other  
19 than the two nursing home administrators, shall have any  
20 direct or indirect financial or pecuniary interest in any  
21 nursing home in this state. Of the original board members  
22 appointed, the one who is a registered nurse shall serve  
23 for one year, the one who has experience or education in  
24 the field of aging shall serve for two years, the one who  
25 is a member of the medical profession shall serve for  
26 three years, the one who is a licensed pharmacist shall  
27 serve for four years, one of the two nursing home admin-  
28 istrators shall serve for five years, and the other nursing  
29 home administrator shall serve for six years. All sub-  
30 sequent appointments shall be for six years, except, that  
31 in case of a vacancy, the appointee shall be appointed for  
32 the remainder of the unexpired term. Any vacancy shall  
33 be filled by appointment of the governor, by and with the  
34 advice and consent of the Senate, from the same group as  
35 was represented by the outgoing member. All members of  
36 the board, unless sooner removed, shall continue to serve  
37 until their respective terms expire and until their succes-  
38 sors are appointed and have qualified.

**§30-25-3. Administrator's license required.**

1 After the effective date of this article, no person shall  
2 be or act as a nursing home administrator, except as  
3 provided in section nine hereof, unless he is a holder  
4 of a currently valid license or provisional license issued  
5 pursuant to this article.

**§30-25-4. Qualifications for license; exceptions; application; fees.**

1 (a) To be eligible for a license as a nursing home  
2 administrator a person must:  
3 (1) Be of good moral character;  
4 (2) Possess such qualifications and meet such reason-  
5 able standards as the board may prescribe pursuant to  
6 subsection (a), section seven of this article;  
7 (3) Pass the examination prescribed by the board in  
8 the subject of nursing home administration; and

9 (4) Have sufficient knowledge and soundness of judg-  
10 ment to be able to adequately discharge the functions of  
11 a nursing home administrator.

12 (b) Any person who holds a license or certificate as  
13 a nursing home administrator issued by any other state,  
14 the requirements for which license or certificate are  
15 found by the board to be at least as great as those pro-  
16 vided in this article may be granted a license without  
17 examination if he meets all of the other requirements  
18 for licensing in this state.

19 (c) Any applicant for any such license shall submit  
20 an application therefor at such time, in such manner,  
21 on such forms and containing such information as the  
22 board may, from time to time, by reasonable rules and  
23 regulations prescribe and pay to the board a license  
24 fee of one hundred dollars, which fee shall be returned  
25 to the applicant if he is denied a license.

**§30-25-5. Issuance of license; renewal of license; renewal fee; display of license.**

1 Whenever the board finds that an applicant meets all  
2 of the requirements of this article for a license as a nurs-  
3 ing home administrator, it shall forthwith issue to him  
4 such license; otherwise the board shall deny the same.  
5 The license shall be valid for a period ending on June  
6 thirty next ensuing and may be renewed without ex-  
7 amination upon application for renewal on a form pre-  
8 scribed by the board and payment to the board of a  
9 renewal fee of fifty dollars: *Provided*, That the board  
10 may deny an application for renewal for any reason  
11 which would justify the denial of the original application  
12 for a license. The board shall prescribe the form of li-  
13 censes and each such license shall be conspicuously dis-  
14 played by the licensee at the nursing home which he  
15 administers.

**§30-25-6. Emergency permit.**

1 If a licensed nursing home administrator dies or is un-  
2 able to continue as such from an unexpected cause, the  
3 owner, governing body or other appropriate authority



4 in charge of the nursing home involved may designate  
5 an acting administrator to whom the board may imme-  
6 diately issue an emergency permit if it finds such ap-  
7 pointment will not endanger the safety of the occupants  
8 of such nursing home. Such emergency permit shall be  
9 valid for a period determined by the board not to exceed  
10 six months and shall not be renewed. The fee for an  
11 emergency permit shall be fifty dollars.

**§30-25-7. Powers and duties of board.**

1 (a) The board shall:

2 (1) Examine applicants and determine their eligibility  
3 for a license or emergency permit as a nursing home  
4 administrator;

5 (2) Prepare, conduct and grade an apt and proper  
6 examination of applicants for a license and determine  
7 the satisfactory passing score thereon;

8 (3) Promulgate reasonable rules and regulations im-  
9 plementing the provisions of this article and the powers  
10 and duties conferred upon the board hereby, all of which  
11 reasonable rules and regulations shall be promulgated  
12 in accordance with the provisions of article three, chapter  
13 twenty-nine-a of this code;

14 (4) Issue, renew, deny, suspend or revoke licenses and  
15 emergency permits in accordance with the provisions of  
16 this article and, in accordance with the administrative  
17 procedures hereinafter provided, may review, affirm,  
18 reverse, vacate or modify its order with respect to any  
19 such denial, suspension or revocation;

20 (5) Develop, impose and enforce standards which  
21 must be met by individuals in order to receive a license  
22 as a nursing home administrator, which standards shall  
23 be designed to ensure that nursing home administrators  
24 will be individuals who are of good character and are  
25 otherwise suitable, and who, by training or experience  
26 in the field of institutional administration, are qualified  
27 to serve as nursing home administrators;

28 (6) Employ, direct, discharge and define the duties of

29 personnel necessary to effectuate the provisions of this  
30 article;

31 (7) Keep accurate and complete records of its pro-  
32 ceedings, certify the same as may be appropriate, and  
33 prepare, from time to time, a list showing the names and  
34 addresses of all licensees;

35 (8) Approve courses of study or training in the field of  
36 nursing home administration which sufficiently meet  
37 education and training requirements for nursing home  
38 administrators established by this article;

39 (9) Conduct a course of study or training of the type  
40 referred to in subdivision (8) of this subsection if such  
41 courses are not otherwise reasonably available to resi-  
42 dents of this state; and

43 (10) Take such other action as may be reasonably  
44 necessary or appropriate to effectuate the provisions of  
45 this article.

46 (b) All moneys paid to the board shall be accepted  
47 by a person designated by the board and deposited by  
48 him with the treasurer of the state and credited to an  
49 account to be known as the "West Virginia nursing home  
50 administrators licensing board fund." Reimbursement of  
51 all reasonable and necessary costs and expenses actually  
52 incurred by members, and by the board in the adminis-  
53 tration of this article shall be paid from such fund.

**§30-25-8. Suspension or revocation of license or emergency permit.**

1 (a) The board may at any time upon its own motion  
2 and shall upon the verified written complaint of any  
3 person, conduct an investigation to determine whether  
4 there are any grounds for the suspension or revocation  
5 of a license or emergency permit issued under the pro-  
6 visions of this article.

7 (b) The board shall suspend or revoke any license or  
8 emergency permit when it finds the holder thereof has:

9 (1) Obtained a license or emergency permit by means  
10 of fraud or deceit; or

11 (2) Failed or refused to comply with the provisions  
12 of this article, article five-c, chapter sixteen, or any rea-  
13 sonable rule and regulation promulgated by the board or  
14 any order or final decision of the board.

15 (c) The board shall also suspend or revoke any license  
16 or emergency permit if it finds the existence of any  
17 ground which would justify the denial of an application  
18 for such license or permit if application were then being  
19 made for it.

**§30-25-9. Procedure for hearings.**

1 (a) Whenever the board shall deny an application for  
2 any original or renewal license or deny an application  
3 for an emergency permit or shall suspend or revoke any  
4 license or emergency permit, it shall make and enter an  
5 order to that effect and serve a copy thereof on the ap-  
6 plicant or licensee, as the case may be, by certified mail,  
7 return receipt requested. Such order shall state the  
8 grounds for the action taken and shall require that any  
9 license or emergency permit suspended or revoked  
10 thereby shall be returned to the board by the holder  
11 within twenty days after receipt of said order.

12 (b) Any person adversely affected by any such order  
13 shall be entitled to a hearing thereon (as to all issues not  
14 excluded from the definition of a "contested case" set  
15 forth in article one, chapter twenty-nine-a of this code)  
16 if, within twenty days after receipt of a copy thereof, he  
17 files with the board a written demand for such hearing.  
18 A demand for hearing shall operate automatically to  
19 stay or suspend the execution of any order suspending  
20 or revoking a license or emergency permit or denying an  
21 application for a renewal license. The board may require  
22 the person demanding such hearing to give reasonable  
23 security for the costs thereof and if such person does  
24 not substantially prevail at such hearing such costs shall  
25 be assessed against him and may be collected by an action  
26 at law or other proper remedy.

27 (c) Upon receipt of a written demand for such hearing,  
28 the board shall set a time and place therefor not less

29 than ten and not more than thirty days thereafter. Any  
30 scheduled hearing may be continued by the board upon  
31 its own motion or for good cause shown by the person  
32 demanding the hearing.

33 (d) All of the pertinent provisions of article five,  
34 chapter twenty-nine-a of this code shall apply to and  
35 govern the hearing and the administrative procedures in  
36 connection with and following such hearing, with like  
37 effect as if the provisions of said article five were set  
38 forth in this subsection.

39 (e) Any such hearing shall be conducted by a quorum  
40 of the board. For the purpose of conducting any such  
41 hearing any member of the board shall have the power  
42 and authority to issue subpoenas and subpoenas duces  
43 tecum which shall be issued and served within the time,  
44 for the fees and shall be enforced, as specified in section  
45 one, article five of said chapter twenty-nine-a.

46 (f) At any such hearing the person who demanded  
47 the same may represent himself or be represented by an  
48 attorney-at-law admitted to practice before any circuit  
49 court of this state. Upon request by the board, it shall be  
50 represented at any such hearing by the attorney general  
51 or his assistants without additional compensation.

52 (g) After any such hearing and consideration of all  
53 of the testimony, evidence and record in the case, the  
54 board shall render its decision in writing. The written  
55 decision of the board shall be accompanied by findings  
56 of fact and conclusions of law as specified in section three,  
57 article five, chapter twenty-nine-a of this code, and a  
58 copy of such decision and accompanying findings and  
59 conclusions shall be served by certified mail, return receipt  
60 requested, upon the person demanding such hearing and  
61 his attorney of record, if any.

62 (h) The decision of the board shall be final unless  
63 reversed, vacated or modified upon judicial review thereof  
64 in accordance with the provisions of section ten of this  
65 article.

**§30-25-10. Judicial review; appeal to supreme court of appeals; legal representation for board.**

1 Any person adversely affected by a decision of the  
2 board rendered after a hearing held in accordance with  
3 the provisions of section nine of this article shall be  
4 entitled to judicial review thereof. All of the pertinent  
5 provisions of section four, article five, chapter twenty-  
6 nine-a of this code shall apply to and govern such  
7 judicial review with like effect as if the provisions of  
8 said section four were set forth in this section.

9 The judgment of the circuit court shall be final unless  
10 reversed, vacated or modified on appeal to the supreme  
11 court of appeals in accordance with the provisions of  
12 section one, article six, chapter twenty-nine-a of this code.

13 Legal counsel and services for the board in all appeal  
14 proceedings in any circuit court and the supreme court of  
15 appeals shall be provided by the attorney general or his  
16 assistants and in any circuit court by the prosecuting  
17 attorney of the county as well, all without additional com-  
18 pensation.

**§30-25-11. Severability.**

1 If any provision of this article or the application there-  
2 of to any person or circumstance is held unconstitutional  
3 or invalid, such unconstitutionality or invalidity shall not  
4 affect other provisions or applications of the article, and  
5 to this end the provisions of this article are declared  
6 to be severable.

**ARTICLE 26. HEARING-AID DEALERS AND FITTERS.**

- §30-26-1. Definitions.
- §30-26-2. Engaging in practice of hearing-aid dealer or trainee without license prohibited; exceptions.
- §30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.
- §30-26-4. Powers and duties of the state department of health.
- §30-26-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto.
- §30-26-6. Standards, scope and subject of examination.
- §30-26-7. Results of examination disclosed to applicant; issuance of license; fees.
- §30-26-8. Posting of license required; duplicate copies.

- §30-26-9. Renewal of license.
- §30-26-10. Notification of change of address of licensee required.
- §30-26-11. Reciprocity.
- §30-26-12. Temporary trainee permits.
- §30-26-13. Refusal to issue, suspension or revocation of license or trainee permit; false and deceptive advertising.
- §30-26-14. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.
- §30-26-15. Receipt required to be furnished to a person supplied with hearing aid; information required.
- §30-26-16. Hearing procedures; judicial review.
- §30-26-17. Prohibited acts and practices.
- §30-26-18. Offenses and penalties.
- §30-26-19. Injunction.
- §30-26-20. Construction and severability.

**§30-26-1. Definitions.**

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

3 (1) "Advertise," and any of its variants, means and  
4 includes the use of a newspaper, magazine, or other  
5 publication, book, notice, circular, pamphlet, letter, hand-  
6 bill, poster, bill, sign, placard, card, label, tag, window  
7 display, store sign, radio, television announcement or  
8 any other means or methods now or hereinafter employed  
9 to bring to the attention of the public the practice of  
10 fitting or dealing in hearing aids.

11 (2) "Board" means the West Virginia board of hearing-  
12 aid dealers.

13 (3) "Department" means the state department of  
14 health and when appropriate shall include the state di-  
15 rector of health.

16 (4) "Hearing aid" means any wearable device or in-  
17 strument or any combination thereof, designed for, rep-  
18 resented as or offered for sale for the purpose of aiding,  
19 improving or compensating for defective or impaired  
20 human hearing and shall include earmolds, parts, at-  
21 tachments or other accessories thereto, but excluding  
22 batteries and cords.

23 (5) "Hearing-aid dealer" and "hearing-aid fitter"  
24 means any person engaged in the practice of dealing in  
25 or fitting of hearing aids.

26 (6) "License" means any license issued under the  
27 provisions of this article and shall include a temporary  
28 license. "Licensee" means any person holding any such  
29 license.

30 (7) "Person" means and includes any individual, part-  
31 nership, trust, association, corporation or other like or-  
32 ganization, or any combination thereof.

33 (8) "Practice of dealing in or fitting of hearing aids"  
34 means and includes:

35 (a) The measurement or other testing of human hear-  
36 ing by means of an audiometer, or by any other means;

37 (b) The selection, adaptation, fitting or sale of hearing  
38 aids by a person for the use of another person; or

39 (c) The making of impressions for earmolds.

40 (9) "Sell" or "sale" or any variant thereof, means  
41 any transfer of title or of the right of use by lease, bail-  
42 ment or any other contract, but shall not include trans-  
43 actions between distributors, dealers or licensees where  
44 the item transferred is intended for sale.

45 (10) "Trainee" means any person training to become  
46 a licensed hearing-aid dealer or fitter.

**§30-26-2. Engaging in practice of hearing-aid dealer or trainee  
without license prohibited; exceptions.**

1 (a) Except as provided in subsections (b), (c) and  
2 (d) hereof no person shall, on or after the effective date  
3 of this article, engage in the practice of dealing in or  
4 fitting of hearing aids, either as a hearing-aid dealer,  
5 fitter or as a trainee, nor shall any person advertise or  
6 assume any such practice, without first being licensed  
7 or otherwise qualified under the provisions of this ar-  
8 ticle.

9 (b) If the applicant is a partnership, trust, association,  
10 corporation or other like organization, the application,  
11 in addition to such other information as the board may  
12 require, shall be accompanied by an application for a  
13 license for each person, whether owner or employee, of  
14 such applicant who serves in the capacity of a hearing-  
15 aid dealer or fitter, or shall contain a statement that such

16 applications for all such persons are submitted sepa-  
17 rately. No partnership, trust, association, corporation or  
18 other like organization shall permit any unlicensed per-  
19 son to sell hearing aids or to engage in the practice of  
20 dealing in or fitting of hearing aids.

21 (c) This article is not intended to prevent any person  
22 who is not licensed under this article from engaging in  
23 the practice of measuring human hearing for the purpose  
24 of selection of hearing aids, provided such person or or-  
25 ganization employing such person does not sell hearing  
26 aids or accessories thereto, except in the case of ear-  
27 molds to be used only for the purpose of audiologic evalu-  
28 ation.

29 (d) Any person who is licensed to practice medicine  
30 in this state or any person holding a degree in audiology  
31 may sell hearing aids or accessories thereto without ob-  
32 taining a license under this article.

**§30-26-3. West Virginia board of hearing-aid dealers created;  
members; qualifications; term; oath; salary and  
expenses; powers and duties.**

1 There is hereby created the West Virginia board of  
2 hearing-aid dealers, which shall be composed of five  
3 members to be appointed by the governor, by and with  
4 the advice and consent of the Senate. The members of  
5 the board shall be residents of this state. One member  
6 shall be a person licensed to practice medicine in this  
7 state and one member shall hold a degree in audiology  
8 from an accredited college or university. The remaining  
9 three members shall be persons having no less than  
10 five years' experience as hearing-aid dealers or fitters and  
11 shall hold a valid license under the provisions of this  
12 article, except that the hearing-aid dealers or fitters to  
13 be first appointed to the board shall obtain a license under  
14 the provisions of this article within six months following  
15 their appointment to the board.

16 The term of office of each member of the board shall  
17 be four years, excepting that as to the members first ap-  
18 pointed to the board, one shall be appointed for two



19 years; two shall be appointed for three years; and two  
20 shall be appointed for four years. A board member shall  
21 serve until his successor has been duly appointed and  
22 qualified and any vacancy in the office of a member shall  
23 be filled by appointment for the unexpired term of such  
24 member. Any member of the board shall be eligible for  
25 reappointment.

26 The board shall, annually at its meeting first succeeding  
27 July one, elect from its own members a chairman and  
28 vice chairman.

29 Each member of the board shall receive for each day  
30 actually engaged in the duties of his office, a per diem  
31 salary of fifty dollars and shall be reimbursed for all  
32 reasonable and necessary expenses actually incurred in  
33 the performance of his duties as a member of such board.  
34 All fees and other moneys collected by the board, pur-  
35 suant to the provisions of this article, shall be kept in a  
36 separate fund and shall be expended solely for the  
37 purposes of this article. The compensation for the mem-  
38 bers of the board and all expenses incurred under this  
39 article shall be paid from this special fund and no such  
40 compensation or expenses shall be paid from the general  
41 revenue fund of this state. All disbursements of funds  
42 necessary to carry out the provisions of this article shall  
43 be so disbursed only upon the authority of the board.

44 The board is hereby empowered, with the assistance  
45 of the department to generally supervise, regulate and  
46 control the practice of dealing in or fitting of hearing  
47 aids in this state, and in so doing, shall administer quali-  
48 fying examinations in accordance with the provisions of  
49 this article to test the knowledge and proficiency of all  
50 prospective licensees or trainees.

51 The board may purchase and maintain or rent audio-  
52 metric equipment and other facilities necessary to carry  
53 out the examination of applicants as provided in this  
54 article and may purchase such other equipment and  
55 supplies and employ such persons as it deems appropriate  
56 to carry out the provisions of this article.

57 The board shall promulgate reasonable rules and regu-  
58 lations in accordance with and subject to the provisions  
59 of chapter twenty-nine-a of this code:

60 (a) For the proper performance of its duties;

61 (b) To define and prescribe the ethical practice of  
62 dealing in or fitting of hearing aids for the safety, pro-  
63 tection and welfare of the public;

64 (c) To govern the time, place and manner of conduct-  
65 ing the examinations required by this article and the  
66 standard, scope and subject of such examinations, which  
67 examinations shall, as a minimum, conform with the  
68 standards, scope and subjects set forth in section six of  
69 this article and manner and form in which applications  
70 for such examinations shall be filed;

71 (d) To establish procedures for determining whether  
72 persons holding similar valid licenses from other states  
73 or jurisdictions shall be required to take and successfully  
74 pass the appropriate qualifying examination as a condi-  
75 tion for such licensing in this state.

**§30-26-4. Powers and duties of the state department of health.**

1 The administrative work of the board shall be per-  
2 formed by and in the state department of health. The  
3 department shall keep full and complete records of all  
4 of the proceedings of the board and of its accounts,  
5 which said records and accounts shall be open to public  
6 inspection at all reasonable times. The department is  
7 hereby authorized to assist in the supervision and ad-  
8 ministration of the qualifying examinations authorized  
9 and required by this article, to maintain for the board  
10 a register or record of persons who apply for a license  
11 or a temporary trainee permit as well as a register or  
12 record of the name and last-known business address of  
13 all persons to whom a license or trainee permit is issued  
14 pursuant to this article.

15 At the direction and request of the board the depart-  
16 ment shall conduct periodic inspections of the establish-  
17 ment and facilities of persons who are licensed to engage  
18 in the practice of dealing in or fitting of hearing aids and

19 shall report its findings and the results of such inspec-  
20 tions to the board.

21 When requested by the board, the department may  
22 assist the board generally in carrying out any of the  
23 powers and duties granted to the board, but none of the  
24 cost incidental to such assistance, powers, functions and  
25 duties given to the department pursuant to this article  
26 shall be borne from any of the appropriations made to  
27 the department, but shall be borne by the board and to  
28 this extent the department shall be entitled to reimburse-  
29 ment from the funds of the board.

**§30-26-5. Application for licenses; qualifications of applicants;  
fees; duties of the board with respect thereto.**

1 Each person desiring to obtain a license from the board  
2 to engage in the practice of dealing in or fitting of hearing  
3 aids shall make application to the board. The application  
4 shall be made in such manner and form as prescribed  
5 by the board and shall be accompanied by a fee of fifty  
6 dollars. The application shall state under oath that the  
7 applicant:

8 (1) Intends to maintain a permanent office or place  
9 of business in this state or that the applicant has at the  
10 time of application a permanent office or place of busi-  
11 ness in another state within a reasonable commuting  
12 distance from this state. The board shall determine and  
13 prescribe by regulation the term "reasonable distance"  
14 as used herein;

15 (2) Is a person of good moral character and that he  
16 has never been convicted of nor is presently under in-  
17 dictment for a crime involving moral turpitude;

18 (3) Is eighteen years of age or older;

19 (4) Has an education equivalent to a four-year course  
20 in an accredited high school; and

21 (5) Is free of chronic infectious or contagious dis-  
22 eases.

23 Any person who fails to meet any of the standards  
24 set forth in the next preceding paragraph shall not be

25 eligible or qualified to take the examination nor shall  
26 any such person be eligible or qualified to engage in the  
27 practice of dealing in or fitting of hearing aids.

28 The board, after first determining that the applicant  
29 is qualified and eligible in every respect to take the  
30 examination, shall notify the applicant that he has ful-  
31 filled all of the qualifications and eligibility require-  
32 ments as required by this section and shall advise him  
33 of the date, time and place for him to appear to be ex-  
34 amined as required by the provisions of this article and  
35 the regulations promulgated by the board pursuant to this  
36 article.

37 The board, with the aid and assistance of the depart-  
38 ment, shall give at least one annual examination of the  
39 type required by this article and may give such addi-  
40 tional examinations, at such times and places, as the board  
41 and the department may deem proper, giving consider-  
42 ation to the number of applications.

**§30-26-6. Standards, scope and subject of examination.**

1 The board by rules and regulations shall determine and  
2 set minimum standards to be met in the qualifying ex-  
3 amination provided for in this article, which examina-  
4 tion shall be designed to demonstrate the applicant's  
5 technical competency and other qualifications by:

6 (1) A test of knowledge in the following areas as they  
7 pertain to the fitting and sale of hearing aids:

8 (a) Basic physics of sound;

9 (b) The anatomy and physiology of the ear; and

10 (c) The function of hearing aids.

11 (2) Practical tests of proficiency in the following  
12 techniques as they pertain to the fitting of hearing aids:

13 (a) Pure tone audiometry, including air conduction  
14 testing;

15 (b) Live voice or recorded voice speech audiometry,  
16 including speech reception threshold testing and speech  
17 discrimination testing; and

- 18 (c) Masking when indicated and effective masking.  
19 (3) Evidence of:
- 20 (a) Ability to counsel the person or family who will  
21 receive the hearing aid relative to the care and use of  
22 the instrument;
- 23 (b) Knowledge regarding the medical and rehabili-  
24 tative facilities for hearing-handicapped children and  
25 adults in the area being served;
- 26 (c) Knowledge and understanding of the grounds for  
27 revocation, suspension, or probation of a license as out-  
28 lined in this article; and
- 29 (d) Knowledge and understanding of criminal of-  
30 fenses as outlined in this article.

**§30-26-7. Results of examination disclosed to applicant; issu-  
ance of license; fees.**

1 (a) Any person who has taken the examination shall  
2 be notified by the board within thirty days following  
3 such examination as to whether he has satisfactorily  
4 passed the examination. If such person has failed to pass  
5 the examination, he shall be notified of the reasons for  
6 such failure and the particular portions of the examina-  
7 tion which he failed to pass. Such person shall also be  
8 advised of his right to take the examination in the  
9 future.

10 If such applicant has satisfactorily passed the exami-  
11 nation, he shall be advised of that fact by the board  
12 and, upon payment of twenty dollars, the board shall  
13 register the applicant as a licensee and shall issue a  
14 license to such applicant. Such license shall remain in  
15 effect for a period of one year from the date of its issu-  
16 ance.

17 (b) Within six months following the effective date  
18 of this article, any applicant for a license who has been  
19 engaged in the practice of dealing in or fitting of hearing  
20 aids in this state for a period of three years immediately  
21 prior to such effective date, shall be so registered and

22 issued a license without being required to undergo or  
23 take the examination required by this article: *Provided*,  
24 That such person meets all other requirements of this  
25 article and the rules and regulations promulgated pur-  
26 suant thereto. All of the fees which such prospective  
27 licensee would be otherwise required to pay shall be  
28 paid by such prospective licensee in the same manner  
29 and to the same extent as if such prospective licensee  
30 had not so engaged in such practice in this state for such  
31 three-year period.

32 (c) The issuance of a license by the board must have  
33 the concurrence of a majority of its members.

**§30-26-8. Posting of license required; duplicate copies.**

1 Each person who holds a hearing-aid dealer's or fitter's  
2 license and engages in the practice of dealing in the fitting  
3 of hearing aids shall display such license in a conspicu-  
4 ous place in his office or place of business at all times.  
5 Each person who maintains more than one office or place  
6 of business shall post a duplicate copy of the license  
7 at each location. The board shall issue duplicate copies  
8 of a license upon receipt of a properly completed applica-  
9 tion and payment of one dollar for each copy requested.

**§30-26-9. Renewal of license.**

1 A person who is engaged in the practice of dealing in  
2 or fitting of hearing aids shall annually pay to the board  
3 a fee of forty dollars for a renewal of his license. A  
4 thirty-day period shall be allowed after expiration of a  
5 license during which any such license may be renewed  
6 on payment of a fee of forty-five dollars to the board.  
7 After the expiration of such thirty-day period, the board  
8 may renew such license upon the payment of fifty dollars  
9 to the board. No person who applies for renewal, whose  
10 license was suspended for failure to renew, shall be re-  
11 quired to submit to any examination as a condition of  
12 renewal if application is made within two years following  
13 the date such license was so suspended.

**§30-26-10. Notification of change of address of licensee required.**

1 Every licensee under the provisions of this article shall  
2 notify the board in writing of the address of each place  
3 where he is, or intends to be, engaged in the practice  
4 of dealing in or fitting of hearing aids. The board shall  
5 cause to be kept a record of each place of business of  
6 every such licensee. Any notice required to be given by  
7 the board or the department to any such licensee shall  
8 be given by mailing the same to him at the address shown  
9 upon such records.

**§30-26-11. Reciprocity.**

1 Whenever the board determines that another state or  
2 jurisdiction has requirements for the licensing of persons  
3 to engage in the practice of dealing in or fitting of  
4 hearing aids, which requirements meet the minimum  
5 requirements and standards set forth in this article and  
6 the rules and regulations promulgated pursuant to this  
7 article, the board may, in the manner prescribed by its  
8 rules and regulations, issue a license without the exami-  
9 nation required by this article, to any person holding a  
10 license in such other state or jurisdiction, upon applica-  
11 tion, providing such prospective licensee meets all of the  
12 requirements set forth in this article and the rules and  
13 regulations of the board with respect thereto. All of the  
14 fees which such prospective licensee would be otherwise  
15 required to pay, shall be paid by such prospective licensee  
16 in the same manner and to the same extent as if such  
17 prospective licensee were not qualified to engage in such  
18 other state or jurisdiction.

**§30-26-12. Temporary trainee permits.**

1 A person who meets all of the qualifications and  
2 requirements set forth in subdivision (2), section five of  
3 this article may obtain a temporary trainee permit upon  
4 application to the board. All such applications for a  
5 temporary trainee permit shall be made in the manner  
6 and form prescribed in the rules and regulations of the  
7 board.

8     Upon receiving an application for a temporary trainee  
9     permit as prescribed in this section, accompanied by a fee  
10    of twenty-five dollars, the board shall issue such permit  
11    which shall entitle the applicant trainee to engage in the  
12    practice of dealing in or fitting of hearing aids for a  
13    period of one year under the supervision and control of a  
14    licensee, such licensee to be responsible for the super-  
15    vision, training and control of such trainee.

16    If a person holding a temporary trainee permit under  
17    this section has not successfully passed the licensing  
18    examination within one year from the date of issuance of  
19    such permit, the permit may be renewed or reissued  
20    under such conditions as the board may require in its  
21    rules and regulations for an additional one-year period  
22    upon the payment of a fee of fifty dollars. No such tem-  
23    porary trainee permit shall be reissued, renewed or  
24    extended more than once.

**§30-26-13. Refusal to issue, suspension or revocation of license  
or trainee permit; false and deceptive advertising.**

1     (a) The board may refuse to issue or renew, or may  
2     suspend or revoke any license or trainee permit for any  
3     one, or any combination of the following causes: Viola-  
4     tion of a rule or regulation governing the ethical practice  
5     of dealing in or fitting of hearing aids promulgated by  
6     the board under the authority granted by this article;  
7     conviction of a felony, as shown by a certified copy of the  
8     record of the court wherein such conviction was had  
9     after such conviction has become final; the obtaining of  
10    or the attempt to obtain a license, money or any other  
11    thing of value, by fraudulent misrepresentation; mal-  
12    practice; continued practice of dealing in or fitting of  
13    hearing aids by a person knowingly having a chronic  
14    infectious or contagious disease; habitual drunkenness or  
15    addiction to the use of a controlled substance as defined  
16    in chapter sixty-a of this code; advertising, practicing or  
17    attempting to practice under a name other than one's  
18    own; advertising by means of or selling by the use of  
19    knowingly false or deceptive statements.

20    (b) False and deceptive advertisement shall constitute



21 unethical practice and the board, by rules and regulations  
22 may regulate and proscribe acts considered by it to be  
23 false and deceptive advertisement.

24 The rules and regulations promulgated pursuant to this  
25 subsection shall include prohibitions against (1) advertis-  
26 ing a particular model or type of hearing aid for sale  
27 when purchasers or prospective purchasers responding to  
28 the advertisement cannot purchase the advertised model  
29 or type, where it is established that the purpose of the  
30 advertisement is to obtain prospects for the sale of a  
31 different model or type than that advertised, (2) repre-  
32 senting that the service or advice of a person licensed to  
33 practice medicine will be used or made available in the  
34 selection, fitting, adjustment, maintenance or repair of  
35 hearing aids when that is not true, or using the words  
36 "doctor," "clinic" or similar words, abbreviations or sym-  
37 bols which tend to connote the medical profession when  
38 such use is not accurate, and (3) advertising a manu-  
39 facturer's product or using a manufacturer's name or  
40 trademark which implies a relationship with the manu-  
41 facturer that does not exist or using the words "audiolo-  
42 gist," "state licensed clinic," "state registered," "state  
43 certified," or "state approved" or any other term, abbrevi-  
44 ation or symbol when it would falsely give the impres-  
45 sion that service is being provided by persons holding a  
46 degree in audiology or trained in clinical audiology, or  
47 that licensee's service has been recommended by the  
48 state when such is not the case.

49 (c) The refusal to issue or renew a license or trainee  
50 permit or the suspension or revocation of a license or  
51 trainee permit by the board must have the concurrence  
52 of a majority of the members of the board.

**§30-26-14. Matters to be ascertained by licensee prior to the  
sale or fitting of hearing aids.**

1 (a) Every licensee engaged in the practice of dealing in  
2 or fitting of hearing aids shall, prior to the sale or the  
3 fitting of a hearing aid intended to be worn or used by any  
4 person, first ascertain whether such person has within  
5 the next preceding six months been examined for the

6 defective or impaired hearing condition sought to be  
7 relieved by an otolaryngologist or other duly licensed  
8 physician. If such person has been so examined, the  
9 licensee shall, prior to the sale or fitting of such hearing  
10 aid, determine the recommendations and consult with  
11 such otolaryngologist or physician. If such person has  
12 not been so examined, the licensee shall not proceed  
13 to the sale or fitting of a hearing aid until after such  
14 person has been so examined.

15 (b) Prior to the sale of a hearing aid, every licensee  
16 shall be required to advise in writing, in the manner  
17 and form prescribed by the board, the person to whom  
18 he intends to sell or fit with such hearing aid that such  
19 person's best interest would be served by consulting an  
20 otolaryngologist or other physician specializing in dis-  
21 eases of the ear, or any other physician duly licensed to  
22 practice medicine in this state, if any of the following  
23 conditions are found upon examination of such person:

24 (1) Visible congenital or traumatic deformity of the  
25 ear;

26 (2) History of active ear discharge within the pre-  
27 vious ninety days;

28 (3) History of a sudden or rapidly progressive hearing  
29 loss within the previous ninety days;

30 (4) Acute or chronic dizziness;

31 (5) Unilateral hearing loss of sudden or recent onset  
32 within the previous ninety days; or

33 (6) Significant air-bone gap.

34 (c) A copy of any writing or form required to be  
35 given to a prospective purchaser or other person by the  
36 terms of this section shall be retained in the records of  
37 the licensee for a period of seven years following the  
38 issuance of each writing.

**§30-26-15. Receipt required to be furnished to a person sup-  
plied with hearing aid; information required.**

1 Any person who practices the fitting and sale of hear-  
2 ing aids shall deliver to each person supplied with a

3 hearing aid a receipt which shall contain his signature  
4 and show his business address and the number of his  
5 license, together with specifications as to the make and  
6 model of the hearing aid furnished, and shall contain  
7 the full terms of the sale. If a hearing aid which has  
8 been previously sold at retail is sold, the receipt shall  
9 be clearly marked as "used" or "reconditioned" which-  
10 ever is applicable, with terms of guarantee, if any.

11 Such receipt shall be in the manner and form as pre-  
12 scribed by the board in its rules and regulations. Such  
13 rules and regulations shall prescribe the type and size  
14 of print to be used in such receipt and the receipt shall  
15 set forth such additional information as the board may  
16 prescribe. A copy of such receipt shall be retained in  
17 the records of the licensee for a period of seven years  
18 following the issuance of such receipt.

**§30-26-16. Hearing procedures; judicial review.**

1 Any person, including a person who brings a complaint  
2 against a licensee or trainee before the board, adversely  
3 affected by any decision, ruling or order of the board  
4 shall be entitled to a hearing before the board. The hear-  
5 ing may be held by the board or a majority thereof either  
6 in the county wherein the licensee, trainee, prospective  
7 licensee or prospective trainee resides or may be held  
8 in the county wherein the person adversely affected re-  
9 sides or may be so held in some other county as the  
10 board may direct. All of the pertinent provisions of  
11 article five, chapter twenty-nine-a of this code shall apply  
12 to any hearing held by the board and the administrative  
13 procedures in connection with and following such hear-  
14 ing shall apply with like effect as if the provisions of  
15 said article five were set forth in extenso in this section.  
16 For the purpose of conducting such hearing the board  
17 shall have the power and authority to issue subpoenas  
18 and subpoenas duces tecum in accordance with the pro-  
19 visions of section one, article five, chapter twenty-nine-a.  
20 Any such hearing shall be held within thirty days after  
21 the date upon which a request therefor was made. All  
22 requests for hearings shall be made in writing to the

23 board by certified or registered mail, return receipt re-  
24 quested. The board may postpone or continue any hear-  
25 ing on its own motion or upon application for good cause  
26 shown.

27 Any person, including a person who brings a complaint  
28 against a licensee or trainee before the board, who may  
29 be adversely affected by any ruling or order made or  
30 entered by the board following a hearing, shall be entitled  
31 to judicial review of such order, in accordance with the  
32 provisions of section four, article five, chapter twenty-  
33 nine-a of this code and the provisions of said section four  
34 shall apply to and govern such appeal with like effect  
35 as if the provisions of said section four were set forth in  
36 extenso in this section and the provisions of article six  
37 of said chapter twenty-nine-a shall apply with respect  
38 to appeals to the supreme court of appeals in the same  
39 manner.

**§30-26-17. Prohibited acts and practices.**

1 Any of the following acts are hereby prohibited and  
2 shall be punishable under section eighteen of this article  
3 and shall also constitute unethical practice and no person  
4 shall:

5 (1) Sell, barter or offer to sell or barter a license  
6 issued pursuant to this article.

7 (2) Purchase or procure by barter any such license  
8 with intent to use it as evidence of the holder's qualifica-  
9 tions to engage in the practice of dealing in or fitting of  
10 hearing aids.

11 (3) Alter materially a license issued pursuant to this  
12 article.

13 (4) Use or attempt to use as a valid license any license  
14 which has been purchased, fraudulently obtained,  
15 counterfeited or materially altered.

16 (5) Willfully make any false statement in an applica-  
17 tion for license or for renewal thereof.

18 (6) Advertise for the mail-order sale of hearing aids

19 in any advertising medium or sell hearing aids by mail  
20 to any person other than distributors, dealers or those  
21 excluded from the provisions of this article.

**§30-26-18. Offenses and penalties.**

1 Any person who shall engage in the practice of dealing  
2 in or fitting of hearing aids without qualifying to do so  
3 under the provisions of this article or any person who  
4 commits any of the acts prohibited under the provisions  
5 of section seventeen of this article shall be guilty of a  
6 misdemeanor, and, upon conviction for the first offense,  
7 shall be fined not less than one hundred dollars nor more  
8 than five hundred dollars or imprisoned in the county jail  
9 for not more than six months, or be subject to both such  
10 fine and imprisonment, and for the second or any sub-  
11 sequent offense, shall be fined not less than five hundred  
12 dollars nor more than one thousand dollars or imprisoned  
13 in the county jail for not less than thirty days nor more  
14 than one year or be subject to both such fine and im-  
15 prisonment. Each sale made in violation of this article  
16 shall constitute a separate offense. Magistrates shall have  
17 concurrent jurisdiction with circuit courts for the en-  
18 forcement of this article.

**§30-26-19. Injunction.**

1 Notwithstanding the existence of any other remedy,  
2 the board may, in the manner provided by law, maintain  
3 an action for an injunction against any person to restrain  
4 or prevent the practice of dealing in or fitting of hearing  
5 aids when such person repeatedly refuses to obtain a  
6 license therefor and continues such practice without first  
7 obtaining a license therefor in the manner hereinbefore  
8 provided, and an action for an injunction may be main-  
9 tained for any continued and repeated violation of any  
10 of the provisions of this article and the rules and regu-  
11 lations promulgated pursuant thereto.

**§30-26-20. Construction and severability.**

1 The provisions of this article and the regulations  
2 promulgated thereunder shall be liberally construed so as  
3 to carry into effect its purposes and to protect the health,  
4 safety and welfare of the public.

5 If any provision of this article or the application thereof  
 6 to any person or circumstance shall be held invalid, the  
 7 remainder of the article and the application of such  
 8 provision to other persons or circumstances shall not be  
 9 affected thereby.

**ARTICLE 27. BOARD OF BARBERS AND BEAUTICIANS.**

- §30-27-1. Board of barbers and beauticians; appointment, qualifications and terms of board members; compensation and expenses of members; powers and duties of board.
- §30-27-2. Revocation of license for violation.
- §30-27-3. Qualifications of applicants; fees; examinations; licensure.
- §30-27-4. Renewal of license; fee; penalty for late renewal; withdrawal from active practice.
- §30-27-5. Student's permit; qualifications; fee.
- §30-27-6. Display of license.
- §30-27-7. Shop to be managed by licensed barbers and beauticians; number of junior barbers or beauticians permitted; restrictions as to other businesses; sign; advertising of prices prohibited.
- §30-27-8. License to own or operate schools of barbering or beauty culture; application for license; qualifications; inspection; license fee; rules and regulations; suspension, etc., of license; qualifications and registration of instructors; registration fee; administrative procedures.
- §30-27-9. Health certificate and photograph required.
- §30-27-10. Requirements to operate shops and schools; sanitary rules and regulations.
- §30-27-11. Grounds for cancellation of or refusal to issue or renew license.
- §30-27-12. Violation to constitute misdemeanor; penalty; concurrent jurisdiction; injunction.
- §30-27-13. Chapter thirty, article one, applicable to board.
- §30-27-14. Collections and expenditures; disposition of funds.
- §30-27-15. Validity of certificates of registration and rules issued by board of barbers and beauticians.
- §30-27-16. Separability; conflicting acts repealed.

**§30-27-1. Board of barbers and beauticians; appointment, qualifications and terms of board members; compensation and expenses of members; powers and duties of board.**

1 (a) The state committee of barbers and beauticians,  
 2 heretofore established, is continued as the board of bar-  
 3 bers and beauticians, and all members of the committee,  
 4 serving for a term which has not expired on the effective  
 5 date of this article, shall continue to serve the terms for  
 6 which they were appointed. The board shall consist of  
 7 four professional members to be appointed by the gov-  
 8 ernor, by and with the advice and consent of the Senate,

9 and one lay member to be appointed in accordance with  
10 the provisions of section four-a, article one of this chap-  
11 ter. Of the four professional members, one shall be an  
12 employing barber, one an employee barber, one an em-  
13 ploying beautician and one an employee beautician. Each  
14 professional member of the board shall have been en-  
15 gaged within this state in the practice of barbering or  
16 beauty culture, as the case may be, for a period of eight  
17 years immediately prior to his appointment, and no  
18 more than two of the four professional members may  
19 belong to the same political party.

20 (b) On or before the thirtieth day of June of each  
21 year the governor shall appoint one member of the board  
22 to serve for a term of four years, to begin on the first  
23 day of July. No professional member of the board may  
24 serve for more than two complete terms.

25 (c) The board shall designate one of its members as  
26 chairperson.

27 (d) Each member of the board shall receive as com-  
28 pensation a per diem of twenty-five dollars for each day  
29 of attendance at board sessions, but such compensation  
30 for each member shall not exceed the sum of five hun-  
31 dred dollars in any calendar year. Each member shall  
32 be reimbursed for actual and necessary expenses incurred  
33 in the performance of duty, upon presentation of an  
34 itemized sworn statement thereof.

35 (e) The board shall examine all applicants for licen-  
36 sure and shall issue licenses to those entitled thereto and  
37 collect examination and licensure fees, in accordance with  
38 regulations promulgated by the board of health pursuant  
39 to article fourteen, chapter sixteen of this code.

40 (f) It shall be unlawful for any person to practice or  
41 offer to practice barbering, beauty culture or manicuring  
42 in this state without first obtaining a license for such  
43 purposes from the board of barbers and beauticians.

**§30-27-2. Revocation of license for violation.**

1 For violation of any regulation promulgated by the  
2 board of health, the board of barbers and beauticians

3 may cancel and revoke the license issued such violator,  
4 and may refuse to renew or reissue the same.

**§30-27-3. Qualifications of applicants; fees; examinations; licensure.**

1 An applicant for licensure as a barber, beautician or  
2 manicurist shall present satisfactory evidence that he or  
3 she is at least eighteen years of age, of good moral char-  
4 acter and temperate habits, has completed at least the  
5 eighth grade of school, or the equivalent thereof, and  
6 has been graduated from a school of barbering or beauty  
7 culture approved by the state board of barbers and beau-  
8 ticians, or in the case of a manicurist has successfully  
9 completed an approved course in manicuring in such a  
10 school, and shall transmit with his application an exam-  
11 ination fee of twenty dollars. The examination shall be  
12 of such character as to determine the qualifications and  
13 fitness of the applicant to practice barbering, beauty  
14 culture or manicuring as defined by this article, and shall  
15 cover such subjects germane to the inquiry as the board  
16 may deem proper. If an applicant for licensure as a  
17 barber or beautician successfully passes such examina-  
18 tion and is otherwise duly qualified, as required by this  
19 section, the board shall license the applicant as a duly  
20 qualified junior barber or beautician, for which license,  
21 or renewal thereof, the fee shall be five dollars. Upon  
22 proof that the holder of such a license has served as a  
23 junior barber or beautician for a period of not less than  
24 twelve months from the original date of such license,  
25 accompanied by a certificate of health from a duly licensed  
26 physician, the board shall issue to the applicant a license  
27 authorizing the applicant to practice barbering or beauty  
28 culture in this state. Any person who is able to furnish  
29 satisfactory proof that he has practiced barbering or  
30 beauty culture for at least twelve months prior to exam-  
31 ination and any applicant for license as a manicurist,  
32 may be licensed as a duly qualified barber, beautician or  
33 manicurist immediately after he has passed the exam-  
34 ination. The board shall charge ten dollars for the issu-  
35 ance or renewal of a license.



36 Any person who meets the requirements of this sec-  
37 tion as to age, character and health, who is a graduate  
38 of a recognized school of barbering or beauty culture in  
39 another state, or has successfully completed an approved  
40 course in manicuring in such a school, and who holds a  
41 current license as a registered barber, beautician or mani-  
42 curist in another state, may file with the board an appli-  
43 cation for licensure without examination, together with  
44 a fee of twenty dollars. If in the opinion of the board  
45 such applicant has had a prescribed course of instruction  
46 in barbering, beauty culture or manicuring equivalent  
47 to that required in this state at the time such course was  
48 completed, or is otherwise properly qualified, the board  
49 may without examination issue to such applicant a license  
50 as a duly qualified barber, beautician or manicurist.

**§30-27-4. Renewal of license; fee; penalty for late renewal;  
withdrawal from active practice.**

1 Every licensed barber, beautician or manicurist who de-  
2 sires to continue in active practice or service shall,  
3 annually upon or before the first day of January, renew  
4 his license and pay an annual renewal fee of ten dollars.  
5 For any renewal which is more than thirty days late, a  
6 penalty of two dollars shall be added to the regular  
7 renewal fee. Every licensed barber, beautician or mani-  
8 curist who does not desire to continue in active practice,  
9 shall notify the board in writing, and shall during such  
10 period, be listed by the board as being inactive, and shall  
11 not be required to renew his license until such time as he  
12 shall again become active, and during such inactive  
13 period he or she shall not be liable for any renewal fees.

**§30-27-5. Student's permit; qualifications; fee.**

1 All students, before entering upon their studies in  
2 approved schools of barbering or beauty culture in this  
3 state, shall apply for and receive a student's permit from  
4 the board. The application shall be upon forms provided  
5 by the board and shall include a health certificate from a  
6 duly licensed physician. An applicant for licensure as a  
7 student shall present satisfactory evidence that he or she  
8 is at least seventeen years of age, of good moral character

9 and temperate habits, and has completed at least the  
10 eighth grade of school or the equivalent thereof. Upon  
11 receipt of a fee of five dollars, the board shall license each  
12 qualified applicant as a student barber, beautician or  
13 manicurist and shall issue the appropriate student's per-  
14 mit, which shall be good during the prescribed period of  
15 study for such student. A student may perform any or all  
16 acts constituting barbering, beauty culture or manicuring  
17 in a school of barbering or beauty culture under the  
18 immediate supervision of a registered instructor, but not  
19 otherwise.

**§30-27-6. Display of license.**

1 Every person practicing barbering, beauty culture or  
2 manicuring and every student and junior barber and  
3 beautician shall display his license or renewal thereof in  
4 a conspicuous place in the shop wherein he practices or is  
5 employed and whenever required shall exhibit such  
6 license to the state board of barbers and beauticians or its  
7 authorized representative.

**§30-27-7. Shop to be managed by licensed barbers and beauticians; number of junior barbers or beauticians permitted; restrictions as to other businesses; sign; advertising of prices prohibited.**

1 Every barber or beauty shop in this state shall be  
2 operated under the supervision and management of a  
3 barber or beautician who is licensed as such in this state.  
4 Each barbershop in this state may employ at least one  
5 junior barber therein. However, in shops regularly em-  
6 ploying more than three licensed barbers only one such  
7 junior barber may be employed for every three such  
8 licensed barbers, but in no event can more than three  
9 such junior barbers be employed in any one barbershop,  
10 and each beauty shop shall have the right to employ one  
11 junior beautician for each licensed beautician therein. No  
12 business or trade other than that of barbering shall be  
13 conducted in a barbershop and no business or trade  
14 other than beauty culture shall be conducted in a beauty  
15 shop, except the display or sale, or both, of commodities or  
16 other articles used in connection with barbering or beau-

17 ty culture, and no such barber or beauty shop shall be  
18 operated in a store, dwelling house, or other building or  
19 space used for any purpose other than barbering or beau-  
20 ty culture unless such barber or beauty shop is separated  
21 by stationary partitions extended from floor to ceiling:  
22 *Provided*, That nothing in this article shall be construed  
23 as prohibiting a barbershop from carrying on the business  
24 of shoe shining or manicuring or both shoe shining and  
25 manicuring. A suitable sign shall be displayed at the  
26 main entrance of all barber and beauty shops, plainly  
27 indicating the business conducted therein: *Provided, how-*  
28 *ever*, That no sign shall be displayed outside any barber  
29 or beauty shop or inside the same, so as to be clearly  
30 visible from the outside and for the ostensible purpose  
31 of attracting trade, which in any way advertises the  
32 prices to be charged in such barber or beauty shop for  
33 services to be therein performed.

**§30-27-8. License to own or operate schools of barbering or beauty culture; application for license; qualifications; inspection; license fee; rules and regulations; suspension, etc., of license; qualifications and registration of instructors; registration fee; administrative procedures.**

1 No person, firm or corporation, whether public or pri-  
2 vate, and whether organized for profit or not, shall own  
3 or operate a school of barbering or beauty culture in this  
4 state without first obtaining a license so to do from the  
5 board. The application for such license shall be made in  
6 writing on forms prescribed and furnished by the board  
7 and shall be signed and verified by the applicant. The  
8 applicant shall, in addition to such other information as  
9 may be reasonably required by the board, furnish evi-  
10 dence that (a) the applicant is professionally competent  
11 and financially responsible, (b) adequate physical facili-  
12 ties will be available for the school, and (c) persons  
13 teaching or instructing therein are registered by the  
14 board as duly qualified instructors. If an applicant desires  
15 to own or operate more than one school of barbering or  
16 beauty culture, a separate application shall be made and  
17 a separate license shall be issued for each.

18 All applicants for a license to own or operate a school of  
19 barbering or beauty culture shall permit an inspection of  
20 such proposed school by the inspectors appointed pur-  
21 suant to subsection (d), section one, article fourteen,  
22 chapter sixteen of this code to determine whether it is  
23 properly fitted and equipped for instruction in barbering  
24 or beauty culture. The board of health shall promulgate  
25 reasonable rules and regulations to implement and make  
26 effective the powers, duties and responsibilities vested in  
27 such board in connection with the licensing of schools of  
28 barbering and beauty culture. If the applicant has met  
29 all of the standards and qualifications prescribed herein  
30 by the board of health and has complied with the rules  
31 and regulations pertaining to the issuance of the license  
32 applied for, the board shall issue such license to the appli-  
33 cant. Thereafter, the board may suspend, revoke or refuse  
34 to renew the license of a school whenever it fails to meet  
35 the minimum standards and qualifications required for  
36 the issuance of an original license. The director of health  
37 or his designees shall administer and enforce such actions  
38 of the board.

39 The license fee for each school of barbering and for  
40 each school of beauty culture shall be twenty-five dollars  
41 annually, to be paid in such manner as the board may  
42 prescribe, on or before January first of each year. The  
43 license shall be permanently displayed in the school, and  
44 a suitable sign shall be kept on the front of the school  
45 which shall plainly indicate that a school of barbering or  
46 beauty culture is operated therein.

47 The board of health shall make reasonable rules and  
48 regulations prescribing the standards and requirements  
49 to be met by applicants for registration as duly qualified  
50 instructors in schools of barbering or beauty culture.  
51 Such rules and regulations may provide for the issuance  
52 of certificates for instructors, including temporary certifi-  
53 cates, and shall prescribe minimum qualifications as  
54 to age, education and training for applicants for such  
55 certificates. Each registered instructor in barbering and  
56 beauty culture shall pay an initial registration fee of five  
57 dollars, and shall renew his certificate annually and pay

58 a renewal fee of five dollars on or before the first day of  
59 January of each year. An expired certificate may be  
60 reinstated only upon the payment of all lapsed renewal  
61 fees, unless such instructor shall have notified the board  
62 that he or she desires to be placed on an inactive status  
63 during which time he or she shall not be liable for any  
64 renewal fees. The applicant for reinstatement shall also  
65 be required to meet the qualifications for registration in  
66 effect at the time application for reinstatement is made.

67 Recognizing that all of the provisions of chapter  
68 twenty-nine-a of this code are fully applicable to any and  
69 all administrative procedures, and the right of judicial  
70 review, in connection with the provisions of this article,  
71 but also recognizing that the question has been raised as  
72 to whether rules and regulations adopted under the pro-  
73 visions of this section must be promulgated in accordance  
74 with the provisions of said chapter twenty-nine-a, it is  
75 hereby expressly provided that all such rules and regula-  
76 tions shall be promulgated in compliance with the pro-  
77 visions of said chapter twenty-nine-a.

**§30-27-9. Health certificate and photograph required.**

1 No person shall practice barbering, beauty culture or  
2 manicuring, or serve as a student or junior barber or  
3 beautician in this state while having an infectious, con-  
4 tagious or communicable disease. No person shall be li-  
5 censed as a barber, beautician, manicurist or student until  
6 he or she shall have obtained a certificate of health from  
7 a licensed physician under article three of this chapter  
8 certifying such person to be free of all infectious, con-  
9 tagious and communicable diseases. Such certificate shall  
10 be filed with the state board of barbers and beauticians  
11 within ten days after the examination of the person is  
12 made by the physician and a photograph of the applicant  
13 must accompany the application with such certificate.  
14 The certificate shall be in such form as the board may  
15 prescribe. The board shall be empowered to compel any  
16 registered barber, beautician, manicurist, student, or  
17 junior barber or beautician, to submit to a physical ex-  
18 amination and file a certificate of health at any reason-  
19 able time.

**§30-27-10. Requirements to operate shops and schools; sanitary rules and regulations.**

1 It shall be unlawful for any person, firm or corporation  
2 to own or operate a beauty shop or barbershop, or a school  
3 of beauty culture or barbering, or to act as a barber,  
4 beautician or manicurist, unless:

5 (a) Such beauty shop, barbershop, or school of beauty  
6 culture or barbering shall before opening its place of  
7 business to the public, have been approved by the board  
8 as having met all the requirements and qualifications for  
9 such places of business as are required by this article  
10 and for this purpose. It shall be the duty of the owner  
11 or operator of each such beauty shop, barbershop, or  
12 school of beauty culture or barbering to notify the board,  
13 in writing, at least ten days before the proposed opening  
14 date of such shop or school, whereupon it shall become  
15 the duty of the board, through the inspectors herein  
16 provided for, to inspect such shop or school. Upon given  
17 notice of the opening of any such shop or school, the  
18 owner or operator thereof shall pay to the board an  
19 inspection fee of twenty-five dollars. In the event the  
20 shop or school fails to meet the requirements of this  
21 article, and is not approved, the inspection fee shall be  
22 returned to the person paying same. Any shop or school  
23 meeting the prescribed requirements shall be granted  
24 a license permitting it to do business as such. If, how-  
25 ever, after the lapse of ten days after the giving of such  
26 notice of opening to the board, an inspection is not made  
27 or such certificate of opening has not been granted or  
28 refused, the owner or operator of such shop or school  
29 may open provisionally subject to later inspection and to  
30 all other provisions, rules and regulations provided for in  
31 this article;

32 (b) All such shops and schools, and bathrooms, toilets  
33 and adjoining rooms used in connection therewith, are  
34 kept clean, sanitary, well-lighted and ventilated at all  
35 times. The use of chunk alum, powder puffs and styptic  
36 pencils in any such shop is prohibited;

37 (c) Each barber, beautician, manicurist, instructor,  
38 junior barber and beautician, and student, shall thor-

39 oughly cleanse his or her hands with soap and water im-  
40 mediately before serving any patron;

41 (d) Each patron is served with clean, freshly laun-  
42 dered linen which is kept in a closed cabinet used for  
43 that purpose alone. All linens, immediately after being  
44 used, shall be placed in a receptacle used for that purpose  
45 alone.

46 The board of health shall prescribe such other rules  
47 and regulations in regard to sanitation and cleanliness  
48 in such shops and schools as it may deem proper and  
49 necessary. The director of health or inspectors desig-  
50 nated pursuant to subsection (d) of section one of article  
51 fourteen of chapter sixteen of the code shall have the  
52 power to enforce compliance therewith. Such rules and  
53 regulations shall be kept posted in a conspicuous place  
54 in each shop or school.

**§30-27-11. Grounds for cancellation of or refusal to issue or re-  
new license.**

1 The board may refuse to issue a license of registration  
2 to any applicant, or may refuse to renew, or may sus-  
3 pend or revoke the same for any holder thereof, for any  
4 of the following causes: (1) Conviction of the commis-  
5 sion of a felony, as shown by a certified copy of the rec-  
6 ord of the court of conviction; (2) obtaining or attempting  
7 to obtain a license to practice barbering or beauty cul-  
8 ture in this state by false pretenses, fraudulent misrepres-  
9 entation, or bribery by the use of money or other con-  
10 sideration; (3) gross incompetency; (4) the continued  
11 practice of barbering or beauty culture by a person know-  
12 ing himself or herself to be afflicted with a contagious  
13 or infectious disease; (5) the use knowingly of any false  
14 or deceptive statements in advertising; (6) habitual  
15 drunkenness or habitual addiction to the use of morphine,  
16 cocaine or other habit-forming drugs; (7) conviction for  
17 the illegal sale of any intoxicating beverage, as shown  
18 by a certified copy of the record of the court of conviction;  
19 (8) violation of any of the sanitary rules and regulations  
20 prescribed by the board of health.

**§30-27-12. Violation to constitute misdemeanor; penalty; concurrent jurisdiction; injunction.**

1 Any violation of the provisions of this article or of the  
2 rules and regulations of the board of health when promul-  
3 gated by it as set out in section three, article fourteen,  
4 chapter sixteen of this code, shall constitute a mis-  
5 demeanor, punishable, upon conviction, by a fine of not  
6 less than ten dollars, nor more than one hundred dollars,  
7 or by imprisonment in the county jail for not more than  
8 sixty days, or by both such fine and imprisonment. Magis-  
9 trates shall have concurrent jurisdiction with circuit  
10 courts for the enforcement of the provisions of this article  
11 and the rules and regulations of the board of health.

12 Notwithstanding the existence or pursuit of any other  
13 remedy, the director of health or board of barbers and  
14 beauticians may, in the manner provided by law, maintain  
15 an action in the name of the state for an injunction against  
16 any person, partnership, association or corporation to  
17 restrain or prevent the establishment, conduct, manage-  
18 ment or operation of any barbershop, beauty shop, school  
19 of barbering or beauty culture, or related agency, when  
20 such person, partnership, association or corporation re-  
21 peatedly refuses to obtain registration or license therefor  
22 and continues the practice or teaching of barbering or  
23 beauty culture without first obtaining registration or a  
24 license therefor in the manner hereinbefore provided.

**§30-27-13. Chapter thirty, article one, applicable to board.**

1 Unless otherwise specifically provided herein, the provi-  
2 sions of article one, chapter thirty of the code of West  
3 Virginia shall apply to the state board of barbers and  
4 beauticians.

**§30-27-14. Collections and expenditures; disposition of funds.**

1 All money collected under the provisions of this article  
2 shall be deposited in the state treasury as provided by  
3 law, and shall be credited to the board of barbers and  
4 beauticians in a special fund to be known as the "barbers  
5 and beauticians special fund." All money in such fund  
6 shall be expended only for the administration and en-  
7 forcement of the provisions of this article, except that at



8 the end of each fiscal year there shall be transferred from  
9 this fund to the general revenue fund of the state ten  
10 percent of all money collected by the board during the  
11 year.

**§30-27-15. Validity of certificates of registration and rules issued by board of barbers and beauticians.**

1 Any certificate of registration issued prior to the effective  
2 date of this article by the committee of barbers and  
3 beauticians shall be valid as a license under the provisions  
4 of this article, except as modified by the board of barbers  
5 and beauticians; and all rules and regulations issued by  
6 the committee of barbers and beauticians prior to the  
7 effective date of this article shall remain in effect unless  
8 modified in accordance with the provisions of article four-  
9 teen, chapter sixteen of this code.

**§30-27-16. Separability; conflicting acts repealed.**

1 The various provisions of this article shall be considered  
2 as separable and several, and should any of the provisions  
3 or parts thereof be construed or held to be unconstitutional,  
4 or for any other reason invalid the remaining  
5 provisions of this article shall not be thereby affected. All  
6 acts and parts of acts in conflict with the provisions of  
7 this article, or any part thereof, are hereby repealed. Any  
8 ordinances of any municipalities in this state now in effect  
9 and having for their purposes the regulation of the practice  
10 of barbering or beauty culture, which are in conflict  
11 with the provisions of this article, or any part thereof,  
12 shall be null and void and of no effect on and after the  
13 date this article goes into effect.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 12. POSTMORTEM EXAMINATIONS.**

- §61-12-3. Office of medical examinations established; appointment, duties, etc., of chief medical examiner; assistants and employees.
- §61-12-4. Central office and laboratory.
- §61-12-5. Certain salaries and expenses paid by state.
- §61-12-6. Chief medical examiner may obtain additional services and facilities.
- §61-12-7. Medical examiners.
- §61-12-14. County coroners; appointment, oath, etc.; duties; fees.

**§61-12-3. Office of medical examinations established; appointment, duties, etc., of chief medical examiner; assistants and employees.**

1 The office of medical examinations is hereby estab-  
2 lished, to be operated under the control and supervision  
3 of the director of the department of health. Such office  
4 shall be directed by a chief medical examiner, who shall  
5 be appointed by the director. The chief medical exam-  
6 iner may employ assistants, pathologists, toxicologists,  
7 laboratory technicians, regional medical examiners and  
8 other staff members as the director may specify.

9 All persons employed by the chief medical examiner  
10 shall be responsible to him and may be discharged by  
11 him for any reasonable cause. The chief medical ex-  
12 aminer shall specify the qualifications required for each  
13 position in the office of medical examinations, and each  
14 position shall be subject to such rules and regulations  
15 as the chief medical examiner may prescribe.

16 The chief medical examiner shall be a physician li-  
17 censed to practice medicine in West Virginia, who is a  
18 diplomate or eligible for certification by the American  
19 board of pathology or the American osteopathic board  
20 of pathology. The salary of the chief medical examiner  
21 and the salaries of all assistants and employees of the  
22 office of medical examinations shall be fixed by the Legis-  
23 lature from funds appropriated for that purpose. The  
24 chief medical examiner shall take such oath and provide  
25 such bond as may be required by law. Within the dis-  
26 cretion of the department, the chief medical examiner  
27 and his assistants shall lecture or instruct in the  
28 field of legal medicine and other related subjects to the  
29 West Virginia University or Marshall University School  
30 of Medicine, the department of public safety, other law-  
31 enforcement agencies, and other interested groups.

**§61-12-4. Central office and laboratory.**

1 The office of medical examinations shall establish and  
2 maintain a central office and a laboratory having ade-  
3 quate professional and technical personnel and medical  
4 and scientific facilities for the performance of the duties

5 imposed by this article. The central laboratory and office  
6 shall be maintained in connection with the facilities of  
7 the West Virginia University school of medicine, and  
8 the director is hereby empowered to contract for the use  
9 of such facilities.

**§61-12-5. Certain salaries and expenses paid by state.**

1 The salaries of the chief medical examiner, and the  
2 technical and clerical personnel in the central office and  
3 laboratory, the expenses of maintaining the central office  
4 and laboratory, the cost of pathological, bacteriological  
5 and toxicological services rendered by others than the  
6 chief medical examiner and his assistants, and of the  
7 personnel of the central office and laboratory, shall be  
8 paid by the state out of funds appropriated for that pur-  
9 pose.

**§61-12-6. Chief medical examiner may obtain additional services and facilities.**

1 Subject to the approval of the director, the chief med-  
2 ical examiner may, in order to provide facilities for in-  
3 vestigating the cause of death as authorized in this article,  
4 employ and pay qualified pathologists and toxicologists  
5 to make autopsies and such pathological and chemical  
6 studies and investigations as he may deem necessary,  
7 and he may arrange for the use of existing laboratory  
8 facilities for such purposes whenever these are avail-  
9 able. The director may prepare a list of approved path-  
10 ologists available for this work in the several counties  
11 or sections of the state, and in such case the chief medical  
12 examiner may call upon such pathologists where they  
13 are available for services in case of need.

**§61-12-7. Medical examiners.**

1 The chief medical examiner shall appoint for each  
2 county in the state a medical examiner to serve for a  
3 term of three years. A medical examiner shall turn over  
4 and deliver to his successor in office all of the papers,  
5 reports and records of his said office. Medical examiners  
6 shall be qualified physicians, licensed to practice medi-  
7 cine in West Virginia.

8 Any vacancy in the office of medical examiner shall  
9 be filled by the chief medical examiner. One person may  
10 be appointed to serve as medical examiner for more than  
11 one county, and the medical examiner need not be a  
12 resident of the county which he serves. When it be-  
13 comes necessary, because of illness, absence, need or  
14 personal interest, the chief medical examiner shall have  
15 the power to appoint any other qualified physician in  
16 the county in which a death is to be investigated, to act  
17 as assistant medical examiner for such county.

**§61-12-14. County coroners; appointment, oath, etc.; duties;  
fees.**

1 It shall be the duty of the county commission of every  
2 county, from time to time, to appoint a coroner for such  
3 county, who shall hold his office during the pleasure of  
4 such commission and shall take the oath of office pre-  
5 scribed for other county officers. The county coroners  
6 shall hereafter perform such duties as may be assigned  
7 to them under the rules and regulations promulgated  
8 by the board of health, and shall be paid such fees or  
9 amounts for such services as may be fixed by the chief  
10 medical examiner.

## CHAPTER 103

(H. B. 1693—By Mrs. Withrow and Mr. Dodd)

[Passed April 7, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expansion of the authority of the state department of health to provide surveillance of public drinking water throughout the state; defining water system; authorizing the board of health to prescribe by regulation maximum contaminant levels of water to prevent adverse effects on the health of individuals and to prescribe minimum sampling and testing requirements; system operation;

public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements; record keeping; laboratory certification; procedures for granting variances and exemptions; permitting the board of health to establish standards covering taste, odor, and appearance of drinking water; granting right of entry to authorized representatives; providing misdemeanor penalties for violation of sections or regulations promulgated thereunder; providing civil penalties for willful violations.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 1. STATE DEPARTMENT OF HEALTH.**

**§16-1-9a. Public water system defined; regulation of maximum contaminant levels in water systems; authorizing inspections; penalties.**

1 A public water system is any water supply or system  
2 which regularly supplies or offers to supply, piped water to the  
3 public for human consumption, if serving at least an average  
4 of twenty-five individuals per day for at least sixty days per  
5 year, or which has at least fifteen service connections, and  
6 shall include: (1) Any collection, treatment, storage, and dis-  
7 tribution facilities under the control of the owner or operator  
8 of such system and used primarily in connection with such  
9 system, and (2) any collection or pretreatment storage facilities  
10 not under such control which are used primarily in connection  
11 with such system. A public water system shall not include a  
12 system which meets all of the following conditions: (1) Which  
13 consists only of distribution and storage facilities (and does  
14 not have any collection and treatment facilities); (2) which  
15 obtains all of its water from, but is not owned or operated by, a  
16 public water system which otherwise meets the definition; (3)  
17 which does not sell water to any person; and (4) which is not  
18 a carrier conveying passengers in interstate commerce.

19 The state board of health shall prescribe by regulation the  
20 maximum contaminant levels to which all public water systems

21 shall conform in order to prevent adverse effects on the health  
22 of individuals, and, if it deems appropriate, treatment tech-  
23 niques that reduce the contaminant or contaminants to a  
24 level which will not adversely affect the health of the con-  
25 sumer.

26 It shall further prescribe by regulation minimum require-  
27 ments for: Sampling and testing; system operation; public noti-  
28 fication by a public water system on being granted a variance  
29 or exemption or upon failure to comply with specific require-  
30 ments of this section and regulations promulgated under this  
31 section; record keeping; laboratory certification; as well as  
32 procedures and conditions for granting variances and exemp-  
33 tions to public water systems from state public water systems  
34 regulations.

35 In addition, the state board of health shall establish regu-  
36 lations covering the production and distribution of bottled  
37 drinking water and may establish regulations covering the  
38 taste, odor, appearance, and other consumer acceptability  
39 parameters of drinking water.

40 Authorized representatives of the state board of health  
41 shall have right of entry to any part of a public water system,  
42 whether or not the system is in violation of a legal require-  
43 ment, for the purpose of inspection, sampling or testing, and  
44 shall be furnished records or information reasonably required  
45 for a complete inspection.

46 Any individual, partnership, association, syndicate, com-  
47 pany, firm, trust, corporation, government corporation, insti-  
48 tution, department, division, bureau, agency, federal agency, or  
49 any entity recognized by law who shall violate any provision  
50 of this section, or any of the regulations or orders issued pur-  
51 suant thereto, shall be guilty of a misdemeanor, and, upon  
52 conviction thereof, shall be fined not less than twenty-five  
53 dollars nor more than two hundred dollars, and each day's  
54 violation shall constitute a separate offense. In addition there-  
55 to, the state board of health or the state director of health, or  
56 his authorized representative may seek injunctive relief in  
57 the circuit court of the county in which all or part of the pub-  
58 lic water system is situated for threatened or continuing viola-

59 tions. For a willful violation of this section, or of any of the  
60 regulations or orders issued thereunder, an individual, partner-  
61 ship, association, syndicate, company, firm, trust, corporation,  
62 government corporation, institution, department, division, bu-  
63 reau, agency, federal agency, or entity recognized by law, upon  
64 a finding thereof by the circuit court of the county in which  
65 the violation occurs, shall be subject to a civil penalty of not  
66 more than five thousand dollars, and each day's violation shall  
67 be grounds for a separate penalty.

68 All regulations permitted under this section shall be promul-  
69 gated in accordance with the provisions of article three, chapter  
70 twenty-nine-a of this code.

## CHAPTER 104

(H. B. 918—By Mrs. Neal and Mrs. Spears)

[Passed April 6, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public health; home health services; and requiring the state department of health to provide home health services and to employ personnel necessary to maintain effective home health service programs.

*Be it enacted by the Legislature of West Virginia:*

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

### ARTICLE 2C. HOME HEALTH SERVICES.

§16-2C-2. Department to provide services; charges for services; authority to employ personnel; purchase of supplies and equipment; assistance to nonprofit agencies.

1 The department shall provide home health services to those  
2 persons living in areas of the state in which adequate home

3 health services are not available otherwise. For such services  
4 the department shall, and is hereby authorized to, charge  
5 fees to individuals to whom it renders such services or to any  
6 governmental agency purchasing such services for individuals,  
7 except for demonstration and public health program activities.

8 In order that it may effectively render home health services,  
9 the department shall employ the necessary personnel in-  
10 cluding nursing and supervisory personnel and shall have the  
11 further authority to purchase equipment and materials neces-  
12 sary to maintain an effective program of home health services.

13 The department shall, wherever possible, assist and advise  
14 nonprofit agencies or associations in the development of a  
15 home health services program to be carried out by such  
16 agencies or associations and, for that purpose, may enter  
17 into agreements with these agencies or associations specifying  
18 the type of assistance and advice it will render them.

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## CHAPTER 105

(Com. Sub. for S.B. 277—By Mr. Hatfield and Mr. Huffman)

[Passed April 9, 1977; 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 two-d, relating to requiring certificate of need prior to the offering or development of all new institutional health services within this state; declaring legislative findings; defining terms; institutional health services subject to review; providing for exemptions; granting the state health planning and development agency the authority to administer the certificate of need program; criteria to be used in conducting a certificate of need program; procedure to be used in conducting a certificate of need review; rules and regulations to be used in administering the certificate of need program; granting authority to promulgate additional rules and regulations; giving power to render a



final decision; authorizing power to issue a certificate of need where appropriate; providing for appeals of certificate of need decisions; providing for the length of time a certificate of need is valid; providing for denial of license; and providing for injunctions.

*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 two-d, to read as follows:

**ARTICLE 2D. CERTIFICATE OF NEED.**

- §16-2D-1. Legislative findings.
- §16-2D-2. Definitions.
- §16-2D-3. Certificate of need.
- §16-2D-4. Exemptions from certificate of need program.
- §16-2D-5. Authority of state health planning and development agency; assistance of health systems agencies.
- §16-2D-6. Minimum criteria for certificate of need reviews; promulgation of regulations regarding review criteria.
- §16-2D-7. Procedures for certificate of need reviews; rules and regulations for emergency applications.
- §16-2D-8. Agency to promulgate additional rules and regulations; procedure for adoption and distribution of rules and regulations.
- §16-2D-9. State agency to render final decision; issue certificate of need.
- §16-2D-10. Appeal of certificate of need decisions.
- §16-2D-11. Time period of certificate of need; extension of time; revocation of certificate; appeal from revocation.
- §16-2D-12. Prohibited acts; penalty.
- §16-2D-13. Injunctive relief.

**§16-2D-1. Legislative findings.**

- 1 It is declared to be the public policy of this state:
- 2 (1) That the offering or development of all new insti-
- 3 tutional health services shall be accomplished in a manner
- 4 which is orderly, economical and consistent with the ef-
- 5 fective development of necessary and adequate means of
- 6 providing for the institutional health services of the
- 7 people of this state and to avoid unnecessary duplication
- 8 of institutional health services, and to contain or reduce
- 9 increases in the cost of delivering institutional health
- 10 services.
- 11 (2) That the general welfare and protection of the

12 lives, health and property of the people of this state  
13 require that the type, level and quality of care, the  
14 feasibility of providing such care and other criteria as  
15 provided for in this article or by the state health plan-  
16 ning and development agency pursuant to provisions of  
17 this article, needed in new institutional health services  
18 within this state be subject to review and evaluation  
19 before any new institutional health services are offered  
20 or developed in order that appropriate and needed in-  
21 stitutional health services are made available for per-  
22 sons in the area to be served.

**§16-2D-2. Definitions.**

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

3 "Ambulatory health care facility" means a facility,  
4 which is freestanding and not physically attached to a  
5 health care facility and which provides health care to  
6 noninstitutionalized and nonhomebound persons on an  
7 outpatient basis. This definition does not include the  
8 legally authorized practice of medicine by any one or  
9 more persons in the private offices of any health care  
10 providers.

11 "Ambulatory surgical facility" means a facility which is  
12 freestanding and not physically attached to a health care  
13 facility and which provides surgical treatment to patients  
14 not requiring hospitalization. This definition does not in-  
15 clude the legally authorized practice of surgery by any  
16 one or more persons in the private offices of any health  
17 care providers.

18 "Annual implementation plan" means a plan which  
19 describes objectives which will achieve the goals of the  
20 health systems plan and priorities among the objectives  
21 and which shall be established, annually reviewed and  
22 amended as necessary by the health systems agency.

23 "Community mental health and mental retardation  
24 facility" means a public or private facility which provides  
25 such comprehensive services and continuity of care as  
26 emergency, outpatient, partial hospitalization, inpatient

27 and consultation and education for individuals with men-  
28 tal illness, mental retardation or drug or alcohol addiction.

29 "Health care facility" is defined as including hospitals,  
30 skilled nursing facilities, kidney disease treatment cen-  
31 ters, including freestanding hemodialysis units, inter-  
32 mediate care facilities, ambulatory health care facilities,  
33 ambulatory surgical facilities, home health agencies and  
34 community mental health and mental retardation facili-  
35 ties; whether under public or private ownership, or as a  
36 profit or nonprofit organization and whether or not li-  
37 censed or required to be licensed in whole or in part by  
38 the state.

39 "Health care provider" means a person, partnership,  
40 corporation, facility or institution licensed or certified  
41 or authorized by law to provide professional health care  
42 service in this state to an individual during that individ-  
43 ual's medical care, treatment or confinement.

44 "Health maintenance organization" means a public or  
45 private organization, organized under the laws of this  
46 state or the federal government which:

47 (a) Provides or otherwise makes available to enrolled  
48 participants health care services, including substantially  
49 the following basic health care services: Usual physician  
50 services, hospitalization, laboratory, X ray, emergency  
51 and preventive services, and out-of-area coverage; and

52 (b) Is compensated except for copayments for the  
53 provision of the basic health care services to enrolled  
54 participants on a predetermined periodic rate basis;  
55 and

56 (c) Provides physicians' services primarily (1) di-  
57 rectly through physicians who are either employees or  
58 partners of such organization, or (2) through arrange-  
59 ments with individual physicians or one or more groups  
60 of physicians organized on a group practice or individual  
61 practice basis, or (3) a combination of (1) and (2) as  
62 provided herein.

63 "Health services" means clinically related preventive,  
64 diagnostic, treatment or rehabilitative services, including  
65 alcohol, drug abuse and mental health services.

66 "Health systems agency" means an entity which is  
67 designated and operated in the manner described in P.L.  
68 93-641, known as the "National Health Planning and  
69 Resources Development Act of 1974."

70 "Health systems plan" means a detailed statement of  
71 goals describing a healthful environment and health  
72 systems of an area which, when developed, will assure  
73 that quality health services will be available and acces-  
74 sible in a manner which assures continuity of care, at  
75 reasonable cost, for all residents of that area; which are  
76 responsive to the unique needs and resources of that  
77 area; and which take into account and are consistent  
78 with the national guidelines for health planning policy  
79 issued by the secretary of the department of health,  
80 education and welfare with respect to supply, distri-  
81 bution and organization of health resources and ser-  
82 vices.

83 "Home health agency" is an organization primarily  
84 engaged in providing directly or through contract ar-  
85 rangements, professional nursing services, home health  
86 aide services, and other therapeutic and related services  
87 including but not limited to physical, speech and occu-  
88 pational therapy and nutritional and medical social ser-  
89 vices, to persons in their place of residence on a part-  
90 time or intermittent basis.

91 "Hospital" means an institution which is primarily  
92 engaged in providing to inpatients, by or under the super-  
93 vision of physicians, diagnostic and therapeutic services  
94 for medical diagnosis, treatment, and care of injured, dis-  
95 abled, or sick persons, or rehabilitation services for  
96 the rehabilitation of injured, disabled or sick persons.

97 "Institutional health services", except as used in section  
98 three of this article, means health services provided in or  
99 through health care facilities or health maintenance orga-  
100 nizations and, except as otherwise specified in this article,  
101 the term shall include the entities in or through which  
102 such services are provided.

103 "Intermediate care facility" means an institution which  
104 provides, on a regular basis, health-related care and

105 services to individuals who do not require the degree of  
106 care and treatment which a hospital or skilled nursing  
107 facility is designed to provide, but who because of their  
108 mental or physical condition require care and services  
109 above the level of room and board which can be made  
110 available to them only through institutional facilities.

111 "Offer" when used in connection with health services,  
112 means that the health care facility or health maintenance  
113 organization holds itself out as capable of providing,  
114 or as having the means for the provision of, specified  
115 health services.

116 "Person" means an individual, trust, estate, partner-  
117 ship, committee, corporation, association, and other or-  
118 ganizations such as joint-stock companies and insurance  
119 companies, a state or a political subdivision or instru-  
120 mentality thereof.

121 "Skilled nursing facility" means an institution or a  
122 distinct part of an institution which is primarily engaged  
123 in providing to inpatients skilled nursing care and re-  
124 lated services for patients who require medical or nurs-  
125 ing care, or rehabilitation services for injured, disabled  
126 or sick persons.

127 "State Health Planning and Development Agency"  
128 shall be that agency designated by the governor and  
129 hereinafter referred to as the "state agency", which shall  
130 be operated in the manner described in P.L. 93-641,  
131 known as the "National Health Planning and Resources  
132 Development Act of 1974."

133 "To develop", when used in connection with health  
134 services, means to undertake those activities which upon  
135 their completion will result in the offer of a new insti-  
136 tutional health service or the incurring of a financial  
137 obligation, in relation to the offering of such a service.

**§16-2D-3. Certificate of need.**

1 Any new institutional health service shall not be  
2 offered or developed within this state except upon appli-  
3 cation for and receipt of a certificate of need as provided

4 by this article. For purposes of this section, "new institu-  
5 tional health service" shall include:

6 (a) The construction, development, or other establish-  
7 ment of a new health care facility or health maintenance  
8 organization;

9 (b) The partial or total closure or relocation of a  
10 health care facility or health maintenance organization;

11 (c) Any expenditure by or on behalf of a health care  
12 facility, health care provider except as exempted in sec-  
13 tion four or health maintenance organization in excess of  
14 one hundred fifty thousand dollars which, under generally  
15 accepted accounting principles consistently applied, is a  
16 capital expenditure; where a person makes an acquisition  
17 by or on behalf of a health care facility, health care  
18 provider except as exempted in section four or health  
19 maintenance organization under lease or comparable ar-  
20 rangement, or through donation, which would have requir-  
21 ed review if the acquisition had been by purchase such ac-  
22 quisition shall be deemed an expenditure subject to  
23 review;

24 (d) A change in the existing bed complement of a  
25 health care facility or health maintenance organization  
26 through the addition or conversion of ten or more  
27 beds or more than ten percent of the total bed capacity  
28 of such facility or organization, whichever is less, or the  
29 relocation of ten or more beds or more than ten percent  
30 of the total bed capacity of such facility or organization,  
31 whichever is less, from one physical facility or site to  
32 another;

33 (e) Health services which are offered in or through  
34 a health care facility or health maintenance organization  
35 and which were not offered on a regular basis in or  
36 through such health care facility or health maintenance  
37 organization within the twelve-month period prior to the  
38 time such services would be offered;

39 (f) The deletion of one or more health services, pre-  
40 viously offered on a regular basis by a health care facility  
41 or health maintenance organization or the relocation of

42 one or more health services from one physical facility or  
43 site to another; and

44 (g) Expenditures in excess of one hundred fifty thou-  
45 sand dollars in preparation for the offering or develop-  
46 ment of a new institutional health service and any  
47 arrangement or commitment for financing the offering or  
48 development of the new institutional health service. Ex-  
49 penditures in preparation for the offering or development  
50 of a proposal for a new institutional health service shall  
51 include but not be limited to expenditures for surveys,  
52 studies, designs, plans, working drawings, specifications  
53 and site acquisition or commitment, which are related  
54 to the offering or development of the new institutional  
55 health service.

**§16-2D-4. Exemptions from certificate of need program.**

1 Nothing in this article or the rules and regulations  
2 adopted pursuant to the provisions of this article shall  
3 be construed to authorize the licensure, supervision, regu-  
4 lation or control in any manner of: (1) Private offices  
5 of physicians, private clinics of physicians, dentists or other  
6 practitioners of the healing arts; (2) dispensaries and first  
7 aid stations located within business or industrial establish-  
8 ments maintained solely for the use of employees: *Pro-*  
9 *vided*, That such facility does not contain inpatient or resi-  
10 dent beds for patients or employees who generally remain  
11 in the facility for more than twenty-four hours; (3) estab-  
12 lishments, such as motels, hotels and boarding houses  
13 which provide medical, nursing personnel and health re-  
14 lated services; and (4) the remedial care or treatment of  
15 residents or patients in any home or institution conducted  
16 only for those who rely solely upon treatment by prayer or  
17 spiritual means in accordance with the creed or tenets of  
18 any recognized church or religious denomination.

19 Unless exempt as hereinafter provided and only to the  
20 extent so exempt, any new institutional health service  
21 which, on or after the effective date of this article, is  
22 offered or developed within this state shall be subject  
23 to all the provisions of this article. However, in the case  
24 of new health care facilities or health maintenance

25 organizations, or health care facilities or health mainte-  
26 nance organizations providing institutional health ser-  
27 vices as of the effective date of this article, which on  
28 such date are committed to a formal plan of development  
29 or expansion of new institutional health services, where  
30 preliminary expenditures toward a formal plan of de-  
31 velopment or of new institutional health services, includ-  
32 ing payments for studies, surveys, designs, plans, working  
33 drawings, specifications, and site acquisition or commit-  
34 ment, essential to the development or expansion of the  
35 new institutional health services of the health care  
36 facility or health maintenance organization of one hun-  
37 dred fifty thousand dollars or more, had been made  
38 during a three-year period ending as of the effective date  
39 of this article, the provisions of this article shall not  
40 apply to such development or expansion of new institu-  
41 tional health services, or where a formal plan of develop-  
42 ment or expansion of new institutional health services  
43 has been submitted to and approved by the state com-  
44 prehensive health planning agency (heretofore created  
45 by the executive order of the governor of West Virginia),  
46 the provisions of this article shall not apply to such de-  
47 velopment or expansion: *Provided*, That upon the com-  
48 pletion of such proposed development or expansion, all the  
49 provisions of this article shall apply to such health care  
50 facilities or health maintenance organizations not herein  
51 specifically excluded.

52 A new or existing health care facility or health main-  
53 tenance organization may apply to the state agency for  
54 an exemption. The new or existing health care facility  
55 or health maintenance organization shall supply such  
56 information as the state agency shall require. The state  
57 agency shall make the determination as to whether the  
58 new or existing health care facility or health mainte-  
59 nance organization is entitled to an exemption under the  
60 provisions of this section.

**§16-2D-5. Authority of state health planning and development  
agency; assistance of health systems agencies.**

1 The state agency is hereby empowered to administer



2 the certificate of need program as provided by this article.

3 The state agency shall seek the advice of the designated  
4 health systems agencies in developing rules and regula-  
5 tions for the certificate of need program. The designated  
6 health systems agencies shall assist the state agency in  
7 carrying out its certificate of need program.

**§16-2D-6. Minimum criteria for certificate of need reviews;  
promulgation of regulations regarding review  
criteria.**

1 In making its determination as to whether a certificate  
2 of need shall be issued, the state agency shall, at a  
3 minimum, consider the following:

4 (a) The recommendation of the designated health  
5 systems agency for the health service area in which the  
6 proposed new institutional health service is to be located;

7 (b) The relationship of the health services being re-  
8 viewed to the applicable health systems plan and annual  
9 implementation plan adopted by the designated health  
10 systems agency for the health service area in which the  
11 proposed new institutional health service is to be located;

12 (c) The relationship of services reviewed to the long-  
13 range development plan of the person providing or pro-  
14 posing such services;

15 (d) The need that the population served or to be  
16 served by such services has for such services;

17 (e) The availability of less costly or more effective  
18 alternative methods of providing such services;

19 (f) The immediate and long-term financial feasibility  
20 of the proposal as well as the probable impact of the  
21 proposal on the costs of and charges for providing health  
22 services by the person proposing the new institutional  
23 health service;

24 (g) The relationship of the services proposed to the  
25 existing health care system of the area in which such  
26 services are proposed to be provided;

27 (h) The availability of resources, including health care  
28 providers, management personnel, and funds for capital  
29 and operating needs, for the provision of the services

30 proposed to be provided and the availability of alternative  
31 uses of such resources for the provision of other health  
32 services;

33 (i) The appropriate and nondiscriminatory utilization  
34 of existing and available health care providers;

35 (j) The relationship, including the organizational rela-  
36 tionship, of the health services proposed to be provided to  
37 ancillary or support services;

38 (k) Special needs and circumstances of those entities  
39 which provide a substantial portion of their services or  
40 resources, or both, to individuals not residing in the  
41 health service areas in which the entities are located  
42 or in adjacent health service areas. Such entities may  
43 include medical and other health professional schools,  
44 multidisciplinary clinics and specialty centers;

45 (l) The special needs and circumstances of health  
46 maintenance organizations for which assistance may be  
47 provided under Title XIII of P. L. 93-222 known as the  
48 Health Maintenance Organizations Act of 1973. Such  
49 needs and circumstances include the needs of and costs  
50 to members and projected members of the health main-  
51 tenance organization in obtaining health services and  
52 the potential for a reduction in the use of inpatient care  
53 in the community through an extension of preventive  
54 health services and the provision of more systematic  
55 and comprehensive health services. The consideration  
56 of a new institutional health service proposed by a health  
57 maintenance organization shall also address the avail-  
58 ability and cost of obtaining the proposed new insti-  
59 tutional health service from the existing providers in  
60 the area that are not health maintenance organizations.  
61 The criteria established by the state agency pursuant  
62 to this subparagraph shall be consistent with standards  
63 and procedures established under section 1306 (c) of  
64 P. L. 93-222, known as the Health Maintenance Orga-  
65 nizations Act of 1973;

66 (m) The special needs and circumstances of biomedical  
67 and behavioral research projects which are designed to  
68 meet a national need and for which local conditions  
69 offer special advantages;

70 (n) In the case of the deletion or relocation of beds  
71 or services or the partial or total closure or relocation of a  
72 health care facility or health maintenance organization,  
73 the state agency shall consider the impact on the person  
74 proposing such new institutional health service, on other  
75 health care facilities or health maintenance organizations  
76 and on the needs of the population to be served or  
77 previously served;

78 (o) In the case of a construction project: (1) The cost  
79 and methods of the proposed construction, including the  
80 costs and methods of energy provision and (2) the  
81 probable impact of the construction project reviewed on  
82 the costs of providing health services by the person  
83 proposing such construction project.

84 In the case of any proposed new institutional health  
85 service, the state agency shall not grant a certificate of  
86 need under its certificate of need program, unless after  
87 consideration of the appropriateness of the use of exist-  
88 ing facilities providing services similar to those being  
89 proposed the state agency makes each of the following  
90 findings in writing: (1) That superior alternatives to  
91 such services in terms of cost, efficiency and appropriate-  
92 ness do not exist and the development of such alternatives  
93 is not practicable; (2) that existing facilities providing  
94 services similar to those proposed are being used in an  
95 appropriate and efficient manner; (3) that in the case  
96 of new construction, alternatives to new construction,  
97 such as modernization or sharing arrangements, have  
98 been considered and have been implemented to the  
99 maximum extent practicable; (4) that patients will  
100 experience serious problems in obtaining care of the type  
101 proposed in the absence of the proposed new service; and  
102 (5) that in the case of a proposal for the addition of  
103 beds for the provision of skilled nursing or intermediate  
104 care services, the addition will be consistent with the  
105 plans of other agencies of the state responsible for the  
106 provision and financing of long-term care facilities or  
107 services including home health services.

108 In the case of any new institutional health service  
109 proposed to be provided by or through a health main-

110 tenance organization the state agency shall not deny a  
111 certificate of need with respect to such service (or  
112 otherwise make a finding under this section that such  
113 service is not needed) in those cases (1) when the state  
114 agency has granted a certificate of need which authorized  
115 the development of the service, or expenditures in  
116 preparation for such offering or development (or has  
117 otherwise made a finding that such development or ex-  
118 penditure is needed) and (2) when the offering of this  
119 new institutional health service will be consistent with  
120 the basic objectives, time schedules, and plans of the  
121 previously approved application.

122 Criteria adopted for review in accordance with this  
123 section shall be in the form of rules and regulations, and  
124 shall be adopted pursuant to section eight of this article.

**§16-2D-7. Procedures for certificate of need reviews; rules and regulations for emergency applications.**

1 Prior to submission of an application for a certificate  
2 of need, the state agency shall require the submission at  
3 least biennially of long-range plans by providers of  
4 health services and other persons subject to state agency  
5 review with respect to the development of proposals  
6 subject to review under this article. The plans shall be  
7 in such form and contain such information as the state  
8 agency shall require.

9 An application for a certificate of need shall be sub-  
10 mitted to the state agency prior to the offering or de-  
11 velopment of all new institutional services within this  
12 state. In the case of construction projects persons pro-  
13 posing such projects shall submit letters of intent prior  
14 to submitting an application. The letters of intent shall  
15 be of such detail as specified by the state agency.

16 The application shall be in such form and contain such  
17 information as the state agency shall establish by rule  
18 or regulation. Within fifteen days of receipt of applica-  
19 tion, the state agency shall determine if the application  
20 is complete. The state agency shall seek the advice of  
21 the designated health systems agency for the area in  
22 which the proposed new institutional health service will

23 be located to determine if the application is complete  
24 and the state agency may request additional information  
25 from the applicant. The state agency shall notify the  
26 applicant that the review has begun on the day that the  
27 application has been determined to be complete. The  
28 state agency shall provide written notice to all affected  
29 persons of the beginning of the review, the proposed  
30 schedule for review, the period within which a public  
31 hearing may be requested by persons directly affected  
32 by the review, which period may not be less than thirty  
33 days from the date of the written notification of the  
34 beginning of the review required by this section, and  
35 the manner in which notification will be provided of  
36 the time and place of any public hearing so requested.  
37 For purposes of this section, "affected person" includes  
38 the person whose proposal is being reviewed, the health  
39 systems agency for the health service area in which the  
40 proposed new institutional health service is to be offered  
41 or developed and when deemed appropriate by the state  
42 agency, contiguous health systems agencies in adjacent  
43 states: *Provided*, That for the purposes of this section  
44 "affected persons" shall also include health care facilities  
45 and health maintenance organizations located in the  
46 health service area which provide institutional health  
47 services, any agency which establishes rates for health  
48 care facilities or health maintenance organizations in the  
49 state, those members of the public who are to be served  
50 by the proposed new institutional health services, and  
51 all hospital service corporations and medical service cor-  
52 porations as defined in article twenty-four, chapter thirty-  
53 three of this code.

54 Written notification to members of the public may be  
55 provided through newspapers of general circulation in  
56 the appropriate area and public information channels;  
57 notification to all other affected persons shall be by mail  
58 which may be as part of a newsletter.

59 The state agency shall seek the recommendation of the  
60 designated health systems agency for the health service  
61 area in which the proposed new institutional health

62 service is to be located as to whether a certificate of  
63 need should be issued. The state agency shall assist the  
64 designated health systems agency in the review of appli-  
65 cations by supplying information and data on those pro-  
66 posed new institutional services which have statewide  
67 implications.

68 The state agency shall adopt schedules for reviews  
69 which provide that no review shall, to the extent prac-  
70 ticable, take longer than ninety days from the date that  
71 notification is sent to the applicant, to the date of the final  
72 decision of the state agency.

73 The state agency shall adopt criteria for determining  
74 when it would not be practicable to complete a review  
75 within ninety days. Where a proposed new institutional  
76 health service is to be provided in a health service area  
77 for which a health systems agency has been designated,  
78 such schedule shall set forth the period within which  
79 the health systems agency must complete its review and  
80 provide its recommendation with respect to such new  
81 institutional health service to the state agency: *Provided,*  
82 That the period allotted by the state agency to a health  
83 systems agency for completion of its review and sub-  
84 mission of its recommendations may not be less than  
85 sixty days, except with the written consent of the health  
86 systems agency.

87 The state agency shall provide in its review procedures  
88 for a public hearing in the course of agency review if  
89 requested by one or more persons directly affected by  
90 the review. For purposes of this section, "person directly  
91 affected by the review" includes, the person whose pro-  
92 posal is being reviewed, members of the public who are  
93 to be served by the proposed new institutional health  
94 services; health care facilities and health maintenance  
95 organizations located in the health service area in which  
96 the service is proposed to be offered or developed which  
97 provide services similar to the proposed services under  
98 review; any agency which establishes rates for health  
99 care facilities or health maintenance organizations in the  
100 state; and health care facilities and health maintenance

101 organizations which, prior to receipt by the state agency  
102 of the proposal being reviewed, have formally indicated  
103 an intention to provide such similar services in the future,  
104 either through the filing of a letter of intent or by adop-  
105 tion of a plan. Where such a hearing is requested, the  
106 state agency shall, prior to such hearing, provide notice  
107 of such hearing, in accordance with its procedure adopted  
108 pursuant to this section. The procedure for the hearing  
109 must provide an opportunity for any person to present  
110 testimony. The procedures may, at the option of the  
111 state agency, provide that the requirement of this section  
112 shall be deemed satisfied if an opportunity for a public  
113 hearing with respect to the new institutional health  
114 service under review has been provided to all persons  
115 directly affected by the review as defined by the state  
116 agency pursuant to this article by the appropriate health  
117 systems agency. Neither the state agency nor the health  
118 systems agency may impose fees for such a public  
119 hearing.

120 The state agency shall issue written findings which  
121 state the basis for any final decision or recommendation  
122 it may make. Such findings shall be sent to the person  
123 proposing the new institutional health service and to the  
124 health systems agency for the health service area in  
125 which the new service is proposed to be offered or de-  
126 veloped, and shall be available to others upon request.  
127 The state agency shall notify, upon request, providers of  
128 health services and other persons subject to review under  
129 this article of the status of the state agency review of  
130 new institutional health services subject to review, find-  
131 ings made in the course of such review, and other ap-  
132 propriate information respecting such review.

133 The state agency shall prepare and publish, at least  
134 annually, reports of reviews completed and being con-  
135 ducted, with general statements about the status of each  
136 review still in progress and the findings and rationale  
137 for each completed review.

138 The state agency shall provide for access by the general  
139 public to all applications reviewed by the state agency

140 and to all other written materials pertinent to agency  
141 review.

142 The state agency shall provide in its review procedures  
143 a provision that any person directly affected by the  
144 review, as defined in this section, may, for good cause  
145 shown, request in writing within thirty days of a final  
146 decision of the state agency, a public hearing for pur-  
147 poses of reconsideration of that decision, and the pro-  
148 cedures for such a hearing. No fees may be imposed by  
149 the state agency for the hearing. For purposes of this  
150 section, a request for a public hearing for purposes of  
151 reconsideration shall be deemed to have shown good  
152 cause if it:

153 (a) Presents significant, relevant information not  
154 previously considered by the state agency;

155 (b) Demonstrates that there have been significant  
156 changes in factors or circumstances relied upon by the  
157 state agency in reaching its decision;

158 (c) Demonstrates that the state agency has materially  
159 failed to follow its adopted procedures in reaching its  
160 decision; or

161 (d) Provides such other bases for a public hearing  
162 as the state agency determines constitutes good cause.

163 To be effective a request for such a hearing shall be  
164 received within thirty days of the state agency de-  
165 cision, and the hearing shall commence within thirty  
166 days of receipt of the request. Notification of such a  
167 public hearing shall be sent, prior to the date of the  
168 hearing, to the person requesting the hearing, the per-  
169 son proposing the new institutional health service, and  
170 the health systems agency for the health service area  
171 in which the new institutional health service is proposed  
172 to be offered or developed, and shall be sent to others  
173 upon request. The state agency shall make written find-  
174 ings which state the basis for its decision within forty-  
175 five days after the conclusion of such hearing.

176 Notwithstanding other provisions of this article, the  
177 state agency shall adopt rules and regulations for de-



178 terminating when there is an emergency application which  
179 requires immediate review and shall adopt regular proce-  
180 dures in accordance with the provisions of this article  
181 for handling such emergency applications as expedi-  
182 tiously as possible.

**§16-2D-8. Agency to promulgate additional rules and regulations; procedure for adoption and distribution of rules and regulations.**

1 The state agency is hereby empowered to promulgate  
2 additional rules and regulations for review of certificate  
3 of need applications beyond those required by sections  
4 six and seven of this article. All rules and regulations  
5 shall be promulgated pursuant to chapter twenty-nine-a  
6 of this code and as described herein. In addition, before  
7 adopting proposed rules and regulations the state agency  
8 shall give interested persons an opportunity to offer  
9 written comments on the rules and regulations, or any  
10 revisions thereof, which it proposes to adopt, as follows:

11 (a) The state agency shall distribute copies of its  
12 proposed review rules and regulations, and proposed  
13 revisions thereof, to statewide health agencies and or-  
14 ganizations, the statewide health coordinating council,  
15 and each health systems agency for a health service area  
16 located in whole or in part within the state;

17 (b) The state agency shall publish, in at least one  
18 newspaper in each planning and development region in  
19 this state, a notice stating that rules and regulations for  
20 review of certificate of need applications or any revisions  
21 thereof, have been proposed for adoption and are avail-  
22 able at specified addresses for inspection and copying by  
23 interested persons. Such notice shall appear in other than  
24 the legal notices of such newspapers; in addition, notice  
25 may be given through other public information channels;

26 (c) The state agency shall distribute copies of its  
27 adopted review rules and regulations, and any revisions  
28 thereof, to the agencies and organizations specified in  
29 this section and to the secretary of health, education and  
30 welfare, and shall provide such copies to other persons  
31 upon request.

**§16-2D-9. State agency to render final decision; issue certificate of need.**

1 The state agency shall render a final decision on every  
2 application for a certificate of need in the form of an  
3 approval, a denial, an approval with conditions or a de-  
4 ferral. Approval with conditions does not give the state  
5 agency authority to mandate new institutional health  
6 services not proposed by the health care facility or health  
7 maintenance organization. As part of a deferral, the  
8 state agency may return the application to the person  
9 proposing the new institutional health service or to the  
10 health systems agency for reconsideration of its recom-  
11 mendations. The state agency shall send its decision along  
12 with written findings to the person proposing the new  
13 institutional health service and to the health systems  
14 agency for the health service area in which the new  
15 service is proposed to be offered or developed and shall  
16 make it available to others upon request. In the case  
17 of a final decision to approve or approve with conditions  
18 a proposal for a new institutional health service, the  
19 state agency shall issue a certificate of need to the person  
20 proposing the new institutional health service. If the  
21 state agency fails to make a decision within the time  
22 period specified for the review, the proposed new insti-  
23 tutional health service shall be deemed to have been  
24 found to be not needed.

**§16-2D-10. Appeal of certificate of need decisions.**

1 If the state agency makes a final decision regarding  
2 a proposed new institutional health service which is in-  
3 consistent with a recommendation made with respect  
4 thereto by a designated health systems agency, the state  
5 agency shall submit to such health systems agency a  
6 written, detailed statement of the reasons for the incon-  
7 sistency. Such decisions and the record upon which it  
8 was made shall, upon request of the health systems  
9 agency, made within thirty days of the issuing of the  
10 decision, be subject to review by an agency of the state  
11 (other than the state agency) designated by the governor.  
12 To be effective, the health systems agency's request must  
13 be received within thirty days of the state agency deci-

14 sion, and the hearing shall commence within thirty days  
15 of receipt of the request. The decision of the reviewing  
16 agency shall be made in writing within forty-five days  
17 after the conclusion of such hearing.

18 A final decision of the state agency, and the record  
19 upon which it was made, shall, upon request of the per-  
20 son proposing the new institutional health service or  
21 other "persons directly affected by the review", as de-  
22 fined in section seven of this article, made within thirty  
23 days of the issuing of the decision, be reviewed by an  
24 agency of the state (other than the state agency) desig-  
25 nated by the governor. To be effective, such request must  
26 be received within thirty days of the state agency deci-  
27 sion, and the hearing shall commence within thirty days  
28 of receipt of the request. The decision of the reviewing  
29 agency shall be made in writing within forty-five days  
30 after the conclusion of such hearing. The written findings  
31 of the review agency shall be sent to the person  
32 who requested the review, to the person proposing the  
33 new institutional health service, to the health systems  
34 agency requesting a review and to the state agency,  
35 and shall be made available by the state agency to others  
36 upon request. The decision of the reviewing agency shall  
37 be considered the final decision of the state agency; how-  
38 ever, the reviewing agency may remand the matter to  
39 the state agency for further action or consideration.

40 If the state agency or the reviewing agency makes a  
41 decision regarding a proposed new institutional health  
42 service which is not consistent with the goals of the  
43 health systems plan of a designated health systems  
44 agency or the priorities of the annual implementation  
45 plan of a designated health systems agency, the state  
46 agency or the reviewing agency shall submit to the health  
47 systems agency a written, detailed statement of the rea-  
48 sons for the inconsistency. Upon the entry of a final  
49 decision by the reviewing agency the designated health  
50 systems agency, the person proposing the new institu-  
51 tional health service and any other "person directly af-  
52 fected by the review" as defined in section seven of this  
53 article shall have standing in and may take an appeal  
54 to the circuit court of Kanawha County from any deci-

55 sion of the state agency granting, with or without con-  
56 ditions, denying or revoking a certificate of need.

**§16-2D-11. Time period of certificate of need; extension of  
time; revocation of certificate; appeal from re-  
vocation.**

1 A certificate of need shall be valid for a maximum of  
2 one year from the date of issuance. Upon the expiration  
3 of the certificate or during the certification period the  
4 person proposing the new institutional health service  
5 shall provide the state agency such information on the  
6 development of the project as the state agency may re-  
7 quest. The state agency shall determine at the end of  
8 the certification period whether sufficient progress is be-  
9 ing made on the development of the project and whether  
10 there has been compliance with the conditions of cer-  
11 tification. The state agency shall seek the advice of the  
12 health systems agency in making its determination. The  
13 certificate of need may be extended by the state agency  
14 for additional periods of time as are reasonably neces-  
15 sary to expeditiously complete the project. The certifi-  
16 cate of need may be revoked by the state agency for in-  
17 sufficient progress in developing the project or noncom-  
18 pliance with any conditions of certification at the end of  
19 the first certification period or at the end of any subse-  
20 quent certification periods. Appeals of revocation shall  
21 be made pursuant to section ten of this article.

**§16-D-12. Prohibited acts; penalty.**

1 Any person offering or developing any new institu-  
2 tional health service within the meaning of this article  
3 without first obtaining a certificate of need therefor as  
4 herein provided, or who shall violate any of the provi-  
5 sions of this article shall be subject to denial or revo-  
6 cation of a license to operate such institutional health  
7 service or facility. Upon a showing to the state agency  
8 that any person is offering or developing any new in-  
9 stitutional health service within the meaning of this  
10 article without having first obtained a certificate of need  
11 therefor as provided herein or that such person is other-  
12 wise in violation of the provisions of this article, the state  
13 agency shall provide such person with written notice

14 which notice shall state the nature of the violation and  
15 the time and place at which such person shall appear  
16 to show good cause why its license should not be revoked  
17 or denied, at which time and place such person shall be  
18 afforded a reasonable opportunity to present testimony  
19 and other evidence in support of its position. If, there-  
20 after, the state agency determines that such person's  
21 license to operate such institutional health service or fa-  
22 cility should be revoked or denied, the state agency shall  
23 issue an order, in writing, to the appropriate responsible  
24 licensing agency of the state, requiring that such person's  
25 license to operate such institutional health service or  
26 facility be revoked or denied, which order shall be binding  
27 upon such licensing agency.

#### §16-2D-13. Injunctive relief.

1 In addition to all other remedies, and aside from various  
2 penalties provided by law, if any person offers or develops  
3 any new institutional health service without first having  
4 a certificate of need therefor as herein provided, or vio-  
5 lates any other provision of this article or any lawful  
6 rule or regulation promulgated thereunder, the state  
7 agency, and/or the health systems agency, may main-  
8 tain a civil action in the circuit court of the county where-  
9 in such violation has occurred, or wherein such person  
10 may be found, to enjoin, restrain or prevent such viola-  
11 tion. This remedy shall also be available to "persons  
12 directly affected by the review" as defined in this article.  
13 No injunction bond shall be required to be filed in any  
14 such proceeding.

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## CHAPTER 106

(H. B. 1285—By Mr. Speaker, Mr. Kopp)

[Passed March 14, 1977: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article eighteen, chap-  
ter thirty-one of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to the authorized limit on borrowing of the West Virginia housing development fund.

*Be it enacted by the Legislature of West Virginia:*

That section twenty, article eighteen, 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 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.**

**§31-18-20. Authorized limit on borrowing.**

1 The aggregate principal amount of bonds and notes issued by  
 2 the housing development fund shall not exceed three hundred  
 3 million dollars outstanding at any one time: *Provided, however,*  
 4 That in computing the total amount of bonds and notes which  
 5 may at any one time be outstanding, the principal amount of  
 6 any outstanding bonds or notes refunded or to be refunded  
 7 either by application of the proceeds of the sale of any refund-  
 8 ing bonds or notes of the housing development fund or by  
 9 exchange for any such refunding bonds or notes, shall be  
 10 excluded.

## CHAPTER 107

(H. B. 848—By Mr. Sonis)

[Passed March 23, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, eight and nine, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the prohibition of discrimination because of sex in the sale, rental or leasing of housing accommodations or real property, or in granting financial assistance therefor; and allowing certain exemptions.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 11. HUMAN RIGHTS COMMISSION.**

§5-11-2. Declaration of policy.

§5-11-4. Human rights commission continued; status, powers and objects.

§5-11-8. Commission powers; functions; services.

§5-11-9. Unlawful discriminatory practices.

**§5-11-2. Declaration of policy.**

1 It is the public policy of the state of West Virginia  
2 to provide all of its citizens equal opportunity for em-  
3 ployment, equal access to places of public accommodations,  
4 and equal opportunity in the sale, purchase, lease, rental  
5 and financing of housing accommodations or real property.  
6 Equal opportunity in the areas of employment and public  
7 accommodations is hereby declared to be a human right or  
8 civil right of all persons without regard to race, religion,  
9 color, national origin, ancestry, sex, age or blindness. Equal  
10 opportunity in housing accommodations or real property is  
11 hereby declared to be a human right or civil right of all  
12 persons without regard to race, religion, color, national  
13 origin, ancestry, sex or blindness.

14 The denial of these rights to properly qualified persons  
15 by reason of race, religion, color, national origin, ancestry,  
16 sex, age or blindness is contrary to the principles of freedom  
17 and equality of opportunity and is destructive to a free and  
18 democratic society.

**§5-11-4. Human rights commission continued; status, powers and objects.**

1 The West Virginia human rights commission, heretofore  
2 created, is hereby continued. The commission shall have the  
3 power and authority and shall perform the functions and  
4 services as in this article prescribed and as otherwise pro-  
5 vided by law. The commission shall encourage and endeavor  
6 to bring about mutual understanding and respect among all  
7 racial, religious and ethnic groups within the state and shall  
8 strive to eliminate all discrimination in employment and places  
9 of public accommodations by virtue of race, religion, color,  
10 national origin, ancestry, sex, age or blindness and shall strive to  
11 eliminate all discrimination in the sale, purchase, lease, rental  
12 or financing of housing and other real property by virtue of  
13 race, religion, color, national origin, ancestry, sex or blindness.

**§5-11-8. Commission powers; functions; services.**

1 The commission is hereby authorized and empowered:

2 (a) To cooperate and work with federal, state and local  
3 government officers, units, activities and agencies in the pro-  
4 motion and attainment of more harmonious understanding  
5 and greater equality of rights between and among all racial,  
6 religious and ethnic groups in this state;

7 (b) To enlist the cooperation of racial, religious and ethnic  
8 units, community and civic organizations, industrial and labor  
9 organizations and other identifiable groups of the state in  
10 programs and campaigns devoted to the advancement of toler-  
11 ance, understanding and the equal protection of the laws of  
12 all groups and peoples;

13 (c) To receive, investigate and pass upon complaints al-  
14 leging discrimination in employment or places of public accom-  
15 modations, because of race, religion, color, national origin,  
16 ancestry, sex, age or blindness, and complaints alleging dis-  
17 crimination in the sale, purchase, lease, rental and financing  
18 of housing accommodations or real property because of race,  
19 religion, color, national origin, ancestry, sex or blindness  
20 and to initiate its own consideration of any situations,  
21 circumstances or problems, including therein any racial, re-  
22 ligious or ethnic group tensions, prejudice, disorder or dis-  
23 crimination reported or existing within the state relating to  
24 employment, places of public accommodations, housing accom-  
25 modations and real property;

26 (d) To hold and conduct public and private hearings at  
27 such times and places around the state as may be practical on  
28 complaints, matters and questions before the commission and,  
29 in connection therewith, relating to discrimination in em-  
30 ployment, or places of public accommodations, housing ac-  
31 commodatiions or real property and during the investigation  
32 of any formal complaint before the commission relating to  
33 employment, places of public accommodations, housing ac-  
34 commodatiions or real property to:

35 (1) Issue subpoenas and subpoenas duces tecum upon the  
36 concurrence of at least five members of the commission, ad-  
37 minister oaths, take the testimony of any person under oath,



38 and make reimbursement for travel and other reasonable and  
39 necessary expenses in connection with such attendance;

40 (2) Furnish copies of public hearing records to parties  
41 involved therein upon their payment of the reasonable costs  
42 thereof to the commission;

43 (3) Delegate to a panel of one commission member ap-  
44 pointed by the chairman and a hearing examiner who shall  
45 be an attorney, duly licensed to practice law in West Vir-  
46 ginia, the power and authority to hold and conduct the hear-  
47 ings, as herein provided, but all decisions and actions growing  
48 out of or upon any such hearings shall be reserved for  
49 determination by the commission;

50 (4) To enter into conciliation agreements and consent orders;

51 (5) To apply to the circuit court of the county where  
52 the respondent resides or transacts business for enforcement  
53 of any conciliation agreement or consent order by seeking  
54 specific performance of such agreement or consent order;

55 (6) To issue cease and desist orders against any person  
56 found, after a public hearing, to have violated the provisions  
57 of this article or the rules and regulations of the commission;

58 (7) To apply to the circuit court of the county where  
59 the respondent resides or transacts business for an order  
60 enforcing any lawful cease and desist order issued by the  
61 commission;

62 (e) To recommend to the governor and Legislature poli-  
63 cies, procedures, practices and legislation in matters and  
64 questions affecting human rights;

65 (f) To delegate to its executive director such powers,  
66 duties and functions as may be necessary and expedient in  
67 carrying out the objectives and purposes of this article;

68 (g) To prepare a written report on its work, functions  
69 and services for each year ending on the thirtieth day of  
70 June and to deliver copies thereof to the governor on or  
71 before the first day of December next thereafter;

72 (h) To do all other acts and deeds necessary and proper  
73 to carry out and accomplish effectively the objects, functions

74 and services contemplated by the provisions of this article,  
75 including the promulgation of rules and regulations in accord-  
76 dance with the provisions of article three, chapter twenty-  
77 nine-a of this code, implementing the powers and authority  
78 hereby vested in the commission;

79 (i) To create such advisory agencies and conciliation  
80 councils, local, regional or statewide, as in its judgment will  
81 aid in effectuating the purposes of this article, to study the  
82 problems of discrimination in all or specific fields or instances  
83 of discrimination because of race, religion, color, national  
84 origin, ancestry, sex, age or blindness; to foster, through  
85 community effort or otherwise, goodwill, cooperation and con-  
86 ciliation among the groups and elements of the population of  
87 this state, and to make recommendations to the commission  
88 for the development of policies and procedures, and for pro-  
89 grams of formal and informal education, which the commission  
90 may recommend to the appropriate state agency. Such advisory  
91 agencies and conciliation councils shall be composed of repre-  
92 sentative citizens serving without pay. The commission may  
93 itself make the studies and perform the acts authorized by this  
94 subdivision. It may, by voluntary conferences with parties in  
95 interest, endeavor by conciliation and persuasion to eliminate  
96 discrimination in all the stated fields and to foster goodwill  
97 and cooperation among all elements of the population of the  
98 state;

99 (j) To accept contributions from any person to assist in  
100 the effectuation of the purposes of this section and to seek and  
101 enlist the cooperation of private, charitable, religious, labor,  
102 civic and benevolent organizations for the purposes of this  
103 section;

104 (k) To issue such publications and such results of investi-  
105 gation and research as in its judgment will tend to promote  
106 goodwill and minimize or eliminate discrimination: *Provided,*  
107 That the identity of the parties involved shall not be disclosed.

**§5-11-9. Unlawful discriminatory practices.**

1 It shall be an unlawful discriminatory practice, unless  
2 based upon a bona fide occupational qualification, or except  
3 where based upon applicable security regulations established

4 by the United States or the state of West Virginia or its  
5 agencies or political subdivisions:

6 (a) For any employer to discriminate against an in-  
7 dividual with respect to compensation, hire, tenure, terms,  
8 conditions or privileges of employment if the individual is  
9 able and competent to perform the services required even  
10 if such individual is blind: *Provided*, That it shall not be  
11 unlawful discriminatory practice for an employer to observe  
12 the provisions of any bona fide pension, retirement, group  
13 or employee insurance, or welfare benefit plan or system  
14 not adopted as a subterfuge to evade the provisions of this  
15 subdivision;

16 (b) For any employer, employment agency or labor or-  
17 ganization, prior to the employment or admission to member-  
18 ship, to (1) elicit any information or make or keep a record  
19 of or use any form of application or application blank con-  
20 taining questions or entries concerning the race, religion,  
21 color, national origin, ancestry, sex or age of any applicant  
22 for employment or membership; (2) print or publish or  
23 cause to be printed or published any notice or advertisement  
24 relating to employment or membership indicating any prefer-  
25 ence, limitation, specifications or discrimination based upon  
26 race, religion, color, national origin, ancestry, sex or age;  
27 or (3) deny or limit, through a quota system, employment or  
28 membership because of race, religion, color, national origin,  
29 ancestry, sex, age or blindness;

30 (c) For any labor organization because of race, religion,  
31 color, national origin, ancestry, sex, age or blindness of  
32 any individual to deny full and equal membership rights to  
33 any individual or otherwise to discriminate against such  
34 individual with respect to hire, tenure, terms, conditions or  
35 privileges of employment or any other matter, directly or  
36 indirectly, related to employment;

37 (d) For an employer, labor organization, employment  
38 agency or any joint labor-management committee controlling  
39 apprentice training programs to:

40 (1) Select individuals for an apprentice training program  
41 registered with the state of West Virginia on any basis other

42 than their qualifications as determined by objective criteria  
43 which permit review;

44 (2) Discriminate against any individual with respect to his  
45 right to be admitted to or participate in a guidance program, an  
46 apprenticeship training program, on-the-job training program,  
47 or other occupational training or retraining program;

48 (3) Discriminate against any individual in his pursuit of  
49 such programs or to discriminate against such a person in the  
50 terms, conditions or privileges of such programs;

51 (4) Print or circulate or cause to be printed or circulated  
52 any statement, advertisement or publication, or to use any form  
53 of application for such programs or to make any inquiry in  
54 connection with such program which expresses, directly or in-  
55 directly, discrimination or any intent to discriminate, unless  
56 based upon a bona fide occupational qualification;

57 (e) For any employment agency to fail or refuse to classify  
58 properly, refer for employment or otherwise to discriminate  
59 against any individual because of his race, religion, color,  
60 national origin, ancestry, sex, age or blindness;

61 (f) For any person being the owner, lessee, proprietor,  
62 manager, superintendent, agent or employee of any place of  
63 public accommodations to:

64 (1) Refuse, withhold from or deny to any individual be-  
65 cause of his race, religion, color, national origin, ancestry,  
66 sex, age or blindness, either directly or indirectly, any of the  
67 accommodations, advantages, facilities, privileges or services  
68 of such place of public accommodations;

69 (2) Publish, circulate, issue, display, post or mail, either  
70 directly or indirectly, any written or printed communication,  
71 notice or advertisement to the effect that any of the accom-  
72 modations, advantages, facilities, privileges or services of any  
73 such place shall be refused, withheld from or denied to any  
74 individual on account of race, religion, color, national origin,  
75 ancestry, sex, age or blindness, or that the patronage or custom  
76 thereat of any individual, belonging to or purporting to be of  
77 any particular race, religion, color, national origin, ancestry,  
78 sex or age or who is blind, is unwelcome, objectionable, not  
79 acceptable, undesired or not solicited;

80 (g) For the owner, lessee, sublessee, assignee or managing  
81 agent of, or other person having the right of ownership or  
82 possession of or the right to sell, rent, lease, assign or sub-  
83 lease any housing accommodations or real property or part or  
84 portion thereof, or any agent, or employee of any of them;  
85 or for any real estate broker, real estate salesman, or employee  
86 or agent thereof:

87 (1) To refuse to sell, rent, lease, assign or sublease or  
88 otherwise to deny to or withhold from any person or group  
89 of persons any housing accommodations or real property, or  
90 part or portion thereof, because of race, religion, color,  
91 national origin, ancestry, sex or blindness of such person or  
92 group of persons: *Provided*, That this provision shall not  
93 require any person named herein to rent, lease, assign or  
94 sublease any housing accommodations or real property, or  
95 any portion thereof to both sexes where the facilities of  
96 such housing accommodations or real property, or any portion  
97 thereof, are suitable for only one sex;

98 (2) To discriminate against any person or group of per-  
99 sons because of the race, religion, color, national origin,  
100 ancestry, sex or blindness of such person or group of persons  
101 in the terms, conditions, or privileges of the sale, rental,  
102 or lease of any housing accommodations or real property,  
103 or part or portion thereof, or in the furnishing of facilities  
104 or services in connection therewith;

105 (3) To print, publish, circulate, issue, display, post or  
106 mail, or cause to be printed, published, circulated, issued,  
107 displayed, posted or mailed any statement, advertisement,  
108 publication, or sign or to use any form of application for  
109 the purchase, rental, lease, assignment or sublease of any  
110 housing accommodations or real property, or part or portion  
111 thereof, or to make any record or inquiry in connection  
112 with the prospective purchase, rental, lease, assignment or  
113 sublease of any housing accommodations or real property or  
114 part or portion thereof, which expresses, directly or indirectly,  
115 any discrimination as to race, religion, color, national origin,  
116 ancestry, sex or blindness or any intent to make any such  
117 discrimination and the production of any statement, advertise-  
118 ment, publicity, sign, form of application, record or inquiry

119 purporting to be made by any such person shall be prima  
120 facie evidence in any action that the same was authorized  
121 by such person: *Provided*, That with respect to sex discrimina-  
122 tion, this provision shall not apply to any person named herein  
123 whose housing accommodations or real property, or any por-  
124 tion thereof, have facilities which are suitable for only one sex;

125 (h) For any person or financial institution or lender to  
126 whom application is made for financial assistance for the  
127 purchase, acquisition, construction, rehabilitation, repair or  
128 maintenance of any housing accommodations or real property,  
129 or part or portion thereof, or any agent or employee thereof  
130 to:

131 (1) Discriminate against any person or group of persons  
132 because of race, religion, color, national origin, ancestry,  
133 sex or blindness, of such person or group of persons or of  
134 the prospective occupants or tenants of such housing accom-  
135 modations or real property, or part or portion thereof, in the  
136 granting, withholding, extending, modifying or renewing,  
137 or in the fixing of the rates, terms, conditions or provisions  
138 of any such financial assistance or in the extension of services  
139 in connection therewith;

140 (2) Use any form of application for such financial assist-  
141 ance or to make any record of inquiry in connection with  
142 applications for such financial assistance which expresses,  
143 directly or indirectly, any discrimination as to race, religion,  
144 color, national origin, ancestry, sex or blindness or any intent  
145 to make any such discrimination;

146 (i) For any person, employer, employment agency, labor  
147 organization, owner, real estate broker, real estate salesman  
148 or financial institution to:

149 (1) Engage in any form of threats or reprisal, or to engage  
150 in, or hire, or conspire with others to commit acts or activities  
151 of any nature, the purpose of which is to harass, degrade,  
152 embarrass, or cause physical harm or economic loss or to  
153 aid, abet, incite, compel or coerce any person to engage in  
154 any of the unlawful discriminatory practices defined in this  
155 section;

156 (2) Willfully obstruct or prevent any person from comply-  
157 ing with the provisions of this article, or to resist, prevent,  
158 impede or interfere with the commission or any of its  
159 members or representatives in the performance of duty under  
160 this article;

161 (3) Engage in any form of reprisal or otherwise discrimi-  
162 nate against any person because he has opposed any practices  
163 or acts forbidden under this article or because he has filed  
164 a complaint, testified or assisted in any proceeding under  
165 this article;

166 (4) Induce or attempt to induce for profit any person  
167 to sell or rent or to not sell or rent any housing accommoda-  
168 tions or real property by representations regarding the entry  
169 or prospective entry into the neighborhood of a person or  
170 persons who are blind or who are of a particular race, religion,  
171 color, national origin, ancestry or sex.

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## CHAPTER 108

(S. B. 582—By Mr. Brotherton, Mr. President)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the industrial development and commercial development bond act; relating to the issuance of refunding bonds under such act; providing purposes for and limitations with respect thereto; and providing for the payment and security of such refunding bonds.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.****§13-2C-11. Refunding bonds.**

1 Any bonds issued hereunder and at any time outstand-  
2 ing may at any time and from time to time be refunded by  
3 a county or municipality by the issuance of its refunding  
4 bonds in such amount as the governing body may deem  
5 necessary to refund the principal of the bonds so to be  
6 refunded, together with any unpaid interest thereon; to  
7 make any improvements or alterations in the industrial  
8 project or commercial project; and any premiums and  
9 commissions necessary to be paid in connection therewith.  
10 Any such refunding may be effected whether the bonds  
11 to be refunded shall have then matured or shall thereafter  
12 mature, either by sale of the refunding bonds and the  
13 application of the proceeds thereof for the redemption of  
14 the bonds to be refunded thereby, or by exchange of the  
15 refunding bonds for the bonds to be refunded thereby:  
16 *Provided*, That the holders of any bonds so to be refunded  
17 shall not be compelled without their consent to surrender  
18 their bonds for payment or exchange prior to the date on  
19 which they are payable or, if they are called for redemp-  
20 tion, prior to the date on which they are by their terms  
21 subject to redemption. Any refunding bonds issued under  
22 the authority of this article shall be payable from  
23 revenues derived from the lease, sale, financing, refinanc-  
24 ing, or other disposition of or realization from or upon  
25 the industrial project or the commercial project which was  
26 acquired, purchased, constructed, built or improved, or  
27 financed with the proceeds of the bonds to be refunded, or  
28 from other moneys or the principal of and interest on or  
29 other investment yield from investments or proceeds of  
30 bonds or other applicable funds and moneys, including  
31 investments of proceeds of any refunding bonds, and shall  
32 be subject to the provisions contained in section seven of  
33 this article and shall be secured in accordance with the  
34 provisions of section eight of this article.



## CHAPTER 109

(S. B. 561—By Mr. Brotherton, Mr. President, Mr. Palumbo, Mr. Hamilton and Mr. Kusic)

[Passed April 5, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, seven-a, eight, nine, ten, eleven, twelve, thirteen, fourteen and fifteen, article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, changing the name of the West Virginia industrial development authority to the West Virginia economic development authority; increasing the powers thereof; setting forth certain legislative findings; defining certain terms; relating to membership on the economic development authority; relating to the appointment of and terms of its members; relating to vacancies on the authority; authorizing the delegation of authority by certain members; relating to voting, compensation, expenses and general powers of the authority; deleting reference to fifty year existence of the authority; relating to loans to industrial development agencies for industrial development projects and industrial subdivision project acquisitions and improvements; relating to certain conditions in connection with such loans; relating to liens; relating to certain loan application requirements; providing for certain hearings; changing the name of the industrial development fund to the economic development fund; relating to the requisitions from the economic development fund; relating to certain excess moneys in such fund; relating to the governing body of the authority; relating to the organization, officers, meetings, quorum, voting and powers of such governing body; relating to the money of the authority; relating to a certain conflict of interest; making certain contracts void; providing an agreement with federal agencies not to alter or limit certain rights and powers of the authority; giving the legislative auditor the authority to audit the accounts and books of such authority; and providing a certain rule of construction.

*Be it enacted by the Legislature of West Virginia:*

That sections one, two, three, four, five, six, seven, seven-a,

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

**ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.**

- §31-15-1. Short title.
- §31-15-2. Legislative findings.
- §31-15-3. Purposes of article.
- §31-15-4. Definitions.
- §31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by certain members; voting; compensation and expenses.
- §31-15-6. General powers of 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.
- §31-15-8. Loan application requirements; hearings.
- §31-15-9. Economic development fund.
- §31-15-10. Governing body; organization and meetings; quorum; powers.
- §31-15-11. Money of the authority.
- §31-15-12. Conflict of interest; when contracts void.
- §31-15-13. Agreement with federal agencies not to alter or limit powers of authority.
- §31-15-14. Audits.
- §31-15-15. Construction.

**§31-15-1. Short title.**

- 1 This article shall be known and may be cited as "The
- 2 West Virginia Economic Development Authority Act."

**§31-15-2. Legislative findings.**

- 1 It is hereby determined and declared as a matter of
- 2 legislative finding: (a) That unemployment exists in
- 3 many areas of the state and may well come about, from
- 4 time to time, in other areas of the state; (b) that in some
- 5 areas of the state, unemployment is a serious problem
- 6 and has been for so long a period of time that, without
- 7 remedial measures, it may become so in other areas of
- 8 the state; (c) that economic insecurity due to unemploy-
- 9 ment is a serious menace to the health, safety, morals
- 10 and general welfare of the people of the entire state;
- 11 (d) that widespread industry unemployment produces
- 12 indigency which falls with crushing force upon all un-

13 employed workers and ultimately upon the state in the  
14 form of welfare and unemployment compensation; (e)  
15 that the absence of employment and business opportunities  
16 for youth is a serious threat to the strength and perma-  
17 nence of their faith in our American political and eco-  
18 nomic institutions and the philosophy of freedom on  
19 which those institutions are based; (f) that lack of em-  
20 ployment and business opportunities has resulted in thou-  
21 sands of workers and their families leaving the state to  
22 find such opportunities elsewhere, and that this exodus  
23 has adversely affected the tax base of counties and mu-  
24 nicipalities resulting in an impairment of their financial  
25 ability to support education and other local government  
26 services; (g) that security against unemployment and  
27 the spread of indigency and economic stagnation can best  
28 be provided by the promotion, attraction, stimulation,  
29 rehabilitation and revitalization of commerce, tourism,  
30 industry and manufacturing; (h) that the present and  
31 future health, safety, morals, right to gainful employment  
32 and general welfare of the people of the state require as a  
33 public purpose the promotion and development of new  
34 and expanded industrial, commercial, tourist and manu-  
35 facturing enterprises within this state; (i) that the device  
36 under which private community industrial development  
37 organizations in the state acquire or build industrial  
38 buildings or sites with funds raised through popular sub-  
39 scription, loans or otherwise for lease and sale to new or  
40 expanding industries has proven effective in creating  
41 new employment and business opportunities locally, is  
42 in accord with the American tradition of community  
43 initiative and enterprise, and requires and deserves en-  
44 couragement and support from the state, as a means  
45 toward alleviation of unemployment and economic dis-  
46 tress; (j) that community industrial development cor-  
47 porations in the state have invested substantial funds in  
48 successful industrial development projects and are ex-  
49 perencing difficulty in undertaking additional projects  
50 by reason of the partial inadequacy of their own funds  
51 potentially available from local subscription sources and  
52 by reason of limitations of local financial institutions in  
53 providing additional and sufficiently sizable first deed of

54 trust or mortgage loans; (k) that an urgent need exists  
55 to stimulate a larger flow of private investment funds from  
56 banks, investment houses, insurance companies and other  
57 financial institutions into community industrial build-  
58 ing programs; and (l) that by increasing the number of  
59 community industrial building projects presenting at-  
60 tractive opportunities for private investment, a larger  
61 portion of the private capital available in this state for  
62 investment can be put to use for the general economic  
63 development of the state.

**§31-15-3. Purposes of article.**

1 The purposes of this article shall be to provide for the  
2 formation of a public economic development authority  
3 to promote, assist, encourage and, in conjunction with  
4 such banking corporations or institutions, trust companies,  
5 savings banks, building and loan associations, insurance  
6 companies, or related corporations, partnerships, founda-  
7 tions or other institutions to develop and advance the  
8 business prosperity and economic welfare of the state of  
9 West Virginia; to encourage and assist in the location of  
10 new business and industry; to stimulate and assist in the  
11 expansion of all kinds of business activity which will  
12 tend to promote the business development and maintain  
13 the economic stability of this state, provide maximum  
14 opportunities for employment, encourage thrift and im-  
15 prove the standard of living of the citizens of this state;  
16 to cooperate and act in conjunction with other organiza-  
17 tions, public or private, the objects of which are the  
18 promotion and advancement of industrial, commercial,  
19 tourist or manufacturing developments in this state; to  
20 furnish money and credit to approved industrial develop-  
21 ment agencies in this state, thereby establishing a source  
22 of credit not otherwise available therefor. Such purposes  
23 are hereby declared to be public purposes for which  
24 public money may be spent and are purposes which will  
25 promote the health, safety, morals, right to gainful em-  
26 ployment, business opportunities and general welfare of  
27 the inhabitants of the state.

**§31-15-4. Definitions.**

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

3 (a) "Authority" means the West Virginia economic  
4 development authority.

5 (b) "Board" means the governing body of the au-  
6 thority.

7 (c) "Cost of establishing an industrial development  
8 project" means cost of construction, cost of all lands,  
9 water areas, property rights and easements, financing  
10 charges, interest prior to and during construction, cost  
11 of engineering and legal services, plans, specifications  
12 and surveys, estimates of costs and any other expenses  
13 necessary or incident to determining the feasibility or  
14 practicability of any industrial development project, to-  
15 gether with such other expenses as may be necessary or  
16 incidental to the financing and the construction of the  
17 industrial development project and the placing of the  
18 same in operation.

19 (d) "Cost of industrial subdivision project improve-  
20 ments" means construction cost of site preparation, cost  
21 of grading and planting, construction cost of utilities,  
22 sewage disposal facilities, storm drains, access roads and  
23 dock facilities, construction cost of internal streets and  
24 roads, curbs, walks, parking areas, lighting, shell build-  
25 ings and rail spurs, cost of acquiring easements and  
26 property rights in other lands and, in connection there-  
27 with, financing charges, interest prior to and during the  
28 construction of such improvements, cost of engineering  
29 and legal services, preparation of plans, specifications,  
30 surveys and estimates of costs, together with such other  
31 expenses as may be necessary or incidental to the fi-  
32 nancing and construction of industrial subdivision proj-  
33 ect improvements.

34 (e) "County" means any county of this state.

35 (f) "Federal agency" means the United States of  
36 America and any department, corporation, agency or  
37 instrumentality created, designated or established by  
38 the United States of America.

39 (g) "Fund" means the economic development fund  
40 provided for in section nine of this article.

41 (h) "Government" means state and federal govern-  
42 ment, and any political subdivision, agency or instru-  
43 mentality thereof, corporate or otherwise.

44 (i) "Industrial development agency" means any in-  
45 corporated organization, foundation, association or agency  
46 to whose members or shareholders no profit inures,  
47 which has as its primary function the promotion, en-  
48 couragement and development of industrial, commercial,  
49 manufacturing and tourist facility enterprises in this  
50 state.

51 (j) "Industrial development project" means any land  
52 or water site, structure, facility or undertaking com-  
53 prising or being connected with or a part of an indus-  
54 trial, commercial, manufacturing or tourist facility en-  
55 terprise established, to be established or proposed to  
56 be acquired by an industrial development agency in this  
57 state.

58 (k) "Industrial subdivision project" means any tract  
59 of land or area of water and includes, where appropri-  
60 ate, related utilities, services and access roads, the clear  
61 and marketable legal title to which is held or is pro-  
62 posed to be acquired by an industrial development  
63 agency for sale or lease for an industrial development  
64 project.

65 (l) "Industrial subdivision project improvements"  
66 means site preparation, grading, planting and the instal-  
67 lation of utilities, sewage disposal facilities, storm drains,  
68 dock facilities, internal streets and roads, curbs, walks,  
69 parking areas, lighting, shell buildings and rail spurs  
70 upon an industrial subdivision project.

71 (m) "Municipality" means any city or town in this  
72 state.

73 (n) "Responsible buyer" means government and  
74 any person, partnership, firm, company or corporation  
75 organized for profit deemed by the authority, after  
76 proper investigation, to be financially responsible to as-

77 sume all obligations prescribed by it in the acquisition  
78 of an industrial development project from an industrial  
79 development agency and in the operation of an indus-  
80 trial, commercial, manufacturing or tourist facility enter-  
81 prise thereon.

82 (o) "Responsible tenant" means government and any  
83 person, partnership, firm, company or corporation orga-  
84 nized for profit deemed by the authority, after proper  
85 investigation, to be financially responsible to assume all  
86 rental and other obligations prescribed by it in the leas-  
87 ing of an industrial development project and in the oper-  
88 ation of an industrial, commercial, manufacturing or  
89 tourist facility enterprise thereon.

**§31-15-5. West Virginia economic development authority; com-  
position; appointment; terms; delegation of author-  
ity by certain members; voting; compensation and  
expenses.**

1 The West Virginia industrial development authority  
2 heretofore created is hereby continued as a body cor-  
3 porate and politic, constituting a public corporation and  
4 government instrumentality, but shall hereafter be  
5 known as the West Virginia economic development au-  
6 thority.

7 The authority shall be composed of a board of members  
8 consisting of a chairman, who shall be the governor or his  
9 designated representative, the state treasurer, the tax  
10 commissioner, the commissioner of banking and five  
11 appointed members who shall be broadly representative  
12 of the geographic regions of the state.

13 The governor shall nominate and, by and with the advice  
14 and consent of the Senate, appoint five members of the  
15 commission for staggered terms of four years. Of the  
16 members of the commission first appointed, one shall be  
17 appointed for a term ending the thirtieth day of June, one  
18 thousand nine hundred seventy-eight, and one each for  
19 terms ending one, two, three and four years thereafter:  
20 *Provided*, That each person serving as a member of the  
21 West Virginia industrial development authority, for a  
22 term which has not expired on the effective date of this

23 article, shall be appointed by the governor without Senate  
24 confirmation to the West Virginia economic development  
25 authority as one of the five appointed members, for the  
26 term ending the thirtieth day of June in the year in  
27 which his term would expire as a member of the West  
28 Virginia industrial development authority. As these origi-  
29 nal appointments expire, each subsequent appointment  
30 shall be for a full four-year term. Any member whose  
31 term has expired shall serve until his successor has been  
32 duly appointed and qualified. Any person appointed to fill  
33 a vacancy shall serve only for the unexpired term. Any  
34 member shall be eligible for reappointment.

35 The governor, state treasurer, tax commissioner and  
36 commissioner of banking may, by written notice filed  
37 with the secretary of the authority, from time to time,  
38 delegate to any subordinate the power to represent them  
39 at any meeting of the authority. In such case, the sub-  
40 ordinate shall have the same power and privileges as the  
41 official he represents and may vote on any question.

42 Members of the authority shall not be entitled to com-  
43 pensation for services performed as members, but shall  
44 be entitled to reimbursement for all reasonable and  
45 necessary expenses actually incurred in the performance  
46 of their duties.

#### **§31-15-6. General powers of authority.**

1 The authority, as a public corporation and govern-  
2 mental instrumentality exercising public powers of the  
3 state, shall have and may exercise all powers necessary  
4 or appropriate to carry out the purposes of this article,  
5 including the power:

6 (a) To cooperate with industrial development agencies  
7 in efforts to promote the expansion of industrial, com-  
8 mercial, manufacturing and tourist activity in this  
9 state.

10 (b) To determine, upon the proper application of an  
11 industrial development agency, whether the declared  
12 public purposes of this article have been or will be ac-  
13 complished by the establishment by such agency of an  
14 industrial development project in this state.



15 (c) To conduct examinations and investigations and  
16 to hear testimony and take proof, under oath or affirma-  
17 tion, at public or private hearings, on any matter relevant  
18 to this article and necessary for information on the  
19 establishment of any industrial development project.

20 (d) To issue subpoenas requiring the attendance of  
21 witnesses and the production of books and papers rele-  
22 vant to any hearing before such authority or one or more  
23 members appointed by it to conduct any hearing.

24 (e) To apply to the circuit court having venue of such  
25 offense to have punished for contempt any witness who  
26 refuses to obey a subpoena, to be sworn or affirmed or  
27 to testify or who commits any contempt after being  
28 summoned to appear.

29 (f) To authorize any member of the authority to con-  
30 duct hearings, administer oaths, take affidavits and issue  
31 subpoenas.

32 (g) To make, upon proper application of any indus-  
33 trial development agency, loans to such agency for in-  
34 dustrial development projects, industrial subdivision  
35 projects and industrial subdivision project improvements  
36 and to provide for the repayment and redeposit of such  
37 loans in the manner provided in this article.

38 (h) To sue and be sued, implead and be impleaded,  
39 and complain and defend in any court.

40 (i) To adopt, use and alter at will a corporate seal.

41 (j) To make bylaws for the management and regula-  
42 tion of its affairs.

43 (k) To appoint officers, agents, employees and ser-  
44 vants.

45 (l) To make contracts of every kind and nature to  
46 execute all instruments necessary or convenient for  
47 carrying on its business.

48 (m) Without in any way limiting any other subdivi-  
49 sion of this section, to accept grants from and enter into  
50 contracts and other transactions with any federal  
51 agency.

52 (n) To take title by foreclosure to any industrial de-  
53 velopment project or any industrial subdivision project  
54 where acquisition is necessary to protect any loan pre-  
55 viously made by the authority and to sell, transfer and  
56 convey such project to any responsible buyer. In the  
57 event such sale, transfer and conveyance cannot be  
58 effected with reasonable promptness, the authority may,  
59 in order to minimize financial losses and sustain em-  
60 ployment, lease the project to a responsible tenant. The  
61 authority shall not lease an industrial development  
62 project or industrial subdivision project, except under  
63 the conditions and for the purposes cited in this section.  
64 The authority shall have no power at any time to borrow  
65 money or in any manner pledge the credit or taxing  
66 power of the state or any municipality or other political  
67 subdivision thereof, and none of its obligations shall be  
68 deemed to be an obligation of the state or any munici-  
69 pality or other political subdivision thereof.

70 (o) To participate in any reorganization proceeding  
71 pending pursuant to Title II of the United States Code  
72 (being the act of Congress entitled "An act to establish  
73 a uniform system of bankruptcy throughout the United  
74 States," approved July 1, 1898, as amended) or in any  
75 receivership proceeding in a state or federal court for  
76 the reorganization or liquidation of a responsible buyer  
77 or responsible tenant. The authority may file its claim  
78 against any such responsible buyer or responsible tenant  
79 in any of the foregoing proceedings, vote upon any ques-  
80 tion pending therein which requires the approval of the  
81 creditors participating in any reorganization proceeding  
82 or receivership, exchange any evidence of such indebted-  
83 ness for any property, security or evidence of indebted-  
84 ness offered as a part of the reorganization of such re-  
85 sponsible buyer or responsible tenant or of any other  
86 entity formed to acquire the assets thereof and may  
87 compromise or reduce the amount of any indebtedness  
88 owing to it as a part of any such reorganization.

**§31-15-7. Loans to industrial development agencies for indus-  
trial development projects.**

1 When it has determined upon application of an in-

2 dustrial development agency and upon hearing in the  
3 manner hereinafter provided that the establishment or  
4 acquisition of a particular industrial development project  
5 has accomplished or will accomplish the public purposes  
6 of this article, the authority may contract to loan such  
7 agency an amount not in excess of fifty percent of the cost  
8 or estimated cost of such project, as established, to be  
9 established or proposed to be acquired, subject to the  
10 following conditions:

11 (a) Industrial development projects to be established  
12 or acquired.

13 (1) The authority shall have first determined that the  
14 industrial development agency holds funds in an amount  
15 equal to or property of a value equal to not less than  
16 ten percent of the estimated cost of establishing or  
17 acquiring the industrial development project, which  
18 funds or property are available for and shall be applied  
19 to the establishment or acquisition of the project.

20 (2) The authority shall have also determined that the  
21 industrial development agency has obtained from other  
22 independent and responsible sources, such as banks and  
23 insurance companies, a firm commitment for all other  
24 funds over and above the loan of the authority and such  
25 funds or property as the agency may hold, necessary for  
26 payment of all the estimated cost of establishing or  
27 acquiring the industrial development project and that  
28 the sum of all these funds is adequate to ensure comple-  
29 tion and operation of the industrial development  
30 project.

31 (b) Industrial development projects established or  
32 acquired with initial authority loan participation.

33 (1) The authority shall have first determined that the  
34 industrial development agency has expended funds in an  
35 amount equal to, or has applied property of a value  
36 equal to, not less than ten percent of the cost of estab-  
37 lishing or acquiring the industrial development project.

38 (2) The authority shall have also determined that the  
39 industrial development agency obtained from other in-

40 dependent and responsible sources, such as banks and  
41 insurance companies, other funds necessary for payment  
42 of all the cost of establishing or acquiring the industrial  
43 development project and that the industrial development  
44 agency participation and these funds have been adequate  
45 to ensure completion and operation or acquisition of the  
46 industrial development project. The proceeds of any loan  
47 made by the authority to the industrial development  
48 agency pursuant to this subdivision (b) shall be used  
49 only for the establishment or acquisition of industrial  
50 development projects in furtherance of the public pur-  
51 poses of this article.

52 The loan of the authority shall be for such period of  
53 time 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  
56 and by deed of trust on the industrial development  
57 project for which the loan was made or by assignment  
58 of any deed of trust and negotiable promissory note and  
59 other security taken by the industrial development  
60 agency on the industrial development project, such deed  
61 of trust and note, assignment of deed of trust, and note  
62 and other security to be second and subordinate only to  
63 the deed of trust securing the first lien obligation issued  
64 to secure the commitment of funds from the independent  
65 and responsible sources and used in the financing of the  
66 industrial development project.

67 Money loaned by the authority to an industrial devel-  
68 opment agency shall be withdrawn from the fund and  
69 paid over to the agency in such manner as is provided by  
70 rules and regulations of the authority.

71 The authority shall deposit all payments of interest on  
72 loans and the principal thereof in the fund. When any  
73 federal agency participates, the authority may adjust the  
74 required ratios of financial participation by the industrial  
75 development agency, the source of independent funds  
76 and the authority in such manner as to ensure the maxi-  
77 mum benefit available to the industrial development  
78 agency, the authority, or both, by the participation of  
79 the federal agency. When ratios are adjusted as aforesaid,

80 no such adjustment shall be made which shall cause the  
81 authority to grant a loan to the industrial development  
82 agency in excess of fifty percent of the cost or estimated  
83 cost of the industrial development project.

84 Where any federal agency participating in the financing  
85 of an industrial development project is not permitted to  
86 take as security for such participation a deed of trust  
87 or assignment of deed of trust and other security the lien  
88 of which is junior to the deed of trust or assignment of  
89 deed of trust and other security of the authority, the  
90 authority may take as security for its loan to the indus-  
91 trial development agency a deed of trust or assignment  
92 of deed of trust and other security junior in lien to that  
93 of the federal agency.

**§31-15-7a. Loans to industrial development agencies for indus-  
trial subdivision project acquisitions and improve-  
ments.**

1 When it has been determined upon application of an in-  
2 dustrial development agency and upon hearing in the  
3 manner hereinafter provided that the acquisition or im-  
4 provement of a particular industrial subdivision project  
5 by such agency will accomplish the public purposes of  
6 this article, the authority may contract to loan such indus-  
7 trial development agency an amount not in excess of  
8 fifty percent of the cost or estimated cost of such in-  
9 dustrial subdivision project acquisition or improvement,  
10 except as to shell buildings, in which case the agency  
11 may contract to loan an amount not in excess of ninety per-  
12 cent of the cost of such shell building, subject to the  
13 following conditions:

14 (1) The authority shall have determined that the in-  
15 dustrial development agency has obtained from other  
16 independent and responsible sources, such as banks and  
17 insurance companies, a firm commitment for all other  
18 funds, over and above the loan of the authority, necessary  
19 for payment of all the estimated cost of the industrial sub-  
20 division project acquisition or improvement and that the  
21 sum of all these funds is adequate to ensure completion of  
22 the project acquisition or improvement.

23       (2) The authority shall have also determined that the  
24 industrial development agency has or proposes to ac-  
25 quire clear and marketable legal title to the industrial  
26 subdivision project to be improved or acquired.

27       (3) The industrial development agency shall covenant  
28 in writing with the authority that, as long as any loan  
29 made by the authority to the agency for the acquisition or  
30 improvement of any industrial subdivision project remains  
31 unpaid, no portion of such industrial subdivision project  
32 shall be sold, leased or otherwise encumbered except for  
33 the purpose of establishing an industrial development  
34 project on such land by the agency.

35       (4) In the case of a contract to loan more than fifty per-  
36 cent of the cost of a shell building, subject to the maximum  
37 limitation of ninety percent as aforesaid, the industrial de-  
38 velopment agency shall furnish to the authority evidence  
39 that such industrial development agency has entered  
40 into a contract whereby a responsible buyer or responsible  
41 tenant is legally obligated to acquire or lease such shell  
42 building. The Legislature finds and declares that it does  
43 not believe it would be in the best interest of the state  
44 for the authority to contract to loan more than fifty per-  
45 cent of the cost of a shell building, subject to the maximum  
46 limitation of ninety percent as aforesaid, unless it is clear  
47 that the use to be made of such shell building will result  
48 in the employment of a reasonably substantial work force.

49       The loan of the authority shall be for such period of  
50 time and shall bear interest at such rate as the authority  
51 determines and it shall be secured by the negotiable  
52 promissory note of the industrial development agency  
53 and by deed of trust on the industrial subdivision project  
54 for which the loan was made, such deed of trust to be  
55 second and subordinate only to the deed of trust securing  
56 the first lien obligation issued to secure the commitment  
57 of funds from the independent and responsible sources  
58 and used in the financing of the industrial subdivision  
59 project acquisition or improvement.

60       The authority may, in its discretion, defer the payment  
61 of principal and interest, or principal only, or interest

62 only, upon any loan made to an industrial development  
63 agency for any industrial subdivision project acquisition  
64 or improvement, such deferment to be for such period  
65 as the authority determines, not to exceed five years from  
66 the date of the deed of trust securing the loan. If any  
67 portion of such industrial subdivision project is sold or  
68 leased by the agency prior to the expiration of the five-  
69 year period, all deferred installments of the principal of  
70 the loan accrued on the date of such sale or lease, or the  
71 proportionate part of such deferred principal which the  
72 sold or leased portion of the project bears to its total acre-  
73 age, together with all unpaid interest accrued on the date  
74 of such sale or lease, shall, at the option of the authority,  
75 become due and payable immediately or subject to re-  
76 negotiation by either increasing or decreasing the number  
77 and amount of each installment of principal and interest,  
78 without effecting any change in the amount of principal of  
79 the original loan or the rate of interest as originally fixed  
80 by the authority in the deed of trust and note.

81 Money loaned by the authority to an industrial develop-  
82 ment agency shall be withdrawn from the fund and paid  
83 over to the agency in such manner as is provided by rules  
84 and regulations of the authority.

85 The authority shall deposit all payments of interest on  
86 any loans and the principal thereof in the fund.

87 Where any federal agency participating in the financing  
88 of industrial subdivision project acquisition or improve-  
89 ment is not permitted to take as security for such partic-  
90 ipation a deed of trust or assignment of deed of trust  
91 and other security the lien of which is junior to the deed  
92 of trust or assignment of deed of trust and other security  
93 of the authority, the authority may take as security for  
94 its loan to the industrial development agency a deed of  
95 trust or assignment of deed of trust and other security  
96 junior in lien to that of the federal agency.

**§31-15-8. Loan application requirements; hearings.**

1 Prior to the loaning of any funds to an industrial  
2 development agency for an industrial development project  
3 or for an industrial subdivision project acquisition or

4 improvement, the authority shall receive from such agency  
5 a loan application in such form as adopted by the author-  
6 ity.

7 (1) If the loan application is for an industrial develop-  
8 ment project, the form shall contain at least the follow-  
9 ing:

10 (a) A general description of the project and a general  
11 description of the industrial, commercial, manufacturing  
12 or tourist enterprise for which the project has been or  
13 will be established.

14 (b) A legally sufficient description of all real estate  
15 necessary for the project.

16 (c) Such plans and other documents as may be  
17 required to show the type, structure and general character  
18 of the project.

19 (d) A general description of the type, classes and  
20 number of employees employed or to be employed in the  
21 operation of the project.

22 (e) Cost or estimates of cost of establishing the project.

23 (f) A general description and statement of value of any  
24 property, real or personal, of the industrial development  
25 agency applied or to be applied to the establishment of  
26 the project.

27 (g) A statement of cash funds previously applied, or held  
28 by the industrial development agency, which are available  
29 for and are to be applied to the establishment of the project.

30 (h) Evidence of the arrangement made by the industrial  
31 development agency for the financing of all cost of the  
32 project over and above its own participation.

33 (i) A general description of the responsible tenant to  
34 which the industrial development agency has leased or  
35 will lease the project or of the responsible buyer to which  
36 the agency has sold or will sell the project.

37 (j) A general description of the form of lease or sales  
38 agreement entered into or to be entered into between the  
39 industrial development agency and its responsible tenant  
40 or responsible buyer.



41 (k) Evidence that the establishment of the project  
42 will not cause the removal of an industrial, commercial,  
43 manufacturing or tourist facility from one area of the  
44 state to another area of the state.

45 (2) If the loan application is for an industrial sub-  
46 division project acquisition or improvement, the form  
47 shall contain at least the following:

48 (a) A general description of the industrial subdivision  
49 project and a general description of its adaptability to  
50 industrial, commercial, manufacturing or tourist pur-  
51 poses, including the type of industrial development project  
52 which may be established thereon upon completion of the  
53 acquisition or improvement for which the loan is re-  
54 quested.

55 (b) A legally sufficient description of the industrial  
56 subdivision project.

57 (c) Such plans and other documents as may be re-  
58 quired to show the type, structure and general character  
59 of the proposed industrial subdivision project acquisition  
60 or improvement.

61 (d) Cost or estimates of cost of the proposed industrial  
62 subdivision project acquisition or improvement.

63 (e) Evidence of the arrangement made by the industrial  
64 development agency for the financing of all cost of the  
65 industrial subdivision project acquisition or improvement  
66 over and above its own participation.

67 (f) Evidence that the establishment of the project to be  
68 acquired or improved will not cause the removal of an in-  
69 dustrial, commercial, manufacturing or tourist facility  
70 from one area of the state to another area of the state.

71 The board of the authority shall hold such hearings  
72 and examinations on each loan application as shall be  
73 necessary to determine whether the public purposes of  
74 this article will be accomplished by the granting of such  
75 loan.

76 When the board determines that a loan will accomplish  
77 the public purposes of this article, it shall grant such loan  
78 in accordance with the provisions of this article.

**§31-15-9. Economic development fund.**

1 The industrial development fund, to which shall be  
2 credited any appropriation made by the Legislature to  
3 the authority and such other deposits as are provided  
4 for in this section, is hereby continued in the state trea-  
5 sury as a special account, but shall hereafter be known  
6 as the economic development fund.

7 The authority shall requisition from the fund such  
8 amounts as are necessary to provide for the payment of  
9 the administrative expenses of this article. Whenever the  
10 authority determines it to be necessary to purchase at a  
11 foreclosure sale any industrial development project or in-  
12 dustrial subdivision project pursuant to subdivision (o),  
13 section six of this article, it may requisition from the fund  
14 such amount as is necessary to pay the purchase price  
15 thereof, notwithstanding that the purchase price in the  
16 foreclosure sale of any industrial development project  
17 may exceed fifty percent of the original cost of the proj-  
18 ect, or that in the foreclosure sale of any industrial subdi-  
19 vision project the purchase price may exceed fifty percent  
20 of the original cost of the project or improvement thereon.

21 The authority shall requisition from the fund such  
22 amounts as are allocated and appropriated for loans to  
23 industrial development agencies for industrial develop-  
24 ment projects, industrial subdivision projects and indus-  
25 trial subdivision project acquisitions or improvements.  
26 As loans to industrial development agencies are repaid  
27 to the authority pursuant to the terms of mortgages and  
28 other agreements, the authority shall pay such amounts  
29 into the fund, consistent with the intent of this article  
30 that the fund shall operate as a revolving fund whereby  
31 all appropriations and payments made thereto may be  
32 applied and reapplied for the purposes of this article.

33 Whenever the authority determines that the balance  
34 in the fund is in excess of the immediate requirements  
35 for loans, it may request that such excess be invested  
36 until needed for loan purposes, in which case such excess  
37 shall be invested in a manner consistent with the in-  
38 vestment of other temporary state funds. Interest earned

39 on any money invested pursuant to this section shall be  
40 credited to the fund.

41 If the authority determines that funds held in the  
42 fund are in excess of the amount needed to carry out  
43 the purposes of this article, it shall take such action as  
44 is necessary to release such excess and transfer it to the  
45 general fund of the state treasury.

**§31-15-10. Governing body; organization and meetings; quorum; powers.**

1 The governing body of the authority shall consist of  
2 the members of the authority acting as a board, which  
3 shall exercise all the powers given to the authority in  
4 this article. The governor or his designated representa-  
5 tive shall be chairman of the board and its chief execu-  
6 tive officer. On the second Monday of July of each  
7 year, the board shall meet to elect a secretary and a  
8 treasurer from among its own members.

9 A majority of the members shall constitute a quorum  
10 for the purpose of conducting business. Except in the  
11 case of a loan application or unless the bylaws require  
12 a larger number, action may be taken by majority vote  
13 of the members present. Approval or rejection of a loan  
14 application shall be made by majority vote of the full  
15 membership of the board.

16 The board shall manage the property and business of  
17 the authority and prescribe, amend and repeal bylaws  
18 and rules and regulations governing the manner in which  
19 the business of the authority is conducted.

20 The governor shall provide staff services to the au-  
21 thority for administration of this article, including liaison  
22 between the authority and industrial development agen-  
23 cies and related organizations and between the au-  
24 thority and other state agencies whose facilities and  
25 services may be useful to the authority in its work.  
26 The authority may reimburse any state spending unit  
27 for any special expense actually incurred in providing  
28 any service or the use of any facility to the authority.

29 The authority shall employ an executive director and  
30 any other personnel it determines necessary, and may  
31 appoint its own counsel and legal staff, and retain  
32 such temporary engineering, financial and other con-  
33 sultants or technicians as may be required for any spe-  
34 cial study or survey consistent with the provisions of  
35 this article.

**§31-15-11. Money of the authority.**

1 All money accruing to the authority from whatever  
2 source derived, except legislative appropriations, shall  
3 be collected and received by the treasurer of the au-  
4 thority, who shall pay it into the state treasury in the  
5 manner required by section two, article two, chapter  
6 twelve of this code, which shall be credited to the fund.

**§31-15-12. Conflict of interest; when contracts void.**

1 No member, officer or employee of the authority shall  
2 either directly or indirectly be a party to or interested  
3 in any manner in any contract or agreement with the  
4 authority whereby liability or indebtedness against the  
5 authority is in any manner created. Any contract or  
6 agreement made in violation of the provisions of this  
7 section shall be void and no action thereon shall be main-  
8 tained against the authority.

**§31-15-13. Agreement with federal agencies not to alter or limit powers of authority.**

1 The state hereby pledges to and agrees with each  
2 federal agency that, if such agency constructs or loans  
3 or contributes any funds for the acquisition, construc-  
4 tion, extension, improvement or enlargement of any in-  
5 dustrial development project or industrial subdivision  
6 project or for industrial subdivision project improve-  
7 ments, the state will not alter or limit the rights and  
8 powers of the authority in any manner which would  
9 be inconsistent with the due performance of any agree-  
10 ment between the authority and such federal agency  
11 and that the authority shall continue to have and exer-  
12 cise all powers granted for carrying out the purposes of  
13 this article for so long as necessary.

**§31-15-14. Audits.**

1 The accounts and books of the authority, including  
2 receipts, disbursements, contracts, mortgages, deeds of  
3 trust, investments and all other matters relating to its  
4 operation, finances and affairs, shall be examined and  
5 audited from time to time by the legislative auditor in  
6 accordance with the provisions of article two, chapter  
7 four of this code.

**§31-15-15. Construction.**

1 The provisions of this article are remedial and shall  
2 be liberally construed and applied so as to promote the  
3 purposes set out in section three of this article.

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## CHAPTER 110

(S. B. 418—By Mr. Brotherton, Mr. President, and Mr. Neeley)

[Passed April 6, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirty, article thirteen of said chapter; and to further amend said article thirteen by adding thereto a new section, designated section thirty-a, all relating to a standard valuation law for life insurance policies, a standard nonforfeiture law for life insurance and enacting a new nonforfeiture law for individual deferred annuities.

*Be it enacted by the Legislature of West Virginia:*

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

**Article**

7. **Assets and Liabilities.**

13. **Life Insurance.**

**ARTICLE 7. ASSETS AND LIABILITIES.****§33-7-9. Standard valuation law for life policies.**

1 (1) The commissioner shall annually value, or cause  
2 to be valued, the reserve liabilities (hereinafter called  
3 reserves) for all outstanding life insurance policies and  
4 annuity and pure endowment contracts of every life  
5 insurer transacting insurance in this state, except that in  
6 the case of an alien insurer such valuation shall be  
7 limited to its United States business, and may certify  
8 the amount of any such reserves, specifying the mor-  
9 tality table or tables, rate or rates of interest and methods  
10 (net level premium method or other) used in the cal-  
11 culation of such reserves.

12 All valuations made by him or by his authority shall  
13 be made upon the net premium basis.

14 In every case the standard of valuation employed shall  
15 be stated in his annual report.

16 In calculating such reserves, he may use group methods  
17 and approximate averages for fractions of a year or  
18 otherwise. In lieu of the valuation of the reserves  
19 herein required of any foreign or alien insurer, he may  
20 accept any valuation made, or caused to be made, by  
21 the insurance supervisory official of any state or other  
22 jurisdiction when such valuation complies with the  
23 minimum standard herein provided and if the official  
24 of such state or jurisdiction accepts as sufficient and  
25 valid for all legal purposes the certificate of valuation  
26 of the commissioner when such certificate states the  
27 valuation to have been made in a specified manner ac-  
28 cording to which the aggregate reserves would be at  
29 least as large as if they had been computed in the  
30 manner prescribed by the law of that state or juris-  
31 diction.

32 Any such insurer which at any time shall have adopted  
33 any standard of valuation producing greater aggregate

34 reserves than those calculated according to the mini-  
35 mum standard herein provided may, with the approval  
36 of the commissioner, adopt any lower standard of val-  
37 uation, but not lower than the minimum herein provided.

38 (2) This subsection shall apply to only those policies  
39 and contracts issued prior to the original operative  
40 date of the Standard Nonforfeiture Law (now section  
41 thirty, article thirteen of this chapter). All valua-  
42 tions shall be according to the standard of valuations  
43 adopted by the insurer for the obligations to be valued.  
44 Any insurer may adopt different standards for obliga-  
45 tions of different dates or classes, but if the total value  
46 determined by any such standard for the obligation for  
47 which it has been adopted shall be less than that deter-  
48 mined by the legal minimum standard hereinafter  
49 prescribed, or if the insurer adopts no standard, said  
50 legal minimum standard shall be used.

51 Except as otherwise provided in subdivision (a)  
52 (B) of subsection (3), the legal minimum standard for  
53 contracts issued before the first day of January, in the  
54 year one thousand nine hundred one, shall be actuaries'  
55 or combined experience table of mortality with interest  
56 at four percent per annum, and for contracts issued on  
57 or after said date shall be the "American Experience  
58 Table" of mortality with interest at three and one-half  
59 percent per annum, except that the minimum standard  
60 for the valuation of annuities and pure endowments  
61 purchased under group annuity and pure endowment  
62 contracts shall be that provided by this subsection but  
63 replacing the interest rates specified in this subsection  
64 by an interest rate of five percent per annum. Policies  
65 issued by insurers doing business in this state may  
66 provide for not more than one-year preliminary term  
67 insurance: *Provided*, That if the premium charged for  
68 term insurance under a limited payment life preliminary  
69 term policy providing for the payment of all premiums  
70 thereof in less than twenty years from the date of the  
71 policy, or under an endowment preliminary term policy,  
72 exceeds that charged for like insurance under twenty  
73 payment life preliminary term policies of the same

74 insurer, the reserve thereon at the end of any year,  
75 including the first, shall not be less than the reserve  
76 on a twenty payment life preliminary term policy is-  
77 sued in the same year and at the same age, together  
78 with an amount which shall be equivalent to the ac-  
79 cumulation of a net level premium sufficient to provide  
80 for a pure endowment at the end of the premium pay-  
81 ment period, equal to the difference between the value  
82 at the end of such period of such a twenty payment life  
83 preliminary term policy and a full reserve at such time  
84 of such a limited payment life or endowment policy.

85 The commissioner may vary the standards of interest  
86 and mortality in the case of alien insurers and in partic-  
87 ular cases of invalid lives and other extra hazards.

88 Reserves for all such policies and contracts may be  
89 calculated, at the option of the insurer, according to  
90 any standards which produce greater aggregate reserves  
91 for all such policies and contracts than the minimum  
92 reserves required by this subsection.

93 (3) Except as otherwise provided in subdivision (a)  
94 (B) of this subsection, this subsection shall apply to  
95 only those policies and contracts issued on or after the  
96 original operative date of the Standard Nonforfeiture  
97 Law (now section thirty, article thirteen of this chapter).

98 (a) (A) Except as otherwise provided in para-  
99 graph (B) of this subdivision, the minimum standard  
100 for the valuation of all such policies and contracts shall  
101 be the commissioners reserve valuation methods de-  
102 fined in subdivisions (b), (c) and (f), five percent in-  
103 terest for group annuity and pure endowment con-  
104 tracts and three and one-half percent interest for all  
105 other such policies and contracts, or in the case of  
106 policies and contracts, other than annuity and pure  
107 endowment contracts, issued on or after the third day  
108 of June, one thousand nine hundred seventy-four, four  
109 percent interest for such policies issued prior to the  
110 effective date of the amendment to this section of one  
111 thousand nine hundred seventy-seven, five and one-  
112 half percent interest for single premium life in-



113 surance policies and four and one-half percent inter-  
114 est for all other such policies issued on or after the  
115 effective date of the amendment to this section of one  
116 thousand nine hundred seventy-seven, and the following  
117 tables:

118 (i) For all ordinary policies of life insurance issued  
119 on the standard basis, excluding any disability and ac-  
120 cidental death benefits in such policies,—the Commis-  
121 sioners 1941 Standard Ordinary Mortality Table for  
122 such policies issued prior to the operative date of  
123 subsection (4a), section thirty, article thirteen of this  
124 chapter, and the Commissioners 1958 Standard Or-  
125 dinary Mortality Table for such policies issued on  
126 or after such operative date: *Provided*, That for any  
127 category of such policies issued on female risks all  
128 modified net premiums and present values referred to  
129 in this section may be calculated according to an age  
130 not more than six years younger than the actual age  
131 of the insured.

132 (ii) For all industrial life insurance policies issued  
133 on the standard basis, excluding any disability and ac-  
134 cidental death benefits in such policies,—the 1941  
135 Standard Industrial Mortality Table for such policies  
136 issued prior to the operative date of subsection (4b),  
137 section thirty, article thirteen of this chapter, and  
138 the Commissioners 1961 Standard Industrial Mortality  
139 Table for such policies issued on or after such operative  
140 date.

141 (iii) For individual annuity and pure endowment  
142 contracts, excluding any disability and accidental death  
143 benefits in such policies,—the 1937 Standard Annuity  
144 Mortality Table or, at the option of the company, the  
145 Annuity Mortality Table for 1949, ultimate, or any  
146 modification of either of these tables approved by the  
147 commissioner.

148 (iv) For group annuity and pure endowment con-  
149 tracts, excluding any disability and accidental death  
150 benefits in such policies,—the Group Annuity Mortality  
151 Table for 1951, any modification of such table approved

152 by the commissioner, or, at the option of the company,  
153 any of the tables or modification of tables specified for  
154 individual annuity and pure endowment contracts.

155 (v) For total permanent disability benefits in or  
156 supplementary to ordinary policies or contracts,—for  
157 policies or contracts issued on or after the first day of  
158 January, one thousand nine hundred sixty-six, the tables  
159 of period two disablement rates and the one thousand  
160 nine hundred thirty to one thousand nine hundred  
161 fifty termination rates of the one thousand nine hundred  
162 fifty-two disability study of the society of actuaries,  
163 with due regard to the type of benefit; for policies or  
164 contracts issued on or after the first day of January,  
165 one thousand nine hundred sixty-one and prior  
166 to the first day of January, one thousand nine hundred  
167 sixty-six, either such tables or, at the option of the  
168 company, the Class (3) Disability Table (1926); and  
169 for policies issued prior to the first day of January, one  
170 thousand nine hundred sixty-one, the Class (3) Dis-  
171 ability Table (1926). Any such table shall, for active  
172 lives, be combined with a mortality table permitted for  
173 calculating the reserves for life insurance policies.

174 (vi) For accidental death benefits in or supplementary  
175 to policies,—for policies issued on or after the first  
176 day of January, one thousand nine hundred sixty-six,  
177 the 1959 Accidental Death Benefits Table; for policies  
178 issued on or after the first day of January, one thousand  
179 nine hundred sixty-one and prior to the first day of  
180 January, one thousand nine hundred sixty-six, either  
181 such table or, at the option of the company, the Inter-  
182 Company Double Indemnity Mortality Table; and for  
183 policies issued prior to the first day of January, one  
184 thousand nine hundred sixty-one, the Inter-Company  
185 Double Indemnity Mortality Table. Either table shall  
186 be combined with a mortality table permitted for cal-  
187 culating the reserves for life insurance policies.

188 (vii) For group life insurance, life insurance issued  
189 on the substandard basis and other special benefits,—  
190 such tables as may be approved by the commissioner.

191 (B) The minimum standard for the valuation of all  
192 individual annuity and pure endowment contracts is-  
193 sued on or after the operative date of this paragraph  
194 (B), as defined herein, and for all annuities and pure  
195 endowments purchased on or after such operative date  
196 under group annuity and pure endowment contracts,  
197 shall be the commissioners reserve valuation methods  
198 defined in subdivisions (b) and (c) and the following  
199 tables and interest rates:

200 (i) For individual annuity and pure endowment con-  
201 tracts issued prior to the effective date of the amendment  
202 to this section of one thousand nine hundred seventy-sev-  
203 en, excluding any disability and accidental death benefits  
204 in such contracts,—the 1971 Individual Annuity Mortality  
205 Table, or any modification of this table approved by the  
206 commissioner, and six percent interest for single premium  
207 immediate annuity contracts, and four percent interest for  
208 all other individual annuity and pure endowment con-  
209 tracts.

210 (ii) For individual single premium immediate annuity  
211 contracts issued on or after the effective date of the  
212 amendment to this section of one thousand nine hundred  
213 seventy-seven, excluding any disability and accidental  
214 death benefits in such contracts,—the 1971 Individual  
215 Annuity Mortality Table, or any modification of this table  
216 approved by the commissioner, and seven and one-half  
217 percent interest.

218 (iii) For individual annuity and pure endowment  
219 contracts issued on or after the effective date of the  
220 amendment to this section of one thousand nine hundred  
221 seventy-seven, other than single premium immediate  
222 annuity contracts, excluding any disability and accidental  
223 death benefits in such contracts,—the 1971 Individual  
224 Annuity Mortality Table, or any modification of this table  
225 approved by the commissioner, and five and one-half  
226 percent interest for single premium deferred annuity and  
227 pure endowment contracts and four and one-half percent  
228 interest for all other such individual annuity and pure  
229 endowment contracts.

230 (iv) For all annuities and pure endowments purchased  
231 prior to the amendment to this section of one thousand  
232 nine hundred seventy-seven under group annuity and  
233 pure endowment contracts, excluding any disability and  
234 accidental death benefits purchased under such contracts,  
235 —the 1971 Group Annuity Mortality Table, or any modi-  
236 fication of this table approved by the commissioner, and  
237 six percent interest.

238 (v) For all annuities and pure endowments purchased on  
239 or after the effective date of the amendment of this section  
240 of one thousand nine hundred seventy-seven under group  
241 annuity and pure endowment contracts, excluding any  
242 disability and accidental death benefits purchased under  
243 such contracts,—the 1971 Group Annuity Mortality  
244 Table, or any modification of this table approved by the  
245 commissioner, and seven and one-half percent interest.

246 After the third day of June, one thousand nine hundred  
247 seventy-four, any company may file with the commis-  
248 sioner a written notice of its election to comply with the  
249 provisions of this paragraph (B) after a specified date  
250 before the first day of January, nineteen hundred and  
251 seventy-nine, which shall be the operative date of this  
252 paragraph (B) for such company, provided that a com-  
253 pany may elect a different operative date for individual  
254 annuity and pure endowment contracts from that elected  
255 for group annuity and pure endowment contracts. If a  
256 company makes no such election, the operative date of  
257 this paragraph (B) for such company shall be the first day  
258 of January, nineteen hundred and seventy-nine.

259 (b) Except as otherwise provided in subdivisions (c)  
260 and (f), reserves according to the commissioners reserve  
261 valuation method, for the life insurance and endowment  
262 benefits of policies providing for a uniform amount of  
263 insurance and requiring the payment of uniform premi-  
264 ums shall be the excess, if any, of the present value, at the  
265 date of valuation, of such future guaranteed benefits  
266 provided for by such policies, over the then present value  
267 of any future modified net premium therefor. The modi-  
268 fied net premiums for any such policy shall be such uni-  
269 form percentage of the respective contract premiums for

270 such benefits that the present value, at the date of issue of  
271 the policy of all such modified net premiums shall be  
272 equal to the sum of the then present value of such bene-  
273 fits provided for by the policy and the excess of (A) over  
274 (B), as follows:

275 (A) A net level annual premium equal to the present  
276 value, at the date of issue, of such benefits provided for  
277 after the first policy year, divided by the present value,  
278 at the date of issue, of an annuity of one percent per  
279 annum payable on the first and each subsequent anniver-  
280 sary of such policy on which the premium falls due:  
281 *Provided*, That such net level annual premium shall not  
282 exceed the net level annual premium on the nineteen-year  
283 premium whole life plan for insurance of the same amount  
284 at an age one year higher than the age at issue of such  
285 policy.

286 (B) A net one-year term premium for such benefits  
287 provided for in the first policy year.

288 Reserves according to the commissioners reserve  
289 valuation method for (i) life insurance policies providing  
290 for a varying amount of insurance or requiring the pay-  
291 ment of varying premiums, (ii) group annuity and pure  
292 endowment contracts purchased under a retirement plan  
293 or plan of deferred compensation, established or main-  
294 tained by an employer (including a partnership or sole  
295 proprietorship) or by an employee organization, or by  
296 both, other than a plan providing individual retirement  
297 accounts or individual retirement annuities under section  
298 408 of the Internal Revenue Code, as now or hereafter  
299 amended, (iii) disability and accidental death benefits in  
300 all policies and contracts, and (iv) all other benefits,  
301 except life insurance and endowment benefits in life  
302 insurance policies and benefits provided by all other  
303 annuity and pure endowment contracts, shall be calcu-  
304 lated by a method consistent with the principles of this  
305 subdivision (b), except that any extra premiums charged  
306 because of impairments or special hazards shall be dis-  
307 regarded in the determination of modified net premiums.

308 (c) This subdivision shall apply to all annuity and

309 pure endowment contracts other than group annuity and  
310 pure endowment contracts purchased under a retirement  
311 plan or plan of deferred compensation, established or  
312 maintained by an employer (including a partnership or  
313 sole proprietorship) or by an employee organization, or by  
314 both, other than a plan providing individual retirement  
315 accounts or individual retirement annuities under section  
316 408 of the Internal Revenue Code, as now or hereafter  
317 amended.

318 Reserves according to the commissioners annuity  
319 reserve method for benefits under annuity or pure endow-  
320 ment contracts, excluding any disability and accidental  
321 death benefits in such contracts, shall be the greatest of  
322 the respective excesses of the present values, at the date of  
323 valuation, of the future guaranteed benefits, including  
324 guaranteed nonforfeiture benefits, provided for by such  
325 contracts at the end of each respective contract year,  
326 over the present value, at the date of valuation, of any  
327 future valuation considerations derived from future gross  
328 considerations, required by the terms of such contract,  
329 that become payable prior to the end of such respective  
330 contract year. The future guaranteed benefits shall be  
331 determined by using the mortality table, if any, and the  
332 interest rate, or rates, specified in such contracts for deter-  
333 mining guaranteed benefits. The valuation considerations  
334 are the portions of the respective gross considerations  
335 applied under the terms of such contracts to determine  
336 nonforfeiture values.

337 (d) In no event shall an insurer's aggregate reserves  
338 for all life insurance policies, excluding disability and  
339 accidental death benefits, be less than the aggregate  
340 reserves calculated in accordance with the methods set  
341 forth in subdivisions (b), (c) and (f) and the mortality  
342 table or tables and rate or rates of interest used in cal-  
343 culating nonforfeiture benefits for such policies.

344 (e) Reserves for any category of policies, contracts or  
345 benefits as established by the commissioner may be cal-  
346 culated, at the option of the insurer, according to any  
347 standards which produce greater aggregate reserves for  
348 such category than those calculated according to the

349 minimum standard herein provided, but the rate or rates  
350 of interest used for policies and contracts, other than  
351 annuity and pure endowment contracts, shall not be  
352 higher than the corresponding rate or rates of interest  
353 used in calculating any nonforfeiture benefits provided for  
354 therein.

355 (f) If in any contract year the gross premium charged  
356 by any life insurer on any policy or contract is less than  
357 the valuation net premium for the policy or contract cal-  
358 culated by the method used in calculating the reserve  
359 thereon, but using the minimum valuation standards of  
360 mortality and rate of interest, the minimum reserve re-  
361 quired for such policy or contract shall be the greater of  
362 either the reserve calculated according to the mortality  
363 table, rate of interest, and method actually used for such  
364 policy or contract, or the reserve calculated by the method  
365 actually used for such policy or contract but using the  
366 minimum standards of mortality and rate of interest and  
367 replacing the valuation net premium by the actual gross  
368 premium in each contract year for which the valuation  
369 net premium exceeds the actual gross premium.

#### ARTICLE 13. LIFE INSURANCE.

§33-13-30. Standard nonforfeiture law for life insurance.

§33-13-30a. Standard nonforfeiture law for individual deferred annuities.

#### §33-13-30. Standard nonforfeiture law for life insurance.

1 (1) In the case of policies issued on or after the origi-  
2 nal operative date of this provision, no policy of life  
3 insurance, except as stated in subsection six, shall be  
4 delivered or issued for delivery in this state unless it  
5 shall contain in substance the following provisions, or  
6 corresponding provisions which in the opinion of the  
7 commissioner are at least as favorable to the defaulting  
8 or surrendering policyholder:

9 (a) That, in the event of default in any premium  
10 payment, the insurer will grant, upon proper request  
11 not later than sixty days after the due date of the  
12 premium in default, a paid-up nonforfeiture benefit on a  
13 plan stipulated in the policy, effective as of such due date,  
14 of such value as may be hereinafter specified;

15 (b) That, upon surrender of the policy within sixty  
16 days after the due date of any premium payment in de-  
17 fault after premiums have been paid for at least three  
18 full years, the insurer will pay, in lieu of any paid-up  
19 nonforfeiture benefit, a cash surrender value of such  
20 amount as may be hereinafter specified;

21 (c) That a specified paid-up nonforfeiture benefit shall  
22 become effective as specified in the policy unless the  
23 person entitled to make such election elects another  
24 available option not later than sixty days after the due  
25 date of the premium in default;

26 (d) That, if the policy shall have become paid up by  
27 completion of all premium payments or if it is continued  
28 under any paid-up nonforfeiture benefit which became  
29 effective on or after the third policy anniversary the  
30 insurer will pay, upon surrender of the policy within  
31 thirty days after any policy anniversary, a cash surrender  
32 value of such amount as may be hereinafter specified;

33 (e) A statement of the mortality table and interest  
34 rate used in calculating the cash surrender values and  
35 the paid-up nonforfeiture benefits available under the  
36 policy, together with a table showing the cash surrender  
37 value, if any, and paid-up nonforfeiture benefits, if any,  
38 available under the policy on each policy anniversary  
39 either during the first twenty policy years or during the  
40 term of the policy, whichever is shorter, such values and  
41 benefits to be calculated upon the assumption that there  
42 are no dividends or paid-up additions credited to the  
43 policy and that there is no indebtedness to the insurer  
44 on the policy;

45 (f) A statement that the cash surrender values and  
46 the paid-up nonforfeiture benefits available under the  
47 policy are not less than the minimum values and benefits  
48 required by or pursuant to the insurance law of the  
49 state in which the policy is delivered; an explanation  
50 of the manner in which the cash surrender values and  
51 the paid-up nonforfeiture benefits are altered by the  
52 existence of any paid-up additions credited to the policy  
53 or any indebtedness to the company on the policy; if a



54 detailed statement of the method of computation of the  
55 values and benefits shown in the policy is not stated  
56 therein a statement that such method of computation  
57 has been filed with the insurance supervisory official  
58 of the state in which the policy is delivered; and a state-  
59 ment of the method to be used in calculating the cash  
60 surrender value and paid-up nonforfeiture benefit avail-  
61 able under the policy on any policy anniversary beyond  
62 the last anniversary for which such values and benefits  
63 are consecutively shown in the policy.

64 Any of the foregoing provisions or portions thereof,  
65 not applicable by reason of the plan of insurance may,  
66 to the extent inapplicable, be omitted from the policy.

67 The insurer shall reserve the right to defer the pay-  
68 ment of any cash surrender value for a period of six  
69 months after demand therefor with surrender of the  
70 policy.

71 (2) Any cash surrender value available under the  
72 policy in the event of default in a premium payment  
73 due on any policy anniversary, whether or not required  
74 by subsection one, shall be an amount not less than the  
75 excess, if any, of the present value, on such anniversary,  
76 of the future guaranteed benefits which would have been  
77 provided for by the policy, including any existing paid-  
78 up additions, if there had been no default, over the sum  
79 of (i) the then present value of the adjusted premiums  
80 as defined in subsections (4), (4a) and (4b), corre-  
81 sponding to premiums which would have fallen due on  
82 and after such anniversary, and (ii) the amount of any  
83 indebtedness to the insurer on the policy. Any cash  
84 surrender value available within thirty days after any  
85 policy anniversary under any policy paid up by comple-  
86 tion of all premium payments or any policy continued  
87 under any paid-up nonforfeiture benefit, whether or not  
88 required by subsection one, shall be an amount not less  
89 than the present value, on such anniversary, of the  
90 future guaranteed benefits provided for by the policy,  
91 including any existing paid-up additions decreased by  
92 any indebtedness to the insurer on the policy.

93       (3) Any paid-up nonforfeiture benefit available under  
94 the policy in the event of default in a premium payment  
95 due on any policy anniversary shall be such that its  
96 present value as of such anniversary shall be at least  
97 equal to the cash surrender value then provided for by  
98 the policy or, if none is provided for that cash surrender  
99 value which would have been required by this section  
100 in the absence of the condition that premiums shall have  
101 been paid for at least a specific period.

102       (4) Except as provided in the third paragraph of this  
103 subsection, the adjusted premiums for any policy shall  
104 be calculated on an annual basis and shall be such uni-  
105 form percentage of the respective premiums specified in  
106 the policy for each policy year, excluding extra premiums  
107 on a substandard policy, that the present value, at the  
108 date of issue of the policy, of all such adjusted premiums  
109 shall be equal to the sum of (i) the then present value  
110 of the future guaranteed benefits provided for by the  
111 policy; (ii) two percent of the amount of insurance, if  
112 the insurance be uniform in amount, or of the equivalent  
113 uniform amount, as hereinafter defined, if the amount  
114 of insurance varies with duration of the policy; (iii) forty  
115 percent of the adjusted premium for the first policy year;  
116 (iv) twenty-five percent of either the adjusted premium  
117 for the first policy year or the adjusted premium for a  
118 whole life policy of the same uniform or equivalent  
119 uniform amount with uniform premiums for the whole  
120 of life issued at the same age for the same amount of  
121 insurance, whichever is less: *Provided*, That in applying  
122 the percentages specified in (iii) and (iv) above, no  
123 adjusted premium shall be deemed to exceed four percent  
124 of the amount of insurance or uniform amount equivalent  
125 thereto. The date of issue of a policy for the purpose of  
126 this subsection shall be the date as of which the rated  
127 age of the insured is determined.

128       In the case of a policy providing an amount of insur-  
129 ance varying with duration of the policy, the equivalent  
130 uniform amount thereof for the purpose of this sub-  
131 section shall be deemed to be the uniform amount of  
132 insurance provided by an otherwise similar policy, con-

133 taining the same endowment benefit or benefits, if any,  
134 issued at the same age and for the same term, the amount  
135 of which does not vary with duration and the benefits  
136 under which have the same present value at the date of  
137 issue as the benefits under the policy: *Provided, however,*  
138 That in the case of a policy providing a varying amount  
139 of insurance issued on the life of a child under age ten,  
140 the equivalent uniform amount may be computed as  
141 though the amount of insurance provided by the policy  
142 prior to the attainment of age ten were the amount pro-  
143 vided by such policy at age ten.

144 The adjusted premiums for any policy providing term  
145 insurance benefits by rider or supplemental policy pro-  
146 vision shall be equal to (a) the adjusted premiums for  
147 an otherwise similar policy issued at the same age with-  
148 out such term insurance benefits, increased, during the  
149 period for which premiums for such term insurance bene-  
150 fits are payable, by (b) the adjusted premiums for such  
151 term insurance, the foregoing items (a) and (b) being  
152 calculated separately and as specified in the first two  
153 paragraphs of this subsection except that, for the pur-  
154 poses of (ii), (iii) and (iv) of the first such paragraph,  
155 the amount of insurance or equivalent uniform amount  
156 of insurance used in the calculation of the adjusted  
157 premiums referred to in (b) shall be equal to the excess  
158 of the corresponding amount determined for the entire  
159 policy over the amount used in the calculation of the  
160 adjusted premiums in (a).

161 Except as otherwise provided in subsections (4a) and  
162 (4b), all adjusted premiums and present values referred  
163 to in this section shall for all policies of ordinary insur-  
164 ance be calculated on the basis of the Commissioners  
165 1941 Standard Ordinary Mortality Table: *Provided, That*  
166 for any category of ordinary insurance issued on female  
167 risks, adjusted premiums and present values may be  
168 calculated according to an age not more than three years  
169 younger than the actual age of the insured, and such  
170 calculations for all policies of industrial insurance shall  
171 be made on the basis of the 1941 Standard Industrial  
172 Mortality Table. All calculations shall be made on the

173 basis of the rate of interest, not exceeding three and  
174 one-half percent per annum, specified in the policy for  
175 calculating cash surrender values and paid-up nonfor-  
176 feiture benefits: *Provided*, That in calculating the present  
177 value of any paid-up term insurance with accompanying  
178 pure endowment, if any, offered as a nonforfeiture bene-  
179 fit, the rate of mortality assumed may be not more than  
180 one hundred and thirty percent of the rates of mortality  
181 according to such applicable table: *Provided further*,  
182 That for insurance issued on a substandard basis, the  
183 calculation of any such adjusted premiums and present  
184 values may be based on such other table of mortality as  
185 may be specified by the insurer and approved by the  
186 commissioner.

187 (4a) In the case of ordinary policies issued on or after  
188 the operative date of this subsection (4a) as defined  
189 herein, all adjusted premiums and present values referred  
190 to in this section shall be calculated on the basis of  
191 the Commissioners 1958 Standard Ordinary Mortality  
192 Table and the rate of interest specified in the policy for  
193 calculating cash surrender values and paid-up nonfor-  
194 feiture benefits provided that such rate of interest shall  
195 not exceed three and one-half percent per annum except  
196 that a rate of interest not exceeding four percent per  
197 annum may be used for policies issued on or after the  
198 third day of June, one thousand nine hundred seventy-  
199 four and prior to the effective date of the amendment  
200 to this section of one thousand nine hundred seventy-  
201 seven and a rate of interest not exceeding five and one-  
202 half percent per annum may be used for policies issued  
203 on or after the effective date of the amendment to this  
204 section of one thousand nine hundred seventy-seven,  
205 except that for any single premium whole life or endow-  
206 ment insurance policy a rate of interest not exceeding  
207 six and one-half percent per annum may be used: *Pro-*  
208 *vided*, That for any category of ordinary insurance issued  
209 on female risks, adjusted premiums and present values  
210 may be calculated according to an age not more than  
211 six years younger than the actual age of the insured:  
212 *Provided, however*, That in calculating the present value

213 of any paid-up term insurance with accompanying pure  
214 endowment, if any, offered as a nonforfeiture benefit,  
215 the rates of mortality assumed may be not more than  
216 those shown in the Commissioners 1958 Extended Term  
217 Insurance Table: *Provided further*, That for insurance  
218 issued on a substandard basis, the calculation of any such  
219 adjusted premiums and present values may be based on  
220 such other table of mortality as may be specified by the  
221 company and approved by the commissioner.

222 After the third day of June, one thousand nine hundred  
223 fifty-nine, any company may file with the commissioner  
224 a written notice of its election to comply with the pro-  
225 visions of this subsection after a specified date before  
226 the first day of January, one thousand nine hundred  
227 sixty-six. After the filing of such notice, then upon such  
228 specified date (which shall be the operative date of this  
229 subsection for such company), this subsection shall be-  
230 come operative with respect to the ordinary policies  
231 thereafter issued by such company. If a company makes  
232 no such election, the operative date of this subsection  
233 for such company shall be the first day of January, one  
234 thousand nine hundred sixty-six.

235 (4b) In the case of industrial policies issued on or  
236 after the operative date of this subsection (4b) as  
237 defined herein, all adjusted premiums and present values  
238 referred to in this section shall be calculated on the  
239 basis of the Commissioners 1961 Standard Industrial  
240 Mortality Table and the rate of interest specified in the  
241 policy for calculating cash surrender values and paid-up  
242 nonforfeiture benefits provided that such rate of interest  
243 shall not exceed three and one-half percent per annum  
244 except that a rate of interest not exceeding four percent  
245 per annum may be used for policies issued on or after  
246 the third day of June, one thousand nine hundred sev-  
247 enty-four and prior to the effective date of the amend-  
248 ment to this section of one thousand nine hundred  
249 seventy-seven and a rate of interest not exceeding five  
250 and one-half percent per annum may be used for policies  
251 issued on or after the effective date of the amendment  
252 to this section of one thousand nine hundred seventy-

253 seven, except that for any single premium whole life  
254 or endowment insurance policy a rate of interest not  
255 exceeding six and one-half percent per annum may be  
256 used: *Provided*, That in calculating the present value of  
257 any paid-up term insurance with accompanying pure  
258 endowment, if any, offered as a nonforfeiture benefit,  
259 the rates of mortality assumed may be not more than  
260 those shown in the Commissioners 1961 Industrial Ex-  
261 tended Term Insurance Table: *Provided, however*, That  
262 for insurance issued on a substandard basis, the calcula-  
263 tion of any such adjusted premiums and present values  
264 may be based on such other table of mortality as may  
265 be specified by the company and approved by the com-  
266 missioner.

267 After the thirty-first day of May, one thousand  
268 nine hundred sixty-five, any company may file with  
269 the commissioner a written notice of its election to  
270 comply with the provisions of this subsection after  
271 a specified date before the first day of January, one  
272 thousand nine hundred sixty-eight. After the filing  
273 of such notice, then upon such specified date (which  
274 shall be the operative date of this subsection for such  
275 company), this subsection shall become operative with  
276 respect to the industrial policies thereafter issued by  
277 such company. If a company makes no such election,  
278 the operative date of this subsection for such company  
279 shall be the first day of January, one thousand nine hun-  
280 dred sixty-eight.

281 (5) Any cash surrender value and any paid-up non-  
282 forfeiture benefit, available under the policy in the event  
283 of default in a premium payment due at any time other  
284 than on the policy anniversary, shall be calculated with  
285 allowance for the lapse of time and the payment of frac-  
286 tional premiums beyond the last preceding policy anni-  
287 versary. All values referred to in subsections (2), (3),  
288 (4), (4a) and (4b) may be calculated upon the as-  
289 sumption that any death benefit is payable at the end  
290 of the policy year of death. The net value of any paid-up  
291 additions, other than paid-up term additions, shall be  
292 not less than the dividends paid to provide such addi-

293 tions. Notwithstanding the provisions of subsection two,  
294 additional benefits payable (a) in the event of death or  
295 dismemberment by accident or accidental means, (b) in  
296 the event of total and permanent disability, (c) as re-  
297 versionary or deferred reversionary annuity benefits,  
298 (d) as term insurance benefits provided by a rider or  
299 supplemental policy provision to which, if issued as a  
300 separate policy, this subsection would not apply, (e) as  
301 term insurance on the life of a child or on the lives of  
302 children provided in a policy on the life of a parent of  
303 the child, if such term insurance expires before the  
304 child's age is twenty-six, is uniform in amount after the  
305 child's age is one, and has not become paid up by reason  
306 of the death of a parent of the child, and (f) as other  
307 policy benefits additional to life insurance and endow-  
308 ment benefits, and premiums for all such additional  
309 benefits, shall be disregarded in ascertaining cash sur-  
310 render values and nonforfeiture benefits required by this  
311 section, and no such additional benefits shall be required  
312 to be included in any paid-up nonforfeiture benefits.

313 (6) This section shall not apply to any reinsurance,  
314 group insurance, pure endowment, annuity or reversion-  
315 ary annuity contract, nor to any term policy of uniform  
316 amount, or renewal thereof, of fifteen years or less ex-  
317 piring before age sixty-six, for which uniform premiums  
318 are payable during the entire term of the policy, nor to  
319 any term policy of decreasing amount on which each  
320 adjusted premium, calculated as specified in subsections  
321 (4), (4a) and (4b), is less than the adjusted premium  
322 so calculated on a policy issued at the same age and for  
323 the same initial amount of insurance for a term defined  
324 as follows—for ages at issue fifty and under, the term  
325 shall be fifteen years, thereafter, the terms shall decrease  
326 one year for each year of age beyond fifty, nor to any  
327 policy which shall be delivered outside this state through  
328 an agent or other representative of the insurer issuing  
329 the policy.

**§33-13-30a. Standard nonforfeiture law for individual deferred annuities.**

- 1 (1) This section shall be known as the "Standard
- 2 Nonforfeiture Law for Individual Deferred Annuities."

3 (2) This section shall not apply to any reinsurance,  
4 group annuity purchased under a retirement plan or plan  
5 of deferred compensation established or maintained by an  
6 employer (including a partnership or sole proprietorship)  
7 or by an employee organization, or by both, other than a  
8 plan providing individual retirement accounts or indi-  
9 vidual retirement annuities under Section 408 of the  
10 Internal Revenue Code, as now or hereafter amended,  
11 premium deposit fund, variable annuity, investment  
12 annuity, immediate annuity, any deferred annuity con-  
13 tract after annuity payments have commenced, or rever-  
14 sionary annuity, nor to any contract which shall be  
15 delivered outside this state through an agent or other  
16 representative of the company issuing the contract.

17 (3) In the case of contracts issued on or after the  
18 operative date of this section as defined in subsection  
19 (12), no contract of annuity, except as stated in sub-  
20 section (2), shall be delivered or issued for delivery in  
21 this state unless it contains in substance the following  
22 provisions, or corresponding provisions which in the  
23 opinion of the commissioner are at least as favorable to  
24 the contract holder, upon cessation of payment of consid-  
25 erations under the contract:

26 (a) That upon cessation of payment of considerations  
27 under a contract, the company will grant a paid-up an-  
28 nuity benefit on a plan stipulated in the contract of such  
29 value as is specified in subsections (5), (6), (7), (8) and  
30 (10);

31 (b) If a contract provides for a lump sum settlement at  
32 maturity, or at any other time, that upon surrender of the  
33 contract at or prior to the commencement of any annuity  
34 payments, the company will pay in lieu of any paid-up  
35 annuity benefit a cash surrender benefit of such amount as  
36 is specified in subsections (5), (6), (8) and (10). The  
37 company shall reserve the right to defer the payment of  
38 such cash surrender benefit for a period of six months  
39 after demand therefor with surrender of the contract;

40 (c) A statement of the mortality table, if any, and  
41 interest rates used in calculating any minimum paid-up



42 annuity, cash surrender or death benefits that are guaran-  
43 teed under the contract, together with sufficient infor-  
44 mation to determine the amounts of such benefits; and

45 (d) A statement that any paid-up annuity, cash sur-  
46 render or death benefits that may be available under the  
47 contract are not less than the minimum benefits  
48 required by any statute of the state in which the  
49 contract is delivered and an explanation of the manner  
50 in which such benefits are altered by the existence of any  
51 additional amounts credited by the company to the con-  
52 tract, any indebtedness to the company on the contract or  
53 any prior withdrawals from or partial surrenders of the  
54 contract.

55 Notwithstanding the requirements of this subsection,  
56 any deferred annuity contract may provide that if no  
57 considerations have been received under a contract for a  
58 period of two full years and the portion of the paid-up  
59 annuity benefit at maturity on the plan stipulated in the  
60 contract arising from considerations paid prior to such  
61 period would be less than twenty dollars monthly, the  
62 company may at its option terminate such contract by  
63 payment in cash of the then present value of such portion  
64 of the paid-up annuity benefit, calculated on the basis of  
65 the mortality table, if any, and interest rate specified in  
66 the contract for determining the paid-up annuity benefit,  
67 and by such payment shall be relieved of any further  
68 obligation under such contract.

69 (4) The minimum values as specified in subsections (5),  
70 (6), (7), (8) and (10) of any paid-up annuity, cash sur-  
71 render or death benefits available under an annuity  
72 contract shall be based upon minimum nonforfeiture  
73 amounts as defined in this section:

74 (a) With respect to contracts providing for flexible  
75 considerations, the minimum nonforfeiture amount at any  
76 time at or prior to the commencement of any annuity  
77 payments shall be equal to an accumulation up to such  
78 time at a rate of interest of three percent per annum of  
79 percentages of the net considerations (as hereinafter de-  
80 fined) paid prior to such time, decreased by the sum  
81 of:

82 (i) Any prior withdrawals from or partial surrenders  
83 of the contract accumulated at a rate of interest of three  
84 percent per annum; and

85 (ii) The amount of any indebtedness to the company on  
86 the contract, including interest due and accrued; and  
87 increased by any existing additional amounts credited by  
88 the company to the contract.

89 The net considerations for a given contract year used  
90 to define the minimum nonforfeiture amount shall be an  
91 amount not less than zero and shall be equal to the  
92 corresponding gross considerations credited to the contract  
93 during that contract year less than an annual contract  
94 charge of thirty dollars and less a collection charge of one  
95 dollar and twenty-five cents per consideration credited to  
96 the contract during that contract year. The percentages  
97 of net considerations shall be sixty-five percent of the net  
98 consideration for the first contract year and eighty-seven  
99 and one-half percent of the net considerations for the  
100 second and later contract years. Notwithstanding the  
101 provisions of the preceding sentence, the percentage shall  
102 be sixty-five percent of the portion of the total net  
103 consideration for any renewal contract year which ex-  
104 ceeds by not more than two times the sum of those  
105 portions of the net considerations in all prior contract  
106 years for which the percentage was sixty-five percent.

107 (b) With respect to contracts providing for fixed  
108 scheduled considerations, minimum nonforfeiture amounts  
109 shall be calculated on the assumption that considerations  
110 are paid annually in advance and shall be defined as for  
111 contracts with flexible considerations which are paid  
112 annually with two exceptions:

113 (1) The portion of the net consideration for the first  
114 contract year to be accumulated shall be the sum of  
115 sixty-five percent of the net consideration for the first  
116 contract year plus twenty-two and one-half percent of the  
117 excess of the net consideration for the first contract year  
118 over the lesser of the net considerations for the second and  
119 third contract years.

120 (2) The annual contract charge shall be the lesser of

121 (i) thirty dollars or (ii) ten percent of the gross annual  
122 consideration.

123 (c) With respect to contracts providing for a single  
124 consideration, minimum nonforfeiture amounts shall be  
125 defined as for contracts with flexible considerations except  
126 that the percentage of net consideration used to determine  
127 the minimum nonforfeiture amount shall be equal to  
128 ninety percent and the net consideration shall be the gross  
129 consideration less a contract charge of seventy-five  
130 dollars.

131 (5) Any paid-up annuity benefit available under a  
132 contract shall be such that its present value on the date  
133 annuity payments are to commence is at least equal to the  
134 minimum nonforfeiture amount on that date. Such present  
135 value shall be computed using the mortality table, if any,  
136 and the interest rate specified in the contract for deter-  
137 mining the minimum paid-up annuity benefits guaranteed  
138 in the contract.

139 (6) For contracts which provide cash surrender  
140 benefits, such cash surrender benefits available prior to  
141 maturity shall not be less than the present value as of the  
142 date of surrender of that portion of the maturity value of  
143 the paid-up annuity benefit which would be provided  
144 under the contract at maturity arising from consideration  
145 paid prior to the time of cash surrender reduced by the  
146 amount appropriate to reflect any prior withdrawals from  
147 or partial surrenders of the contract, such present value  
148 being calculated on the basis of an interest rate not more  
149 than one percent higher than the interest rate specified in  
150 the contract for accumulating the net considerations to  
151 determine such maturity value, decreased by the amount  
152 of any indebtedness to the company on the contract, in-  
153 cluding interest due and accrued, and increased by any  
154 existing additional amounts credited by the company to  
155 the contract. In no event shall any cash surrender benefit  
156 be less than the minimum nonforfeiture amount at that  
157 time. The death benefit under such contracts shall be at  
158 least equal to the cash surrender benefit.

159 (7) For contracts which do not provide cash surrender

160 benefits, the present value of any paid-up annuity benefit  
161 available as a nonforfeiture option at any time prior to  
162 maturity shall not be less than the present value of that  
163 portion of the maturity value of the paid-up annuity  
164 benefit provided under the contract arising from consid-  
165 erations paid prior to the time the contract is surrendered  
166 in exchange for, or changed to, a deferred paid-up annu-  
167 ity, such present value being calculated for the period  
168 prior to the maturity date on the basis of the interest rate  
169 specified in the contract for accumulating the net consid-  
170 erations to determine such maturity value, and in-  
171 creased by any existing additional amounts credited by  
172 the company to the contract. For contracts which do not  
173 provide any death benefits prior to the commencement of  
174 any annuity payments, such present values shall be calcu-  
175 lated on a basis of such interest rate and the mortality  
176 table specified in the contract for determining the matu-  
177 rity value of the paid-up annuity benefit. However, in no  
178 event shall the present value of a paid-up annuity benefit  
179 be less than the minimum nonforfeiture amount at that  
180 time.

181 (8) For the purpose of determining the benefits  
182 calculated under subsections (6) and (7), in the case of  
183 annuity contracts under which an election may be made to  
184 have annuity payments commence at optional maturity  
185 dates, the maturity date shall be deemed to be the latest  
186 date for which election shall be permitted by the contract,  
187 but shall not be deemed to be later than the anniversary  
188 of the contract next following the annuitant's seventieth  
189 birthday or the tenth anniversary of the contract, which-  
190 ever is later.

191 (9) Any contract which does not provide cash surrender  
192 benefits or does not provide death benefits at least equal  
193 to the minimum nonforfeiture amount prior to the com-  
194 mencement of any annuity payments shall include a  
195 statement in a prominent place in the contract that such  
196 benefits are not provided.

197 (10) Any paid-up annuity, cash surrender or death  
198 benefits available at any time, other than on the contract  
199 anniversary under any contract with fixed scheduled

200 considerations, shall be calculated with allowance for the  
201 lapse of time and the payment of any scheduled con-  
202 siderations beyond the beginning of the contract year in  
203 which cessation of payment of considerations under the  
204 contract occurs.

205 (11) For any contract which provides, within the same  
206 contract by rider or supplemental contract provision, both  
207 annuity benefits and life insurance benefits that are in  
208 excess of the greater of cash surrender benefits or a return  
209 of the gross considerations with interest, the minimum  
210 nonforfeiture benefits shall be equal to the sum of the  
211 minimum nonforfeiture benefits for the annuity portion  
212 and the minimum nonforfeiture benefits, if any, for the  
213 life insurance portion computed as if each portion were a  
214 separate contract. Notwithstanding the provisions of sub-  
215 sections (5), (6), (7), (8) and (10), additional benefits  
216 payable (a) in the event of total and permanent disability,  
217 (b) as reversionary annuity or deferred reversionary  
218 annuity benefits, or (c) as other policy benefits additional  
219 to life insurance, endowment and annuity benefits, and  
220 considerations for all such additional benefits, shall be  
221 disregarded in ascertaining the minimum nonforfeiture  
222 amounts, paid-up annuity, cash surrender and death bene-  
223 fits that may be required by this section. The inclusion of  
224 such additional benefits shall not be required in any paid-  
225 up benefits, unless such additional benefits separately  
226 would require minimum nonforfeiture amounts, paid-up  
227 annuity, cash surrender and death benefits.

228 (12) After the effective date of this section, any  
229 company may file with the commissioner a written notice  
230 of its election to comply with the provisions of this section  
231 after a specified date before the second anniversary of the  
232 effective date of this section. After the filing of such  
233 notice, then upon such specified date, which shall be the  
234 operative date of this section for such company, this  
235 section shall become operative with respect to annuity  
236 contracts thereafter issued by such company. If a company  
237 makes no such election, the operative date of this section  
238 for such company shall be the second anniversary of the  
239 effective date of this section.

## CHAPTER 111

(S. B. 268—By Mr. Brotherton, Mr. President, and Mr. Neeley)

(Passed March 30, 1977; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section eight, article thirteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to policy loan interest rates on life insurance.

*Be it enacted by the Legislature of West Virginia:*

That section eight, article thirteen, 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 13. LIFE INSURANCE.

#### §33-13-8. Loans on policies.

1 (a) There shall be a provision that after the policy has  
2 a cash surrender value and while no premium is in de-  
3 fault beyond the grace period for payment, the insurer  
4 will advance, on proper assignment of pledge of the policy  
5 and on the sole security thereof, at a specified rate of  
6 interest not exceeding eight percent per annum, or  
7 seven and four-tenths percent per annum if payable an-  
8 nually in advance, an amount equal to or, at the option  
9 of the party entitled thereto, less than the loan value of  
10 the policy. The loan value of the policy shall be at least  
11 equal to the cash surrender value at the end of the then  
12 current policy year: *Provided*, That the insurer may  
13 deduct, either from such loan value or from the proceeds  
14 of the loan, any existing indebtedness not already deducted  
15 in determining such cash surrender value including any  
16 interest then accrued but not due, any unpaid balance of  
17 premium for the current policy year, and interest on the  
18 loan to the end of the current policy year. The policy  
19 may also provide that if interest on any indebtedness is  
20 not paid when due it shall then be added to the existing  
21 indebtedness and shall bear interest at the same rate,  
22 and that if and when the total indebtedness on the policy,  
23 including interest due or accrued, equals or exceeds the

24 amount of the loan value thereof, then the policy shall  
25 terminate and become void. The policy shall reserve to  
26 the insurer the right to defer the granting of a loan, other  
27 than for the payment of any premium to the insurer, for  
28 six months after application therefor. The policy, at the  
29 insurer's option, may provide for automatic premium loan,  
30 subject to an election of the party entitled to elect. In any  
31 policy issued by conversion of a term insurance policy in  
32 force prior to the effective date of this act, the policy-  
33 holder shall be entitled to a loan at an interest rate in  
34 effect on the date of original purchase.

35 (b) This section shall not apply to term policies nor  
36 to term insurance benefits provided by rider or supple-  
37 mented policy provision.

38 (c) This section shall not impair the terms and condi-  
39 tions of any policy of life insurance in force prior to the  
40 effective date thereof.

41 (d) As a condition for approval of a policy loan in-  
42 terest rate in excess of six percent per annum, but not  
43 in excess of the rate provided in this section, the insur-  
44 ance commissioner shall require the insurer to furnish  
45 such assurances as he deems necessary that the holders  
46 of such policies will benefit through higher dividends  
47 or lower premiums or both.

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## CHAPTER 112

(S. B. 369—By Mr. Brotherton, Mr President, and Mr. Neeley)

[Passed April 6, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-a, relating to variable life insurance policies and variable annuity contracts; the establishment of separate accounts by domestic life insurers to provide life insurance or annuity benefits payable in fixed or variable dollar

amounts, or both; features and benefits of variable contracts; qualification of companies, subsidiaries and affiliates to deliver or issue for delivery within this state variable contracts; supervisory powers of the insurance commissioner; application of other insurance laws and valuation of reserves.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 13A. VARIABLE CONTRACTS.**

§33-13A-1. Establishment of separate accounts.

§33-13A-2. Features and benefits.

§33-13A-3. Qualification of companies, subsidiaries and affiliates.

§33-13A-4. Supervisory powers of insurance commissioner.

§33-13A-5. Application of other insurance laws, valuation of reserves.

**§33-13A-1. Establishment of separate accounts.**

1 A domestic life insurer may establish one or more  
2 separate accounts, and may allocate thereto amounts,  
3 including without limitation proceeds applied under op-  
4 tional modes of settlement or under dividend options, to  
5 provide for life insurance or annuities and benefits inci-  
6 dental thereto, payable in fixed or variable amounts or  
7 both, subject to the following:

8 (a) The income, gains and losses, realized or unrealized,  
9 from assets allocated to a separate account shall be  
10 credited to or charged against the account, without regard  
11 to other income, gains or losses of the company.

12 (b) Except as may be provided with respect to reserves  
13 for guaranteed benefits and funds referred to in subdivi-  
14 sion (c) of this section, (i) amounts allocated to any sepa-  
15 rate account and accumulations thereon may be invested  
16 and reinvested without regard to any requirements or  
17 limitations prescribed by the laws of this state governing  
18 the investments of life insurance companies and (ii) the  
19 investments in such separate account or accounts shall not  
20 be taken into account in applying the investment limita-



21 tions otherwise applicable to the investments of the com-  
22 pany.

23 (c) Except with the approval of the commissioner and  
24 under such conditions as to investments and other matters  
25 as he may prescribe, which shall recognize the guaranteed  
26 nature of the benefits provided, reserves for (i) benefits  
27 guaranteed as to dollar amount and duration and (ii)  
28 funds guaranteed as to principal amount or stated rate of  
29 interest shall not be maintained in a separate account.

30 (d) Unless otherwise approved by the commissioner,  
31 assets allocated to a separate account shall be valued at  
32 their market value on the date of valuation, or if there is  
33 no readily available market, then as provided under the  
34 terms of the contract or the rules or other written  
35 agreement applicable to such separate account: *Provided*,  
36 That unless otherwise approved by the commissioner, the  
37 portion if any of the assets of such separate account equal  
38 to the company's reserve liability with regard to the  
39 guaranteed benefits and funds referred to in subdivision  
40 (c) of this section shall be valued in accordance with the  
41 rules otherwise applicable to the company's assets.

42 (e) Amounts allocated to a separate account in the  
43 exercise of the power granted by this article shall be  
44 owned by the company, and the company shall not be,  
45 nor hold itself out to be, a trustee with respect to such  
46 amounts. If and to the extent so provided under the  
47 applicable contracts, that portion of the assets of any  
48 such separate account equal to the reserves and other  
49 contract liabilities with respect to such account shall not  
50 be chargeable with liabilities arising out of any other  
51 business the company may conduct.

52 (f) No sale, exchange or other transfer of assets may  
53 be made by a company between any of its separate ac-  
54 counts or between any other investment account and  
55 one or more of its separate accounts unless, in case of a  
56 transfer into a separate account, such transfer is made  
57 solely to establish the account or to support the operation  
58 of the contracts with respect to the separate account to  
59 which the transfer is made, and unless such transfer,

60 whether into or from a separate account, is made (i) by  
61 a transfer of cash, or (ii) by a transfer of securities having  
62 a readily determinable market value, provided that such  
63 transfer of securities is approved by the commissioner.  
64 The commissioner may approve other transfers among  
65 such accounts if, in his opinion, such transfers would not  
66 be inequitable.

67 (g) To the extent such company deems it necessary to  
68 comply with any applicable federal or state laws, such  
69 company, with respect to any separate account, including  
70 without limitation any separate account which is a  
71 management investment company or a unit investment  
72 trust, may provide for persons having an interest therein  
73 appropriate voting and other rights and special procedures  
74 for the conduct of the business of such account, including  
75 without limitation special rights and procedures relating  
76 to investment policy, investment advisory services, selec-  
77 tion of independent public accountants, and the selection  
78 of a committee, the members of which need not be other-  
79 wise affiliated with such company, to manage the business  
80 of such account.

### **§33-13A-2. Features and benefits.**

1 Any contract providing benefits payable in variable  
2 amounts delivered or issued for delivery in this state shall  
3 contain a statement of the essential features of the pro-  
4 cedures to be followed by the insurance company in  
5 determining the dollar amount of such variable benefits.  
6 Any such contract under which the benefits vary to reflect  
7 investment experience, including a group contract and any  
8 certificate in evidence of variable benefits issued there-  
9 under, shall state that such dollar amount will so vary  
10 and shall contain on its first page a statement to the  
11 effect that the benefits thereunder are on a variable basis.

### **§33-13A-3. Qualification of companies, subsidiaries and affiliates.**

1 No company shall deliver or issue for delivery within  
2 this state variable contracts unless it is licensed or orga-  
3 nized to do a life insurance or annuity business in this  
4 state, and the commissioner is satisfied that its condition

5 or method of operation in connection with the issuance of  
6 such contracts will not render its operation hazardous to  
7 the public or its policyholders in this state. In this connec-  
8 tion, the commissioner shall consider among other  
9 things:

10 (a) The history and financial condition of the company;

11 (b) The character, responsibility and fitness of the  
12 officers and directors of the company; and

13 (c) The law and regulation under which the company is  
14 authorized in the state of domicile to issue variable  
15 contracts. The state of entry of an alien company shall be  
16 deemed its place of domicile for this purpose.

17 If the company is a subsidiary of an admitted life  
18 insurance company, or affiliated with such company  
19 through common management or ownership, it may be  
20 deemed by the commissioner to have met the provisions  
21 of this section if either it or the parent or the affiliated  
22 company meets the requirements hereof.

**§33-13A-4. Supervisory powers of insurance commissioner.**

1 Notwithstanding any other provision of law, the com-  
2 missioner shall have sole authority to regulate the  
3 issuance and sale of variable contracts, and to issue such  
4 reasonable rules and regulations as may be appropriate to  
5 carry out the purposes and provisions of this article.

**§33-13A-5. Application of other insurance laws, valuation of reserves.**

1 Except for sections eighteen, twenty-three, twenty-  
2 four and thirty-a, article thirteen of this chapter, and  
3 section twenty-three, article fourteen of this chapter in  
4 the case of a variable annuity contract, and sections three,  
5 eight to twelve, inclusive, and thirty, article thirteen of  
6 this chapter and section nine, article fourteen of this  
7 chapter in the case of a variable life insurance policy and  
8 except as otherwise provided in this article, all pertinent  
9 provisions of this chapter shall apply to separate accounts  
10 and contracts relating thereto. Any individual variable  
11 life insurance or annuity contract, delivered or issued for

12 delivery in this state shall contain grace, reinstatement  
13 and nonforfeiture provisions appropriate to such a con-  
14 tract. Any individual variable annuity contract delivered  
15 or issued for delivery in this state shall contain grace and  
16 reinstatement provisions appropriate to such a contract.  
17 Any group variable life insurance or annuity contract,  
18 delivered or issued for delivery in this state shall contain  
19 a grace provision appropriate to such a contract.

20 The reserve liability for variable contracts shall be  
21 established in accordance with actuarial procedures that  
22 recognize the variable nature of the benefits provided and  
23 any mortality guarantees.

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## CHAPTER 113

(H. B. 1111—By Mr. Farley and Mr. Morasco)

[Passed April 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a; and to amend article sixteen of said chapter by adding thereto a new section, designated section three-a, all relating to accident and sickness insurance; providing for the inclusion of protection against mental illness costs in individual and group accident and sickness insurance contracts.

*Be it enacted by the Legislature of West Virginia:*

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

**Article**

**15. Accident and Sickness Insurance.**

**16. Group Accident and Sickness Insurance.**

**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.****§33-15-4a. Required policy provisions—mental illness.**

1 Any policy of insurance described in this article which  
2 provides hospital expense and surgical expense insurance and  
3 which is issued or subsequently renewed by agreement between  
4 the insurer and the policyholder, within this state, or any  
5 policy of accident and sickness insurance which provides  
6 hospital expense and surgical expense insurance and which is  
7 delivered or issued for delivery or subsequently renewed by  
8 agreement between the insurer and the policyholder in this  
9 state, shall provide, unless specifically refused by the policy-  
10 holder, benefits for expense of residents of the state covered  
11 under any such policy or plan, arising from mental or nervous  
12 conditions as described in the standard nomenclature of the  
13 American psychiatric association which are at least equal to  
14 the following minimum requirements:

15 (a) In the case of benefits based upon confinement as an  
16 inpatient in a mental hospital under the direction and super-  
17 vision of the department of mental health, or in a private  
18 hospital or private mental hospital licensed by the department  
19 of mental health or any other duly authorized state agency, the  
20 period of confinement for which benefits shall be payable  
21 shall be at least forty-five consecutive days in any calendar  
22 year.

23 (b) In the case of benefits based upon confinement as  
24 an inpatient in a licensed or accredited general hospital, such  
25 benefits shall be no different than for any other illness.

26 (c) In the case of outpatient benefits, these shall cover  
27 fifty percent of eligible expenses up to five hundred dollars  
28 over a twelve-month period, services furnished (1) by a com-  
29 prehensive health service organization, (2) by a licensed or  
30 accredited hospital, or (3) subject to the approval of the de-  
31 partment of mental health, services furnished by a community  
32 mental health center or other mental health clinic or day care  
33 center which furnishes mental health services, or (4) consulta-  
34 tions or diagnostic or treatment sessions, provided that such  
35 services are rendered by a psychotherapist or by a psycholo-  
36 gist and do not exceed fifty such sessions over a twelve-month

37 period. For purposes of this article "psychotherapist" means  
38 any person employed by the mental health center to provide  
39 direct services to clients, such person to serve under the author-  
40 ity and direction of a licensed psychologist, physician, psychia-  
41 trist or director of a duly licensed mental health facility.

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

**§33-16-3a. Required policy provisions—mental illness.**

1 Any policy described in this article which shall be delivered  
2 or issued or renewed in this state shall make available as  
3 benefits to all individual subscribers and members and to all  
4 group members if so elected by the subscriber or group, for  
5 expenses arising from mental or nervous conditions as herein-  
6 after set forth. Such benefits shall be as described in the stan-  
7 dard nomenclature of the American psychiatric association  
8 which are at least equal to the following minimum require-  
9 ments:

10 (a) In the case of benefits based upon confinement as  
11 an inpatient in a mental hospital under the direction and  
12 supervision of the department of mental health, or in a pri-  
13 vate mental hospital licensed by the department of mental  
14 health, the period of confinement for which benefits shall be  
15 payable shall be at least forty-five days in any calendar year.

16 (b) In the case of benefits based upon confinement as an  
17 inpatient in a licensed or accredited general hospital, such  
18 benefits shall be no different than for any other illness.

19 (c) In the case of outpatient benefits, these shall cover fifty  
20 percent of eligible expenses up to five hundred dollars over  
21 a twelve-month period, services furnished (1) by a compre-  
22 hensive health service organization, (2) by a licensed or ac-  
23 credited hospital, or (3) subject to the approval of the depart-  
24 ment of mental health, services furnished by a community  
25 mental health center or other mental health clinic or day care  
26 center which furnishes mental health services, or (4) consul-  
27 tations or diagnostic or treatment sessions, provided that such  
28 services are rendered by a psychotherapist or by a psycholo-  
29 gist and do not exceed fifty such sessions over a twelve-month  
30 period.

## CHAPTER 114

(Com. Sub. for S. B. 211—By Miss Herndon)

[Passed April 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring group insurance policies provided by an employee's group plan to include a provision allowing members to continue the policies for not more than eighteen months after an involuntary layoff.

*Be it enacted by the Legislature of West Virginia:*

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

### **ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

#### **§33-16-3. Required policy provisions.**

1 Each such policy hereafter delivered or issued for  
2 delivery in this state shall contain in substance the follow-  
3 ing provisions:

4 (a) A provision that the policy, the application of the  
5 policyholder, a copy of which shall be attached to such  
6 policy, and the individual applications, if any, submitted  
7 in connection with such policy by the employees or  
8 members, shall constitute the entire contract between  
9 the parties, and that all statements made by any applicant  
10 or applicants shall be deemed representations and not  
11 warranties, and that no such statement shall void the  
12 insurance or reduce benefits thereunder unless contained  
13 in a written application.

14 (b) A provision that the insurer will furnish to the  
15 policyholder, for delivery to each employee or member  
16 of the insured group, an individual certificate setting  
17 forth in substance the essential features of the insurance  
18 coverage of such employee or member and to whom bene-  
19 fits thereunder are payable. If dependents are included

20 in the coverage, only one certificate need be issued for  
21 each family unit.

22 (c) A provision that all new employees or members,  
23 as the case may be, in the groups or classes eligible for  
24 insurance, shall from time to time be added to such  
25 groups or classes eligible to obtain such insurance in  
26 accordance with the terms of the policy.

27 (d) No provision relative to notice or proof of loss or  
28 the time for paying benefits or the time within which  
29 suit may be brought upon the policy shall be less favorable  
30 to the insured than would be permitted in the case of an  
31 individual policy by the provisions set forth in article  
32 fifteen of this chapter.

33 (e) A provision that all members in groups or classes  
34 eligible for insurance provided through an employee's  
35 group plan shall be permitted to pay the premiums at  
36 the same group rate and receive the same coverages  
37 for a period not to exceed eighteen months when they  
38 are involuntarily laid off from work.

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## CHAPTER 115

(Com. Sub. for H. B. 951—By Mr. Shingleton)

[Passed April 1, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nineteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one, relating to surety insurance; and requiring persons to be licensed in West Virginia in order to transact surety insurance where required for persons in courts or by governmental bodies of West Virginia.

*Be it enacted by the Legislature of West Virginia:*

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



**ARTICLE 19. SURETY INSURANCE.****§33-19-1. Surety required in courts or by governmental bodies to be provided by persons licensed in West Virginia.**

1       When surety insurance, as defined in section ten, article one  
 2       of this chapter, is required of any person by a court or govern-  
 3       mental body of the state of West Virginia, such insurance  
 4       shall be provided only by persons licensed in West Virginia to  
 5       transact surety insurance.

**CHAPTER 116**

(S. B. 592—By Mr. Brotherton, Mr. President)

[Passed April 4, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article twenty-six of said chapter, all relating to providing that farmers' mutual fire insurance companies be governed by the West Virginia insurance guaranty association act.

*Be it enacted by the Legislature of West Virginia:*

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

**Article**

- 22. **Farmers' Mutual Fire Insurance Companies.**
- 26. **West Virginia Insurance Guaranty Association Act.**

**ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.****§33-22-2. Other provisions of chapter applicable.**

1       Each such company to the same extent such provisions  
 2       are applicable to domestic mutual insurers shall be gov-  
 3       erned by and be subject to the following articles of this

4 chapter: Article one (definitions), article two (insurance  
5 commissioner), article four (general provisions) except  
6 that section sixteen of article four shall not be applicable  
7 thereto, article ten (rehabilitation and liquidation) except  
8 that under the provisions of section thirty-two of said  
9 article ten no assessment shall be levied against any  
10 former member of a farmers' mutual fire insurance com-  
11 pany who was no longer a member of such company at  
12 the time the order to show cause was issued, article  
13 eleven (unfair practices and frauds), and article twelve  
14 (agents, brokers and solicitors) except that the agents'  
15 license fee shall be one dollar and article twenty-six  
16 (West Virginia Insurance Guaranty Association Act);  
17 but only to the extent such provisions are not incon-  
18 sistent with the provisions of this article.

**ARTICLE 26. WEST VIRGINIA INSURANCE GUARANTY ASSO-  
CIATION ACT.**

**§33-26-5. Definitions.**

1 As used in this article:

2 (1) "Account" means any one of the two accounts  
3 created by section six of this article.

4 (2) "Association" means the West Virginia insurance  
5 guaranty association created under section six of this  
6 article.

7 (3) "Commissioner" means the insurance commis-  
8 sioner of West Virginia.

9 (4) "Covered claim" means an unpaid claim, includ-  
10 ing one for unearned premiums, which arises out of and  
11 is within the coverage of an insurance policy to which  
12 this article applies and which policy is in force at the  
13 time of the occurrence giving rise to such unpaid claims  
14 if (a) the insurer issuing the policy becomes an insolvent  
15 insurer after the effective date of this article and (b)  
16 the claimant or insured is a resident of this state at the  
17 time of the insured occurrence, or the property from  
18 which the claim arises is permanently located in this  
19 state. "Covered claim" shall not include (i) any amount  
20 in excess of the applicable limits of coverage provided  
21 by an insurance policy to which this article applies; nor

22 (ii) any amount due any reinsurer, insurer, insurance  
23 pool, or underwriting association, as subrogation re-  
24 coveries or otherwise.

25 (5) "Insolvent insurer" means an insurer (a) autho-  
26 rized to transact insurance in this state either at the time  
27 the policy was issued or when the insured event occurred  
28 and (b) determined to be insolvent by a court of com-  
29 petent jurisdiction.

30 (6) "Member insurer" means any person who (a)  
31 writes any kind of insurance to which this article applies  
32 under section three of this article, including farmers'  
33 mutual fire insurance companies and the exchange of  
34 reciprocal or interinsurance contracts, and (b) is licensed  
35 to transact insurance in this state.

36 (7) "Net direct written premiums" means direct gross  
37 premiums written in this state on insurance policies to  
38 which this article applies, less return premiums thereon  
39 and dividends paid or credited to policyholders on such  
40 direct business. "Net direct written premiums" does  
41 not include premiums on contracts between insurers or  
42 reinsurers.

43 (8) "Person" includes an individual, company, in-  
44 surer, association, organization, society, reciprocal, part-  
45 nership, syndicate, business trust, corporation, or any  
46 other legal entity.

47 (9) "Receiver" means receiver, liquidator, rehabili-  
48 tator or conservator as the context may require.

## CHAPTER 117

(S. B. 389—By Mr. Hatfield)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five-a, relating to establishing health maintenance organizations; issuance of certificate of authority;

powers of health maintenance organizations; fiduciary responsibilities; approval of contracts; evidence of coverage and charges for health care services; annual report; information to enrollees; enrollment; complaint system; investments; prohibited practices; regulation of marketing; examinations; suspension or revocation of certificate of authority; rehabilitation, liquidation or conservation of health maintenance organizations; regulations; administrative procedures; fees; penalties and enforcement; filings and reports as public documents; confidentiality of medical information; authority to contract with health maintenance organizations under medicaid; and required health maintenance organization option.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

- §33-25A-1. Short title and purpose.
- §33-25A-2. Definitions.
- §33-25A-3. Establishment of health maintenance organizations; certificate required; notice of modification of operation or documents.
- §33-25A-4. Issuance of certificate of authority.
- §33-25A-5. Powers of health maintenance organizations.
- §33-25A-6. Governing body.
- §33-25A-7. Fiduciary responsibilities of officers; approval of contracts by commissioner.
- §33-25A-8. Evidence of coverage; charges for health care services; cancellation of contract by enrollee.
- §33-25A-9. Annual report.
- §33-25A-10. Information to enrollees.
- §33-25A-11. Open enrollment period; limitation on medicare and medicaid beneficiaries.
- §33-25A-12. Complaint system.
- §33-25A-13. Investments.
- §33-25A-14. Prohibited practices.
- §33-25A-15. Regulation of marketing.
- §33-25A-16. Powers of insurers and hospital and medical service corporations.
- §33-25A-17. Examinations.
- §33-25A-18. Suspension or revocation of certificate of authority.
- §33-25A-19. Rehabilitation, liquidation or conservation of health maintenance organization.
- §33-25A-20. Regulations.
- §33-25A-21. Administrative procedures.

- §33-25A-22. Fees.
- §33-25A-23. Penalties and enforcement.
- §33-25A-24. Statutory construction and relationship to other laws.
- §33-25A-25. Filings and reports as public documents.
- §33-25A-26. Confidentiality of medical information.
- §33-25A-27. Authority to contract with health maintenance organizations under medicaid.
- §33-25A-28. Required health maintenance organization option.

**§33-25A-1. Short title and purpose.**

1 (a) This article may be cited as the "Health Maintenance  
2 nance Organization Act of 1977."

3 (b) Faced with the continuation of mounting costs of  
4 health care coupled with its inaccessibility to large  
5 segments of the population, the Legislature has deter-  
6 mined that there is a need to encourage alternative  
7 methods for the delivery of health care services, with a  
8 view toward achieving greater efficiency, availability,  
9 distribution and economy in providing these services.

10 In carrying out this intention, it is the policy of the  
11 state to eliminate legal barriers to the establishment of  
12 prepaid health care plans accountable to consumers for the  
13 health care services they provide; to provide for the  
14 financial and administrative soundness of these health  
15 care plans as it relates to their ability to provide such  
16 services, and to exempt prepaid health care plans from  
17 regulation as an insurer, the operation of insurance laws  
18 of the state and all other laws inconsistent with the pur-  
19 poses of this article.

**§33-25A-2. Definitions.**

1 (1) "Basic health care services" means physician,  
2 hospital, out-of-area, podiatric, laboratory, X ray, emer-  
3 gency, short-term mental health services not exceeding  
4 twenty outpatient visits in any twelve-month period, and  
5 cost-effective preventive services including immuniza-  
6 tions, well-child care, periodic health evaluations for  
7 adults, voluntary family planning services, infertility ser-  
8 vices and children's eye and ear examinations conducted  
9 to determine the need for vision and hearing corrections.

10 (2) "Commissioner" means the commissioner of insur-  
11 ance.

12 (3) "Consumer" means any person who is not a pro-  
13 vider of care or an employee, officer, director or stock-  
14 holder of any provider of care.

15 (4) "Copayment" means a nominal payment required of  
16 enrollees as a condition of the receipt of specific health  
17 services.

18 (5) "Employee" means a person in some official em-  
19 ployment or position working for a salary or wage con-  
20 tinuously for no less than one calendar quarter and who  
21 is in such a relation to another person that the latter may  
22 control the work of the former and direct the manner in  
23 which the work shall be done.

24 (6) "Employer" means any individual, corporation,  
25 partnership, other private association, or state or local  
26 government that employs the equivalent of at least  
27 twenty-five full-time employees during any four consecu-  
28 tive calendar quarters.

29 (7) "Enrollee" means an individual who has been vol-  
30 untarily enrolled in a health maintenance organization,  
31 including individuals on whose behalf a contractual ar-  
32 rangement has been entered into with a health mainte-  
33 nance organization to receive health care services.

34 (8) "Evidence of coverage" means any certificate,  
35 agreement or contract issued to an enrollee setting out the  
36 coverage and other rights to which the enrollee is en-  
37 titled.

38 (9) "Health care services" means any services or goods  
39 included in the furnishing to any individual of medical,  
40 mental or dental care, or hospitalization or incident to the  
41 furnishing of such care of hospitalization, osteopathic  
42 services, home health, health education, rehabilitation, as  
43 well as the furnishing to any person of any and all other  
44 services or goods for the purpose of preventing, alleviat-  
45 ing, curing or healing human illness or injury.

46 (10) "Health maintenance organization" means a public  
47 or private organization which provides, or otherwise  
48 makes available to enrollees, health care services, includ-  
49 ing at a minimum basic health care services:

50 (a) Is compensated except for copayments for the  
51 provision of basic health care services to enrollees solely  
52 on a predetermined periodic rate basis;

53 (b) Provides physicians' services primarily (i) directly  
54 through physicians who are either employees or partners  
55 of such organization, or (ii) through arrangements with  
56 individual physicians or one or more groups of physicians  
57 organized on a group practice or individual practice  
58 basis, or (iii) through some combination of (i) and (ii)  
59 above;

60 (c) Assures the availability, accessibility and quality  
61 including effective utilization of the health care services  
62 which it provides or makes available through clearly  
63 identifiable focal points of legal and administrative re-  
64 sponsibility.

65 (11) "Individual practice basis" means any agreement or  
66 arrangement to provide medical services on behalf of a  
67 health maintenance organization among or between phy-  
68 sicians or between a health maintenance organization and  
69 individual physicians or groups of physicians, where the  
70 physicians are not employees or partners of such health  
71 maintenance organization and are not members of or  
72 affiliated with a medical group.

73 (12) "Medical group" means (a) a professional corpora-  
74 tion, partnership, association, or other organization which  
75 is composed solely of health professionals licensed to  
76 practice medicine or osteopathy and of such other licensed  
77 health professionals, including podiatrists, dentists and  
78 optometrists, as are necessary for the provision of health  
79 services for which the group is responsible; (b) a majority  
80 of the members of which are licensed to practice medicine  
81 or osteopathy; (c) as their principal professional activity  
82 engage in the coordinated practice of their profession; (d)  
83 pool their income for practice as members of the group  
84 and distribute it among themselves according to a pre-  
85 arranged salary, drawing account or other plan; and (e)  
86 share medical and other records and substantial portions  
87 of major equipment and professional, technical and ad-  
88 ministrative staff.

89 (13) "Premium" means a predetermined periodic rate  
90 unrelated to the actual or potential utilization of services  
91 of any particular person which is charged by the health  
92 maintenance organization for health services provided to  
93 an enrollee.

94 (14) "Provider" means any physician, hospital or other  
95 person or organization which is licensed or otherwise  
96 authorized in this state to furnish health care services.

97 (15) "Service area" means the area identified by a  
98 health maintenance organization as the area within which  
99 health care services will be provided by the health main-  
100 tenance organization.

**§33-25A-3. Establishment of health maintenance organiza-  
tions; certificate required; notice of modification  
of operation or documents.**

1 (1) Notwithstanding any law of this state to the con-  
2 trary, any person may apply to the commissioner for and  
3 obtain a certificate of authority to establish or operate a  
4 health maintenance organization in compliance with this  
5 article. No person shall sell health maintenance organi-  
6 zation enrollee contracts, nor shall any health mainte-  
7 nance organization commence services, prior to receipt of  
8 a certificate of authority. Any person may, however,  
9 establish the feasibility of a health maintenance organi-  
10 zation prior to receipt of authority through funding drives  
11 and by receiving loans, grants and preliminary payments.  
12 The commissioner shall promulgate regulations in ac-  
13 cordance herewith establishing methods of determining  
14 the feasibility of operating prospective health mainte-  
15 nance organizations.

16 (2) Every health maintenance organization in opera-  
17 tion as of the effective date of this article shall submit an  
18 application for a certificate of authority under this sec-  
19 tion within thirty days of the effective date of this  
20 article. Each such applicant may continue to operate until  
21 the commissioner acts upon the application. In the event  
22 that an application is denied pursuant to section four of  
23 this article, the applicant shall henceforth be treated as a  
24 health maintenance organization whose certificate of  
25 authority has been revoked.



26 (3) The commissioner may require any organization pro-  
27 viding or arranging for health care services on a pre-  
28 determined periodic rate to apply for a certificate of  
29 authority under this article. Any organization directed to  
30 apply for a certificate of authority shall be subject to the  
31 provisions of subsection (2) of this section.

32 (4) Each application for a certificate of authority shall  
33 be verified by an officer or authorized representative of  
34 the applicant, shall be in a form prescribed by the com-  
35 missioner, and shall set forth or be accompanied by any  
36 and all information required by the commissioner, in-  
37 cluding (a) the basic organizational document; (b) the  
38 bylaws or rules and regulations; (c) a list of the names,  
39 addresses and official positions of each member of the  
40 governing body, which shall contain a full disclosure in  
41 the application of any financial interest by such officer  
42 or member of the governing body or any provider or any  
43 organization or corporation owned or controlled by such  
44 person and the health maintenance organization and the  
45 extent and nature of any contract or financial arrange-  
46 ments between such persons and the health maintenance  
47 organization; (d) description of the health maintenance  
48 organization; (e) a copy of each evidence of coverage  
49 form and of each enrollee contract form; (f) financial  
50 statements which include the assets, liabilities and  
51 sources of financial support of the applicant and any  
52 corporation or organization owned or controlled by the  
53 applicant; (g) (i) a description of the proposed method  
54 of marketing the plan, (ii) a schedule of proposed charges,  
55 and (iii) a financial plan which includes a three-year  
56 projection of the expenses and income and other sources  
57 of future capital; (h) a power of attorney duly executed  
58 by such applicant, if not domiciled in this state, appoint-  
59 ing the commissioner and his successors in office, and  
60 duly authorized deputies, as the true and lawful attorney  
61 of such applicant in and for this state upon whom all  
62 lawful process in any legal action or proceeding against  
63 the health maintenance organization on a cause of action  
64 arising in this state may be served; (i) a statement  
65 reasonably describing the geographic area or areas to be

66 served and the type or types of enrollees to be served; (j)  
67 a description of the complaint procedures to be utilized  
68 as required under section twelve of this article; (k) a  
69 description of the mechanism by which enrollees will be  
70 afforded an opportunity to participate in matters of policy  
71 and operation under section six of this article; and (l)  
72 such other information as the commissioner may require  
73 to be provided.

74 (5) A health maintenance organization shall, unless  
75 otherwise provided for by regulations promulgated by the  
76 commissioner, file notice prior to any modification of the  
77 operations or documents filed pursuant to this section or  
78 as the commissioner may require by regulation. If the  
79 commissioner does not disapprove of the filing within  
80 thirty days of filing, it shall be deemed approved and may  
81 be implemented by the health maintenance organiza-  
82 tion.

**§33-25A-4. Issuance of certificate of authority.**

1 (1) Upon receipt of an application for a certificate of  
2 authority, the commissioner shall determine whether the  
3 application for a certificate of authority, with respect to  
4 health care services to be furnished has demonstrated:

5 (a) The willingness and potential ability to assure  
6 that basic health services will be provided in such a  
7 manner as to enhance and assure both the availability and  
8 accessibility of adequate personnel and facilities;

9 (b) Arrangements for an ongoing evaluation of the  
10 quality of health care;

11 (c) A procedure to develop, compile, evaluate and  
12 report statistics relating to the cost of its operations,  
13 the pattern of utilization of its services, the quality, avail-  
14 ability and accessibility of its services, and such other  
15 matters as may be reasonably required by regulation.

16 (2) The commissioner shall issue or deny a certificate  
17 of authority to any person filing an application within  
18 sixty days after receipt of the application. Issuance of a  
19 certificate of authority shall be granted upon payment of

20 the application fee prescribed, if the commissioner is  
21 satisfied that the following conditions are met:

22 (a) The health maintenance organization's proposed  
23 plan of operation meets the requirements of subsection  
24 (1) of this section;

25 (b) The health maintenance organization will effec-  
26 tively provide or arrange for the provision of at least  
27 basic health care services on a prepaid basis except for  
28 copayments: *Provided*, That nothing herein shall be con-  
29 strued to relieve a health maintenance organization from  
30 the obligations to provide health care services because of  
31 the nonpayment of copayments unless the enrollee fails to  
32 make payment in at least three instances over any twelve-  
33 month period: *Provided, however*, That nothing herein  
34 shall permit a health maintenance organization to charge  
35 copayments to medicare beneficiaries or medicaid  
36 recipients in excess of the copayments permitted under  
37 those programs, nor shall a health maintenance organiza-  
38 tion be required to provide services to such medicare  
39 beneficiaries or medicaid recipients in excess of the bene-  
40 fits compensated under such programs;

41 (c) The health maintenance organization is financially  
42 responsible and may reasonably be expected to meet its  
43 obligations to enrollees and prospective enrollees. In  
44 making this determination, the commissioner may con-  
45 sider:

46 (i) The financial soundness of the health maintenance  
47 organization's arrangements for health care services and  
48 proposed schedule of charges used in connection therewith;

49 (ii) The adequacy of working capital;

50 (iii) Any arrangements which will guarantee for a  
51 reasonable period of time the continued availability or  
52 payment of the cost of health care services in the event  
53 of discontinuance of the plan;

54 (iv) Any agreement with providers for the provision of  
55 health care services; and

56 (d) Reasonable provisions have been made for emer-  
57 gency and out-of-area health care services;

58 (e) The enrollees will be afforded an opportunity to  
59 participate in matters of policy and operation pursuant to  
60 section six of this article;

61 (f) The health maintenance organization has demon-  
62 strated that it will assume full financial risk on a pro-  
63 spective basis for the provision of health care services,  
64 including hospital care: *Provided*, That the requirement  
65 of this subdivision shall not prohibit a health maintenance  
66 organization from obtaining insurance or making other  
67 arrangements (i) for the cost of providing to any enrollee  
68 comprehensive health maintenance services, the aggregate  
69 value of which exceeds four thousand dollars in any year,  
70 (ii) for the cost of providing comprehensive health care  
71 services to its members on a nonelective emergency basis,  
72 or while they are outside the area served by the organiza-  
73 tion, or (iii) for not more than ninety-five percent of the  
74 amount by which the health maintenance organization's  
75 costs for any of its fiscal years exceed one hundred five  
76 percent of its income for such fiscal years.

77 (3) A certificate of authority shall be denied only  
78 after compliance with the requirements of section twenty-  
79 one of this article.

80 (4) Except as provided in subsection (2), section three  
81 of this article, no person who has not been issued a  
82 certificate of authority shall use the words "health  
83 maintenance organization" or the initials "HMO" in its  
84 name, contracts or literature: *Provided*, That persons  
85 who are operating under a contract with, operating in  
86 association with, enrolling enrollees for, or otherwise  
87 authorized by a health maintenance organization licensed  
88 under this article to act on its behalf may use the terms  
89 "health maintenance organization" or "HMO" for the  
90 limited purpose of denoting or explaining their associa-  
91 tion or relationship with the authorized health mainte-  
92 nance organization. No health maintenance organization  
93 which has a minority of board members who are con-  
94 sumers shall use the words "consumer controlled" in its  
95 name or in any way represent to the public that it is con-  
96 trolled by consumers.

**§33-25A-5. Powers of health maintenance organizations.**

1 Upon obtaining a certificate of authority as required  
2 under this article, a health maintenance organization may  
3 enter into health maintenance contracts in this state and  
4 engage in any activities, consistent with the purposes and  
5 provisions of this article, which are necessary to the  
6 performance of its obligations under such contracts, sub-  
7 ject to the limitations provided for in this article. The  
8 commissioner may promulgate rules and regulations lim-  
9 iting or regulating the powers of health maintenance  
10 organizations which he finds to be in the public interest.

**§33-25A-6. Governing body.**

1 (1) The governing body of any health maintenance  
2 organization may include enrollees, providers, or other  
3 individuals.

4 (2) Such governing body shall establish a mechanism to  
5 afford the enrollees an opportunity to participate in  
6 matters of policy and operation through the establishment  
7 of advisory panels, by the use of advisory referenda on  
8 major policy decisions, or through the use of other mech-  
9 anisms as may be prescribed by the commissioner.

**§33-25A-7. Fiduciary responsibilities of officers; approval of contracts by commissioner.**

1 (a) Any director, officer or partner of a health main-  
2 tenance organization who receives, collects, disburses or  
3 invests funds in connection with the activities of such  
4 organization shall be responsible for such funds in a  
5 fiduciary relationship to the enrollees.

6 (b) Any contracts made with hospitals and practition-  
7 ers of medical, dental and related services enabling a  
8 health maintenance organization to provide health care  
9 services authorized under this article shall be filed with  
10 the commissioner. The commissioner shall have power to  
11 require immediate renegotiation of such contracts when-  
12 ever he determines that they provide for excessive pay-  
13 ments, or that they fail to include reasonable incentives  
14 for cost control, or that they otherwise substantially and  
15 unreasonably contribute to escalation of the costs of pro-  
16 viding health care services to enrollees.

**§33-25A-8. Evidence of coverage; charges for health care services; cancellation of contract by enrollee.**

1 (1) (a) Every enrollee is entitled to evidence of coverage  
2 in accordance with this section. The health maintenance  
3 organization or its designated representative shall issue  
4 the evidence of coverage.

5 (b) No evidence of coverage, or amendment thereto,  
6 shall be issued or delivered to any person in this state  
7 until a copy of the form of the evidence of coverage, or  
8 amendment thereto, has been filed with and approved by  
9 the commissioner.

10 (c) An evidence of coverage shall contain a clear,  
11 concise and complete statement of (i) the health care  
12 services and the insurance or other benefits, if any, to  
13 which the enrollee is entitled; (ii) any exclusions or  
14 limitations on the services, kind of services, benefits, or  
15 kind of benefits, to be provided, including any copay-  
16 ments; (iii) where and in what manner information is  
17 available as to how services, including emergency and out-  
18 of-area services, may be obtained; (iv) the total amount  
19 of payment and copayment, if any, for health care ser-  
20 vices and the indemnity or service benefits, if any, which  
21 the enrollee is obligated to pay with respect to individual  
22 contracts, or an indication whether the plan is contribu-  
23 tory or noncontributory with respect to group certificates;  
24 and (v) a description of the health maintenance organi-  
25 zation's method for resolving enrollee complaints.

26 (d) Any subsequent approved change in an evidence  
27 of coverage shall be issued to each enrollee.

28 (e) A copy of the form of the evidence of coverage to  
29 be used in this state, and any amendment thereto, shall  
30 be subject to the filing and approval requirements of  
31 subdivision (b), subsection (1) of this section, unless the  
32 commissioner promulgates a regulation dispensing with  
33 this requirement or unless it is subject to the jurisdic-  
34 tion of the commissioner under the laws governing health  
35 insurance or, hospital or medical service corporations, in  
36 which event the filing and approval provisions of such  
37 laws shall apply. To the extent, however, that such pro-

38 visions do not apply the requirements in subdivision (c),  
39 subsection (1) of this section, shall be applicable.

40 (2) Such charges may be established in accordance  
41 with actuarial principles: *Provided*, That premiums shall  
42 not be excessive, inadequate, or unfairly discriminatory.  
43 A certification by a qualified actuary, to the appropri-  
44 ateness of the charges based on reasonable assumptions  
45 shall accompany the filing along with adequate supporting  
46 information. In determining whether such charges are  
47 reasonable, the commissioner shall consider whether such  
48 health maintenance organization has (a) made a vigorous,  
49 good faith effort to control rates paid to health care  
50 providers; and (b) established a premium schedule, in-  
51 cluding copayments, if any, which encourages enrollees  
52 to seek out preventive health care services.

53 (3) The commissioner shall within a reasonable period  
54 approve any form if the requirements of subsection (1)  
55 are met and any schedule of charges if the requirements  
56 of subsection (2) are met. It shall be unlawful to issue  
57 such form or to use such schedule of charges until ap-  
58 proved. If the commissioner disapproves of such filing,  
59 he shall notify the filer promptly. In the notice, the com-  
60 missioner shall specify the reasons for his disapproval  
61 and the findings of fact and conclusions which support  
62 his reasons. A hearing will be granted by the commis-  
63 sioner within fifteen days after a request in writing, by  
64 the person filing, has been received by the commission. If  
65 the commissioner does not disapprove any form or sched-  
66 ular of charges within sixty days of the filing of such  
67 forms or charges, they shall be deemed approved.

68 (4) The commissioner may require the submission of  
69 whatever relevant information in addition to the sched-  
70 ular of charges which he deems necessary in determining  
71 whether to approve or disapprove a filing made pursuant  
72 to this section.

73 (5) An enrollee shall be allowed to cancel a contract  
74 with a health maintenance organization at any time for  
75 any reason provided that a health maintenance organiza-  
76 tion may require that he or she give thirty days' notice  
77 of disenrollment to such organization.

**§33-25A-9. Annual report.**

1 (1) Every health maintenance organization shall  
2 annually, on or before the first day of March, file a report  
3 verified by at least two principal officers with the com-  
4 missioner, covering the preceding calendar year.

5 (2) Such report shall be on forms prescribed by the  
6 commissioner and shall include:

7 (a) A financial statement of the organization, including  
8 its balance sheet and receipts and disbursements for the  
9 preceding year certified by an independent certified  
10 public accountant, reflecting at least (i) all prepayment  
11 and other payments received for health care services  
12 rendered, (ii) expenditures to all providers, by classes or  
13 groups of providers, and insurance companies or nonprofit  
14 health service plan corporations engaged to fulfill obli-  
15 gations arising out of the health maintenance contract,  
16 and (iii) expenditures for capital improvements, or  
17 additions thereto, including, but not limited to, construc-  
18 tion, renovation or purchase of facilities and capital  
19 equipment;

20 (b) The number of new enrollees enrolled during the  
21 year, the number of enrollees as of the end of the year  
22 and the number of enrollees terminated during the year;

23 (c) A summary of information compiled pursuant to  
24 subdivision (c), subsection (1), section four of this article  
25 in such form as may be required by the department of  
26 health;

27 (d) A report of the names and residence addresses of  
28 all persons set forth in subdivision (c), subsection (4),  
29 section three of this article who were associated with the  
30 health maintenance organization during the preceding  
31 year, and the amount of wages, expense reimbursements,  
32 or other payments to such individuals for services to the  
33 health maintenance organization, including a full dis-  
34 closure of all financial arrangements during the preceding  
35 year required to be disclosed pursuant to subdivision  
36 (c), subsection (4), section three of this article; and

37 (e) Such other information relating to the performance  
38 of the health maintenance organization as is reasonably



39 necessary to enable the commissioner to carry out his  
40 duties under this article.

**§33-25A-10. Information to enrollees.**

1 Every health maintenance organization or its repre-  
2 sentative shall annually, before the first day of April,  
3 provide to its enrollees a summary of: Its most recent  
4 annual financial statement, including a balance sheet and  
5 statement of receipts and disbursements; a description  
6 of the health maintenance organization, its basic health  
7 care services, its facilities and personnel, any material  
8 changes therein since the last report, the current evidence  
9 of coverage, and a clear and understandable description  
10 of the health maintenance organization's method for  
11 resolving enrollee complaints: *Provided*, That with respect  
12 to enrollees who have been enrolled through contracts  
13 between a health maintenance organization and an em-  
14 ployer, the health maintenance organization shall be  
15 deemed to have satisfied the requirement of this section by  
16 providing the requisite summary to each enrolled em-  
17 ployee.

**§33-25A-11. Open enrollment period; limitation on medicare  
and medicaid beneficiaries.**

1 (1) Once a health maintenance organization has been  
2 in operation at least five years, or has enrollment of not  
3 less than fifty thousand persons, such health maintenance  
4 organization shall, in any year following a year in which  
5 the health maintenance organization has achieved an  
6 operating surplus, maintain an open enrollment period of  
7 at least thirty days during which time the health main-  
8 tenance organization shall, within the limits of its  
9 capacity, accept individuals in the order in which  
10 they apply without regard to preexisting illness, medical  
11 conditions, or degree of disability except for individuals  
12 who are confined to an institution because of chronic  
13 illness or permanent injury: *Provided*, That no health  
14 maintenance organization shall be required to continue  
15 an open enrollment period after such time as enrollment  
16 pursuant to such open enrollment period is equal to three  
17 percent of the health maintenance organization's net  
18 increase in enrollment during the previous year.

19 (2) Where a health maintenance organization demon-  
20 strates to the satisfaction of the commissioner that it  
21 has a disproportionate share of high-risk enrollees and  
22 that, by maintaining open enrollment, it would be re-  
23 quired to enroll so disproportionate a share of high-risk  
24 enrollees as to jeopardize its economic viability, the  
25 commissioner may:

26 (a) Waive such requirement for open enrollment for a  
27 period of not more than three years; or

28 (b) Authorize such organization to impose such under-  
29 writing restrictions upon open enrollment as are neces-  
30 sary (i) to preserve its financial stability; (ii) to prevent  
31 excessive adverse selection by prospective enrollees; or  
32 (iii) to avoid unreasonably high or unmarketable charges  
33 for enrollee coverage of health services. A health main-  
34 tenance organization may receive more than one such  
35 waiver or authorization.

36 (3) The enrollment by a health maintenance organiza-  
37 tion of medicare beneficiaries who are at least sixty-five  
38 years of age and medicaid beneficiaries shall not exceed  
39 fifty percent of its total enrollee population. The commis-  
40 sioner may waive this requirement with respect to any  
41 health maintenance organization intending to enroll at  
42 least forty percent of its enrollees from medically under-  
43 served areas, as defined by the commissioner, if he is  
44 satisfied that such organization is making substantial  
45 progress toward achieving compliance.

### **§33-25A-12. Complaint system.**

1 (1) A health maintenance organization shall establish  
2 and maintain a complaint system, which has been ap-  
3 proved by the commissioner, to provide adequate and  
4 reasonable procedures for the expeditious resolution of  
5 written complaints initiated by enrollees concerning any  
6 matter relating to any provisions of such organization's  
7 health maintenance contracts, including, but not limited  
8 to, claims regarding the scope of coverage for health care  
9 services; denials, cancellations, or nonrenewals of enrollee  
10 coverage; observance of an enrollee's rights as a patient;  
11 and the quality of the health care services rendered.

12 (2) A health maintenance organization shall give a  
13 timely and reasoned response, in writing, to each written  
14 complaint it receives. Copies of such complaints and the  
15 responses thereto shall be available to the commissioner,  
16 and the public for inspection for three years.

17 (3) Each health maintenance organization shall submit  
18 to the commissioner an annual report in a form prescribed  
19 by the commissioner which describes such complaint sys-  
20 tem and contains a compilation and analysis of the com-  
21 plaints filed, their disposition, and their underlying  
22 causes.

#### §33-25A-13. Investments.

1 With the exception of investments otherwise made in  
2 accordance with this article, the investable funds of a  
3 health maintenance organization shall be invested only in  
4 securities or other investments permitted by the laws of  
5 this state for the investment of assets constituting the  
6 legal reserves of life insurance companies or such other  
7 securities or investments as the commissioner may permit.

#### §33-25A-14. Prohibited practices.

1 (1) No health maintenance organization, or representa-  
2 tive thereof, may cause or knowingly permit the use of  
3 advertising which is untrue or misleading, solicitation  
4 which is untrue or misleading, or any form of evidence  
5 of coverage which is deceptive. For purposes of this  
6 article:

7 (a) A statement or item of information shall be deemed  
8 to be untrue if it does not conform to fact in any respect  
9 which is or may be significant to an enrollee of, or person  
10 considering enrollment in, a health maintenance orga-  
11 nization;

12 (b) A statement or item of information shall be deemed  
13 to be misleading, whether or not it may be literally  
14 untrue, if, in the total context in which such statement  
15 is made or such item of information is communicated,  
16 such statement or item of information may be reasonably  
17 understood by a reasonable person, not possessing special  
18 knowledge regarding health care coverage, as indicating

19 any benefit or advantage or the absence of any exclusion,  
20 limitation, or disadvantage of possible significance to an  
21 enrollee of, or person considering enrollment in, a health  
22 maintenance organization, if such benefit or advantage or  
23 absence of limitation, exclusion or disadvantage does not  
24 in fact exist;

25 (c) An evidence of coverage shall be deemed to be  
26 deceptive if the evidence of coverage taken as a whole,  
27 and with consideration given to typography and format,  
28 as well as language, shall be such as to cause a reasonable  
29 person, not possessing special knowledge regarding health  
30 maintenance organizations, and evidences of coverage  
31 therefor, to expect benefits, services, or other advantages  
32 which the evidence of coverage does not provide or which  
33 the health maintenance organization issuing such evidence  
34 of coverage does not regularly make available for enrollees  
35 covered under such evidence of coverage; and

36 (d) The commissioner may further define practices  
37 which are untrue, misleading or deceptive.

38 (2) No health maintenance organization may cancel or  
39 fail to renew the coverage of an enrollee except for (a)  
40 failure to pay the charge for health care coverage; (b)  
41 termination of the health maintenance organization; (c)  
42 termination of the group plan; (d) enrollee moving out of  
43 the area served; (e) enrollee moving out of an eligible  
44 group; or (f) other reasons established in regulations  
45 promulgated by the commissioner. No health maintenance  
46 organization shall use any technique of rating or grouping  
47 to cancel or fail to renew the coverage of an enrollee. An  
48 enrollee shall be given thirty days' notice of any can-  
49 cellation or nonrenewal, including therein the reason  
50 therefor: *Provided*, That each enrollee moving out of an  
51 eligible group shall be granted the opportunity to enroll  
52 in the health maintenance organization on an individual  
53 basis.

54 A health maintenance organization may not disenroll an  
55 enrollee for nonpayment of copayments unless the  
56 enrollee has failed to make payment in at least three in-  
57 stances over any twelve-month period; however, the en-

58 rollee may not be disenrolled if the disenrollment would  
59 constitute abandonment of a patient. Any enrollee wrong-  
60 fully disenrolled shall be reenrolled.

61 (3) No health maintenance organization may use in its  
62 name, contracts or literature any of the words "insur-  
63 ance," "casualty," "surety," "mutual," or any other words  
64 which are descriptive of the insurance, casualty or surety  
65 business or deceptively similar to the name or description  
66 of any insurance or surety corporation doing business  
67 in this state: *Provided*, That when a health maintenance  
68 organization has contracted with an insurance company  
69 for any coverage permitted by this article, it may so  
70 state.

71 (4) The providers under agreement with a health  
72 maintenance organization to provide health care services  
73 and the health maintenance organization shall not have  
74 recourse against enrollees for amounts above those speci-  
75 fied in the evidence of coverage as the periodic prepay-  
76 ment, or copayment, for health care services.

77 (5) No health maintenance organization shall enroll  
78 more than three hundred thousand persons in this state.

79 (6) No health maintenance organization shall dis-  
80 criminate in enrollment policies or quality of services  
d1 against any person on the basis of race, sex, age, religion,  
82 place of residence, health status, or source of payment:  
83 *Provided*, That differences in rates based on valid actuarial  
84 distinctions, including, distinctions relating to age and  
85 sex, shall not be considered discrimination in enrollment  
86 policies.

87 (7) No agent of a health maintenance organization or  
88 person selling enrollments in a health maintenance orga-  
89 nization shall sell an enrollment in a health maintenance  
90 organization unless such agent or person shall first dis-  
91 close in writing to the prospective purchaser the follow-  
92 ing information using the following exact terms in bold  
93 print: (a) "Services offered," including any exclusions or  
94 limitations; (b) "full cost," including copayments; (c)  
95 "facilities available and hours of services"; (d) "trans-  
96 portation services"; (e) "disenrollment rate"; and (f)

97 "staff," including the names of all full-time staff physi-  
98 cians, consulting specialists, hospitals and pharmacies as-  
99 sociated with the health maintenance organization. In  
100 any home solicitation, any three-day cooling-off period  
101 applicable to consumer transactions generally shall apply  
102 in the same manner as consumer transactions.

103 The form disclosure statement shall not be used in  
104 sales until it has been approved by the commissioner or  
105 submitted to the commissioner for ten days without  
106 disapproval. Any person who fails to disclose the req-  
107 uisite information prior to the sale of an enrollment  
108 may be held liable in an amount equivalent to one year's  
109 subscription rate to the health maintenance organiza-  
110 tion, plus costs and a reasonable attorney's fee.

111 (8) No contract with an enrollee shall prohibit an  
112 enrollee from canceling his or her enrollment at any  
113 time for any reason except that such contract may re-  
114 quire thirty days' notice to the health maintenance orga-  
115 nization.

116 (9) Any person who in connection with an enrollment  
117 violates any subsection of this section may be held liable  
118 for an amount equivalent to one year's subscription rate,  
119 plus costs and a reasonable attorney's fee.

**§33-25A-15. Regulation of marketing.**

1 The commissioner may, in his discretion, after notice  
2 and hearing, promulgate rules and regulations as are  
3 necessary to regulate marketing of health maintenance  
4 organizations by persons compensated directly or indi-  
5 rectly by such health maintenance organizations. When  
6 necessary such rules and regulations may prohibit door-to-  
7 door solicitations, may prohibit commission sales, and  
8 may provide for such other proscriptions and other regu-  
9 lations as are required to effectuate the purposes of this  
10 article.

**§33-25A-16. Powers of insurers and hospital and medical service corporations.**

1 (1) An insurance company licensed in this state, or a  
2 hospital or medical service corporation authorized to do

3 business in this state, may either directly or through a  
4 subsidiary or affiliate organize and operate a health main-  
5 tenance organization under the provisions of this article.  
6 Notwithstanding any other law which may be inconsistent  
7 herewith, any two or more such insurance companies,  
8 hospital or medical service corporations, or subsidiaries  
9 or affiliates thereof, may jointly organize and operate a  
10 health maintenance organization. The business of insur-  
11 ance is deemed to include the providing of health care  
12 by a health maintenance organization owned or operated  
13 by an insurer or a subsidiary thereof.

14 (2) Notwithstanding any provision of insurance and  
15 hospital or medical service corporation laws, an insurer or  
16 a hospital or medical service corporation may contract  
17 with a health maintenance organization to provide insur-  
18 ance or similar protection against the cost of care provided  
19 through health maintenance organizations and to provide  
20 coverage in the event of the failure of the health main-  
21 tenance organization to meet its obligations. The enrollees  
22 of a health maintenance organization constitute a permis-  
23 sible group under such laws. Among other things, under  
24 such contracts, the insurer or hospital or medical service  
25 corporation may make benefit payments to health main-  
26 tenance organizations for health care services rendered by  
27 providers.

#### §33-25A-17. Examinations.

1 (1) The commissioner may make an examination of the  
2 affairs of any health maintenance organization and pro-  
3 viders with whom such organization has contracts, agree-  
4 ments or other arrangements as often as he deems it  
5 necessary for the protection of the interests of the people  
6 of this state but not less frequently than once every three  
7 years.

8 (2) The commissioner shall contract with the depart-  
9 ment of health to make examinations concerning the  
10 quality of health care services of any health maintenance  
11 organization and providers with whom such organization  
12 has contracts, agreements or other arrangements as often  
13 as it deems necessary for the protection of the interests

14 of the people of this state but not less frequently than  
15 once every three years: *Provided*, That in making the  
16 foregoing examination, the department of health shall  
17 utilize the services of persons or organizations with  
18 demonstrable expertise in assessing quality of health  
19 care.

20 (3) Every health maintenance organization and affili-  
21 ated provider shall submit its books and records to  
22 such examinations and in every way facilitate them. For  
23 the purpose of examinations, the commissioner and the  
24 department of health shall have all powers necessary to  
25 conduct such examinations, including, but not limited to,  
26 the power to issue subpoenas, the power to administer  
27 oaths to, and examine the officers and agents of the health  
28 maintenance organization and the principles of such  
29 providers concerning their business.

30 (4) The expenses of examinations under this section  
31 shall be assessed against the organization being examined  
32 and remitted to the commissioner.

33 (5) In lieu of such examination, the commissioner may  
34 accept the report of an examination made by other states.

**§33-25A-18. Suspension or revocation of certificate of authority.**

1 (1) The commissioner may suspend or revoke any  
2 certificate of authority issued to a health maintenance  
3 organization under this article if he finds that any of the  
4 following conditions exist:

5 (a) The health maintenance organization is operating  
6 significantly in contravention of its basic organizational  
7 document, in any material breach of contract with an  
8 enrollee, or in a manner contrary to that described in and  
9 reasonably inferred from any other information sub-  
10 mitted under section three unless amendments to such  
11 submissions have been filed with an approval by the  
12 commissioner;

13 (b) The health maintenance organization issues evi-  
14 dence of coverage or uses a schedule of premiums for  
15 health care services which do not comply with the re-  
16 quirements of section eight of this article;



17 (c) The health maintenance organization does not  
18 provide or arrange for basic health care services;

19 (d) The department of health certifies to the com-  
20 missioner that: (i) The health maintenance organization  
21 is unable to fulfill its obligations to furnish health care  
22 services as required under its contract with enrollees; or  
23 (ii) the health maintenance organization does not meet  
24 the requirements of subsection (1), section four of this  
25 article;

26 (e) The health maintenance organization is no longer  
27 financially responsible and may reasonably be expected to  
28 be unable to meet its obligations to enrollees or prospec-  
29 tive enrollees;

30 (f) The health maintenance organization has failed to  
31 implement a mechanism affording the enrollees an  
32 opportunity to participate in matters of policy and opera-  
33 tion under section six of this article;

34 (g) The health maintenance organization has failed to  
35 implement the complaint system required by section  
36 twelve of this article in a manner to reasonably resolve  
37 valid complaints;

38 (h) The health maintenance organization, or any  
39 person on its behalf, has advertised or merchandised its  
40 services in an untrue, misrepresentative, misleading,  
41 deceptive or unfair manner;

42 (i) The continued operation of the health maintenance  
43 organization would be hazardous to its enrollees; or

44 (j) The health maintenance organization has otherwise  
45 failed to substantially comply with this article.

46 (2) A certificate of authority shall be suspended or  
47 revoked only after compliance with the requirements of  
48 section twenty-one of this article.

49 (3) When the certificate of authority of a health  
50 maintenance organization is suspended, the health  
51 maintenance organization shall not, during the period of  
52 such suspension, enroll any additional enrollees except  
53 newborn children or other newly acquired dependents of

54 existing enrollees, and shall not engage in any advertis-  
55 ing or solicitation whatsoever.

56 (4) When the certificate of authority of a health  
57 maintenance organization is revoked, such organization  
58 shall proceed, immediately following the effective date of  
59 the order of revocation, to terminate its affairs, and shall  
60 conduct no further business except as may be essential  
61 to the orderly conclusion of the affairs of such organiza-  
62 tion. It shall engage in no further advertising or solicita-  
63 tion whatsoever. The commissioner may, by written  
64 order, permit such further operation of the organization  
65 as he may find to be in the best interests of enrollees, to  
66 the end that enrollees will be afforded the greatest  
67 practical opportunity to obtain continuing health care  
68 coverage.

**§33-25A-19. Rehabilitation, liquidation or conservation of  
health maintenance organization.**

1 Any rehabilitation, liquidation or conservation of a  
2 health maintenance organization shall be deemed to be  
3 the rehabilitation, liquidation or conservation of an in-  
4 surance company and shall be conducted under the super-  
5 vision of the commissioner pursuant to the law governing  
6 the rehabilitation, liquidation or conservation of in-  
7 surance companies. The commissioner may apply for  
8 an order directing him to rehabilitate, liquidate or con-  
9 serve a health maintenance organization upon any one  
10 or more grounds set out in the vocational rehabilitation  
11 statutes or when, in his opinion, the continued operation  
12 of the health maintenance organization would be hazard-  
13 ous either to the enrollees or to the people of this state.

**§33-25A-20. Regulations.**

1 The commissioner may after notice and hearing  
2 promulgate reasonable rules and regulations in accor-  
3 dance with chapter twenty-nine-a of this code, as are  
4 necessary or proper to effectuate the purposes of this  
5 article and to prevent circumvention and evasion thereof.

**§33-25A-21. Administrative procedures.**

1 (1) When the commissioner has cause to believe that

2 grounds for the denial of an application for a certifi-  
3 cate of authority exist, or that grounds for the suspension  
4 or revocation of a certificate of authority exist, he shall  
5 notify the health maintenance organization in writing  
6 specifically stating the grounds for denial, suspension or  
7 revocation and fixing a time of at least twenty days  
8 thereafter for a hearing on the matter.

9 (2) After such hearing, or upon the failure of the  
10 health maintenance organization to appear at such hear-  
11 ing, the commissioner shall take action as is deemed  
12 advisable on written findings which shall be mailed to the  
13 health maintenance organization. The action of the com-  
14 missioner shall be subject to review. The court may  
15 modify, affirm or reverse the order of the commissioner  
16 in whole or in part.

17 (3) The provisions of the administrative procedures  
18 act, chapter twenty-nine-a of this code, shall apply to  
19 proceedings under this article to the extent that they are  
20 not in conflict with subsections (1) and (2) of this  
21 section.

#### §33-25A-22. Fees.

1 Every health maintenance organization subject to this  
2 article shall pay to the commissioner the following fees:  
3 For filing an application for a certificate of authority or  
4 amendment thereto, one hundred dollars; and for filing  
5 each annual report, ten dollars. Fees charged under this  
6 section shall be deposited in the general fund of the state  
7 treasury.

#### §33-25A-23. Penalties and enforcement.

1 (1) The commissioner may, in lieu of suspension or  
2 revocation of a certificate of authority under section  
3 nineteen of this article, levy an administrative penalty  
4 in an amount not less than one hundred dollars nor more  
5 than five thousand dollars, if reasonable notice in writing  
6 is given of the intent to levy the penalty and the health  
7 maintenance organization has a reasonable time within  
8 which to remedy the defect in its operations which gave  
9 rise to the penalty citation. The commissioner may

10 augment this penalty by an amount equal to the sum  
11 that he calculates to be the damages suffered by en-  
12 rollees or other members of the public.

13 (2) Any person who violates any provision of this  
14 article shall be guilty of a misdemeanor, and, upon  
15 conviction thereof, shall be fined not less than one  
16 thousand dollars nor more than ten thousand dollars, or  
17 imprisoned in the county jail not more than one year, or  
18 both fined and imprisoned.

19 (3) (a) If the commissioner shall for any reason have  
20 cause to believe that any violation of this article or  
21 regulations promulgated pursuant thereto has occurred  
22 or is threatened, prior to the levy of a penalty or sus-  
23 pension or revocation of a certificate of authority, the  
24 commissioner shall give notice to the health maintenance  
25 organization and to the representatives, or other persons  
26 who appear to be involved in such suspected violation, to  
27 arrange a conference with the alleged violators or their  
28 authorized representatives for the purpose of attempting  
29 to ascertain the facts relating to such suspected violation,  
30 and, in the event it appears that any violation has oc-  
31 curred or is threatened, to arrive at an adequate and  
32 effective means of correcting or preventing such viola-  
33 tion.

34 (b) Proceedings under this subsection shall not be  
35 governed by any formal procedural requirements, and  
36 may be conducted in such manner as the commissioner  
37 may deem appropriate under the circumstances. En-  
38 rollees shall be afforded notice by publication of pro-  
39 ceedings under this subsection (3) and shall be afforded  
40 the opportunity to intervene.

41 (4) (a) The commissioner may issue an order direct-  
42 ing a health maintenance organization or a representative  
43 of a health maintenance organization to cease and desist  
44 from engaging in any act or practice in violation of the  
45 provisions of this article or regulations promulgated  
46 pursuant thereto.

47 (b) Within ten days after service of the order of cease  
48 and desist, the respondent may request a hearing on the

49 question of whether acts or practices in violation of this  
50 article have occurred. Such hearings shall be conducted  
51 pursuant to chapter twenty-nine-a of this code, and  
52 judicial review shall be available as provided by chapter  
53 twenty-nine-a of this code.

54 (5) In the case of any violation of the provisions of  
55 this article or regulations promulgated pursuant thereto,  
56 if the commissioner elects not to issue a cease and desist  
57 order, or in the event of noncompliance with a cease and  
58 desist order issued pursuant to subsection (4) of this  
59 section, the commissioner may institute a proceeding to  
60 obtain injunctive relief, or seek other appropriate re-  
61 lief, in the circuit court of the county of the principal  
62 place of business of the health maintenance organization.

63 (6) Any enrollee of or resident of the service area of  
64 the health maintenance organization may bring an action  
65 to enforce any provision, standard or regulation enforce-  
66 able by the commissioner. In the case of any successful  
67 action to enforce this article, or accompanying standards  
68 or regulations, the individual shall be awarded the costs  
69 of the action together with a reasonable attorney's fee  
70 as determined by the court.

**§33-25A-24. Statutory construction and relationship to other laws.**

1 (1) Except as otherwise provided in this article, provi-  
2 sions of the insurance law and provisions of hospital or  
3 medical service corporation laws shall not be applicable to  
4 any health maintenance organization granted a certifi-  
5 cate of authority under this article. This provision shall  
6 not apply to an insurer or hospital or medical service  
7 corporation licensed and regulated pursuant to the in-  
8 surance laws or the hospital or medical service corpora-  
9 tion laws of this state except with respect to its health  
10 maintenance corporation activities authorized and regu-  
11 lated pursuant to this article.

12 (2) Factually accurate advertising or solicitation re-  
13 garding the range of services provided, the premiums  
14 and copayments charged, the sites of services and hours  
15 of operation, and any other quantifiable, nonprofessional

16 aspects of its operation by a health maintenance orga-  
17 nization granted a certificate of authority, or its repre-  
18 sentative shall not be construed to violate any provision  
19 of law relating to solicitation or advertising by health  
20 professions: *Provided*, That nothing contained herein  
21 shall be construed as authorizing any solicitation or ad-  
22 vertising which identifies or refers to any individual  
23 provider, or makes any qualitative judgment concerning  
24 any provider.

25 (3) Any health maintenance organization authorized  
26 under this article shall not be deemed to be practicing  
27 medicine and shall be exempt from the provision of chap-  
28 ter thirty of this code, relating to the practice of medicine.

**§33-25A-25. Filings and reports as public documents.**

1 All applications, filings and reports required under this  
2 article shall be treated as public documents.

**§33-25A-26. Confidentiality of medical information.**

1 Any data or information pertaining to the diagnosis,  
2 treatment or health of any enrollee or applicant obtained  
3 from such person or from any provider by any health  
4 maintenance organization shall be held in confidence and  
5 shall not be disclosed to any person except (1) to the  
6 extent that it may be necessary to facilitate an assess-  
7 ment of the quality of care delivered pursuant to section  
8 seventeen of this article or to review the complaint system  
9 pursuant to section twelve of this article; (2) upon the  
10 express written consent of the enrollee or legally au-  
11 thorized representative; (3) pursuant to statute or court  
12 order for the production of evidence or the discovery  
13 thereof; or (4) in the event of claim or litigation between  
14 such person and the health maintenance organization  
15 wherein such data or information is pertinent.

16 A health maintenance organization shall be entitled to  
17 claim any statutory privileges against such disclosure  
18 which the provider who furnished such information to  
19 the health maintenance organization is entitled to claim.

**§33-25A-27. Authority to contract with health maintenance organizations under medicaid.**

1 The department of welfare is hereby authorized to  
2 enter into contracts with health maintenance organiza-  
3 tions certified and permitted to market under the laws  
4 of this state, and to furnish to recipients of medical as-  
5 sistance under Title XIX of the Social Security Act, 42  
6 U.S.C. Section 1396, et. seq., health care services offered  
7 to such recipients under the medical assistance plan of  
8 West Virginia.

**§33-25A-28. Required health maintenance organization option.**

1 (1) Each employer shall offer no less than once every  
2 year to every employee and dependent entitled to receive  
3 health care under an existing health benefit plan sup-  
4 ported in whole or in part by such employer the oppor-  
5 tunity to become enrollees in certified health maintenance  
6 organizations which have the capacity to provide basic  
7 health services in health maintenance organization ser-  
8 vice areas in which at least twenty-five such employees  
9 reside: *Provided*, That nothing herein shall require an em-  
10 ployer to contribute more on behalf of an employee seek-  
11 ing to enroll in a health maintenance organization than  
12 would be contributed on the employee's behalf to the  
13 existing health plan.

14 (2) If any employees of an employer are represented by  
15 a collective bargaining representative or other employee  
16 representative designated or selected under any law of  
17 this state, the offer described in subsection (1) of this  
18 section should be made to such collective bargaining  
19 representatives or other employee representative, and  
20 only if such representative approves the offer should  
21 it be made to employees represented by such represen-  
22 tatives.

23 (3) If there is more than one certified health mainte-  
24 nance organization which meets the requirements of sub-  
25 section (1) of this section and such health maintenance  
26 organizations have service areas contemporaneously  
27 covering the same twenty-five or more employees, the  
28 employer shall offer such employees at least one health

29 maintenance organization which provides health ser-  
30 vices primarily through staff physicians, or medical  
31 groups, or a combination of both; and one health mainte-  
32 nance organization which provides health services  
33 through other means.

34 (4) Any employer who knowingly fails to comply with  
35 any of the requirements of this section shall be subject  
36 to a fine of not more than ten thousand dollars for every  
37 thirty-day period that such violation continues.

38 (5) The commissioner is authorized, in addition to the  
39 remedy provided in subsection (4) of this section, to seek  
40 an injunction in a court of competent jurisdiction to  
41 compel compliance with the provisions of this section.

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## CHAPTER 118

(H. B. 952—By Mr. Shingleton and Mr. Shiflet)

[Passed March 23, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six-a, relating to the creation of a life and health insurance guaranty association; short title; purpose; scope of article; construction of article; definitions; creation of association; board of directors; powers and duties of association; assessments; plan of operation; duties and powers of commissioner of insurance; prevention of impairments; appointment of association nominee; miscellaneous provisions; examination of the association; annual reports; tax exemptions; immunity; and stay of court proceedings and reopening default judgments.

*Be it enacted by the Legislature of West Virginia:*

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



**ARTICLE 26A. WEST VIRGINIA LIFE AND HEALTH INSURANCE  
GUARANTY ASSOCIATION ACT.**

- §33-26A-1. Short title.
- §33-26A-2. Purpose.
- §33-26A-3. Scope of article.
- §33-26A-4. Construction of article.
- §33-26A-5. Definitions.
- §33-26A-6. Creation of association; membership required; maintenance of accounts; supervision by commissioner.
- §33-26A-7. Board of directors.
- §33-26A-8. Powers and duties of association.
- §33-26A-9. Assessments.
- §33-26A-10. Plan of operation.
- §33-26A-11. Duties and powers of commissioner of insurance.
- §33-26A-12. Prevention of impairments.
- §33-26A-13. Appointment of association nominee.
- §33-26A-14. Reduction of liability for unpaid assessments; records to be kept; association deemed creditor of impaired insurer; distribution of ownership rights; unfair trade practice; rights upon liquidation or rehabilitation.
- §33-26A-15. Examination of association; annual report.
- §33-26A-16. Tax exemptions.
- §33-26A-17. Immunity.
- §33-26A-18. Stay of court proceedings; reopening default judgments.

**§33-26A-1. Short title.**

- 1 This article shall be known and may be cited as the West
- 2 Virginia life and health insurance guaranty association act.

**§33-26A-2. Purpose.**

- 1 The purpose of this article is to protect policy owners,
- 2 insureds, beneficiaries, annuitants, payees and assignees of
- 3 life insurance policies, health insurance policies, annuity con-
- 4 tracts, and supplemental contracts, subject to certain limita-
- 5 tions, against failure in the performance of contractual obliga-
- 6 tions due to the impairment of the insurer issuing such policies
- 7 or contracts. To provide this protection, (1) an association
- 8 of insurers is created to enable the guaranty of payment of
- 9 benefits and of continuation of coverages, (2) members of the
- 10 association are subject to assessment to provide funds to
- 11 carry out the purpose of this article, and (3) the association is
- 12 authorized to assist the commissioner, in the prescribed man-
- 13 ner, in the detection and prevention of insurer impairments.

**§33-26A-3. Scope of article.**

- 1 (a) This article shall apply to direct life insurance

2 policies, health insurance policies, annuity contracts, and  
3 contracts supplemental to life and health insurance policies  
4 and annuity contracts issued by persons licensed to transact  
5 insurance in this state at any time.

6 (b) This article shall not apply to:

7 (1) Any such policies or contracts, or any part of such  
8 policies or contracts, under which the risk is borne by the  
9 policyholder;

10 (2) Any such policy or contract or part thereof assumed  
11 by the impaired insurer under a contract of reinsurance,  
12 other than reinsurance for which assumption certificates have  
13 been issued.

**§33-26A-4. Construction of article.**

1 This article shall be liberally construed to effect the pur-  
2 pose under section two of this article which shall constitute  
3 an aid and guide to interpretation.

**§33-26A-5. Definitions.**

1 As used in this article:

2 (1) "Account" means either of the three accounts created  
3 under section six of this article.

4 (2) "Association" means the West Virginia life and health  
5 insurance guaranty association created under section six of  
6 this article.

7 (3) "Commissioner" means the commissioner of insurance  
8 of this state.

9 (4) "Contractual obligation" means any obligation under  
10 covered policies.

11 (5) "Covered policy" means any policy or contract within  
12 the scope of this article under section three of this article.

13 (6) "Impaired insurer" means (i) an insurer which after  
14 the effective date of this article becomes insolvent and is  
15 placed under a final order of liquidation, rehabilitation  
16 or conservation by a court of competent jurisdiction, or (ii)  
17 an insurer deemed by the commissioner after the effective  
18 date of this article to be unable or potentially unable to  
19 fulfill its contractual obligations.

20 (7) "Member insurer" means any person authorized to  
21 transact in this state any kind of insurance to which this  
22 article applies under section three.

23 (8) "Premiums" means direct gross insurance premiums  
24 and annuity considerations written on covered policies, less  
25 return premiums and considerations thereon and dividends  
26 paid or credited to policyholders on such direct business.  
27 "Premiums" do not include premiums and considerations on  
28 contracts between insurers and reinsurers. As used in section  
29 nine, "premiums" are those for the calendar year preceding the  
30 determination of impairment.

31 (9) "Person" means any individual, corporation, partner-  
32 ship, association or voluntary organization.

33 (10) "Resident" means any person who resides in this  
34 state at the time the impairment is determined and to whom  
35 contractual obligations are owed.

36 (11) "Health insurance" means accident and sickness in-  
37 surance as defined in subsection (b), section ten, article one,  
38 of this chapter.

**§33-26A-6. Creation of association; membership required; main-  
tenance of accounts; supervision by commissioner.**

1 (a) There is created a nonprofit legal entity to be known  
2 as the West Virginia life and health insurance guaranty  
3 association. All member insurers shall be and remain mem-  
4 bers of the association as a condition of their authority to  
5 transact insurance in this state. The association shall perform  
6 its functions under the plan of operation established and  
7 approved under section ten and shall exercise its powers  
8 through a board of directors established under section seven.  
9 For purposes of administration and assessment, the associa-  
10 tion shall maintain the following three accounts:

- 11 (1) The health insurance account;
- 12 (2) The life insurance account; and
- 13 (3) The annuity account.

14 (b) The association shall come under the immediate super-  
15 vision of the commissioner and shall be subject to the appli-  
16 cable provisions of the insurance laws of this state.

**§33-26A-7. Board of directors.**

1 (a) The board of directors of the association shall  
2 consist of not less than five nor more than nine members  
3 serving terms as established in the plan of operation. The  
4 members of the board shall be selected by member insurers  
5 subject to the approval of the commissioner. Vacancies on  
6 the board shall be filled for the remaining period of the  
7 term in the manner described in the plan of operation. To  
8 select the initial board of directors, and initially organize  
9 the association, the commissioner shall give notice to all  
10 member insurers of the time and place of the organizational  
11 meeting. In determining voting rights at the organizational  
12 meeting each member insurer shall be entitled to one vote in  
13 person or by proxy. If the board of directors is not selected  
14 within sixty days after notice of the organizational meeting,  
15 the commissioner may appoint the initial members.

16 (b) In approving selections or in appointing members of  
17 the board, the commissioner shall consider, among other  
18 things, whether all member insurers are fairly represented.

19 (c) Members of the board may be reimbursed from the  
20 assets of the association for expenses incurred by them as  
21 members of the board of directors but members of the board  
22 shall not otherwise be compensated by the association for  
23 their services.

**§33-26A-8. Powers and duties of association.**

1 In addition to the powers and duties enumerated in other  
2 sections of this article:

3 (a) If a domestic insurer is an impaired insurer, the  
4 association may, prior to an order of liquidation or re-  
5 habilitation, and subject to any conditions imposed by the  
6 association other than those which impair the contractual  
7 obligations of the impaired insurer, and approved by the  
8 impaired insurer and the commisioner:

9 (1) Guarantee or reinsure, or cause to be guaranteed,  
10 assumed or reinsured, all the covered policies of the im-  
11 paired insurer;

12 (2) Provide such moneys, pledges, notes, guarantees or

13 other means as are proper to effectuate subdivision (1),  
14 subsection (a) of this section, and assure payment of the  
15 contractual obligations of the impaired insurer pending action  
16 under said subdivision (1), subsection (a); and

17 (3) Lend money to the impaired insurer.

18 (b) If a foreign or alien insurer is an impaired insurer,  
19 the association may, prior to an order of liquidation, rehabilita-  
20 tion or conservation, with respect to the covered policies  
21 of residents and subject to any conditions imposed by the  
22 association other than those which impair the contractual  
23 obligations of the impaired insurer, and approved by the  
24 impaired insurer and the commissioner:

25 (1) Guarantee or reinsure, or cause to be guaranteed,  
26 assumed or reinsured, the impaired insurer's covered policies  
27 of residents;

28 (2) Provide such moneys, pledges, notes, guarantees or  
29 other means as are proper to effectuate subdivision (1), sub-  
30 section (b) of this section, and assure payment of the impaired  
31 insurer's contractual obligations to residents pending action  
32 under subdivision (1), subsection (b); and

33 (3) Lend money to the impaired insurer.

34 (c) If a domestic insurer is an impaired insurer under  
35 an order of liquidation or rehabilitation, the association  
36 shall, subject to the approval of the commissioner, (1)  
37 guarantee, assume or reinsure, or cause to be guaranteed,  
38 assumed or reinsured the covered policies of the impaired  
39 insurer, (2) assure payment of the contractual obligations  
40 of the impaired insurer, and (3) provide such moneys, pledges,  
41 notes, guarantees, or other means as are reasonably necessary  
42 to discharge such duties. If the association fails to act  
43 within a reasonable period of time, the commissioner shall  
44 have the powers and duties of the association under this  
45 article with respect to such domestic impaired insurer.

46 (d) If a foreign or alien insurer is an impaired insurer  
47 under an order of liquidation, rehabilitation or conservation,  
48 the association shall, subject to the approval of the com-  
49 missioner:

50 (1) Guarantee, assume or reinsure, or cause to be guaran-

51 teed, assumed or reinsured, the covered policies of residents;

52 (2) Assure payment of the contractual obligations of the  
53 impaired insurer to residents; and

54 (3) Provide such moneys, pledges, notes, guarantees, or  
55 other means as are reasonably necessary to discharge such  
56 duties. If the association fails to act within a reasonable  
57 period of time, the commissioner shall have the powers and  
58 duties of the association under this article with respect to  
59 such foreign or alien impaired insurer.

60 (e) In carrying out its duties under subsections (c)  
61 and (d) of this section, the association may request that  
62 there be imposed policy liens, contract liens, moratoriums  
63 on payments, or other similar means and such liens, mora-  
64 toriums, or similar means may be imposed if the commis-  
65 sioner:

66 (1) Finds that the amounts which can be assessed under  
67 this article are less than the amounts needed to assure full  
68 and prompt performance of the impaired insurer's contractual  
69 obligations, or that the economic or financial conditions as  
70 they affect member insurers are sufficiently adverse to ren-  
71 der the imposition of policy or contract liens, moratoriums,  
72 or similar means to be in the public interest; and

73 (2) Approves the specific policy liens, contract liens,  
74 moratoriums, or similar means to be used.

75 Before being obligated under subsections (c) and (d) of  
76 this section, the association may request that there be imposed  
77 temporary moratoriums or liens on payments of cash values and  
78 policy loans and such temporary moratoriums and liens may be  
79 imposed if they are approved by the commissioner.

80 (f) The association shall have no liability under this  
81 section for any covered policy of a foreign or alien insurer  
82 whose domiciliary jurisdiction or state of entry provides by  
83 statute or regulation, for residents of this state protection  
84 substantially similar to that provided by this article for  
85 residents of other states.

86 (g) The association may render assistance and advice to  
87 the commissioner, upon his request, concerning rehabilitation,

88 payment of claims, continuations of coverage, or the per-  
89 formance of other contractual obligations of any impaired  
90 insurer.

91 (h) The association shall have standing to appear before  
92 any court in this state with jurisdiction over an impaired  
93 insurer concerning which the association is or may become  
94 obligated under this article. Such standing shall extend to  
95 all matters germane to the powers and duties of the associa-  
96 tion, including, but not limited to, proposals for reinsuring  
97 or guaranteeing the covered policies of the impaired insurer  
98 and the determination of the covered policies and contractual  
99 obligations.

100 (i) Any person receiving benefits under this article shall  
101 be deemed to have assigned his rights under the covered  
102 policy to the association to the extent of the benefits received  
103 because of this article whether the benefits are payments of  
104 contractual obligations or continuation of coverage. The  
105 association may require an assignment to it of such rights  
106 by any payee, policy or contract owner, beneficiary, insured  
107 or annuitant as a condition precedent to the receipt of any  
108 rights or benefits conferred by this article upon such person.  
109 The association shall be subrogated to these rights against  
110 the assets of any impaired insurer.

111 The subrogation rights of the association under this sub-  
112 section shall have the same priority against the assets of the  
113 impaired insurer as that possessed by the person entitled to  
114 receive benefits under this article.

115 (j) The contractual obligations of the impaired insurer  
116 for which the association becomes or may become liable shall  
117 be as great as but no greater than the contractual obligations  
118 of the impaired insurer would have been in the absence  
119 of an impairment unless such obligations are reduced as  
120 permitted by subsection (e) of this section, but the associa-  
121 tion shall have no liability with respect to any portion of  
122 a covered policy to the extent that the death benefit coverage  
123 on any one life exceeds an aggregate of three hundred thousand  
124 dollars.

125 (k) The association may:

126 (1) Enter into such contracts as are necessary or proper  
127 to carry out the provisions and purposes of this article.

128 (2) Sue or be sued, including taking any legal actions  
129 necessary or proper for recovery of any unpaid assessments  
130 under section nine.

131 (3) Borrow money to effect the purposes of this article.  
132 Any notes or other evidence of indebtedness of the association  
133 not in default shall be legal investments for domestic in-  
134 surers and may be carried as admitted assets.

135 (4) Employ or retain such persons as are necessary to  
136 handle the financial transactions of the association, and to  
137 perform such other functions as become necessary or proper  
138 under this article.

139 (5) Negotiate and contract with any liquidator, rehabilita-  
140 tor, conservator, or ancillary receiver to carry out the powers  
141 and duties of the association.

142 (6) Take such legal action as may be necessary to avoid  
143 payment of improper claims.

144 (7) Exercise, for the purposes of this article and to the  
145 extent approved by the commissioner, the powers of a  
146 domestic life or health insurer, but in no case may the associa-  
147 tion issue insurance policies or annuity contracts other than  
148 those issued to perform the contractual obligations of the  
149 impaired insurer.

**§33-26A-9. Assessments.**

1 (a) For the purpose of providing the funds necessary  
2 to carry out the powers and duties of the association,  
3 the board of directors shall assess the member insurers,  
4 separately for each account, at such times and for such  
5 amounts as the board finds necessary. The board shall  
6 collect the assessments after thirty days' written notice to  
7 the member insurers before payment is due.

8 (b) There shall be three classes of assessments, as fol-  
9 lows:

10 (1) Class A assessments shall be made for the purpose



11 of meeting administrative costs and other general expenses  
12 not related to a particular impaired insurer.

13 (2) Class B assessments shall be made to the extent  
14 necessary to carry out the powers and duties of the associa-  
15 tion under section eight with regard to an impaired domestic  
16 insurer.

17 (3) Class C assessments shall be made to the extent  
18 necessary to carry out the powers and duties of the associa-  
19 tion under section eight with regard to an impaired foreign  
20 or alien insurer.

21 (c) The amount of any Class A assessment for each  
22 account shall be determined by the board. The amount of any  
23 Class B or C assessment shall be divided among the accounts  
24 in the proportion that the premiums received by the impaired  
25 insurer on the policies covered by each account bears to the  
26 premiums received by such insurer on all covered policies.

27 Class A and Class C assessments against member insur-  
28 ers for each account shall be in the proportion that the  
29 premiums received on business in this state by each assessed  
30 member insurer on policies covered by each account bears to  
31 such premiums received on business in this state by all  
32 assessed member insurers.

33 Class B assessments for each account shall be made  
34 separately for each state in which the impaired domestic  
35 insurer was authorized to transact insurance at any time, in  
36 the proportion that the premiums received on business in  
37 such state by the impaired insurer on policies covered by  
38 such account bears to such premiums received in all such  
39 states by the impaired insurer. The assessments against  
40 member insurers shall be in the proportion that the premiums  
41 received on business in each such state by each assessed  
42 member insurer on policies covered by each account bears to  
43 such premiums received on business in each state by all as-  
44 sessed member insurers.

45 Assessments for funds to meet the requirements of the  
46 association with respect to an impaired insurer shall not be  
47 made until necessary to implement the purposes of this  
48 article. Classification of assessments under subsection (b)

49 of this section, and computation of assessments under this  
50 subsection shall be made with a reasonable degree of ac-  
51 curacy, recognizing that exact determinations may not always  
52 be possible.

53 (d) The association may abate or defer, in whole or in  
54 part, the assessment of a member insurer if, in the opinion  
55 of the board, payment of the assessment would endanger the  
56 ability of the member insurer to fulfill its contractual  
57 obligations. The total of all assessments upon a member  
58 insurer for each account shall not in any one calendar year  
59 exceed two percent of such insurer's premiums in this state  
60 on the policies covered by the account.

61 (e) In the event an assessment against a member insurer  
62 is abated or deferred, in whole or in part, because of  
63 the limitations set forth in subsection (d) of this section,  
64 the amount by which such assessment is abated or deferred,  
65 shall be assessed against the other member insurers in a  
66 manner consistent with the basis for assessments set forth  
67 in this section. If the maximum assessment, together with  
68 the other assets of the association in either account, does  
69 not provide in any one year in either account an amount  
70 sufficient to carry out the responsibilities of the association,  
71 the necessary additional funds shall be assessed as soon  
72 thereafter as permitted by this article.

73 (f) The board may, by an equitable method as established  
74 in the plan of operation, refund to member insurers, in propor-  
75 tion to the contribution of each insurer to that account, the  
76 amount by which the assets of the account exceed the amount  
77 the board finds is necessary to carry out during the coming  
78 year the obligations of the association with regard to that  
79 amount, including assets accruing from net realized gains and  
80 income from investments. A reasonable amount may be re-  
81 tained in any account to provide funds for the continuing ex-  
82 penses of the association and for future losses if refunds are  
83 impractical.

84 (g) It shall be proper for any member insurer, in deter-  
85 mining its premium rates and policy owner dividends as to  
86 any kind of insurance within the scope of this article, to con-

87 sider the amount reasonably necessary to meet its assessment  
88 obligations under this article.

89 (h) The association shall issue to each insurer paying an  
90 assessment under this article a certificate of contribution, in a  
91 form prescribed by the commissioner, for the amount so paid.  
92 All outstanding certificates shall be of equal dignity and prior-  
93 ity without reference to amounts or dates of issue. A certifi-  
94 cate of contribution may be shown by the insurer in its finan-  
95 cial statement as an asset in such form and for such amount,  
96 if any, and period of time as the commissioner may approve.

**§33-26A-10. Plan of operation.**

1 (a) The association shall submit to the commissioner a plan  
2 of operation and any amendments thereto necessary or suit-  
3 able to assure the fair, reasonable, and equitable administration  
4 of the association. The plan of operation and any amendments  
5 thereto shall become effective upon approval in writing by the  
6 commissioner.

7 If the association fails to submit a suitable plan of opera-  
8 tion within one hundred eighty days following the effective  
9 date of this article or if at any time thereafter the association  
10 fails to submit suitable amendments to the plan, the com-  
11 missioner shall, after notice and hearing, adopt and promulgate  
12 such reasonable rules as are necessary or advisable to  
13 effectuate the provisions of this article. Such rules shall con-  
14 tinue in force until modified by the commissioner or superseded  
15 by a plan submitted by the association and approved by the  
16 commissioner.

17 (b) All member insurers shall comply with the plan of  
18 operation.

19 (c) The plan of operation shall, in addition to requirements  
20 enumerated elsewhere in this article:

21 (1) Establish procedures for handling the assets of the  
22 association;

23 (2) Establish the amount and method of reimbursing  
24 members of the board of directors under section seven of  
25 this article;

26 (3) Establish regular places and times for meetings of  
27 the board of directors;

28 (4) Establish procedures for records to be kept of all  
29 financial transactions of the association, its agents, and the  
30 board of directors;

31 (5) Establish the procedures whereby selections for the  
32 board of directors will be made and submitted to the  
33 commissioner;

34 (6) Establish any additional procedures for assessments  
35 under section nine of this article; and

36 (7) Contain additional provisions necessary or proper for  
37 the execution of the powers and duties of the associa-  
38 tion.

39 (d) The plan of operation may provide that any or all  
40 powers and duties of the association, except those under  
41 subdivision (3), subsection (k), section eight, and section  
42 nine of this article, are delegated to a corporation, as-  
43 sociation, or other organization which performs or will per-  
44 form functions similar to those of this association, or its  
45 equivalent, in two or more states. Such a corporation, associa-  
46 tion or organization shall be reimbursed for any payments  
47 made on behalf of the association and shall be paid for  
48 its performance of any function of the association. A delega-  
49 tion under this subsection shall take effect only with the  
50 approval of both the board of directors and the commis-  
51 sioner, and may be made only to a corporation, association or  
52 organization which extends protection not substantially less  
53 favorable and effective than that provided by this article.

**§33-26A-11. Duties and powers of commissioner of insurance.**

1 (a) In addition to the duties and powers enumerated  
2 elsewhere in this article the commissioner shall:

3 (1) Notify the board of directors of the existence of  
4 an impaired insurer not later than three days after a  
5 determination of impairment is made or he receives notice of  
6 impairment;

7 (2) Upon request of the board of directors, provide the

8 association with a statement of the premiums in the appro-  
9 priate states for each member insurer; and

10 (3) When an impairment is declared and the amount of  
11 the impairment is determined, serve a demand upon the im-  
12 paired insurer to make good the impairment within a reason-  
13 able time. Notice to the impaired insurer shall constitute notice  
14 to its shareholders, if any. The failure of the insurer to prompt-  
15 ly comply with such demand shall not excuse the association  
16 from the performance of its powers and duties under this  
17 article.

18 (b) The commissioner may suspend or revoke, after notice  
19 and hearing, the certificate of authority to transact insurance  
20 in this state of any member insurer which fails to pay an  
21 assessment when due or fails to comply with the plan of opera-  
22 tion. As an alternative the commissioner may levy a forfeiture  
23 on any member insurer which fails to pay an assessment when  
24 due. Such forfeiture shall not exceed five percent of the un-  
25 paid assessment per month, but no forfeiture shall be less  
26 than one hundred dollars per month.

27 (c) Any action of the board of directors or the association  
28 may be appealed to the commissioner by any member insurer  
29 if such appeal is taken within thirty days of the action being  
30 appealed. Any final action or order of the commissioner shall  
31 be subject to judicial review in a court of competent jurisdic-  
32 tion.

33 (d) The liquidator, rehabilitator or conservator of any  
34 impaired insurer may notify all interested persons of the effect  
35 of this article.

### §33-26A-12. Prevention of impairments.

1 (a) To aid in the detection and prevention of insurer  
2 impairments the board of directors shall, upon majority  
3 vote, notify the commissioner of any information indicating  
4 any member insurer may be unable or potentially unable to  
5 fulfill its contractual obligations.

6 (b) The board of directors may, upon majority vote,  
7 request that the commissioner order an examination of any  
8 member insurer which the board in good faith believes may

9 be unable or potentially unable to fulfill its contractual  
10 obligations. The commissioner may conduct such examination.  
11 The examination may be conducted as a national association  
12 of insurance commissioners examination or may be conducted  
13 by such persons as the commissioner designates. The cost of  
14 such examination shall be paid by the association and the  
15 examination report shall be treated as are other examination  
16 reports. In no event shall such examination report be  
17 released to the board of directors of the association prior  
18 to its release to the public, but this shall not excuse the  
19 commissioner from his obligation to comply with subsection  
20 (c) of this section. The commissioner shall notify the  
21 board of directors when the examination is completed. The  
22 request for examination shall be kept on file by the com-  
23 missioner, but it shall not be open to public inspection prior  
24 to the release of the examination report to the public and  
25 shall be released at that time only if the examination dis-  
26 closes that the examined insurer is unable or potentially  
27 unable to meet its contractual obligations.

28 (c) The commissioner shall report to the board of  
29 directors when he has reasonable cause to believe that any  
30 member insurer examined at the request of the board of  
31 directors may be unable or potentially unable to fulfill its  
32 contractual obligations.

33 (d) The board of directors may, upon majority vote, make  
34 reports and recommendations to the commissioner upon any  
35 matter germane to the solvency, liquidation, rehabilitation or  
36 conservation of any member insurer. Such reports and recom-  
37 mendations shall not be considered public documents.

38 (e) The board of directors may, upon majority vote,  
39 make recommendations to the commissioner for the detection  
40 and prevention of insurer impairments.

41 (f) The board of directors shall, at the conclusion of  
42 any insurer impairment in which the association carried out  
43 its duties under this article or exercised any of its powers  
44 under this article, prepare a report on the history and  
45 causes of such impairment, based on the information  
46 available to the association, and submit such report to the  
47 commissioner.

**§33-26A-13. Appointment of association nominee.**

1 The association may recommend a natural person to serve  
2 as a special deputy to act for the commissioner and under  
3 his supervision in the liquidation, rehabilitation or conserva-  
4 tion of any member insurer.

**§33-26A-14. Reduction of liability for unpaid assessments; records to be kept; association deemed creditor of impaired insurer; distribution of ownership rights; unfair trade practice; rights upon liquidation or rehabilitation.**

1 (a) Nothing in this article shall be construed to reduce  
2 the liability for unpaid assessments of the insureds of an  
3 impaired insurer operating under a plan with assessment  
4 liability.

5 (b) Records shall be kept of all negotiations and meet-  
6 ings in which the association or its representatives are  
7 involved to discuss the activities of the association in carry-  
8 8 ing out its powers and duties under section eight. Records of  
9 such negotiations or meetings shall be made public only  
10 upon the termination of a liquidation, rehabilitation or con-  
11 servation proceeding involving the impaired insurer, upon the  
12 termination of the impairment of the insurer, or upon the  
13 order of a court of competent jurisdiction. Nothing in this  
14 subsection shall limit the duty of the association to render a  
15 report of its activities under section fifteen of this article.

16 (c) For the purpose of carrying out its obligations  
17 under this article, the association shall be deemed to be  
18 a creditor of the impaired insurer to the extent of assets  
19 attributable to covered policies reduced by any amounts to  
20 which the association is entitled as subrogee pursuant to  
21 subdivision (i), section eight of this article. All assets of  
22 the impaired insurer attributable to covered policies shall be  
23 used to continue all covered policies and pay all contractual  
24 obligations of the impaired insurer as required by this article.  
25 Assets attributable to covered policies, as used in this sub-  
26 section, is that proportion of the assets which the reserves that  
27 should have been established for such policies bear to the  
28 reserve that should have been established for all policies of  
29 insurance written by the impaired insurer.

30 (d) Prior to the termination of any liquidation, rehabilita-  
31 tion or conservation proceeding, the court may take into  
32 consideration the contributions of the respective parties, in-  
33 cluding the association, the shareholders and policy owners of  
34 the impaired insurer, and any other party with a bona fide  
35 interest, in making an equitable distribution of the ownership  
36 rights of such impaired insurer. In such a determination, con-  
37 sideration shall be given to the welfare of the policyholders  
38 of the continuing or successor insurer. No distribution to  
39 stockholders, if any, of an impaired insurer shall be made  
40 until and unless the total amount of assessments levied by the  
41 association with respect to such insurer have been fully re-  
42 covered by the association.

43 (e) It shall be a prohibited unfair trade practice for any  
44 person to make use in any manner of the protection afforded  
45 by this article in the sale of insurance.

46 (f) If an order for liquidation or rehabilitation of an in-  
47 surer domiciled in this state has been entered, the receiver  
48 appointed under such order shall have a right to recover on  
49 behalf of the insurer, from any affiliate that controlled it, the  
50 amount of distributions other than stock dividends paid by the  
51 insurer on its capital stock made at any time during the five  
52 years preceding the petition for liquidation or rehabilitation  
53 subject to the limitations of this subsection. No such dividend  
54 shall be recoverable if the insurer shows that when paid the  
55 distribution was lawful and reasonable, and that the insurer  
56 did not know and could not reasonably have known that the  
57 distribution might adversely affect the ability of the insurer to  
58 fulfill its contractual obligations. Any person who, as an  
59 affiliate, controlled the insurer at the time the distributions  
60 were paid shall be liable up to the amount of distributions he  
61 received. Any person who, as an affiliate, controlled the in-  
62 surer at the time the distributions were declared, shall be  
63 liable up to the amount of distributions he would have re-  
64 ceived if they had been paid immediately. If two persons are  
65 liable with respect to the same distributions, they shall be  
66 jointly and severally liable. The maximum amount recover-  
67 able under this subsection shall be the amount needed in  
68 excess of all other available assets of the impaired insurer to  
69 pay the contractual obligations of the impaired insurer. If



70 any person is liable as an affiliate who controlled the insurer,  
71 its affiliates that controlled it at the time the dividend was  
72 paid shall be jointly and severally liable for any resulting  
73 deficiency in the amount recovered from the insolvent affiliate.

**§33-26A-15. Examination of association; annual report.**

1 The association shall be subject to examination and regula-  
2 tion by the commissioner. The board of directors shall sub-  
3 mit to the commissioner, not later than the first day of  
4 May of each year, a financial report for the preceding  
5 calendar year in a form approved by the commissioner and  
6 a report of its activities during the preceding calendar year.

**§33-26A-16. Tax exemptions.**

1 The association shall be exempt from payment of all  
2 fees and all taxes levied by this state or any of its sub-  
3 divisions, except taxes levied on real property.

**§33-26A-17. Immunity.**

1 There shall be no liability on the part of and no cause  
2 of action of any nature shall arise against any member  
3 insurer or its agents or employees, the association or its  
4 agents or employees, members of the board of directors, or  
5 the commissioner or his representatives, for any action  
6 taken by them in the performance of their powers and duties  
7 under this article.

**§33-26A-18. Stay of court proceedings; reopening default judgments.**

1 All proceedings in which the impaired insurer is a party  
2 in any court in this state shall be stayed sixty days from the  
3 date an order of liquidation, rehabilitation or conservation  
4 is final to permit proper legal action by the association on  
5 any matters germane to its powers or duties. As to a  
6 judgment under any decision, order, verdict or finding based  
7 on default the association may apply to have such judgment  
8 set aside by the same court that made such judgment and  
9 shall be permitted to defend against such suit on the merits.

## CHAPTER 119

(Com. Sub. for H. B. 1677—By Mr. Wiedebusch)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-c, relating to establishing a state labor-management advisory council; providing for appointment, terms, and setting forth certain functions and duties of the council; and establishing duration of council.

*Be it enacted by the Legislature of West Virginia:*

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

### **ARTICLE 1C. WEST VIRGINIA LABOR-MANAGEMENT ADVISORY COUNCIL.**

§21-1C-1. Appointment, terms, vacancies, chairman, quorum of the labor-management advisory council.

§21-1C-2. Powers, duties and functions of the council; annual reports.

§21-1C-3. Duration of council.

#### **§21-1C-1. Appointment, terms, vacancies, chairman, quorum of the labor-management advisory council.**

1       There is hereby created the West Virginia labor-management  
2       advisory council which shall consist of nineteen members. One  
3       member of the council shall be the commissioner of labor,  
4       one member of the council shall be a member of the  
5       economic development authority, and one member of the  
6       council shall be the employment security commissioner or  
7       his designated representative, who shall be ex officio non-  
8       voting members of the council. The other members of  
9       the council shall be appointed by the governor by and with  
10      the advice and consent of the Senate for terms of four years  
11      and until their successors have been appointed and have qual-  
12      ified, except that the members first appointed shall be for two,  
13      three and four years, respectively, as designated by the gover-

14 nor at the time of their appointment, and until their successors  
15 have been appointed and have qualified.

16 Vacancies shall be filled by appointment by the governor for  
17 the unexpired term of the member whose office is vacant and  
18 the appointment shall be made within sixty days of the occur-  
19 rence of the vacancy.

20 In making appointments to the council, the governor shall  
21 consider names of persons recommended to him by the West  
22 Virginia chamber of commerce, the West Virginia coal asso-  
23 ciation, the West Virginia manufacturers' association, the  
24 West Virginia retailers' association, utilities, other industrial  
25 groups in this state, the West Virginia labor federation, the  
26 united mine workers union, the West Virginia building trades  
27 council and other labor organizations in the state. Membership  
28 shall be composed of, in addition to those of the state or other  
29 government agencies, no less than eight members from in-  
30 dustry and eight from labor. The commissioner of labor shall  
31 serve as the chairman of the council.

32 The council shall meet at least two times each year and at  
33 other times on call of the chairman or a majority of the  
34 members. Ten members of the council shall constitute a  
35 quorum for the transaction of business.

**§21-1C-2. Powers, duties and functions of the council; annual reports.**

1 The council shall function as an advisory agency of state  
2 government and provide leadership and assistance for labor  
3 and management in this state, and shall serve to effect im-  
4 proved labor-management relations within the state, and to  
5 thereby attract and encourage new and existing industry in  
6 this state.

7 The council shall not infringe upon or assume the respon-  
8 sibilities, duties or functions of the West Virginia labor-man-  
9 agement relations board as set forth in article one-b of this  
10 chapter. The council may make recommendations to the gov-  
11 ernor and the Legislature and it shall publish an annual report  
12 of its activities during the preceding calendar year and shall  
13 forward a copy of the report to the governor and the Legisla-  
14 ture not later than the first day of February of each year.

15 Meetings of the council may be held at any location in this  
 16 state: *Provided*, That the first and organizational meeting  
 17 of said council shall be held at the state capitol.

18 The commissioner of labor shall supply necessary staff and  
 19 supplies to the council as well as funds for reimbursing each  
 20 member for reasonable and necessary costs incurred as a result  
 21 of attending council meetings, and he shall act as the executive  
 22 secretary of the council. The attorney general shall provide  
 23 legal assistance to the council when required.

### §21-1C-3. Duration of council.

1 Unless sooner terminated by law and until and unless ex-  
 2 tended, the West Virginia labor-management advisory council  
 3 shall cease to exist on the thirtieth day of June, one thousand  
 4 nine hundred eighty.

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## CHAPTER 120

(Com. Sub. for H. B. 1124—By Mr. Moore and Mr. Bumgarner)

[Passed March 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to establishing days of commemoration, and designating the third Saturday in January as Martin Luther King Day.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.**

### §2-2-1a. Special memorial days.

1 The governor shall, by proclamation, declare the third Satur-  
 2 day in January as a special memorial day to be known as  
 3 Martin Luther King Day.

## CHAPTER 121

(Com. Sub. for S. B. 285—By Mr. Susman)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-b; to amend and reenact sections one, two, four, eleven, thirteen, twenty, twenty-one and thirty, article one, chapter twenty-two of said code; to further amend article one of said chapter twenty-two by adding thereto one new section, designated section thirty-a; to amend and reenact sections seven, eight, twelve, thirteen, fourteen, twenty-six, thirty-seven, thirty-eight, forty, forty-two, forty-nine and sixty, article two of said chapter twenty-two; to further amend article two of said chapter twenty-two by adding thereto six new sections, designated sections twenty-eight-a, fifty-three-a, seventy-a, seventy-b, seventy-c and seventy-d; to further amend chapter twenty-two, by adding thereto two new articles, designated articles two-a and two-c; to amend and reenact section five, article six of said chapter; and to amend and reenact section five, article six-a of said chapter twenty-two, all relating to coal miners' health and safety; certification of surface mine foremen; definitions; duties of the director; contents of annual report; eligibility for appointment as mine inspector and qualifications and salary thereof; duties of inspectors and foremen and removal thereof; duties of mine foremen and assistant mine foremen; suspension of foremen; foremen suspended out of state; supervision of apprentices; daily inspection of working places; records; safety inspection and removal of gases; roof control; equipment to conform with height of seam; haulage roads and equipment; transportation of men by cars; general provisions; telephone service or communication facilities; safeguards for mechanical equipment; creation of board of coal mine health and safety; power of the board to promulgate rules and regulations, rules and regulations

not to be promulgated pursuant to chapter twenty-nine-a; outlets and emergency roadways; access roads; shafts, slopes and underground construction; right of miner to refuse to operate unsafe equipment; promulgation of regulation of long wall and short wall mining; construction of surface facilities; control of respirable dust; emergency medical personnel; definitions; permit of apprenticeship of underground mines; supervision of apprentices; certificate of competency and qualifications of underground or surface miners; limitations of article; board of miner training powers and duties; and providing for penalties thereof.

*Be it enacted by the Legislature of West Virginia:*

That sections one, two, four, eleven, thirteen, twenty, twenty-one and thirty, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections seven, eight, twelve, thirteen, fourteen, twenty-six, thirty-seven, thirty-eight, forty, forty-two, forty-nine and sixty, article two of said chapter, be amended and reenacted; that section five, article six of said chapter, be amended and reenacted; that section five, article six-a of said chapter, be amended and reenacted; that article six, chapter twenty of said code, be amended by adding thereto a new section, designated section twenty-b; that article one, chapter twenty-two of said code, be further amended by adding thereto a new section, designated section thirty-a; that article two of said chapter be further amended by adding thereto six new sections, designated sections twenty-eight-a, fifty-three-a, seventy-a, seventy-b, seventy-c and seventy-d; and that said chapter twenty-two be further amended by adding thereto two new articles, designated articles two-a and two-c, all to read as follows:

## **Chapter**

**20. Natural Resources.**

**22. Mines and Minerals.**

### **CHAPTER 20. NATURAL RESOURCES.**

#### **ARTICLE 6. SURFACE MINING AND RECLAMATION.**

##### **§20-6-20b. Certification of surface mine foremen.**

1 (a) In every surface mine where five or more persons

2 are employed in a period of twenty-four hours, the  
3 operator shall employ at least one person certified in  
4 accordance with the provisions of article six-a of chapter  
5 twenty-two as a mine foreman. Each applicant for certifi-  
6 cation as a mine foreman shall, at the time he is issued  
7 a certificate of competency: (1) Be a resident or employed  
8 in a mine in this state; (2) have had at least three years'  
9 experience in surface mining, which shall include at least  
10 eighteen months' experience on or at a working section  
11 of a surface mine or be a graduate of the school of mines  
12 at West Virginia University or of another accredited  
13 mining engineering school and have had at least two  
14 years' practical experience in a surface mine, which shall  
15 include at least eighteen months' experience on or at a  
16 working section of a surface mine; and (3) have demon-  
17 strated his knowledge of mine safety, first aid, safety  
18 appliances, emergency procedures relative to all equip-  
19 ment, state and federal mining laws and regulations and  
20 other subjects by completing such training, education  
21 and examinations as may be required of him under article  
22 six-a, chapter twenty-two.

23 (b) In surface mines in which the operations are so  
24 extensive that the duties devolving upon the mine fore-  
25 man cannot be discharged by one man, one or more  
26 assistant mine foremen may be designated. Such persons  
27 shall act under the instruction of the mine foreman who  
28 shall be responsible for their conduct in the discharge of  
29 their duties. Each assistant so designated shall be certified  
30 under the provisions of article six-a of chapter twenty-  
31 two. Each applicant for certification as assistant mine  
32 foreman shall, at the time he is issued a certificate of com-  
33 petency, possess all of the qualifications required of a  
34 mine foreman: *Provided*, That he shall at the time he is  
35 certified be required to have at least two years' experience  
36 in surface mining, which shall include eighteen months on  
37 or at a working section of a surface mine or be a graduate  
38 of the school of mines at West Virginia University or of  
39 another accredited mining engineering school and have  
40 had twelve months' practical experience in a surface mine,  
41 all of which shall have been on or at a working section.

42 (c) The director shall by the first day of July, one  
 43 thousand nine hundred seventy-eight, promulgate such  
 44 rules and regulations as may be necessary to carry out  
 45 the provisions of this section.

## CHAPTER 22. MINES AND MINERALS.

### Article

1. Administration; Enforcement.
2. Coal Mines.
- 2A. Board of Coal Mine Health and Safety.
- 2C. Emergency Medical Personnel.
6. Certification of Underground and Surface Coal Miners.
- 6A. Board of Miner Training, Education and Certification.

### ARTICLE 1. ADMINISTRATION; ENFORCEMENT.

- §22-1-1. Definitions.
- §22-1-2. Department of mines; purposes; rules and regulations.
- §22-1-4. Director of the department of mines—powers and duties.
- §22-1-11. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.
- §22-1-13. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents.
- §22-1-20. Penalties.
- §22-1-21. Discrimination.
- §22-1-30. Withdrawal of certification.
- §22-1-30a. Certification of mine foreman or assistant mine foreman whose license to engage in similar activities suspended in another state.

#### §22-1-1. Definitions.

1 Unless the context in which used clearly requires a  
 2 different meaning, the following definitions shall apply  
 3 to articles one and two of this chapter:

#### 4 (a) *General.*

5 (1) **Accident:** The term "accident" shall mean any  
 6 mine explosion, mine ignition, mine fire, or mine inunda-  
 7 tion, or injury to, or death of any person.

8 (2) **Agent:** The term "agent" means any person  
 9 charged with responsibility for the operation of all or  
 10 a part of a mine or the supervision of the miners in a  
 11 mine.

12 (3) **Approved:** The term "approved" shall mean in  
 13 strict compliance with mining law, or, in the absence of



14 law, accepted by a recognized standardizing body or  
15 organization whose approval is generally recognized as  
16 authoritative on the subject.

17 (4) Face equipment: The term "face equipment" shall  
18 mean mobile or portable mining machinery having elec-  
19 tric motors or accessory equipment normally installed or  
20 operated in by the last open crosscut in an entry or  
21 room.

22 (5) Imminent danger: The term "imminent danger"  
23 means the existence of any condition or practice in a  
24 coal mine which could reasonably be expected to cause  
25 death or serious physical harm before such condition or  
26 practice can be abated.

27 (6) Mine: The term "mine" includes the shafts, slopes,  
28 drifts or inclines connected with, or intended in the  
29 future to be connected with, excavations penetrating coal  
30 seams or strata, which excavations are ventilated by  
31 one general air current or divisions thereof, and con-  
32 nected by one general system of mine haulage over which  
33 coal may be delivered to one or more points outside the  
34 mine, and the surface structures or equipment connected  
35 or associated therewith which contribute directly or in-  
36 directly to the mining, preparation or handling of coal,  
37 or construction thereof.

38 (7) Miner: The term "miner" shall mean any indi-  
39 vidual working in a coal mine.

40 (8) Operator: The term "operator" shall mean any  
41 firm, corporation, partnership or individual operating  
42 any coal mine or part thereof, or engaged in the con-  
43 struction of any facility associated with a coal mine.

44 (9) Permissible: The term "permissible" shall mean  
45 any equipment, device or explosive that has been ap-  
46 proved as permissible by the United States bureau of  
47 mines and meets all requirements, restrictions, excep-  
48 tions, limitations and conditions attached to such classifi-  
49 cation by the bureau.

50 (10) Person: The term "person" shall mean any indi-

51 vidual, partnership, association, corporation, firm, sub-  
52 sidiary of a corporation or other organization.

53 (11) Work of preparing the coal: The term "work of  
54 preparing the coal" shall mean the breaking, crushing,  
55 sizing, cleaning, washing, drying, mixing, storing and  
56 loading of bituminous coal or lignite, and such other work  
57 of preparing such coal as is usually done by the operator  
58 of the coal mine.

59 (b) *Department of Mines.*

60 (1) Board of appeals: The term "board of appeals"  
61 shall mean as provided for in section thirty-one of this  
62 article.

63 (2) Department: The term "department" shall mean  
64 the state department of mines provided for in section  
65 two of this article.

66 (3) Director of the department of mines: The term  
67 "director of the department of mines" shall mean the  
68 director of the department of mines provided for in sec-  
69 tion three of this article, and is synonymous with the  
70 term "chief of the department of mines."

71 (4) Mine inspector: The term "mine inspector" shall  
72 mean a state mine inspector provided for in section  
73 seven of this article.

74 (5) Mine inspectors' examining board: The term  
75 "mine inspectors' examining board" shall mean the mine  
76 inspectors' examining board provided for in section  
77 twelve of this article.

78 (c) *Mine areas.*

79 (1) Abandoned workings: The term "abandoned work-  
80 ings" shall mean excavation, either caved or sealed, that  
81 is deserted and in which further mining is not intended,  
82 or open workings which are ventilated and not inspected  
83 regularly.

84 (2) Active workings: The term "active workings"  
85 shall mean all places in a mine that are ventilated and  
86 inspected regularly.

87 (3) Drift: The term "drift" shall mean a horizontal  
88 or approximately horizontal opening through the strata  
89 or in a coal seam and used for the same purposes as a  
90 shaft.

91 (4) Excavations and workings: The term "excavations  
92 and workings" shall mean any or all parts of a mine  
93 excavated or being excavated, including shafts, slopes,  
94 drifts, tunnels, entries, rooms and working places,  
95 whether abandoned or in use.

96 (5) Inactive workings: The term "inactive workings"  
97 shall include all portions of a mine in which operations  
98 have been suspended for an indefinite period, but have  
99 not been abandoned.

100 (6) Mechanical working section: The term "mechanical  
101 working section" shall mean an area of a mine (A) in  
102 which coal is loaded mechanically, (B) which is com-  
103 prised of a number of working places that are generally  
104 contiguous, and (C) which is of such size to permit neces-  
105 sary supervision during shift operation, including pre-  
106 shift and on-shift examinations and tests required by law.

107 (7) Panel: The term "panel" shall mean workings that  
108 are or have been developed off of submain entries which  
109 do not exceed three thousand feet in length.

110 (8) Return air: The term "return air" shall mean a  
111 volume of air that has passed through and ventilated  
112 all the working places in a mine section.

113 (9) Shaft: The term "shaft" shall mean a vertical  
114 opening through the strata that is or may be used for  
115 the purpose of ventilation, drainage, and the hoisting  
116 and transportation of men and material, in connection  
117 with the mining of coal.

118 (10) Slope: The term "slope" shall mean a plane or  
119 incline roadway, usually driven to a coal seam from the  
120 surface and used for the same purposes as a shaft.

121 (11) Working face: The term "working face" shall  
122 mean any place in a coal mine in which work of extract-  
123 ing coal from its natural deposit in the earth is performed  
124 during the mining cycle.

125 (12) Working place: The term "working place" shall  
126 mean the area of a coal mine in by the last open crosscut.

127 (13) Working section: The term "working section"  
128 shall mean all areas of the coal mine from the loading  
129 point of the section to and including the working faces.

130 (14) Working unit: The term "working unit" shall  
131 mean an area of a mine in which coal is mined with a  
132 set of production equipment; a conventional mining unit  
133 by a single loading machine; a continuous mining unit  
134 by a single continuous mining machine, which is com-  
135 prised of a number of working places.

136 (d) *Mine Personnel.*

137 (1) Assistant mine foreman: The term "assistant mine  
138 foreman" shall mean a certified person designated to  
139 assist the mine foreman in the supervision of a portion  
140 or the whole of a mine or of the persons employed  
141 therein.

142 (2) Certified electrician: The term "certified electri-  
143 cian" shall mean any person who is qualified as a mine  
144 electrician and who has passed an examination given by  
145 the department of mines, or has at least three years of  
146 experience in performing electrical work underground  
147 in a coal mine, in the surface work areas of an under-  
148 ground coal mine, in a surface coal mine, in a noncoal  
149 mine, in the mine equipment manufacturing industry,  
150 or in any other industry using or manufacturing similar  
151 equipment, and has satisfactorily completed a coal mine  
152 electrical training program approved by the department  
153 of mines.

154 (3) Certified person: The term "certified person",  
155 when used to designate the kind of person to whom the  
156 performance of a duty in connection with the operation  
157 of a mine shall be assigned, shall mean a person who is  
158 qualified under the provisions of this law to perform  
159 such duty.

160 (4) Interested persons: The term "interested persons"  
161 shall include the operator, members of any mine safety  
162 committee at the mine affected and other duly authorized

163 representatives of the mine workers and department of  
164 mines.

165 (5) Mine foreman: The term "mine foreman" shall  
166 mean the certified person whom the operator or super-  
167 intendent shall place in charge of the inside workings  
168 of the mine and of the persons employed therein.

169 (6) Qualified person: The term "qualified person"  
170 shall mean a person who has completed an examination  
171 and is considered qualified on record by the department  
172 of mines.

173 (7) Shot firer: The term "shot firer" shall mean any  
174 person having had at least two years of practical experi-  
175 ence in coal mines, who has a knowledge of ventilation,  
176 mine roof and timbering, and who has demonstrated his  
177 knowledge of mine gases, the use of a flame safety lamp,  
178 and other approved detecting devices by examination  
179 and certification given him by the department of mines.

180 (8) Superintendent: The term "superintendent" shall  
181 mean the person who shall have, on behalf of the oper-  
182 ator, immediate supervision of one or more mines.

183 (9) Supervisor: The term "supervisor" shall mean a  
184 superintendent, mine foreman, assistant mine foreman,  
185 or any person specifically designated by the superin-  
186 tendent or mine foreman to supervise work or employees  
187 and who is acting pursuant to such specific designation  
188 and instructions.

189 (e) *Electrical.*

190 (1) Armored cable: The term "armored cable" shall  
191 mean a cable provided with a wrapping of metal, usually  
192 steel wires or tapes, primarily for the purpose of mechani-  
193 cal protection.

194 (2) Borehole cable: The term "borehole cable" shall  
195 mean a cable designed for vertical suspension in a bore-  
196 hole or shaft and used for power circuits in the mine.

197 (3) Branch circuit: The term "branch circuit" shall  
198 mean any circuit, alternating current or direct current,  
199 connected to and leading from the main power lines.

200 (4) Cable: The term "cable" shall mean a standard  
201 conductor (single conductor cable) or a combination of  
202 conductors insulated from one another (multiple con-  
203 ductor cable).

204 (5) Circuit breaker: The term "circuit breaker" shall  
205 mean a device for interrupting a circuit between sep-  
206 arable contacts under normal or abnormal conditions.

207 (6) Delta connected: The term "delta connected" shall  
208 mean a power system in which the windings or trans-  
209 formers or a.c. generators are connected to form a tri-  
210 angular phase relationship, and with phase conductors  
211 connected to each point of the triangle.

212 (7) Effectively grounded: The term "effectively  
213 grounded" is an expression which means grounded  
214 through a grounding connection of sufficiently low im-  
215 pedence (inherent or intentionally added or both) so  
216 that fault grounds which may occur cannot build up  
217 voltages in excess of limits established for apparatus,  
218 circuits or systems so grounded.

219 (8) Flame-resistant cable, portable: The term "flame-  
220 resistant cable, portable" shall mean a portable flame-  
221 resistant cable that has passed the flame tests of the  
222 federal bureau of mines.

223 (9) Ground or grounding conductor (mining): The  
224 term "ground or grounding conductor (mining)", also  
225 referred to as a safety ground conductor, safety ground,  
226 and frame ground, shall mean a metallic conductor used  
227 to connect the metal frame or enclosure of any equip-  
228 ment, device or wiring system with a mine track or  
229 other effective grounding medium.

230 (10) Grounded (earthed): The term "grounded  
231 (earthed)" shall mean that the system, circuit, or appa-  
232 ratus referred to is provided with a ground.

233 (11) High voltage: The term "high voltage" shall  
234 mean voltages of more than one thousand volts.

235 (12) Lightning arrester: The term "lightning arrester"  
236 shall mean a protective device for limiting surge volt-

237 age on equipment by discharging or by passing surge  
238 current; it prevents continued flow of follow current to  
239 ground and is capable of repeating these functions as  
240 specified.

241 (13) Low voltage: The term "low voltage" shall mean  
242 up to and including six hundred sixty volts.

243 (14) Medium voltage: The term "medium voltage"  
244 shall mean voltages from six hundred sixty-one to one  
245 thousand volts.

246 (15) Mine power center or distribution center: The  
247 term "mine power center or distribution center" shall  
248 mean a combined transformer or distribution unit, com-  
249 plete within a metal enclosure from which one or more  
250 low-voltage power circuits are taken.

251 (16) Neutral (derived): The term "neutral (derived)"  
252 shall mean a neutral point or connection established by  
253 the addition of a "zig-zag" or grounding transformer to  
254 a normally underground power system.

255 (17) Neutral point: The term "neutral point" shall  
256 mean the connection point of transformer or generator  
257 windings from which the voltage to ground is nominally  
258 zero, and is the point generally used for system ground-  
259 ings in wye-connected a.c. power system.

260 (18) Portable (trailing) cable: The term "portable  
261 (trailing) cable" shall mean a flexible cable or cord used  
262 for connecting mobile, portable or stationary equipment  
263 in mines to a trolley system or other external source  
264 of electric energy where permanent mine wiring is pro-  
265 hibited or is impracticable.

266 (19) Wye-connected: The term "wye-connected" shall  
267 mean a power system connection in which one end of  
268 each phase windings or transformers or a.c. generators  
269 are connected together to form a neutral point, and a  
270 neutral conductor may or may not be connected to the  
271 neutral point, and the neutral point may or may not be  
272 grounded.

273 (20) Zig-zag transformer (grounding transformer):  
274 The term "zig-zag transformer (grounding transformer)"

275 shall mean a transformer intended primarily to provide  
276 a neutral point for grounding purposes.

**§22-1-2. Department of mines; purposes; rules and regulations.**

1 The department of mines heretofore created is hereby  
2 continued and shall have as its purpose the supervision  
3 of the execution and enforcement of the provisions of  
4 this chapter and, in carrying out the aforesaid purposes,  
5 it shall give prime consideration to the protection of the  
6 safety and health of persons employed within or at the  
7 mines of this state. In addition, the department shall,  
8 consistent with the aforesaid prime consideration, pro-  
9 tect and preserve mining property and property used in  
10 connection therewith.

11 The department is hereby given authority, where au-  
12 thorized and in the manner prescribed in this chapter,  
13 to enact such rules and regulations as may be necessary  
14 to effectuate the above stated purposes.

**§22-1-4. Director of the department of mines—powers and duties.**

1 The director of the department of mines shall have  
2 full charge of the department. He shall have the power  
3 and duty to:

4 (1) Supervise and direct the execution and enforce-  
5 ment of the provisions of this chapter.

6 (2) Appoint a deputy director of the department of  
7 mines, fix his compensation and prescribe his powers and  
8 duties.

9 (3) Employ such assistants, clerks, stenographers and  
10 other employees as may be necessary to fully and effec-  
11 tively carry out the provisions of this law and fix their  
12 compensation, except as otherwise provided in this ar-  
13 ticle.

14 (4) Employ mine inspectors, and assign them to divi-  
15 sions or districts in accordance with the provisions of  
16 section seven of this article as may be necessary to fully  
17 and effectively carry out the provisions of this law, in-  
18 cluding the hiring and training of inspectors for the spe-



19 cialized requirements of surface mining, shaft and  
20 slope sinking, and surface installations and to super-  
21 vise and direct such mine inspectors in the performance  
22 of their duties.

23 (5) Suspend, for good cause, any mine inspector with-  
24 out compensation for a period not exceeding thirty  
25 days in any calendar year.

26 (6) Prepare report forms to be used by mine inspec-  
27 tors in making their findings, orders and notices, upon  
28 inspections made in accordance with this chapter.

29 (7) Hear and determine applications made by mine  
30 operators for the annulment or revision of orders made  
31 by mine inspectors, and to make inspections of mines,  
32 in accordance with the provisions of this article.

33 (8) Cause a properly indexed permanent and public  
34 record to be kept of all inspections made by himself or  
35 by mine inspectors.

36 (9) Make annually a full and complete written re-  
37 port of the administration of his department to the gov-  
38 ernor and the Legislature of the state for the year ending  
39 the thirtieth day of June. Such report shall include  
40 the number of visits and inspections of mines in the  
41 state by mine inspectors, the quantity of coal, coke and  
42 other minerals (including oil and gas) produced in the  
43 state, the number of men employed, number of mines  
44 in operation, statistics with regard to health and safety  
45 of persons working in the mines including the causes  
46 of injuries and deaths, improvements made, prosecutions,  
47 the total funds of the department from all sources  
48 identifying each source of such funds, the expendi-  
49 tures of the department, the surplus or deficit of the  
50 department at the beginning and end of the year, the  
51 amount of fines collected, the amount of fines imposed,  
52 the value of fines pending, the number and type of viola-  
53 tions found, the amount of fines imposed, levied and  
54 turned over for collection, the total amount of fines  
55 levied but not paid during the prior year, the titles and  
56 salaries of all inspectors and other officials of the depart-  
57 ment, the number of inspections made by each inspector,

58 the number and type of violations found by each inspec-  
59 tor: *Provided*, That no inspector shall be identified by  
60 name in this report. Such reports shall be filed with  
61 the governor and the Legislature on or before the thirty-  
62 first day of December of the same year for which it was  
63 made, and shall upon proper authority be printed and dis-  
64 tributed to interested persons.

65 (10) Call or subpoena witnesses, for the purpose of  
66 conducting hearings into mine fires, mine explosions or  
67 any mine accident; to administer oaths and to require  
68 production of any books, papers, records, or other docu-  
69 ments relevant or material to the hearing. Any witness  
70 so called or subpoenaed shall receive forty dollars per  
71 diem and shall receive mileage at the rate of fifteen  
72 cents for each mile actually traveled, which shall be  
73 paid out of the state treasury upon a requisition upon the  
74 state auditor, properly certified by such witness.

75 (11) Institute civil actions for relief, including per-  
76 manent or temporary injunctions, restraining orders, or  
77 any other appropriate action in the appropriate federal  
78 or state court whenever any operator or his agent violates  
79 or fails or refuses to comply with any lawful order,  
80 notice or decision issued by the director or his rep-  
81 resentative.

82 (12) Perform all other duties which are expressly  
83 imposed upon him by the provisions of this chapter.

84 (13) Make all records of the department open for  
85 inspection of interested persons and the public.

**§22-1-11. Eligibility for appointment as mine inspector; quali-  
fications; salary and expenses; removal.**

1 (a) No person shall be eligible for appointment as a  
2 mine inspector unless, at the time of his probationary  
3 appointment, he (1) is a citizen of West Virginia, in good  
4 health, not less than twenty-four nor more than sixty  
5 years of age, and of good character, reputation and tem-  
6 perate habits; (2) has had at least six years' practical  
7 experience in coal mines, at least three years of which,  
8 immediately preceding his original appointment, shall

9 have been in mines of this state: *Provided*, That gradu-  
10 ation from any accredited college of mining engineering  
11 shall be considered the equivalent of two years' practical  
12 experience; (3) has had practical experience with dan-  
13 gerous gases found in coal mines; and (4) has a good  
14 theoretical and practical knowledge of mines, mining  
15 methods, mine ventilation, sound safety practices and  
16 applicable mining laws.

17 (b) In order to qualify for appointment as a mine in-  
18 spector, an eligible applicant shall submit to a written  
19 and oral examination by the mine inspectors' examin-  
20 ing board and furnish such evidence of good health,  
21 character and other facts establishing eligibility as the  
22 board may require. If the board finds after investigation  
23 and examination that an applicant: (1) Is eligible for  
24 appointment and (2) has passed all written and oral ex-  
25 aminations, with a grade of at least eighty percent, the  
26 board shall add such applicant's name and grade to the  
27 register of qualified eligible candidates and certify its  
28 action to the director of the department of mines. No  
29 candidate's name shall remain in the register for more  
30 than three years without requalifying.

31 (c) Salaries of district inspectors shall not be less  
32 than fifteen thousand three hundred dollars per year,  
33 with graduations of two hundred seventy dollars an-  
34 nually for a ten-year period; assistant inspector-at-large,  
35 not less than sixteen thousand eight hundred seventy-  
36 five dollars per year, with graduations of two hundred  
37 seventy dollars annually for a ten-year period; inspec-  
38 tors-at-large, not less than eighteen thousand dollars per  
39 year, with graduations of two hundred seventy dollars  
40 annually for a ten-year period, and they shall receive  
41 mileage at the rate of not less than fifteen cents for each  
42 mile actually traveled in the discharge of their official  
43 duties in a privately owned vehicle. Within the limits  
44 provided by law, the salary of each inspector shall be  
45 fixed by the director of the department of mines, subject  
46 to the approval of the mine inspectors' examining board.  
47 In fixing salaries of mine inspectors, the director of the  
48 department of mines shall consider ability, performance

49 of duty and experience. No reimbursement for traveling  
50 expenses shall be made except on an itemized account of  
51 such expenses submitted by the inspector, who shall  
52 verify upon oath, that such expenses were actually in-  
53 curred in the discharge of his official duties. Every in-  
54 spector shall be afforded compensatory time or compen-  
55 sation of at least his regular rate for all time in excess  
56 of forty-two hours per week.

57 (d) Any mine inspector who has fulfilled the require-  
58 ments of this section with respect to employment and  
59 who has served satisfactorily as a mine inspector for a  
60 minimum period of one year and who has terminated  
61 his employment as a mine inspector, upon successfully  
62 passing a physical examination, may be reinstated as a  
63 mine inspector within two years after terminating his  
64 employment with the approval of the examining board  
65 and the director of the department of mines.

66 (e) A mine inspector, after having received a per-  
67 manent appointment, shall be removed from office only  
68 for physical or mental impairment, incompetency, neglect  
69 of duty, drunkenness, malfeasance in office, or other  
70 good cause.

71 Proceedings for the removal of a mine inspector may  
72 be initiated by the director of the department of mines  
73 whenever he has reasonable cause to believe and does  
74 believe that adequate cause exists, warranting removal.  
75 Such a proceeding shall be initiated by a verified peti-  
76 tion, filed with the board by the director of the depart-  
77 ment of mines, setting forth with particularity the facts  
78 alleged. Not less than twenty reputable citizens, who are  
79 operators or employees in mines in the state, may  
80 petition the director of the department of mines for  
81 the removal of a mine inspector. If such petition is  
82 verified by at least one of the petitioners, based on ac-  
83 tual knowledge of the affiant and alleged facts, which,  
84 if true, warrant the removal of the inspector, the director  
85 of the department of mines shall cause an investigation  
86 of the facts to be made. If, after such investigation, the  
87 director finds that there is substantial evidence, which,  
88 if true, warrants removal of the inspector, he shall file

89 a petition with the board requesting removal of the in-  
90 spector.

91 On receipt of a petition by the director of the depart-  
92 ment of mines seeking removal of a mine inspector, the  
93 board shall promptly notify the inspector to appear before  
94 it at a time and place designated in said notice, which  
95 time shall be not less than fifteen days thereafter. There  
96 shall be attached to the copy of the notice served upon  
97 the inspector a copy of the petition filed with the board.

98 At the time and place designated in said notice, the  
99 board shall hear all evidence offered in support of the  
100 petition and on behalf of the inspector. Each witness  
101 shall be sworn, and a transcript shall be made of all  
102 evidence taken and proceedings had at any such hearing.  
103 No continuance shall be granted except for good cause  
104 shown. The chairman of the board and the director of  
105 the department of mines shall have power to administer  
106 oaths and subpoena witnesses.

107 Any mine inspector who shall willfully refuse or fail  
108 to appear before the board, or having appeared, shall  
109 refuse to answer under oath any relevant question on  
110 the ground that his testimony or answer might incrim-  
111 inate him, or shall refuse to waive immunity from prose-  
112 cution on account of any relevant matter about which  
113 he may be asked to testify at any such hearing before  
114 the board, shall forfeit his position.

115 If, after hearing, the board finds that the inspector  
116 should be removed, it shall enter an order to that effect.  
117 The decision of the board shall be final and shall not be  
118 subject to judicial review.

**§22-1-13. Director and inspectors authorized to enter mines;  
duties of inspectors to examine mines; no advance  
notice; reports after fatal accidents.**

1 The director of the department of mines shall have  
2 authority to visit, enter, and examine any mine, whether  
3 underground or on the surface, and may call for the as-  
4 sistance of any district mine inspector or inspectors when-  
5 ever such assistance is necessary in the examination of  
6 any mine. The operator of every coal mine shall furnish

7 the director of the department of mines or mine inspector  
8 proper facilities for entering such mine and making  
9 examination or obtaining information.

10 If miners at any mine or one of their authorized rep-  
11 resentatives have reason to believe that dangerous con-  
12 ditions are existing or that the law is not being complied  
13 with, they may request the director to have an immediate  
14 investigation made.

15 Mine inspectors shall devote their full time and un-  
16 divided attention to the performance of their duties, and  
17 they shall examine all of the mines in their respective  
18 districts at least four times annually, and as often, in addi-  
19 tion thereto, as the director of the department of mines  
20 may direct, or the necessities of the case or the condition  
21 of the mine or mines may require, with no advance notice  
22 of inspection provided to any person, and they shall make  
23 a personal examination of each working face and all  
24 entrances to abandoned parts of the mine where gas is  
25 known to liberate, for the purpose of determining whether  
26 a danger, described in section fourteen of this article,  
27 exists in any such mine, or whether any provision of  
28 article two of this chapter is being violated or has been  
29 violated within the past forty-eight hours in any such  
30 mine.

31 In addition to the other duties imposed by articles one  
32 and two of this chapter, it shall be the duty of each  
33 inspector to note each violation he finds and issue a  
34 finding order or notice, as appropriate for each violation  
35 so noted. During the investigation of any accident, any  
36 violation may be noted whether or not the inspector  
37 actually observes the violation and whether or not the  
38 violation exists at the time the inspector notes the vio-  
39 lation, so long as the inspector has clear and convincing  
40 evidence the violation has occurred or is occurring.

41 The mine inspector shall visit the scene of each fatal  
42 accident occurring in any mine within his district and  
43 shall make an examination into the particular facts of  
44 such accident; make a report to the director of the de-  
45 partment of mines, setting forth the results of such  
46 examination, including the condition of the mine and the

47 cause or causes of such fatal accident, if known, and  
48 all such reports shall be made available to the interested  
49 parties, upon written requests.

50 At the commencement of any inspection of a coal mine  
51 by an authorized representative of the director, the autho-  
52 rized representative of the miners at the mine at the time  
53 of such inspection shall be given an opportunity to ac-  
54 company the authorized representative of the director on  
55 such inspection.

#### §22-1-20. Penalties.

1 (a) (1) Any operator of a coal mine in which a  
2 violation occurs of any health or safety rule or regulation  
3 or who violates any other provision of this law, shall be  
4 assessed a civil penalty by the director under subdivision  
5 (3) of this subsection, which penalty shall be not more  
6 than three thousand dollars, for each such violation. Each  
7 such violation shall constitute a separate offense. In de-  
8 termining the amount of the penalty, the director shall  
9 consider the operator's history of previous violations, the  
10 appropriateness of such penalty to the size of the business  
11 of the operator charged, the gravity of the violation and  
12 the demonstrated good faith of the operator charged in  
13 attempting to achieve rapid compliance after notification  
14 of a violation.

15 (2) Any miner who knowingly violates any health or  
16 safety provision of this chapter or health or safety rule or  
17 regulation promulgated pursuant to this chapter shall be  
18 subject to a civil penalty assessed by the director under  
19 subdivision (3) of this subsection which penalty shall not  
20 be more than two hundred fifty dollars for each occurrence  
21 of such violation.

22 (3) A civil penalty shall be assessed by the director  
23 only after the person charged with a violation under this  
24 chapter or rule or regulation promulgated pursuant to  
25 this chapter has been given an opportunity for a public  
26 hearing and the director has determined, by a decision  
27 incorporating his findings of fact therein, that a violation  
28 did occur, and the amount of the penalty which is war-  
29 ranted, and incorporating, when appropriate, an order

30 therein requiring that the penalty be paid. Any hearing  
31 under this section shall be of record.

32 (4) If the person against whom a civil penalty is  
33 assessed fails to pay the penalty within the time pre-  
34 scribed in such order, the director shall file a petition for  
35 enforcement of such order in any appropriate circuit  
36 court. The petition shall designate the person against  
37 whom the order is sought to be enforced as the respon-  
38 dent. A copy of the petition shall forthwith be sent by  
39 certified mail, return receipt requested, to the respondent  
40 and to the representative of the miners at the affected  
41 mine or the operator, as the case may be, and thereupon  
42 the director shall certify and file in such court the record  
43 upon which such order sought to be enforced was  
44 issued. The court shall have jurisdiction to enter a  
45 judgment enforcing, modifying, and enforcing as so modi-  
46 fied, or setting aside in whole or in part the order and  
47 decision of the director or it may remand the proceedings  
48 to the director for such further action as it may direct.  
49 The court shall consider and determine de novo all rele-  
50 vant issues, except issues of fact which were or could  
51 have been litigated in review proceedings before a circuit  
52 court under section eighteen of this article, and upon the  
53 request of the respondent, such issues of fact which are in  
54 dispute shall be submitted to a jury. On the basis of the  
55 jury's findings the court shall determine the amount of  
56 the penalty to be imposed. Subject to the direction and  
57 control of the attorney general, attorneys appointed for  
58 the director may appear for and represent him in any  
59 action to enforce an order assessing civil penalties under  
60 this subdivision.

61 (b) Any operator who knowingly violates a health or  
62 safety provision of this chapter or health or safety rule or  
63 regulation promulgated pursuant to this chapter, or  
64 knowingly violates or fails or refuses to comply with any  
65 order issued under section fourteen of this article, or any  
66 order incorporated in a final decision issued under this  
67 article, except an order incorporated in a decision under  
68 subsection (a) of this section or subsection (b), section  
69 twenty-one of this article, shall be assessed a civil penalty



70 by the director under subdivision (3), subsection (a) of  
71 this section, of not more than five thousand dollars, and  
72 for a second or subsequent violation assessed a civil  
73 penalty of not more than ten thousand dollars.

74 (c) Whenever a corporate operator knowingly violates  
75 a health or safety provision of this chapter or health or  
76 safety rules or regulations promulgated pursuant to this  
77 chapter, or knowingly violates or fails or refuses to com-  
78 ply with any order issued under this law or any order  
79 incorporated in a final decision issued under this law,  
80 except an order incorporated in a decision issued under  
81 subsection (a) of this section or subsection (b), section  
82 twenty-one of this article, any director, officer, or agent of  
83 such corporation who knowingly authorized, ordered or  
84 carried out such violation, failure or refusal shall be  
85 subject to the same civil penalties that may be imposed  
86 upon a person under subsections (a) and (b) of this  
87 section.

88 (d) Whoever knowingly makes any false statement,  
89 representation or certification in any application, record,  
90 report, plan or other document filed or required to be  
91 maintained pursuant to this law or any order or de-  
92 cision issued under this law shall be guilty of a misde-  
93 meanor, and, upon conviction thereof, shall be fined not  
94 more than five thousand dollars or imprisoned in the  
95 county jail not more than six months, or both fined and  
96 imprisoned. The conviction of any person under this  
97 subsection shall result in the revocation of any certifica-  
98 tions held by him under this chapter which certified him  
99 or authorized him to direct other persons in coal mining  
100 by operation of law and shall bar him from being issued  
101 any such license under this chapter, except a miner's certi-  
102 fication, for a period of not less than one year or for such  
103 longer period as may be determined by the director.

104 (e) Whoever willfully distributes, sells, offers for sale,  
105 introduces or delivers in commerce any equipment for  
106 use in a coal mine, including, but not limited to, compo-  
107 nents and accessories of such equipment, who willfully  
108 misrepresents such equipment as complying with the

109 provisions of this law, or with any specification or regula-  
110 tion of the director applicable to such equipment, and  
111 which does not so comply, shall be guilty of a misde-  
112 meanor, and, upon conviction thereof, shall be subject  
113 to the same fine and imprisonment that may be imposed  
114 upon a person under subsection (d) of this section.

**§22-1-21. Discrimination.**

1 (a) No person shall discharge or in any other way dis-  
2 criminate against or cause to be discharged or dis-  
3 criminated against any miner or any authorized repre-  
4 sentative of miners by reason of the fact that he believes  
5 or knows that such miner or representative (1) has  
6 notified the director, his authorized representative, or  
7 an operator, directly or indirectly, of any alleged viola-  
8 tion or danger, (2) has filed, instituted or caused to be  
9 filed or instituted any proceeding under this law, (3) has  
10 testified or is about to testify in any proceeding resulting  
11 from the administration or enforcement of the provisions  
12 of this law. No miner or representative shall be dis-  
13 charged or in any other way discriminated against or  
14 caused to be discriminated against because a miner or  
15 representative has done (1), (2) or (3) above.

16 (b) Any miner or a representative of miners who be-  
17 lieves that he has been discharged or otherwise dis-  
18 criminated against, or any miner who has not been  
19 compensated by an operator for lost time due to the  
20 posting of a withdrawal order, may, within thirty days  
21 after such violation occurs, apply to the appeals board  
22 for a review of such alleged discharge, discrimination, or  
23 failure to compensate. A copy of the application shall  
24 be sent to such person who shall be the respondent. Upon  
25 receipt of such application, the appeals board shall cause  
26 such investigation to be made as it deems appropriate.  
27 Such investigation shall provide an opportunity for a  
28 public hearing at the request of any party to enable the  
29 parties to present information relating to such violation.  
30 The parties shall be given written notice of the time and  
31 place of the hearing at least five days prior to the hear-  
32 ing. Mailing of the notice of hearing to the charged party  
33 at his last address of record as reflected in the records

34 of the department of mines shall be deemed adequate  
35 notice to the charged party. Such notice shall be by  
36 certified mail, return receipt requested. Any such hearing  
37 shall be of record. Upon receiving the report of such  
38 investigation, the board shall make findings of fact. If  
39 it finds that such violation did occur, it shall issue a deci-  
40 sion within forty-five days, incorporating an order therein,  
41 requiring the person committing such violation to take  
42 such affirmative action to abate the violation as the board  
43 deems appropriate, including, but not limited to, the  
44 rehiring or reinstatement of the miner or representative  
45 of miners to his former position with back pay, and also  
46 pay compensation for the idle time as a result of a  
47 withdrawal order. If it finds that there was no such  
48 violation, it shall issue an order denying the applica-  
49 tion. Such order shall incorporate the board's findings  
50 therein. If the proceedings under this section relative to  
51 discharge are not completed within forty-five days of  
52 the date of discharge due to delay caused by the operator,  
53 the miner shall be automatically reinstated until the final  
54 determination. If such proceedings are not completed  
55 within forty-five days of the date of discharge due to  
56 delay caused by the board, then the board may, at its  
57 option, reinstate the miner until the final determination.  
58 If such proceedings are not completed within forty-five  
59 days of the date of discharge due to delay caused by the  
60 miner the board shall not reinstate the miner until the  
61 final determination.

62 (c) Whenever an order is issued under this section, at  
63 the request of the applicant, a sum equal to the aggregate  
64 amount of all costs and expenses including the attorney's  
65 fees as determined by the board to have been reasonably  
66 incurred by the applicant for, or in connection with, the  
67 institution and prosecution of such proceedings, shall be  
68 assessed against the person committing such violation.

**§22-1-30. Withdrawal of certification.**

1 (a) *Charge of breach of duty.*—A mine inspector or  
2 the director may charge a mine foreman, assistant mine  
3 foreman, fire boss or any other certified person with  
4 neglect or failure to perform any duty mandated pur-

5 suant to article one or two of this chapter. The charge  
6 shall state the name of the person charged, the duty or  
7 duties he is alleged to have violated, the approximate  
8 date and place so far as is known of the violation of duty,  
9 the capacity of the person making the charge, and shall  
10 be verified on the basis of information and belief or  
11 personal knowledge. The charge is initiated by filing  
12 it with the director or with the board of appeals. A copy  
13 of any charge filed with the board of appeals or any  
14 member thereof, shall be transmitted promptly to the  
15 director. The director shall maintain a file of each  
16 charge and of all related documents which shall be  
17 open to the public.

18 (b) *Evaluation of charge by board of appeals.*—Within  
19 twenty days after receipt of the charge the board shall  
20 evaluate the charge and determine whether or not a  
21 violation of duty has been stated. In making such a  
22 determination the board shall evaluate all documents  
23 submitted to it by all persons to determine as nearly as  
24 possible the substance of the charge and if the board of  
25 appeals is unable to determine the substance of the  
26 charge it may request the director to investigate the  
27 charge. Upon request, the director shall investigate the  
28 charge and report the results of the investigation to the  
29 board of appeals within ten days of his receipt of the  
30 charge. If the board determines that probable cause  
31 exists to support the allegation that the person charged  
32 has violated his duty, the board by the end of the twenty-  
33 day period shall set a date for hearing which date shall  
34 be within eighty days of the filing of the charge. Notice  
35 of the hearing or notice of denial of the hearing for failure  
36 to state a charge and a copy of the charge shall be mailed  
37 by certified mail, return receipt requested, to the charging  
38 party, the charged party, the director, the representative  
39 of the miner or miners affected, and to any interested  
40 person of record. Thereafter the board shall maintain  
41 the file of the charge which shall contain all documents,  
42 testimony and other matters filed which shall be open  
43 for public inspection.

44 (c) *Hearing.*—The board of appeals shall hold a hear-  
45 ing, may appoint a hearing examiner to take evidence

46 and report to the board of appeals within the time allotted,  
47 may direct or authorize taking of oral depositions under  
48 oath by any participant, or adopt any other method for  
49 the gathering of sworn evidence which affords the charg-  
50 ing party, the charged party, the director and any  
51 interested party of record due process of law and a fair  
52 opportunity to present and make a record of evidence.  
53 Any member of the board shall have the power to ad-  
54 minister oaths. The board may subpoena witnesses and  
55 require production of any books, papers, records, or other  
56 documents relevant or material to the inquiry. The board  
57 shall consider all evidence offered in support of the  
58 charge and on behalf of the persons so charged at the  
59 time and place designated in the notice. Each witness  
60 shall be sworn and a transcript shall be made of all  
61 evidence presented in any such hearing. No continuance  
62 shall be granted except for good cause shown.

63 At the conclusion of the hearing the board shall proceed  
64 to determine the case upon consideration of all the evi-  
65 dence offered and shall render a decision containing its find-  
66 ings and conclusions of law. If the board finds by a pre-  
67 ponderance of the evidence that the certificate or certif-  
68 icates of the charged person should be suspended or  
69 revoked, as hereinafter provided, it shall enter an order  
70 to that effect. No renewal of the certificate shall be  
71 granted except as herein provided.

72 (d) *Failure to cooperate.*—Any person charged who  
73 shall, without just cause refuse or fail to appear before  
74 the board or cooperate in the investigation or gathering  
75 of evidence shall forfeit his certificate or certificates for  
76 a period to be determined by the board, not to exceed  
77 five years, and such certificate or certificates may not be  
78 renewed except upon a successful completion of the  
79 examination prescribed by the law for mine foremen,  
80 assistant mine foremen, fire boss or other certified per-  
81 son.

82 (e) *Penalties.*—The board may suspend or revoke the  
83 certificate or certificates of a charged party for a minimum  
84 of thirty days or more including an indefinite period or  
85 may revoke permanently the certificate or certificates of  
86 the charged party, as it sees fit, subject to the prescribed

87 penalties and monetary fines imposed elsewhere in this  
88 chapter.

89 (f) *Integrity of penalties imposed.*—No person whose  
90 certification is suspended or revoked under this provision  
91 can perform any duties under any other certification  
92 issued under chapter twenty or twenty-two of this code,  
93 during the period of the suspension imposed herein.

94 (g) Any party adversely affected by a final order or  
95 decision issued by the board hereunder shall be entitled  
96 to judicial review thereof pursuant to section four, article  
97 five, chapter twenty-nine-a of this code.

**§22-1-30a. Certification of mine foreman or assistant mine  
foreman whose license to engage in similar ac-  
tivities suspended in another state.**

1 Any person whose license, certificate or similar au-  
2 thority to perform any supervisory or fire boss duties  
3 in another state has been suspended or revoked by that  
4 state cannot be certified under any provision of this  
5 chapter during the period of such suspension or revoca-  
6 tion in the other state.

**ARTICLE 2. COAL MINES.**

- §22-2-7. When underground mine foreman-fire boss required; assistants; certification.
- §22-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors; instruction of apprentice miners.
- §22-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using flame safety lamps; records of examination; maintenance of methane detectors, etc.
- §22-2-13. Daily inspection of working places; records.
- §22-2-14. Safety inspections; removal of gases.
- §22-2-26. Roof control programs and plans; refusal to work under unsupported roof.
- §22-2-28a. Equipment to conform with height of seam.
- §22-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.
- §22-2-38. Transportation of men by cars; self-propelled equipment; belts.
- §22-2-40. General provisions.
- §22-2-42. Telephone service or communication facilities.
- §22-2-49. Safeguards for mechanical equipment.
- §22-2-53a. Railroad cars; dumping areas.
- §22-2-60. Accessible outlets; safe roadways for emergencies; accessibility of first aid equipment; use of special capsule for removal of personnel.
- §22-2-70a. Right of miner to refuse to operate unsafe equipment.
- §22-2-70b. Long wall and short wall mining.

§22-2-70c. Shafts, slopes and construction of surface facilities; legislative findings; duties of director to promulgate rules and regulations.

§22-2-70d. Control of respirable dust.

**§22-2-7. When underground mine foreman—fire boss required; assistants; certification.**

1 (a) In every underground mine where five or more  
2 persons are employed in a period of twenty-four hours,  
3 the operator shall employ at least one person certified  
4 in accordance with the provisions of article six-a of this  
5 chapter as a mine foreman—fire boss. Each applicant  
6 for certification as a mine foreman—fire boss shall, at  
7 the time he is issued a certificate of competency: (1)  
8 Be a resident or employed in a mine in this state; (2)  
9 have had at least five years' experience in the under-  
10 ground working, ventilation and drainage of a coal mine,  
11 which shall include at least eighteen months' experience  
12 on or at a working section of an underground mine or  
13 be a graduate of the school of mines at West Virginia  
14 University or of another accredited mining engineering  
15 school or be a graduate of an accredited engineering  
16 school with a bachelor's degree in mining engineering  
17 technology, electrical, mechanical or civil engineering;  
18 and have had at least two years' practical experience in  
19 an underground mine, which shall include at least eigh-  
20 teen months' experience on or at a working section of  
21 an underground mine; or be a graduate of an accredited  
22 college or university with an associate degree in mining,  
23 electrical, mining engineering technology, mechanical  
24 engineering or civil engineering and have had at least  
25 four years' practical experience in an underground mine,  
26 which shall include at least eighteen months' experience  
27 on or at a working section of an underground mine;  
28 and (3) have demonstrated his knowledge of dangerous  
29 mine gases and their detection, mine safety, first aid,  
30 safety appliances, state and federal mining laws and  
31 regulations and other subjects by completing such train-  
32 ing, education and examinations as may be required of  
33 him under article six-a of this chapter.

34 (b) In mines in which the operations are so extensive  
35 that the duties devolving upon the mine foreman—fire

36 boss cannot be discharged by one man, one or more as-  
37 assistant mine foremen—fire bosses may be designated.  
38 Such persons shall act under the instruction of the mine  
39 foreman—fire boss, who shall be responsible for their  
40 conduct in the discharge of their duties. Each assistant  
41 so designated shall be certified under the provisions of  
42 article six-a of this chapter. Each applicant for certifica-  
43 tion as assistant mine foreman—fire boss shall, at the  
44 time he is issued a certificate of competency, possess all  
45 of the qualifications required of a mine foreman—fire boss:  
46 *Provided*, That he shall at the time he is certified be re-  
47 quired to have at least three years' experience in the  
48 underground working, ventilation and drainage of coal  
49 mines, which shall include eighteen months on or at a  
50 working section of an underground mine or be a gradu-  
51 ate of the school of mines at West Virginia University  
52 or of another accredited mining engineering school or  
53 be a graduate of an accredited engineering school with  
54 a bachelor's degree in mining engineering technology,  
55 electrical, mechanical or civil engineering; and have had  
56 twelve months' practical experience in an underground  
57 mine, all of which shall have been on or at a working  
58 section or be a graduate of an accredited college or uni-  
59 versity with an associate degree in mining, electrical,  
60 mining engineering technology, mechanical or civil engi-  
61 neering and have had at least two years' practical experi-  
62 ence in an underground mine, which shall include at  
63 least eighteen months' experience on or at a working  
64 section of an underground mine.

65 (c) Until the first day of January, one thousand nine  
66 hundred seventy-seven, in mines in which the operations  
67 are so extensive that all the duties devolving upon the  
68 mine foreman—fire boss cannot be discharged by one  
69 man, competent persons having had at least three years'  
70 experience in coal mines may be designated as assis-  
71 tants, who shall act under the mine foreman—fire boss'  
72 instructions and the mine foreman—fire boss shall be  
73 responsible for their conduct in the discharge of their  
74 duties under such designation.

75 (d) Any person holding a mine foreman's certificate  
76 issued by any other state may act in the capacity of mine



77 foreman—fire boss in any mine in this state until the  
78 next regular mine foreman—fire boss' examination held  
79 by the department, but not to exceed a maximum of  
80 ninety days.

81 (e) After the effective date of this section, all duties  
82 heretofore performed by persons certified as mine fore-  
83 man, assistant mine foreman or fire boss shall be per-  
84 formed by persons certified as underground mine foreman  
85 —fire boss or an assistant underground mine foreman—  
86 fire boss.

87 After the effective date of this section, every certificate  
88 heretofore issued to an assistant mine foreman or fire  
89 boss shall be deemed to be of equal value to a certificate  
90 issued hereafter to an assistant mine foreman—fire boss,  
91 and every certificate heretofore issued to a mine foreman  
92 shall be deemed to be of equal value to a certificate issued  
93 hereafter to a mine foreman—fire boss.

**§22-2-8. Duties; ventilation; loose coal, slate or rocks; props;  
drainage of water; man doors; instruction of ap-  
prentice miners.**

1 (a) The duties of the mine foreman shall be to keep a  
2 careful watch over the ventilating apparatus, the airways,  
3 traveling ways, pumps and drainage. He shall see that,  
4 as the miners advance their excavations, proper break-  
5 throughs are made so as to ventilate properly the mine;  
6 that all loose coal, slate and rock overhead in the work-  
7 ing places and along the haulways are removed or care-  
8 fully secured so as to prevent danger to persons em-  
9 ployed in such mines, and that sufficient suitable props,  
10 caps, timbers, roof bolts, or other approved methods of  
11 roof supports are furnished for the places where they are  
12 to be used and delivered at suitable points. The mine  
13 foreman shall have all water drained or hauled out of the  
14 working places where practicable, before the miners enter,  
15 and such working places shall be kept dry as far as  
16 practicable while the miners are at work. It shall be the  
17 duty of the mine foreman to see that proper crosscuts  
18 are made, and that the ventilation is conducted by means  
19 of such crosscuts through the rooms by means of checks

20 or doors placed on the entries or other suitable places, and  
21 he shall not permit any room to be opened in advance of  
22 the ventilation current. The mine foreman or other certi-  
23 fied persons designated by him, shall measure the air  
24 current with an anemometer or other approved device at  
25 least weekly at the inlet and outlet at or near the faces  
26 of the advanced headings, and shall keep a record of such  
27 measurements in a book or upon a form prescribed by the  
28 director of the department of mines. Signs directing the  
29 way to outlets or escapeways shall be conspicuously  
30 placed throughout the mine.

31 (b) After the effective date of this article, hinged man  
32 doors, at least thirty inches square or the height of the  
33 coal seam, shall be installed between the intake and  
34 return at intervals of three hundred feet when the height  
35 of the coal is below forty-eight inches and at intervals of  
36 five hundred feet when the height of the coal is above  
37 forty-eight inches.

38 (c) The duties of the mine foreman and assistant mine  
39 foreman shall include the instruction of apprentice min-  
40 ers in the hazards incident to any new work assignments;  
41 to assure that any individual given a work assignment in  
42 the working face without prior experience on the face is  
43 instructed in the hazards incident thereto and supervised  
44 by a miner with experience in the tasks to be performed.

**§22-2-12. Instruction of employees and supervision of appren-  
tices; annual examination of persons using flame  
safety lamps; records of examination; maintenance  
of methane detectors, etc.**

1 The department of mines shall prescribe and establish  
2 a course of instruction in mine safety and particularly  
3 in dangers incident to such employment in mines and in  
4 mining laws and rules, which course of instruction shall  
5 be successfully completed within twelve weeks after any  
6 person shall be first employed as a miner. It shall further  
7 be the duty and responsibility of the department of mines  
8 to see that such course shall be given to all persons as  
9 above provided after their first being employed in any  
10 mine in this state.

11 It shall be the duty of the mine foreman or the  
12 assistant mine foreman of every coal mine in this state to  
13 see that every person employed to work in such mine  
14 shall, before beginning work therein, be instructed in  
15 the particular danger incident to his work in such mine,  
16 and be furnished a copy of the mining laws and rules of  
17 such mine. It shall be the duty of every mine operator  
18 who employs apprentices, as that term is used in sections  
19 three and four, article six of this chapter, to ensure that  
20 the apprentices are effectively supervised with regard to  
21 safety practices and to instruct apprentices in safe mining  
22 practices. Every apprentice shall work under the direction  
23 of the mine foreman or his assistant mine foreman and  
24 they shall be responsible for his safety. The mine foreman  
25 or assistant mine foreman may delegate the supervision  
26 of an apprentice to an experienced miner, but the fore-  
27 man and his assistant mine foreman shall remain re-  
28 sponsible for the apprentice. During the first ninety days of  
29 employment in a mine, the apprentice shall work within  
30 sight and sound of the mine foreman, assistant mine fore-  
31 man, or an experienced miner, and in such a location  
32 that the mine foreman, assistant mine foreman or ex-  
33 perience miner can effectively respond to cries for help  
34 of the apprentice. Such location shall be on the same side  
35 of any belt, conveyor or mining equipment.

36 Persons whose duties require them to use a flame  
37 safety lamp or other approved methane detectors shall  
38 be examined at least annually as to their competence by  
39 a qualified official from the West Virginia department of  
40 mines and a record of such examination shall be kept by  
41 the operator and the department of mines. Flame safety  
42 lamps and other approved methane detectors shall be  
43 given proper maintenance and shall be tested before each  
44 working shift. Each operator shall provide for the proper  
45 maintenance and care of the permissible flame safety  
46 lamp or any other approved device for detecting methane  
47 and oxygen deficiency by a person trained in such  
48 maintenance, and, before each shift, care shall be taken  
49 to ensure that such lamp or other device is in a permis-  
50 sible condition.

**§22-2-13. Daily inspection of working places; records.**

1 Before the beginning of any shift upon which they  
2 shall perform supervisory duties, the mine foreman or  
3 his assistant shall review carefully and countersign all  
4 books and records reflecting the conditions and the areas  
5 under their supervision, exclusive of equipment logs,  
6 which the operator is required to keep under this chapter.  
7 The mine foreman, assistant mine foreman or fire boss  
8 shall visit and carefully examine each working place in  
9 which miners will be working at the beginning of each  
10 shift before any face equipment is energized and shall  
11 examine each working place in the mine at least once  
12 every two hours each shift while such miners are at work  
13 in such places, and shall direct that each working place  
14 shall be secured by props, timbers, roof bolts, or other  
15 approved methods of roof support or both where neces-  
16 sary to the end that the working places shall be made  
17 safe. The mine foreman or his assistants upon observing  
18 a violation or potential violation of article two of this  
19 chapter or any regulation or any plan or agreement pro-  
20 mulgated or entered into thereunder shall arrange for the  
21 prompt correction thereof. The foreman shall not permit  
22 any miner other than a certified foreman, fire boss, assis-  
23 tant mine foreman, assistant mine foreman—fire boss or  
24 pumper to be on a working section by himself. Should  
25 the mine foreman or his assistants find a place to be in a  
26 dangerous condition, they shall not leave the place until  
27 it is made safe, or shall remove the persons working  
28 therein until the place is made safe by some competent  
29 person designated for that purpose.

30 He shall place his initials, time and the date at or near  
31 each place he examines. He shall also record any danger-  
32 ous conditions and practices found during his examina-  
33 tion in a book provided for that purpose.

**§22-2-14. Safety inspections; removal of gases.**

1 It shall be the duty of the mine foreman, assistant  
2 mine foreman or fire boss to examine all working places  
3 under his supervision for hazards at least once every  
4 two hours during each coal-producing shift, or more

5 often if necessary for safety. In all mines such examina-  
6 tions shall include tests with an approved detector for  
7 methane and oxygen deficiency and may also include  
8 tests with a permissible flame safety lamp. It shall also  
9 be his duty to remove as soon as possible after its dis-  
10 covery any accumulations of explosive or noxious gases  
11 in active workings, and where practicable, any accumu-  
12 lations of explosive or noxious gases in the worked out  
13 and abandoned portions of the mine. It shall be the  
14 duty of the mine foreman, assistant mine foreman or  
15 fire boss to examine each mine within three hours prior  
16 to the beginning of a shift and before any miner in such  
17 shift enters the active workings of the mine.

**§22-2-26. Roof control programs and plans; refusal to work  
under unsupported roof.**

1 (a) Each operator shall undertake to carry out on a  
2 continuing basis a program to improve the roof control  
3 system of each coal mine and the means and measures  
4 to accomplish such system. The roof and ribs of all  
5 active underground roadways, travelways, and working  
6 places shall be supported or otherwise controlled ade-  
7 quately to protect persons from falls of the roof or ribs.  
8 A roof control plan and revisions thereof suitable to the  
9 roof conditions and mining systems of each coal mine and  
10 approved by the director of the department of mines  
11 shall be adopted and set out in printed form before new  
12 operations. The safety committee of the miners of each  
13 mine where such committee exists shall be afforded the  
14 opportunity to review and to submit comments and  
15 recommendations to the director and operator concerning  
16 the development, modification or revision of such roof  
17 control plans. The plan shall show the type of support  
18 and spacing approved by the director. Such plan shall  
19 be reviewed periodically, at least every six months by  
20 the director, taking into consideration any falls of roof  
21 or rib or inadequacy of support of roof or ribs. A copy  
22 of the plan shall be furnished to the director of the  
23 department of mines or his authorized representative  
24 and shall be available to the miners and their representa-  
25 tives.

26 (b) The operator, in accordance with the approved  
27 plan, shall provide at or near each working face and at  
28 such other locations in the coal mine, as the director may  
29 prescribe, an ample supply of suitable materials of proper  
30 size with which to secure the roof thereof of all working  
31 places in a safe manner. Safety posts, jacks, or other  
32 approved devices shall be used to protect the workmen  
33 when roof material is being taken down, crossbars are  
34 being installed, roof bolt holes are being drilled, roof  
35 bolts are being installed, and in such other circumstances  
36 as may be appropriate. Loose roof and overhanging or  
37 loose faces and ribs shall be taken down or supported.  
38 When overhangs or brows occur along rib lines they  
39 shall be promptly removed. All sections shall be main-  
40 tained as near as possible on center. Except in the case  
41 of recovery work, supports knocked out shall be replaced  
42 promptly. Apprentice miners shall not be permitted to  
43 set temporary supports on a working section without  
44 the direct immediate supervision of a certified miner.

45 (c) The operator of a mine has primary responsi-  
46 bility to prevent injuries and deaths resulting from  
47 working under unsupported roof. Every operator shall  
48 require that no person may proceed beyond the last  
49 permanent support unless adequate temporary support  
50 is provided or temporary support is not required under  
51 an approved roof control plan and absence of such sup-  
52 port will not pose a hazard to the miners.

53 (d) The immediate supervisor of any area in which  
54 unsupported roof is located shall not direct or knowingly  
55 permit any person to proceed beyond the last permanent  
56 support unless adequate temporary support is provided  
57 or temporary support is not required under an approved  
58 roof control plan and absence of such support will not  
59 pose a hazard to the miners.

60 (e) No miner shall proceed beyond the last perma-  
61 nent support in violation of a direct or standing  
62 order of an operator, a foreman or an assistant foreman,  
63 unless adequate temporary support is provided or tem-  
64 porary support is not required under an approved roof

65 control plan and absence of such support will not pose  
66 a hazard to the miner.

67 (f) The immediate supervisor of each miner who will  
68 be engaged in any activity involving the securing of roof  
69 or rib during a shift shall, at the onset of any such  
70 shift, orally review those parts of the roof control plan  
71 relevant to the type of mining and roof control to be  
72 pursued by such miner. The time, and parts of the plan  
73 reviewed shall be recorded in a log book kept for such  
74 purpose. Each log book entry so recorded shall be signed  
75 by such immediate supervisor making such entry.

76 (g) Any action taken against a miner due in whole or  
77 in part to his refusal to work under unsupported roof,  
78 where such work would constitute a violation of this  
79 section, is prohibited as an act of discrimination pursuant  
80 to section twenty-one, article one of this chapter. Upon  
81 a finding of discrimination by the appeals board pur-  
82 suant to subsection (b), section twenty-one, article one of  
83 this chapter, the miner shall be awarded by the appeals  
84 board all reliefs available pursuant to subsections (b) and  
85 (c), section twenty-one, article one of this chapter.

**§22-2-28a. Equipment to conform with height of seam.**

1 The use of underground mining equipment of a size  
2 that does not conform to the height of the seam being  
3 mined, which creates unsafe working conditions for the  
4 miner operating the equipment or others, is prohibited.  
5 The board of coal mine health and safety shall promulgate  
6 such rules and regulations as are necessary to effectuate  
7 this section.

**§22-2-37. Haulage roads and equipment; shelter holes; pro-  
hibited practices; signals; inspection.**

1 (a) The roadbed, rails, joints, switches, frogs and other  
2 elements of all haulage roads shall be constructed, in-  
3 stalled and maintained in a manner consistent with speed  
4 and type of haulage operations being conducted to ensure  
5 safe operation. Where transportation of personnel is  
6 exclusively by rail, track shall be maintained to within  
7 five hundred feet of the nearest working face.

8 (b) Track switches, except room and entry development  
9 switches, shall be provided with properly installed throws,  
10 bridle bars and guard rails; switch throw and stands,  
11 where possible, shall be placed on the clearance side.

12 (c) Haulage roads on entries developed after the effective  
13 date of this article shall have a continuous, un-  
14 obstructed clearance of at least twenty-four inches from  
15 the farthest projection of any moving equipment on the  
16 clearance side.

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

19 (e) On the trolley wire or "tight" side, after the effective  
20 date of this article, there shall be at least twelve  
21 inches of clearance from the farthest projection of any  
22 moving equipment.

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

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

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

34 (i) Shelter holes shall be provided along haulage entries  
35 driven after the effective date of this article where  
36 locomotive, rope or animal haulage is used. Such shelter  
37 holes shall be spaced not more than one hundred feet  
38 apart; they shall be on the side of the entry opposite the  
39 trolley wire: *Provided*, That where belt haulage and  
40 secondary track haulage are located in the same entry,  
41 shelter holes may be on the trolley wire and feeder  
42 wire side if the trolley wire and feeder wire are guarded  
43 in a manner approved by the director of the department  
44 of mines.

45 (j) Shelter holes made after the effective date of this



46 article shall be at least five feet in depth, not more than  
47 four feet in width, and as high as the traveling space.  
48 Room necks and crosscuts may be used as shelter holes  
49 even though their width exceeds four feet.

50 (k) Shelter holes shall be kept clear of refuse and  
51 other obstructions.

52 (l) After the effective date of this article, shelter holes  
53 shall be provided at switch throws and manually oper-  
54 ated permanent doors.

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

60 (n) Underground equipment powered by internal  
61 combustion engines using petroleum products, alcohol,  
62 or any other compound shall not be used in a coal mine.

63 (o) Locomotives, personnel carriers, mine cars, supply  
64 cars, shuttle cars, and all other haulage equipment shall  
65 be maintained in a safe operating condition. Each loco-  
66 motive, personnel carrier, barrier tractor and other re-  
67 lated equipment shall be equipped with a suitable lifting  
68 jack and handle. An audible warning device and head-  
69 lights shall be provided on each locomotive and each  
70 shuttle car. All other mobile equipment, using the face  
71 areas of the mine, purchased after the effective date of  
72 this article, shall be provided with a conspicuous light or  
73 other approved device so as to reduce the possibility of  
74 collision.

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

80 (q) The pushing of trips, except for switching purposes,  
81 is prohibited on main haulage roads: *Provided*, That  
82 nothing herein shall prohibit the use of a pusher loco-  
83 motive to assist the locomotive pulling a trip. Motormen  
84 and trip riders shall use care in handling locomotives

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

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

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

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

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

124 (3) The dispatcher's only duty shall be to direct  
125 traffic. Where a dispatcher is employed, no person shall  
126 move a locomotive, personnel carrier or self-propelled  
127 equipment on or onto haulageways without instructions  
128 from the dispatcher.

129 (4) Any dispatcher's station provided after the effec-  
130 tive date of this article shall be on the surface.

131 (5) All self-propelled track equipment shall be equip-  
132 ped with two-way communications.

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

136 (v) A locomotive following another trip shall maintain  
137 a distance of at least three hundred feet from the rear  
138 end of the trip ahead, unless such locomotive is coupled  
139 to the trip ahead.

140 (w) Positive stopblocks or derails shall be installed on  
141 all tracks near the top and at landings of shafts, slopes, and  
142 surface inclines. Positive-acting stopblocks or derails  
143 shall be used where necessary to protect persons from  
144 danger of runaway haulage equipment.

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

147 (y) Mining equipment shall not be parked within fifteen  
148 feet of a check curtain or fly curtain.

**§22-2-38. Transportation of men by cars; self-propelled equip-  
ment; belts.**

1 (a) Man trips shall be pulled, unless self-propelled,  
2 at safe speeds consistent with the condition of roads and  
3 type of equipment used, but not to exceed twelve miles  
4 an hour. Each man trip shall be under the charge of a  
5 certified person or other competent person designated  
6 by a mine foreman or assistant mine foreman. It shall be  
7 operated independently of any loaded trip of coal or other  
8 heavy material, but may transport tools, small machine  
9 parts and supplies. When mine cars are used for man  
10 trips, a locomotive shall be used on each end of the trip.

11 (b) Cars on the man trip shall not be overloaded, and

12 sufficient cars in good mechanical condition shall be  
13 provided. Sufficient space shall be afforded so that no  
14 miner shall have to be transported in a hazardous posi-  
15 tion.

16 (c) No person shall ride under the trolley wire unless  
17 the man cars used are suitably covered and insulated.  
18 No person shall ride on loaded timber cars, loaded supply  
19 trucks, empty timber cars or empty supply trucks which  
20 are not equipped with side guards, on top of locomotives,  
21 on chain conveyors, inside shuttle cars, on the tops of  
22 machinery or equipment, or on the sides of machinery or  
23 equipment, except for operators of such machinery or  
24 equipment.

25 (d) Men shall not load or unload before the cars in  
26 which they are to ride, or are riding, come to a full stop.  
27 Men shall proceed in an orderly manner to and from man  
28 trips.

29 (e) When belts are used for transporting men, a mini-  
30 mum clearance of eighteen inches shall be maintained  
31 between the belt and the roof or crossbars, projecting  
32 equipment, cap pieces, overhead cables, wiring and other  
33 objects. Visible reflectors shall be placed where project-  
34 ed equipment, cap pieces, overhead cables, wiring or other  
35 pieces cross the belt line. Where the height of the coal  
36 seam permits, the clearance shall not be less than twenty-  
37 four inches.

38 (f) The belt speed shall not exceed two hundred  
39 fifty feet per minute where the minimum overhead clear-  
40 ance is eighteen inches, or three hundred feet per minute  
41 where the minimum overhead clearance is twenty-four  
42 inches, while men are loading, unloading, or being trans-  
43 ported. A signaling system or method shall be provided  
44 for stopping the belt and men shall ride not less than  
45 six feet apart.

46 (g) An assistant mine foreman or some other person  
47 designated by the mine foreman shall supervise the load-  
48 ing and unloading of belts and man trips. Where men  
49 are required to cross over belts, adequate and safe facilities  
50 shall be provided.

51 (h) Positive-acting stop controls shall be installed  
52 along all belt conveyors used to transport men, and such  
53 controls shall be readily accessible, and maintained so  
54 that the belt can be stopped or started at any location.

55 (i) Belt conveyors used for man trips shall be stopped  
56 while men are loading or unloading.

57 (j) There shall be at least thirty-six inches of side  
58 clearance where men board or leave such belt con-  
59 veyors.

60 (k) Adequate illumination including colored lights or  
61 reflective signs shall be installed at all loading and  
62 unloading stations. Such colored lights and reflective  
63 signs shall be so located as to be observable to all  
64 persons riding the belt conveyor.

65 (l) Telephone or other suitable communications shall  
66 be provided at points where men are regularly loaded on  
67 or unloaded from belt conveyors.

68 (m) After supplies have been transported on man trip  
69 cars, such cars shall be examined for unsafe conditions  
70 prior to the transportation of men.

71 (n) While trackmen are working on haulageways, the  
72 dispatcher, or if there is no dispatcher, such other person  
73 responsible for communications with haulage crews shall  
74 give notice to haulage crews to maintain traffic under a  
75 slow and safe operating speed at the point of construction  
76 or repair.

#### §22-2-40. General provisions.

1 Operators of coal mines in which electricity is  
2 used as a means of power shall comply with the follow-  
3 ing provisions:

4 (1) All surface transformers, unless of a construction  
5 which will eliminate shock hazards, or unless installed  
6 at least eight feet above ground, shall be enclosed in a  
7 house or surrounded by a fence at least six feet high.  
8 If the enclosure is of metal, it shall be grounded effec-  
9 tively. The gate or door to the enclosure shall be

- 10 kept locked at all times, unless authorized persons are  
11 present.
- 12 (2) Underground transformers shall be air cooled or  
13 cooled with noninflammable liquid or inert gas.
- 14 (3) Underground stations containing circuit breakers  
15 filled with inflammable liquids shall be put on a separate  
16 split of air or ventilated to the return air, and shall be  
17 of fireproof construction.
- 18 (4) Transformers shall be provided with adequate  
19 overload protection.
- 20 (5) "Danger—High Voltage" signs with the voltage  
21 indicated shall be posted conspicuously on all transformer  
22 enclosures, high-potential switchboards and other high-  
23 potential installations.
- 24 (6) Dry insulating platforms of rubber or other suit-  
25 able nonconductive material shall be kept in place at  
26 each switchboard and at stationary machinery where  
27 shock hazards exist.
- 28 (7) Capacitors used for power factor connection shall  
29 be noninflammable liquid filled. Suitable drain-off re-  
30 sistors or other means to protect workman against electric  
31 shock following removal of power shall be provided.
- 32 (8) All unattended underground loading points where  
33 electric driven hydraulic systems are used shall utilize  
34 a fireproof oil or emulsion.
- 35 (9) Before electrical changes are made to permissible  
36 equipment for use in a mine, they shall be approved by  
37 the director of the department of mines.
- 38 (10) Reverse current protection shall be provided at  
39 storage battery charging stations to prevent the storage  
40 batteries from energizing the power circuits in the event  
41 of power failure.
- 42 (11) In all mines all junction or distribution boxes  
43 used for making multiple power connections in by the  
44 last open crosscut shall be permissible.

45 (12) All hand-held electric drills, blower and ex-  
46 haust fans, electric pumps, and such other low horse-  
47 power electric face equipment which are taken into or  
48 used inby the last open crosscut of any coal mine shall be  
49 permissible.

50 (13) All electric face equipment which is taken into  
51 or used inby the last open crosscut of any coal mine  
52 shall be permissible.

53 (14) In mines operated in coal seams which are located  
54 at elevations above the water table, the phrase "coal  
55 seams above the water table" means coal seams in a  
56 mine which are located at an elevation above a river  
57 or the tributary of a river into which a local surface  
58 water system naturally drains.

59 (15) The operator of each coal mine shall maintain  
60 in permissible condition all electric face equipment, which  
61 is taken into or used inby the last open crosscut of any  
62 mine.

63 (16) Except where permissible power connection units  
64 are used, all power-connection points outby the last open  
65 crosscut shall be in intake air.

66 (17) All power circuits and electric equipment shall  
67 be deenergized before work is done on such circuits and  
68 equipment, except when necessary for trouble shooting  
69 or testing.

70 (18) Energized trolley wires may be repaired only  
71 by a person trained to perform electrical work and to  
72 maintain electrical equipment and the operator of a  
73 mine shall require that such persons wear approved and  
74 tested insulated shoes and wireman's gloves.

75 (19) No electrical work shall be performed on low-,  
76 medium-, or high-voltage distribution circuits or equip-  
77 ment, except by a qualified person or by a person trained  
78 to perform electrical work and to maintain electrical  
79 equipment under the direct supervision of a qualified  
80 person. Disconnecting devices shall be locked out and  
81 suitably tagged by the persons who perform such work,

82 except that in cases where locking out is not possible,  
83 such devices shall be opened and suitably tagged by  
84 such persons who installed them, or, if such persons are  
85 unavailable, by persons authorized by the operator or  
86 his agent.

87 (20) All electric equipment shall be examined weekly,  
88 tested, and properly maintained by a qualified person to  
89 assure safe operating conditions. When a potentially  
90 dangerous condition is found on electric equipment, such  
91 equipment shall be removed from service until such  
92 condition is corrected. A record of such examinations  
93 shall be kept and made available to an authorized repre-  
94 sentative of the director of the department of mines and  
95 to the miners in such mine.

96 (21) All electric conductors shall be sufficient in size  
97 and have adequate current-carrying capacity and be of  
98 such construction that a rise in temperature resulting  
99 from normal operation will not damage the insulating  
100 material.

101 (22) All electrical connections or splices in conductors  
102 shall be mechanically and electrically efficient, and suit-  
103 able connectors shall be used. All electrical connections  
104 or splices in insulated wire shall be reinsulated at least  
105 to the same degree of protection as the remainder of the  
106 wire.

107 (23) Cables shall enter metal frames of motors, splice  
108 boxes, and electric compartment only through proper  
109 fittings. When insulated wire, other than cables pass  
110 through metal frames, the holes shall be substantially  
111 bushed with insulated bushings.

112 (24) All power wire (except trailing cables on mobile  
113 equipment, specially designed cables conducting high-  
114 voltage power to underground rectifying equipment or  
115 transformers, or bare or insulated ground and return  
116 wires) shall be supported on well-installed insulators and  
117 shall not contact combustible material, roof or ribs.

118 (25) Power wires and cables, including but not limited  
119 to phone communication and control wires, except trolley



120 wires, trolley feeder wires and bare signal wires, shall  
121 be insulated adequately and fully protected. The pro-  
122 visions of this subdivision shall not become effective until  
123 the first day of January, one thousand nine hundred  
124 seventy-eight.

125 (26) Automatic circuit-breaking devices or fuses of  
126 the correct type and capacity shall be installed so as to  
127 protect all electric equipment and circuits against short  
128 circuit and overloads. Three-phase motors on all electric  
129 equipment shall be provided with overload protection  
130 that will deenergize all three phases in the event that  
131 any phase is overloaded.

132 (27) Incandescent lamps installed along haulageways  
133 and at other locations shall not contact combustible  
134 material, and if powered from trolley or direct current  
135 feeder circuits, need not be provided with separate  
136 short circuits or overload protection, if the lamp is not  
137 more than eight feet in distance from such circuits.

138 (28) In all main power circuits, disconnecting  
139 switches shall be installed underground within five hun-  
140 dred feet of the bottoms of shafts and boreholes through  
141 which main power circuits enter the underground area  
142 of the mine and within five hundred feet of all other  
143 places where main power circuits enter the underground  
144 area of the mine.

145 (29) All electric equipment shall be provided with  
146 switches or other controls that are safely designed, con-  
147 structed and installed.

148 (30) Each underground, exposed power conductor that  
149 leads underground shall be equipped with suitable light-  
150 ning arrestors of approved type within one hundred  
151 feet of the point where the circuit enters the mine.  
152 Lightning arrestors shall be connected to a low-resistance  
153 grounding medium on the surface which shall be sepa-  
154 rated from neutral ground by a distance of not less than  
155 twenty-five feet.

156 (31) Except for areas of a coal mine inby the last  
157 open crosscut, incandescent lamps may be used to illumi-

158 nate underground areas. When incandescent lamps are  
159 used in a track entry or belt entry or near track entries  
160 to illuminate special areas other than structures, the  
161 lamps shall be installed in weatherproof sockets located  
162 in positions such that the lamps will not come in contact  
163 with any combustible material. Lamps used in all other  
164 places must be of substantial construction and be fitted  
165 with a glass enclosure.

166 (32) An authorized representative may require in any  
167 mine that electric face equipment be provided with de-  
168 vices that will permit the equipment to be deenergized  
169 quickly in the event of an emergency.

170 (33) An authorized representative of the director  
171 shall require manually operated emergency stop switches,  
172 designed to deenergize the traction motor circuit when  
173 the contractors or controller fail to open, to be installed  
174 on all battery powered tractors, taken into or used in by  
175 the last open crosscut of any entry or room.

176 (34) Trailing cables used in coal mines shall meet the  
177 requirements for flame-resistant cables.

178 (35) Short circuit protection for trailing cables shall  
179 be provided by an automatic circuit breaker or other  
180 no less effective device approved by the director of the  
181 department of mines of adequate current-interrupting  
182 capacity in each ungrounded conductor. Disconnecting  
183 devices used to disconnect power from trailing cables  
184 shall be plainly marked and identified and such devices  
185 shall be equipped or designed in such a manner that it  
186 can be determined by visual observation that the power  
187 is disconnected.

188 (36) When two or more trailing cables junction to  
189 the same distribution center, means shall be provided to  
190 assure against connecting a trailing cable to the wrong  
191 size circuit breaker.

192 (37) One temporary splice may be made in any trailing  
193 cable. Such trailing cable may only be used for the next  
194 twenty-four-hour period. No temporary splice shall be  
195 made in a trailing cable within twenty-five feet of the

196 machine, except cable reel equipment. Temporary splices  
197 in trailing cables shall be made in a workmanlike manner  
198 and shall be mechanically strong and well insulated.  
199 Trailing cables or hand cables which have exposed wires  
200 or which have splices that heat or spark under load  
201 shall not be used. As used in this section, the term  
202 "splice" means a mechanical joining of one or more con-  
203 ductors that have been severed.

204 (38) When permanent splices in trailing cables are  
205 made, they shall be:

206 (A) Mechanically strong with adequate electrical  
207 conductivity and flexibility,

208 (B) Effectively insulated and sealed so as to exclude  
209 moisture, and

210 (C) Vulcanized or otherwise treated with suitable  
211 materials to provide flame-resistant qualities and good  
212 bonding to the outer jacket.

213 (39) Trailing cables shall be clamped to machines in  
214 a manner to protect the cables from damage and to  
215 prevent strain on the electrical connections. No cables  
216 will be hung in a manner which will damage the insula-  
217 tion or conductors.

218 (40) Trailing cables shall be adequately protected to  
219 prevent damage by mobile equipment.

220 (41) Trailing cable and power cable connections to  
221 junction boxes and to electrical equipment shall not be  
222 made or broken under load.

223 (42) All metallic sheaths, armors and conduits en-  
224 closing power conductors shall be electrically continuous  
225 throughout and shall be grounded by methods approved  
226 by an authorized representative of the director of the  
227 department of mines.

228 (43) Except where waived by the director, metallic  
229 frames, casings and other enclosures of electric equip-  
230 ment that can become alive through failure of insulation  
231 or by contact with energized parts shall be grounded,  
232 and on or before the first day of January, one thousand

233 nine hundred seventy-eight, shall have a ground monitor-  
234 ing system.

235 (44) In instance where single-phase 110-220 volt cir-  
236 cuits are used to feed electrical equipment, the only  
237 method of grounding that will be approved is the con-  
238 nection of all metallic frames, casings and other enclo-  
239 sures of such equipment to a separate grounding conduc-  
240 tor which establishes a continuous connection to a  
241 grounded center tap of the transformer.

242 (45) The attachment of grounding wires to a mine  
243 tract or other grounded power conductor will be approved  
244 if separate clamps, suitable for such purpose, are used  
245 and installed to provide a solid connection.

246 (46) The frames of all offtrack direct-current machines  
247 and the enclosures of related detached components shall  
248 be effectively grounded or otherwise maintained at no  
249 less safe voltages.

250 (47) Installation of silicon diodes shall be restricted  
251 to electric equipment receiving power from a direct-  
252 current system with one polarity grounded. Where such  
253 diodes are used on circuits having a nominal voltage  
254 rating of two hundred fifty, they must have a forward  
255 current rating of four hundred amperes or more, and  
256 have a peak inverse voltage rating of four hundred or  
257 more. Where such diodes are used on circuits having  
258 nominal voltage rating of five hundred fifty, they must  
259 have a forward current rating of two hundred fifty  
260 amperes or more, and have a peak inverse voltage rating  
261 of eight hundred or more.

262 (48) In addition to the grounding diode, a polarizing  
263 diode must be installed in the machine control circuit  
264 to prevent operation of the machine when the polarity  
265 of a trailing cable is reversed.

266 (49) When installed on permissible equipment, all  
267 grounding diodes, over-current devices, and polarizing  
268 diodes must be placed in explosion-proof compartments.

269 (50) High-voltage lines, both on the surface and  
270 underground, shall be deenergized and grounded before

271 work is performed on them, except that repairs may be  
272 permitted, in the case of energized surface high-voltage  
273 lines, if such repairs are made by a qualified person in  
274 accordance with procedures and safeguards, including,  
275 but not limited to, a requirement that the operator of  
276 such mine provide, test and maintain protective devices  
277 in making such repairs.

278 (51) When two or more persons are working on an  
279 energized high-voltage surface line simultaneously, and  
280 any one of them is within reach of another, such per-  
281 sons shall not be allowed to work on different phases or  
282 on equipment with different potentials.

283 (52) All persons performing work on energized high-  
284 voltage surface lines shall wear protective rubber gloves,  
285 sleeves, and climber guards if climbers are worn. Pro-  
286 tective rubber gloves shall not be worn wrong side  
287 out or without protective leather gloves. Protective  
288 devices worn by a person assigned to perform repairs  
289 on high-voltage surface lines shall be worn continuously  
290 from the time he leaves the ground until he returns  
291 to the ground, and, if such devices are employed for  
292 extended periods, such person shall visually inspect the  
293 equipment assigned him for defects before each use, and,  
294 in no case, less than twice each day.

295 (53) Disconnecting or cutout switches on energized  
296 high-voltage surface lines shall be operated only with  
297 insulated sticks, fuse tongs or pullers which are ade-  
298 quately insulated and maintained to protect the operator  
299 from the voltage to which he is exposed. When such  
300 switches are operated from the ground, the person oper-  
301 ating such devices shall wear protective rubber gloves.

302 (54) Solely for purposes of grounding ungrounded  
303 high-voltage power systems, grounded messenger wires  
304 used to suspend the cables of such systems may be used  
305 as a grounding medium.

306 (55) When not in use, power circuits underground  
307 shall be deenergized on idle days and idle shifts, except  
308 that rectifiers and transformers may remain energized.

309 (56) High-voltage circuits entering the underground  
310 area of any coal mine shall be protected by suitable  
311 circuit breakers of adequate interrupting capacity. Such  
312 breakers shall be equipped with devices to provide pro-  
313 tection against undervoltage, grounded phase, short cir-  
314 cuit and overcurrent.

315 (57) Circuit breakers protecting high-voltage circuits  
316 entering an underground area of any coal mine shall be  
317 located on the surface and in no case installed either  
318 underground or within a drift.

319 (58) One circuit breaker may be used to protect two  
320 or more branch circuits, if the circuit breaker is adjusted  
321 to afford overcurrent protection for the smallest con-  
322 ductor.

323 (59) The grounding resistor, where required, shall be  
324 of the proper ohmic value to limit the voltage drop in  
325 the grounding circuit external to the resistor to not more  
326 than one hundred volts under fault conditions. The  
327 grounding resistor shall be rated for maximum fault  
328 current continuously and insulated from ground for a  
329 voltage equal to the phase-to-phase voltage of the system.

330 (60) High-voltage circuits extending underground and  
331 supplying portable mobile or stationary high-voltage  
332 equipment shall contain either a direct or derived neutral  
333 which shall be grounded through a suitable resistor at  
334 the source transformers, and a grounding circuit, orig-  
335 inating at the grounded side of the grounding resistor,  
336 shall extend along with the power conductors and serve  
337 as a grounding conductor for the frames of all high-  
338 voltage equipment supplied power from the circuit,  
339 except that the director or his authorized representative  
340 may permit ungrounded high-voltage circuits to be  
341 extended underground to feed stationary electrical  
342 equipment if such circuits are either steel armored  
343 or installed in grounded, rigid steel conduit through-  
344 out their entire length, and upon his finding that such  
345 exception does not pose a hazard to the miners. Within  
346 one hundred feet of the point on the surface where  
347 high-voltage circuits enter the underground portion of

348 the mine, disconnecting devices shall be installed and  
349 so equipped or designed in such a manner that it can  
350 be determined by visual observation that the power  
351 is disconnected, except that the director or his authorized  
352 representative may permit such devices to be installed  
353 at a greater distance from such area of the mine if he  
354 determines, based on existing physical conditions, that  
355 such installation will be more accessible at a greater  
356 distance and will not pose any hazard to the miners.

357 (61) High-voltage resistance grounded systems serv-  
358 ing portable or mobile equipment shall include a fail-  
359 safe ground check circuit to monitor continuously the  
360 grounding circuit to assure continuity, and the fail-safe  
361 ground check circuit shall cause the circuit breaker to  
362 open when either the ground or pilot check wire is  
363 broken, or other no less effective device approved by  
364 the director or his authorized representative to assure  
365 such continuity.

366 (62) Underground high-voltage cables used in re-  
367 sistance grounded systems shall be equipped with metal-  
368 lic shields around each power conductor with one or  
369 more ground conductors having a total cross-sectional  
370 area of not less than one half the power conductor, and  
371 with an insulated internal or external conductor not  
372 smaller than No. 10 (A.W.G.) for the ground continuity  
373 check circuit.

374 (63) All such cables shall be adequate for the intended  
375 current and voltage. Splices made in such cables shall  
376 provide continuity of all components.

377 (64) Single-phase loads, such as transformer pri-  
378 maries, shall be connected phase-to-phase.

379 (65) All underground high-voltage transmission cables  
380 shall be installed only in regularly inspected air courses  
381 and haulageways, and shall be covered, buried, or placed  
382 so as to afford protection against damage, guarded where  
383 men regularly work or pass under them unless they  
384 are six and one-half feet or more above the floor or  
385 rail, securely anchored, properly insulated, and guarded

386 at ends, and covered, insulated, or placed to prevent  
387 contact with trolley wires and other low-voltage cir-  
388 cuits.

389 (66) Disconnecting devices shall be installed at the  
390 beginning of branch lines in underground high-voltage  
391 circuits and equipped or designed in such a manner that  
392 it can be determined by visual observation that the cir-  
393 cuit is deenergized when the switches are open.

394 (67) Circuit breakers and disconnecting switches  
395 underground shall be marked for identification.

396 (68) In the case of high-voltage cables used as trailing  
397 cables, temporary splices shall not be used and all  
398 permanent splices shall be made in accordance with the  
399 manufacturers' specifications.

400 (69) Frames, supporting structures and enclosures of  
401 stationary, portable, or mobile underground high-voltage  
402 equipment and all high-voltage equipment supplying  
403 power to such equipment receiving power from resistance  
404 grounded systems shall be effectively grounded to the  
405 high-voltage ground.

406 (70) Low- and medium-voltage power circuits serving  
407 three-phase alternating current equipment serving port-  
408 able or mobile equipment shall be protected by suitable  
409 circuit breakers of adequate interrupting capacity which  
410 are properly tested and maintained as prescribed by the  
411 director. Such breakers shall be equipped with devices  
412 to provide protection against under-voltage, grounded  
413 phase, short circuit and overcurrent.

414 (71) Power centers and portable transformers shall be  
415 deenergized before they are moved from one location to  
416 another, except that, when equipment powered by sources  
417 other than such centers or transformers is not available,  
418 the director may permit such centers and transformers  
419 to be moved while energized, if he determines that an-  
420 other equivalent or greater hazard may otherwise be  
421 created, and if they are moved under the supervision of  
422 a qualified person, and if such centers and transformers



423 are examined prior to such movement by such person  
424 and found to be grounded by methods approved by an  
425 authorized representative of the director and otherwise  
426 protected from hazards to the miner. A record shall be  
427 kept of such examinations. High-voltage cables, other  
428 than trailing cables, shall not be moved or handled at any  
429 time while energized, except that when such centers and  
430 transformers are moved while energized as permitted  
431 under this section, energized high-voltage cables attached  
432 to such centers and transformers may be moved only by a  
433 qualified person and the operator of such mine shall  
434 require that such person wear approved and tested in-  
435 sulated wireman's gloves.

436 (72) Low- and medium-voltage three-phase alternat-  
437 ing-current circuits used underground shall contain either  
438 a direct or derived neutral which shall be grounded  
439 through a suitable resistor at the power center, and a  
440 grounding circuit, originating at the grounded side of  
441 the grounding resistor, shall extend along with the power  
442 conductors and serve as a grounding conductor for the  
443 frames of all the electrical equipment supplied power  
444 from the circuit, except that the director or his autho-  
445 rized representative may permit underground low- and  
446 medium-voltage circuits to be used underground to feed  
447 such stationary electrical equipment if such circuits are  
448 either steel armored or installed in grounded rigid steel  
449 conduit throughout their entire length. The grounding  
450 resistor, where required, shall be of the proper ohmic  
451 value to limit the ground fault current to twenty-five  
452 amperes. The grounding resistor shall be rated for  
453 maximum fault current continuously and insulated from  
454 ground for a voltage equal to the phase-to-phase voltage  
455 of the system.

456 (73) Low- and medium-voltage resistance grounded  
457 systems serving portable or mobile equipment shall in-  
458 clude a fail-safe ground check circuit to monitor con-  
459 tinuously the grounding circuit to assure continuity  
460 which ground check circuit shall cause the circuit breaker  
461 to open when either the ground or pilot check wire is

462 broken, or other not less effective device approved by  
463 the director or his authorized representative to assure  
464 such continuity, except that an extension of time, not in  
465 excess of twelve months, may be permitted by the direc-  
466 tor on a mine-to-mine basis if he determines that such  
467 equipment is not available. Cable couplers shall be con-  
468 structed so that the ground check continuity conductor  
469 shall be broken first and the ground conductors shall  
470 be broken last when the coupler is being uncoupled.

471 (74) Disconnecting devices shall be installed in con-  
472 junction with circuit breakers serving portable or mobile  
473 equipment to provide visual evidence that the power  
474 is connected.

475 (75) Circuit breakers shall be marked for identifica-  
476 tion.

477 (76) Single-phase loads shall be connected phase-to-  
478 phase.

479 (77) Trailing cables for medium-voltage circuits shall  
480 include grounding conductors, a ground check conductor,  
481 and grounded metallic shields around each power con-  
482 ductor or a ground metallic shield over the assembly,  
483 except that on equipment employing cable reels, cables  
484 without shields may be used if the insulation is rated  
485 two thousand volts or more.

486 (78) Trolley wires and trolley feeder wires shall be  
487 provided with cutout switches at intervals of not more  
488 than two thousand feet and near the beginning of all  
489 branch lines.

490 (79) Trolley wires and trolley feeder wires shall be  
491 provided with overcurrent protection.

492 (80) Trolley wires and trolley feeder wires, high-  
493 voltage cables, and transformers shall not be located  
494 within fifteen feet of the last open crosscut and shall be  
495 kept at least one hundred fifty feet from pillar workings.

496 (81) Trolley wires, trolley feeder wires, and bare  
497 signal wires shall be insulated adequately where they  
498 pass through doors and stoppings and where they cross

499 other power wires and cables. Trolley wires and trolley  
500 feeder wires shall be guarded adequately:

501 (A) At all points where men are required to work  
502 or pass regularly under the wires.

503 (B) On both sides of all doors and stoppings.

504 (C) At man-trip stations.

505 (82) Temporary guards shall be provided where track-  
506 men and other persons work in proximity to trolley  
507 wires and trolley feeder wires.

508 (83) Adequate precaution shall be taken to ensure that  
509 equipment being moved along haulageways will not come  
510 in contact with trolley wires or trolley feeder wires.

511 (84) Trolley and feeder wires shall be installed as  
512 follows: Where installed on permanent haulage, they  
513 shall be:

514 (A) At least six inches outside the track gauge line.

515 (B) Kept taut and not permitted to touch the roof,  
516 rib or crossbars. Particular care shall be taken where  
517 they pass through door openings to preclude bare wires  
518 from coming in contact with combustible material.

519 (C) Installations of trolley wire hangers shall be pro-  
520 vided within three feet of each splice in a trolley wire.

**§22-2-42. Telephone service or communication facilities.**

1 Telephone service or equivalent two-way communica-  
2 tion facilities shall be provided in all mines at least one  
3 of which shall be in service at all times as follows:

4 (a) A telephone or equivalent two-way communica-  
5 tion facility shall be located on the surface within five  
6 hundred feet of all main portals, and shall be installed  
7 either in a building or in a box-like structure designed  
8 to protect the facilities from damage by inclement  
9 weather. At least one of these communication facilities  
10 shall be at a location where a responsible person who  
11 is always on duty when men are underground can hear  
12 the facility and respond immediately in the event of an

13 emergency. "Two-way communication facility" shall mean  
14 a system maintained to allow voice contact to come in  
15 and out of the working section at all times.

16 (b) (1) Telephones or equivalent two-way communica-  
17 tion facilities provided at each working section shall be  
18 located not more than five hundred feet outby the last  
19 open crosscut and not more than eight hundred feet from  
20 the farthest point of penetration of the working places on  
21 such section.

22 (2) The incoming communication signal shall activate  
23 an audible alarm, distinguishable from the surrounding  
24 noise level, or a visual alarm that can be seen by a miner  
25 regularly employed on the working section.

26 (3) If a communication system other than telephones  
27 is used and its operation depends entirely upon  
28 power from the mine electric system, means shall be  
29 provided to permit continued communication in the event  
30 the mine electric power fails or is cut off: *Provided*, That  
31 where trolley phones and telephones are both used, an  
32 alternate source of power for the trolley phone system  
33 is not required.

34 (4) Telephones or equivalent two-way communication  
35 facilities shall be maintained in good operating condition  
36 at all times. In the event of any failure in the system  
37 that results in loss of communication, repairs shall be  
38 started immediately, and the system restored to operat-  
39 ing condition as soon as possible.

40 (5) Where required by the director, trucks used for  
41 haulage of coal, men or supplies by an operator shall be  
42 equipped with two-way communication instruments.

43 (c) On or after the first day of January, one thousand  
44 nine hundred seventy-eight, unless the director for good  
45 cause grants a waiver, all such telephones or equivalent  
46 two-way communications shall be connected to regular  
47 telephonic and other means of communication available  
48 in the community so that in the event of an emergency,  
49 emergency medical attendants or other personnel can  
50 communicate from within the mine directly to health care  
51 facilities.

52 (d) Telephone lines and cables shall be carried on  
53 insulators installed on the opposite side from power or  
54 trolley wires, and where they cross power or trolley  
55 wires, they shall be insulated adequately. Lightning ar-  
56 restors shall be provided at the points where telephone  
57 circuits enter the mine.

**§22-2-49. Safeguards for mechanical equipment.**

1 (a) The cutter chains of mining machines shall be  
2 locked securely by mechanical means or electrical inter-  
3 locks while such machines are parked or being trammed.  
4 Loading machines shall not be trammed with loading  
5 arms in motion, except when loading materials.

6 (b) Belt, chain or rope drives and the moving parts of  
7 machinery which are within seven feet of the floor,  
8 ground or platform level, unless isolated, shall be guarded  
9 adequately. Repair pits shall be kept covered or guarded  
10 at all times when not in use. Machinery shall not be  
11 lubricated or repaired while in motion, except where safe  
12 remote lubricating devices are used. Machinery shall not  
13 be started until the person lubricating or repairing it  
14 has given a clear signal. Guards which have been re-  
15 moved shall be replaced before the machinery is again  
16 put into use. Provision shall be made to prevent ac-  
17 cumulations of spilled lubricants.

18 (c) Mechanically operated grinding wheels shall be  
19 equipped with safety washers, substantial retaining hoods,  
20 and, unless goggles are used, eye shields.

21 (d) No person shall stand along the side of the boom,  
22 or pass or stand along the loading head or cutting head,  
23 on a continuous miner or loading machine in operation.

24 (e) Braking devices shall be guarded to prevent ac-  
25 cidental release. When required by the director, track  
26 mounted mobile equipment shall be equipped with  
27 workable sanding devices.

28 (f) On and after the first day of January, one thousand  
29 nine hundred seventy-eight, all battery powered equip-  
30 ment shall be equipped with an under-voltage indicator  
31 which will indicate when the voltage is less than three  
32 fourths of its rated capacity, at which time such equipment

33 shall be withdrawn from use except for the purpose of  
34 returning the vehicle to the recharging station.

**§22-2-53a. Railroad cars; dumping areas.**

1 Employees handling railroad cars shall have access to  
2 and use an approved distinct audible signaling device to  
3 give warning when cars are in motion. Where required by  
4 rule or regulation, safety belts shall be worn and properly  
5 attached by all car droppers handling railroad cars. All  
6 dumping ramps shall be of a sufficient width to ensure  
7 safe operation of vehicles used thereon.

**§22-2-60. Accessible outlets; safe roadways for emergencies;  
accessibility of first aid equipment; use of special  
capsule for removal of personnel.**

1 (a) No operator or mine foreman of any coal mine  
2 shall employ any person to work in such mine, or permit  
3 any persons to be in the mine for the purpose of working  
4 therein unless they are provided with two openings or  
5 outlets to each seam, separated by natural strata, such  
6 openings to be not less than three hundred feet apart,  
7 if the mine be worked by shaft; if the mine be worked  
8 by shaft and slope, such openings shall be separated by  
9 one hundred feet of natural strata; and not less than  
10 fifty feet apart at the outlets, if worked by slope or drift;  
11 but this requirement of a distance of three hundred feet  
12 between openings or outlets to shaft mines shall not apply  
13 where such openings or outlets have been made prior  
14 to the effective date of this article.

15 (b) At least two separate and distinct travelable pas-  
16 sageways designated as escapeways shall be maintained  
17 to ensure passage at all times to any person, including  
18 disabled persons. The escapeway openings to the surface  
19 shall be separated in such manner as shall be prescribed  
20 by the director. If at least two escapeways are not  
21 available for any reason, all miners in the affected area  
22 other than those requisite to remedy the situation shall  
23 be withdrawn from the affected area until such time as  
24 the escapeway is made passable. Where the height of  
25 the coal bed is more than five feet, the escapeways shall  
26 be maintained at a height of at least five feet excluding  
27 necessary roof support, and the travelway in such escape-

28 way shall be maintained at a width of at least six feet,  
29 excluding necessary roof support and in those situations  
30 where the height of the coal bed is less than five feet  
31 the escapeway should be maintained to the height of  
32 the coal bed excluding any necessary roof support, and  
33 the travelway in such escapeway shall be maintained  
34 at a width of at least six feet. At least one escapeway  
35 ventilated with intake air, maintained to the last open  
36 crosscut, shall be provided from each working section  
37 continuously to the nearest available opening on the  
38 surface, and shall be maintained in safe condition and  
39 properly marked. Mine openings shall be adequately  
40 protected to prevent the entrance into the underground  
41 area of the mine of floodwater. Escape facilities ap-  
42 proved by the director of the department of mines,  
43 properly maintained and frequently tested, shall be  
44 present at or in each escape shaft or slope to allow all  
45 persons, including disabled persons, to escape quickly  
46 to the surface in event of an emergency. Return airways  
47 entries designated as escapeways shall be provided with  
48 permissible two-way communication systems to the sur-  
49 face, and such systems shall be located at points not to  
50 exceed every four thousand feet. On or after the first  
51 day of April, one thousand nine hundred seventy-eight,  
52 each operator shall provide lifeline cords, with reflective  
53 material at twenty-five foot intervals, from the last open  
54 crosscut to the surface along a designated escapeway  
55 ventilated by return air: *Provided*, That in case of a  
56 shaft mine such lifeline cords shall extend from the last  
57 open crosscut to the bottom of the designated escape  
58 shaft. Such lifeline cord shall be of durable construction  
59 sufficient to allow miners to see and to use effectively to  
60 guide themselves out of the mine in the event of an  
61 emergency.

62 (c) Escapeways shall be inspected and traveled at  
63 least once each week by a certified mine examiner who  
64 shall place his initials and the date in a conspicuous place  
65 or places and who shall file a written report thereon which  
66 shall be kept on the surface.

67 (d) When new coal mines are opened, not more than  
68 twenty men shall be allowed at any one time in any

69 mine until a connection has been made between the two  
70 mine openings, and such connections shall be made as  
71 soon as possible.

72 (e) When only one opening is available because of  
73 final mining of pillars, not more than twenty miners shall  
74 be allowed in such mine at any one time, and the dis-  
75 tance between the mine opening and working face shall  
76 not exceed five hundred feet.

77 (f) First aid materials and such other equipment as  
78 the director may require shall be maintained within five  
79 hundred feet of each area in which miners are regularly  
80 working to which they may have access in case of an  
81 emergency and for protection against hazards.

82 (g) Each working area of the mine not serviced by  
83 track mounted or rubber tired vehicles which uses con-  
84 veyor belts for removal of coal shall be equipped with a  
85 special capsule in which an injured person can be placed  
86 and transported on the belt to the surface or to other  
87 transportation facilities. The director shall within nine  
88 months of the effective date of this section promulgate  
89 standards and guidelines as to what such "special capsule"  
90 as used in this subsection shall include. Each section of  
91 the mine using or serviced by track mounted or rubber  
92 tired equipment shall have readily available a vehicle  
93 which can be used to promptly remove a person in case of  
94 injury.

**§22-2-70a. Right of miner to refuse to operate unsafe equip-  
ment.**

1 No miner shall be required to operate unsafe equip-  
2 ment. On or before the first day of January, one thousand  
3 nine hundred seventy-eight, the board of coal mine health  
4 and safety shall by rule or regulation establish a procedure  
5 for resolving disputes arising out of the refusal by a  
6 miner to operate such alleged unsafe equipment. No  
7 action shall be taken against a miner by an operator  
8 unless such miner is found to have acted in bad faith  
9 and without good cause by the director or his authorized  
10 representative.

**§22-2-70b. Long wall and short wall mining.**

1 (a) The Legislature finds that new methods of extract-



2 ing coal known as long wall or short wall mining is being  
3 used in this state. The board of coal mine health and  
4 safety shall investigate or cause to be investigated the  
5 technology, procedures and techniques used in such  
6 mining methods and shall promulgate by the first day  
7 of January, one thousand nine hundred seventy-eight, and  
8 continuously update the same, rules and regulations  
9 governing long wall and short wall mining, which rules  
10 and regulations shall have as their paramount objective,  
11 the health and safety of the persons involved in such  
12 operations, and which said regulations shall include, but  
13 not be limited to, the certification of personnel involved in  
14 such operation.

15 (b) The director may modify the application of any  
16 provision of this section to a mine if the director deter-  
17 mines that an alternative method of achieving the result  
18 of such provision exists which will at all times guarantee  
19 no less than the same measure of protection afforded the  
20 miners of such mine by such provision, or that the ap-  
21 plication of such provision to such mine will result in  
22 a diminution of the health of, or safety to, the miners in  
23 such mine. The director shall give notice to the operator  
24 and the representative of miners in the affected mine, as  
25 appropriate, and shall cause such investigation to be  
26 made as he deems appropriate. Such investigation shall  
27 provide an opportunity for a hearing, at the request of  
28 such operator or representative or other interested party,  
29 to enable the operator and the representative of miners  
30 in such mine or other interested party to present informa-  
31 tion relating to the modification of such provision. The  
32 director shall issue a decision incorporating his findings  
33 of fact therein, and send a copy thereof to the operator  
34 and the representative of the miners, as appropriate. Any  
35 such hearing shall be of record.

**§22-2-70c. Shafts, slopes and construction of surface facilities;  
legislative findings; duties of director to promul-  
gate rules and regulations.**

1 The board of coal mine health and safety shall investi-  
2 gate or cause to be investigated the technology, procedures  
3 and techniques used in the construction of shafts, slopes

4 and surface facilities, the safety hazards, attendant there-  
5 with, and shall promulgate by the first day of January,  
6 one thousand nine hundred seventy-eight, and continuous-  
7 ly update the same, rules and regulations governing the  
8 construction of shafts, slopes and surface facilities, which  
9 rules and regulations shall have as their paramount con-  
10 cern, the health and safety of the persons involved in  
11 such operations, and which said regulations shall include,  
12 but not be limited to, the certification of all supervisors,  
13 the certification and training of hoist operators and shaft  
14 workers, the certification of blasters, and approval of  
15 plans. The provisions of such rules and regulations may  
16 be enforced against operators and construction companies  
17 in accord with the provisions of article one of this chapter.  
18 For purposes of this chapter, a construction company  
19 shall be deemed an operator.

**§22-2-70d. Control of respirable dust.**

1 Each operator shall maintain the concentration of  
2 respirable dust in the mine atmosphere during each shift  
3 to which miners in active workings of such mine are  
4 exposed below such level as the board may establish.  
5 The board of the department of mines may promulgate  
6 rules and regulations governing respirable dust, including,  
7 but not limited to, dust standards, sampling procedures,  
8 sampling devices, equipment and sample analysis by using  
9 the data gathered by the federal bureau of mines.

10 Any operator found to be in violation of such standards  
11 shall bring itself into compliance with such standards  
12 and rules and regulations of the board or the director of  
13 mines may thereafter order such operator to discontinue  
14 such operation.

**ARTICLE 2A. BOARD OF COAL MINE HEALTH AND SAFETY.**

§22-2A-1. Declaration of legislative findings and purpose.

§22-2A-2. Definitions.

§22-2A-3. Board created; membership; method of nomination and appointment; meetings; vacancies; quorum.

§22-2A-4. Board powers and duties.

§22-2A-5. Effect of rules and regulations.

§22-2A-6. Reports.

**§22-2A-1. Declaration of legislative findings and purpose.**

1 (a) The Legislature hereby finds and declares that:

2 (1) The Legislature concurs with the Congressional  
3 declaration made in the "Federal Coal Mine Health and  
4 Safety Act of 1969" that "the first priority and concern of  
5 all in the coal mining industry must be the health and  
6 safety of its most precious resource—the miner";

7 (2) Coal mining is highly specialized, technical and  
8 complex and it requires frequent review, refinement and  
9 improvement of standards to protect the health and  
10 safety of miners;

11 (3) During each session of the Legislature, coal mine  
12 health and safety standards are proposed which require  
13 knowledge and comprehension of scientific and technical  
14 data related to coal mining;

15 (4) The formulation of appropriate regulations and  
16 practices to improve health and safety and provide in-  
17 creased protection of miners can be accomplished more  
18 effectively by persons who have experience and com-  
19 petence in coal mining and coal mine health and safety.

20 (b) In view of the foregoing findings, it is the purpose  
21 of this article to:

22 (1) Create a board of coal mine health and safety;

23 (2) Require such board to adopt as standard rules and  
24 regulations the coal mine health and safety provisions of  
25 this chapter;

26 (3) Compel the board to review such standard rules  
27 and regulations and, when deemed appropriate to improve  
28 or enhance coal mine health and safety, to revise the  
29 same or develop and promulgate new rules and regula-  
30 tions dealing with coal mine health and safety; and

31 (4) Authorize such board to conduct such other activ-  
32 ities as it deems necessary to implement the provisions  
33 of this chapter.

**§22-2A-2. Definitions.**

1 Unless the context in which a word or phrase appears  
2 clearly requires a different meaning, the words and

3 phrases defined in section one, article one of this chapter  
4 shall have, when used in this article, the meaning therein  
5 assigned to them. For the purpose of this article "board"  
6 means the board of coal mine health and safety created  
7 by section three of this article.

**§22-2A-3. Board created; membership; method of nomination  
and appointment; meetings; vacancies; quorum.**

1 (a) There is hereby created a board of coal mine health  
2 and safety, which shall consist of seven members who shall  
3 be residents of this state, six of whom shall be appointed  
4 as hereinafter specified in this section.

5 (1) The governor shall appoint one member to represent  
6 the viewpoint of those operators in this state whose in-  
7 dividual aggregate production exceeds one million tons  
8 annually and one member to represent the viewpoint of  
9 those operators in this state whose individual aggregate  
10 production exceeds three hundred fifty thousand tons an-  
11 nually but is less than one million tons annually. When  
12 such members are to be appointed, the governor may  
13 request from the major trade association representing  
14 operators in this state a list of three nominees for each  
15 such position on the board. All such nominees shall be  
16 persons with special experience and competence in coal  
17 mine health and safety. There shall be submitted with  
18 such list a summary of the qualifications of each nominee.  
19 For purposes of this subsection, the major trade as-  
20 sociation representing operators in this state shall be  
21 deemed to be that association which represents operators  
22 accounting for over one half of the coal produced in mines  
23 in this state in the year prior to the year in which the  
24 appointment is to be made.

25 (2) The governor shall appoint one member to represent  
26 the viewpoint of those operators in this state whose indi-  
27 vidual aggregate production is less than three hundred  
28 fifty thousand tons annually which tonnage shall include  
29 tonnage produced by affiliated, parent and subsidiary  
30 companies and tonnage produced by companies which  
31 have a common director or directors, shareholder or share-  
32 holders, owner or owners.

33 (3) Three members who can reasonably be expected  
34 to represent the interests of the working miners in this  
35 state. If the major employee organization representing  
36 coal miners in this state is divided into administrative  
37 districts, the employee organization of each district shall,  
38 upon request by the governor, submit a list of three  
39 nominees for membership on the board. If such major  
40 employee organization is not so divided into administra-  
41 tive districts, such employee organization shall, upon re-  
42 quest by the governor, submit a list of twelve nominees for  
43 membership on the board. The governor shall make such  
44 appointments from the persons so nominated: *Provided,*  
45 That in the event nominations are made by administrative  
46 districts, not more than one member shall be appointed  
47 from the nominees of any one district unless there are  
48 less than three such districts in this state.

49 (4) All appointments made by the governor under this  
50 section shall be with the advice and consent of the  
51 Senate.

52 (b) The seventh member of the board shall be the  
53 director of the department of mines who shall serve as  
54 chairman of the board. The director shall furnish to the  
55 board such secretarial, clerical and other services as are  
56 deemed necessary to the conduct of the business of the  
57 board.

58 (c) The six members of the board to be appointed by  
59 the governor shall be appointed by him within ninety  
60 days of the effective date of this article. As soon as such  
61 members of the board are appointed, the director of the  
62 department of mines shall call an organizational meeting  
63 of the board. At such meeting, the group of members  
64 appointed to represent the viewpoint of operators and the  
65 group of members appointed to represent the viewpoint  
66 of working miners shall draw lots by group to determine  
67 the length of the term the members of each group shall  
68 serve. One member from each group shall serve for  
69 three years; one member from each group shall serve for  
70 two years; and one member from each group shall serve  
71 for one year. Thereafter, members shall be nominated  
72 and appointed in the manner provided in this section and

73 shall serve for a term of three years. The board shall  
74 meet at the call of the director, or upon the request of  
75 any three members of the board: *Provided*, That no meet-  
76 ing of the board for any purpose other than an emergency  
77 shall be conducted unless the board members are notified  
78 at least five days in advance of a proposed meeting. In  
79 cases of an emergency, members may be notified of a  
80 board meeting by the most practical means of com-  
81 munication available.

82 (d) Whenever a vacancy on the board occurs, nomina-  
83 tions and appointments shall be made in the manner  
84 prescribed in this section: *Provided*, That in the case of  
85 an appointment to fill a vacancy, nominations of three  
86 persons for each such vacancy shall be requested by and  
87 submitted to the governor within thirty days after the  
88 vacancy occurs by the major trade association or major  
89 employee organization, if any, which nominated the  
90 person whose seat on the board is vacant. The vacancy  
91 shall be filled by the governor within thirty days of his  
92 receipt of the list of nominations.

93 (e) A quorum of the board shall be five members which  
94 shall include the director, at least two members represent-  
95 ing the viewpoint of operators and at least two members  
96 representing the viewpoint of working miners, and the  
97 board may act officially by a majority of those members  
98 who are present.

**§22-2A-4. Board powers and duties.**

1 (a) At the organizational meeting of the board re-  
2 quired by subsection (c), section three of this article, the  
3 board shall adopt as standard rules and regulations the  
4 "coal mine health and safety provisions of this chapter".  
5 Such standard rules and regulations and any other rules  
6 and regulations shall be adopted by the board without  
7 regard to the provisions of chapter twenty-nine-a of this  
8 code.

9 (b) The board shall review such standard rules and  
10 regulations and, when deemed appropriate to improve or  
11 enhance coal mine health and safety, revise the same or  
12 develop and promulgate new rules and regulations dealing  
13 with coal mine health and safety.

14 (c) The board shall develop, promulgate and revise, as  
15 may be appropriate, rules and regulations as are necessary  
16 and proper to effectuate the purposes of article two of this  
17 chapter and to prevent the circumvention and evasion  
18 thereof, all without regard to the provisions of chapter  
19 twenty-nine-a of this code.

20 (1) Upon consideration of the latest available scientific  
21 data in the field, the technical feasibility of standards,  
22 and experience gained under this and other safety  
23 statutes, such rules and regulations may expand protec-  
24 tions afforded by this chapter notwithstanding specific  
25 language herein, and such rules and regulations may deal  
26 with subject areas not covered by this chapter to the end  
27 of affording the maximum possible protection to the  
28 health and safety of miners.

29 (2) No rules or regulations promulgated by the board  
30 of mines shall reduce or compromise the level of safety  
31 or protection afforded miners below the level of safety  
32 or protection afforded by this chapter.

33 (3) Any miner or representative of any miner, or any  
34 coal operator shall have the power to petition the circuit  
35 court of Kanawha county for a determination as to  
36 whether any rule or regulation promulgated or revised  
37 reduces the protection afforded miners below that provided  
38 by this chapter, or is otherwise contrary to law.

39 (4) The director shall cause proposed rules and regula-  
40 tions and a notice thereof to be posted and in the same  
41 manner as notices, orders and decisions are required to  
42 be posted in section seventeen of this article. The di-  
43 rector shall deliver a copy of such proposed rules and  
44 regulations and accompanying notice to each operator  
45 affected. A copy of such proposed rules and regulations  
46 shall be provided to any individual by the director upon  
47 request. The notice of proposed rules and regulations  
48 shall contain a summary in plain language explaining  
49 the effect of the proposed rules and regulations.

50 (5) The board shall afford interested persons a period  
51 of not less than thirty days after releasing proposed rules  
52 and regulations to submit written data or comments. The  
53 board may, upon the expiration of such period and after

54 consideration of all relevant matters presented, promul-  
55 gate such rules and regulations with such modifications  
56 as it may deem appropriate.

57 (6) On or before the last day of any period fixed for  
58 the submission of written data or comments under sub-  
59 division (5) of this section, any interested person may  
60 file with the board written objections to a proposed  
61 rule or regulation, stating the grounds therefor and re-  
62 questing a public hearing on such objections. As soon as  
63 practicable after the period for filing such objections has  
64 expired, the board shall release a notice specifying the  
65 proposed rules or regulations to which objections have  
66 been filed and a hearing requested.

67 (7) Promptly after any such notice is released by the  
68 board under subdivision (6) of this section, the board  
69 shall issue notice of, and hold, a public hearing for the  
70 purpose of receiving relevant evidence. Within sixty days  
71 after completion of the hearings, the board shall make  
72 findings of fact which shall be public, and may promulgate  
73 such rules and regulations with such modifications as it  
74 deems appropriate. In the event the board determines  
75 that a proposed rule or regulation should not be promul-  
76 gated or should be modified, it shall within a reasonable  
77 time publish the reasons for its determination.

78 (8) All rules and regulations promulgated by the board  
79 shall be published in the state register and shall continue  
80 in effect until modified or superseded in accordance with  
81 the provisions of this chapter.

82 (d) To effectuate the purpose of this article, the board  
83 may, as it deems necessary, conduct research and studies,  
84 employ experts and consultants and use the services,  
85 facilities and personnel of any agency of this state.

#### **§22-2A-5. Effect of rules and regulations.**

1 The standard rules and regulations and any rules and  
2 regulations promulgated by the board shall have the same  
3 force and effect of law as if enacted by the Legislature  
4 as a part of this chapter and any violation of any such  
5 rule and regulation shall be deemed to be a violation of



6 law or of a health or safety standard within the meaning  
7 of this chapter.

**§22-2A-6. Reports.**

1 Prior to each regular session of the Legislature, the  
2 board shall submit to the Legislature an annual report  
3 upon the subject matter of this article, the progress  
4 concerning the achievement of its purpose and any other  
5 relevant information, including any recommendations  
6 it deems appropriate.

**ARTICLE 2C. EMERGENCY MEDICAL PERSONNEL.**

§22-2C-1. Emergency personnel in coal mines.

§22-2C-2. First-aid training of coal mine employees.

**§22-2C-1. Emergency personnel in coal mines.**

1 Emergency medical personnel shall be employed in  
2 every mine in the state. On or before the first day of  
3 July, one thousand nine hundred seventy-eight, at least  
4 one emergency medical attendant as defined in section  
5 two, article four-c, chapter sixteen of this code, paramedic  
6 as defined in section two, article three-b, chapter thirty  
7 of this code, or physician assistant as defined in section  
8 one, article three-a, chapter thirty of this code, shall be  
9 employed at a mine for every seventy employees or any  
10 part thereof who are engaged at one time, in the extrac-  
11 tion, production or preparation of coal: *Provided*, That  
12 the provision of this section shall not apply to mines  
13 employing no more than ten employees.

14 Said emergency medical attendants shall be employed  
15 at their regular duties at a central location convenient  
16 for quick response to emergencies, and further shall have  
17 available to them at all times such equipment as shall  
18 be prescribed by the director, in consultation with the  
19 director of the department of health.

**§22-2C-2. First-aid training of coal mine employees.**

1 Each coal mine operator shall provide every new em-  
2 ployee within six months of the date of his employment  
3 with the opportunity for first-aid training as prescribed

4 by the director unless such employee has previously re-  
5 ceived such training. Each coal mine employee shall be  
6 required to take refresher first-aid training of not less  
7 than five hours within each twenty-four months of em-  
8 ployment. The employee shall be paid regular wages,  
9 or overtime pay if applicable, for all periods of first-aid  
10 training.

**ARTICLE 6. CERTIFICATION OF UNDERGROUND AND SUR-  
FACE COAL MINERS.**

**§22-6-5. Supervision of apprentices.**

1 Each holder of a permit of apprenticeship shall be  
2 known as an apprentice. Any miner holding a certificate  
3 of competency and qualification may have one person  
4 working with him, and under his supervision and direc-  
5 tion, as an apprentice, for the purpose of learning and  
6 being instructed in the duties and calling of mining. Any  
7 mine foreman—fire boss or assistant mine foreman or fire  
8 boss may have three persons working with him under  
9 his supervision and direction, as apprentices, for the pur-  
10 pose of learning and being instructed in the duties and  
11 calling of mining: *Provided*, That a mine foreman, as-  
12 sistant mine foreman or fire boss supervising apprentices  
13 in an area where no coal is being produced or which is  
14 outby the working section may have as many as five  
15 apprentices under his supervision and direction, as ap-  
16 prentices, for the purpose of learning and being in-  
17 structed in the duties and calling of mining or where the  
18 operator is using a production section under program  
19 for training of apprentice miners, approved by the board  
20 of miner training, education and certification.

21 Every apprentice working at a surface mine shall be  
22 at all times under the supervision and control of at least  
23 one person who holds a certificate of competency and  
24 qualification.

25 In all cases, it shall be the duty of every mine opera-  
26 tor who employs apprentices to ensure that such per-  
27 sons are effectively supervised and to instruct such  
28 persons in safe mining practices. Each apprentice shall

29 wear a red hat which identifies him as such while  
30 employed at or near a mine. No person shall be em-  
31 ployed as an apprentice for a period in excess of eight  
32 months, except that in the event of illness or injury,  
33 time extensions shall be permitted as established by  
34 the director of the department of mines.

**ARTICLE 6A. BOARD OF MINER TRAINING, EDUCATION AND  
CERTIFICATION.**

**§22-6A-5. Board powers and duties.**

1 (a) The board shall establish criteria and standards  
2 for a program of education, training and examination to  
3 be required of all prospective miners and miners prior to  
4 their certification in any of the various miner specialties  
5 requiring certification, under this article or any other  
6 provision of this code. Such specialties include, but  
7 are not limited to, underground miner, surface miner,  
8 apprentice, underground mine foreman—fire boss, assistant  
9 underground mine foreman—fire boss, shotfirer, mine  
10 electrician and belt examiner. Notwithstanding the  
11 provisions of this section the director may by rule or  
12 regulation further subdivide the classification for certifi-  
13 cation.

14 (b) The board may require certification in other miner  
15 occupational specialties: *Provided*, That no new specialty  
16 may be created by the board unless certification in a new  
17 specialty is made desirable by action of the federal gov-  
18 ernment requiring certification in a specialty not enu-  
19 merated in this code.

20 (c) The board may establish criteria and standards for  
21 a program of pre-employment education and training to  
22 be required of miners working on the surface at under-  
23 ground mines who are not certified under the provisions  
24 of this article or any other provision of this code.

25 (d) The board shall set minimum standards for a  
26 program of continuing education and training of certified  
27 persons and other miners on an annual basis. Prior to is-  
28 suing said standards, the board shall conduct public  
29 hearings at which the parties that may be affected by its  
30 actions may be heard. Such education and training shall

31 be provided in a manner determined by the director to be  
32 sufficient to meet the standards established by the board.

33 (e) The board may, in conjunction with any state, local  
34 or federal agency or any other person or institution,  
35 provide for the payment of a stipend to prospective miners  
36 enrolled in one or more of the programs of miner educa-  
37 tion, training and certification provided for in this article  
38 or any other provision of this code.

39 (f) The board may also, from time to time, conduct such  
40 hearings and other oversight activities as may be re-  
41 quired to ensure full implementation of programs estab-  
42 lished by it.

43 (g) Nothing in this article shall be deemed to empower  
44 the board to revoke or suspend any certificate issued by  
45 the director or the department of mines.

46 (h) The board may, upon its own motion or whenever  
47 requested to do so by the director, deem two certificates  
48 issued by this state to be of equal value or deem training  
49 provided or required by federal agencies to be sufficient  
50 to meet training and education requirements set by it, the  
51 director, or by the provisions of this code.

†

## CHAPTER 122

(Com. Sub. for S. B. 113—By Mr. Rogers)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven-a; and to amend and reenact section five, article three of said chapter, all relating to the eligibility for appointment as surface mine inspector; qualifications; salary and expenses of surface mine inspectors and the surface mine inspector supervisor; removal; and salary of open-pit inspectors.

*Be it enacted by the Legislature of West Virginia:*

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

**Article**

1. **Administration; Enforcement.**
3. **Open-pit Mines, Cement Manufacturing Plants and Underground Limestone and Sandstone Mines.**

**ARTICLE 1. ADMINISTRATION; ENFORCEMENT.**

**§22-1-11a. Eligibility for appointment as surface mine inspector; qualifications; salary and expenses; removal.**

1 In order to qualify for an appointment as a surface mine  
2 inspector, an eligible applicant shall have had at least  
3 five years' practical experience in surface mines, at least  
4 one year of which, immediately preceding his original  
5 appointment, shall have been in surface mines in this  
6 state, and submit to a written and oral examination given  
7 by the mine inspectors' examining board. The examination  
8 shall relate to the duties to be performed by a surface  
9 mine inspector and may, subject to the approval of the  
10 mine inspectors' examining board, be prepared by the  
11 director of the West Virginia department of mines.

12 If the board finds after investigation and examination  
13 that the applicant (1) is eligible for appointment, and (2)  
14 has passed all oral and written examinations with a grade  
15 of at least eighty percent, the board shall add such appli-  
16 cant's name and grade to a register of qualified eligible  
17 candidates and certify its action to the director of the  
18 department of mines. The director may then appoint  
19 one of the candidates from the three having the highest  
20 grades.

21 All such appointees shall be citizens of West Virginia,  
22 in good health, not less than twenty-five years of age, of  
23 good character and reputation, and temperate in habits.  
24 No person shall be eligible for permanent appointment as  
25 a surface mine inspector until he has served in a proba-

26 tionary status for a period of one year to the satisfaction  
27 of the director of the department of mines.

28 Surface mine inspectors serving as such on the effective  
29 date of this section may continue to serve for a proba-  
30 tionary period not exceeding one year and if eligible as  
31 prescribed by this section, may qualify for appointment  
32 during such probationary period in accordance with the  
33 provisions of this section.

34 However, surface mine inspectors employed on the  
35 effective date of this section and who have served to the  
36 satisfaction of the director of the department of mines for  
37 a period of two years or more may continue to serve on a  
38 permanent tenure basis. In the performance of duties  
39 devolving upon surface mine inspectors, they shall be  
40 responsible to the inspector-at-large of the department of  
41 mines of their respective division.

42 The salary of the surface mine inspector supervisor  
43 shall be not less than seventeen thousand dollars per  
44 year. Salaries of surface mine inspectors shall be not less  
45 than twelve thousand nine hundred dollars per year  
46 during the first year of probationary services. After serv-  
47 ing for a probationary period of one year, the salary of a  
48 surface mine inspector shall be not less than fifteen  
49 thousand dollars per year. In the discharge of their  
50 official duties in privately owned vehicles, surface mine  
51 inspectors and the surface mine inspector supervisor  
52 shall receive mileage at the rate of not less than fifteen  
53 cents per mile.

54 A surface mine inspector, after having received a  
55 permanent appointment, shall be removed from office  
56 only for physical or mental impairment, incompetency,  
57 neglect of duty, drunkenness, malfeasance in office, or  
58 other good cause.

**ARTICLE 3. OPEN-PIT MINES, CEMENT MANUFACTURING  
PLANTS AND UNDERGROUND LIMESTONE AND  
SANDSTONE MINES.**

**§22-3-5. Inspectors.**

1 The director of the department of mines shall divide  
2 the state into not more than two mining districts and

3 assign one inspector to each district. Such inspector shall  
4 be a citizen of West Virginia, in good health, of good  
5 character and reputation, temperate in habits, having a  
6 minimum of five years of practical experience in such  
7 mining operations and at the time of his appointment is  
8 not more than fifty-five years of age. To qualify for  
9 appointment as such an inspector, an eligible applicant  
10 shall submit to a written and oral examination by the  
11 mine inspectors' examining board and furnish such evi-  
12 dence of good health, character and other facts establish-  
13 ing eligibility as the board may require. If the board finds  
14 after investigation and examination that an applicant:  
15 (1) Is eligible for appointment and (2) has passed all  
16 written and oral examinations, with a grade of at least  
17 ninety percent, the board shall add such applicant's name  
18 and grade to the register of qualified eligible candidates  
19 and certify its action to the director of the department of  
20 mines. No candidate's name shall remain in the register  
21 for more than three years without requalifying.

22 Such inspector shall have the same tenure accorded a  
23 mine inspector, as provided in subsection (d), section  
24 eight, article one of this chapter and shall be paid not less  
25 than fifteen thousand dollars per year. Such inspector  
26 shall also receive reimbursement for traveling expenses at  
27 the rate of not less than fifteen cents for each mile actu-  
28 ally traveled in the discharge of their duties in a privately  
29 owned vehicle. Such inspector shall also be reimbursed  
30 for any expense incurred in maintaining an office in his  
31 or her home, which office is used in the discharge of  
32 official duties: *Provided*, That such reimbursement shall  
33 not exceed two hundred forty dollars per annum.

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## CHAPTER 123

(Com. Sub. for H. B. 1745—By Mr. Sattes)

[Passed April 8, 1977; in effect ninety days from passage. Approved by Governor.]

AN ACT to amend and reenact sections one, one-f, one-g, one-h, one-j, one-k, two, two-a, two-b, three, three-a, four, four-a,

nine, ten, twelve, thirteen and eighteen, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections eight-b and twenty, redefining certain terms; right to request inspection for violations; findings and orders of inspectors; rights of persons to seek review of findings; judicial review of final orders of deputy director; information required on permit applications; drilling notice to coal operators and others; bond requirements; notice to coal operators and others of intent to fracture; notice to coal operators and others regarding introduction of liquids or wastes into wells; objections to proposed drilling or fracturing; objections to proposed drilling or converting for introducing liquids or wastes into wells; appeal from order of issuance or refusal of permit to drill or fracture; appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting; filing of well log with department of mines; notice to coal operators and others of intent to plug or abandon wells; methods of plugging wells; appeals from final decision of department of mines; rules and regulations by and hearing before department of mines; injunctive relief; declaration of oil and gas notice by owners and lessees of coal seams.

*Be it enacted by the Legislature of West Virginia:*

That sections one, one-f, one-g, one-h, one-j, one-k, two, two-a, two-b, three, three-a, four, four-a, nine, ten, twelve, thirteen and eighteen, article four, 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 be further amended by adding thereto two new sections, designated sections eight-b and twenty, all to read as follows:

**ARTICLE 4. OIL AND GAS WELLS.**

§22-4-1. Definitions.

§22-4-1f. Authority and duty of deputy director and inspectors to visit and inspect wells and facilities; inspectors to devote full time to duties.

§22-4-1g. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.

§22-4-1h. Review of findings and orders by deputy director for oil and gas; special inspection; annulment, revision, etc., of order; notice.



- \$22-4-1j. Judicial review of final orders of deputy director for oil and gas.
- \$22-4-1k. Permits required; application for permit; information; responsible agent; drilling permit number; when permits not to be issued; penalty.
- \$22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.
- \$22-4-2a. Notice to coal operators, owners or lessees and department of mines of intention to fracture certain other wells; contents of such notice; permit required.
- \$22-4-2b. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notices and information furnished to coal operators, owners or lessees and chief of water resources; issuance of permits; performance bonds or security in lieu thereof.
- \$22-4-3. Objections to proposed drilling or fracturing; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits.
- \$22-4-3a. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits; dockets of proceeding.
- \$22-4-4. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.
- \$22-4-4a. Appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting procedure.
- \$22-4-8b. Well log to be filed; contents; authority to promulgate regulations.
- \$22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.
- \$22-4-10. Methods of plugging well.
- \$22-4-12. Supervision by department of mines over drilling, mining and reclamation operations; complaints; hearings; appeals.
- \$22-4-13. Rules and regulations; hearings before department of mines; appeals.
- \$22-4-18. Injunctive relief.
- \$22-4-20. Declaration of oil and gas notice by owners and lessees of coal seams.

#### **§22-4-1. Definitions.**

- 1 Unless the context in which used clearly requires a different
- 2 meaning, as used in this article:
- 3 (a) "Deputy director" means the deputy director for oil
- 4 and gas;
- 5 (b) "Well" means any shaft or hole sunk, drilled, bored
- 6 or dug unto the earth or into underground strata for the
- 7 extraction or injection or placement of any liquid or gas, or
- 8 any shaft or hole sunk or used in conjunction with such
- 9 extraction or injection or placement. The term "well" does

10 not include any shaft or hole sunk, drilled, bored or dug  
11 into the earth for the sole purpose of core drilling or  
12 pumping or extracting therefrom potable, fresh or usable  
13 water for household, domestic, industrial, agricultural or  
14 public use;

15 (c) "Facility" means any facility utilized in the oil and gas  
16 industry in this state and specifically named or referred to in  
17 this article or in articles five or seven of this chapter, other  
18 than a well or well site;

19 (d) "Owner" when used with reference to any such well,  
20 shall include any person or persons, firm, partnership, part-  
21 nership association or corporation that owns, manages, oper-  
22 ates, controls or possesses such well as principals, or as lessee  
23 or contractor, employee or agent of such principal;

24 (e) "Well operator" or "operator" means any person or  
25 persons, firm, partnership, partnership association or corpora-  
26 tion that proposes to or does locate, drill, operate or abandon  
27 any well as herein defined;

28 (f) "Chief" means chief of the division of water resources  
29 of the department of natural resources;

30 (g) "Coal operator" means any person or persons, firm,  
31 partnership, partnership association or corporation that pro-  
32 poses to or does operate a coal mine;

33 (h) "Department" or "department of mines" means the  
34 duly constituted authorities under the laws of this state having  
35 jurisdiction over coal mining operations;

36 (i) "Plat" means a map, drawing or print showing the  
37 location of a well or wells as herein defined;

38 (j) "Casing" means a string or strings of pipe commonly  
39 placed in wells drilled for natural gas or petroleum or both;

40 (k) "Oil" means natural crude oil or petroleum and other  
41 hydrocarbons, regardless of gravity, which are produced at  
42 the well in liquid form by ordinary production methods and  
43 which are not the result of condensation of gas after it leaves  
44 the underground reservoirs;

45 (l) "Gas" means all natural gas and all other fluid hydro-  
46 carbons not defined as oil in subdivision (k) of this section;

47 (m) "Cement" means hydraulic cement properly mixed  
48 with water only;

49 (n) "Coal seam" or "workable coal bed" are interchangeable  
50 terms and mean any seam of coal twenty inches or more in  
51 thickness, unless a seam of less thickness is being commercial-  
52 ly worked, or can in the judgment of the department foresee-  
53 ably be commercially worked and will require protection if  
54 wells are drilled through it;

55 (o) "Stimulate" means any action taken by any well  
56 operator to increase oil or gas production from any oil or  
57 gas well, including fracturing, shooting or acidizing, but  
58 excluding cleaning out or bailing operations.

**§22-4-1f. Authority and duty of deputy director and inspectors to  
visit and inspect wells and facilities; inspectors to  
devote full time to duties.**

1 The deputy director for oil and gas of the department of  
2 mines shall have authority to visit and inspect any well or well  
3 site and any other oil or gas facility in this state and may call  
4 for the assistance of any oil and gas inspector or inspectors or  
5 supervising inspector whenever such assistance is necessary in  
6 the inspection of any such well or well site or any other oil  
7 or gas facility. Similarly, all oil and gas inspectors and the  
8 supervising inspector shall have authority to visit and inspect  
9 any well or well site and any other oil or gas facility in this  
10 state. Any well operator, coal operator operating coal seams  
11 beneath the tract of land, or the coal seam owner or lessee, if  
12 any, if said owner or lessee is not yet operating said coal seams  
13 beneath said tract of land may request the deputy director to  
14 have an immediate inspection made. The operator or owner of  
15 every well or well site or any other oil or gas facility shall co-  
16 operate with the deputy director for oil and gas, all oil and  
17 gas inspectors and the supervising inspector in making inspec-  
18 tions or obtaining information.

19 Oil and gas inspectors shall devote their full time and un-  
20 divided attention to the performance of their duties, and they

21 shall be responsible for the inspection of all wells or well sites  
22 or other oil or gas facilities in their respective districts as often  
23 as may be required in the performance of their duties.

**§22-4-1g. Findings and orders of inspectors concerning violations;  
determination of reasonable time for abatement; exten-  
sions of time for abatement; special inspections; notice  
of findings and orders.**

1 (a) If an oil and gas inspector, upon making an inspection  
2 of a well or well site or any other oil or gas facility, finds that  
3 any provision of this article is being violated, he shall also  
4 find whether or not an imminent danger to persons engaged in  
5 active coal mining exists. If he finds that such imminent danger  
6 exists, he shall forthwith make an order requiring the operator  
7 of such well or well site or other oil or gas facility to cease  
8 further operations until such imminent danger has been abated.  
9 If he finds that no such imminent danger exists, he shall de-  
10 termine what would be a reasonable period of time within  
11 which such violation should be totally abated. Such findings  
12 shall contain reference to the provisions of this article which  
13 he finds are being violated, and a detailed description of the  
14 conditions which cause and constitute such violation.

15 (b) The period of time so found by such oil and gas in-  
16 spector to be a reasonable period of time may be extended by  
17 such inspector, or by any other oil and gas inspector duly  
18 authorized by the deputy director for oil and gas, from time  
19 to time, but on not more than three occasions, upon the making  
20 of a special inspection to ascertain whether or not such viola-  
21 tion has been totally abated. The deputy director for oil and  
22 gas shall cause a special inspection to be made: (A) Whenever  
23 an operator of a well or well site or any other oil or gas facil-  
24 ity, prior to the expiration of any such period of time, requests  
25 him to cause a special inspection to be made at such well or  
26 well site or any other oil or gas facility; and (B) upon expira-  
27 tion of such period of time as originally fixed or as extended,  
28 unless the deputy director for oil and gas is satisfied that the  
29 violation has been abated. Upon making such special inspec-  
30 tion, such oil and gas inspector shall determine whether or  
31 not such violation has been totally abated. If he determines  
32 that such violation has not been totally abated, he shall de-

33 termine whether or not such period of time as originally fixed,  
34 or as so fixed and extended, should be extended. If he deter-  
35 mines that such period of time should be extended, he shall  
36 determine what a reasonable extension would be. If he deter-  
37 mines that such violation has not been totally abated, and if  
38 such period of time as originally fixed, or as so fixed and ex-  
39 tended, has then expired, and if he also determines that such  
40 period of time should not be further extended, he shall there-  
41 upon make an order requiring the operator of such well or well  
42 site or other oil or gas facility to cease further operations of  
43 such well, well site or facility, as the case may be. Such find-  
44 ings and order shall contain reference to the specific provisions  
45 of this article which are being violated.

46 (c) Notice of each finding and order made under this sec-  
47 tion shall promptly be given to the operator of the well or  
48 well site or other oil or gas facility to which it pertains by the  
49 person making such finding or order.

50 (d) No order shall be issued under the authority of this  
51 section which is not expressly authorized herein.

**§22-4-1h. Review of findings and orders by deputy director for  
oil and gas; special inspection; annulment, revision,  
etc., of order; notice.**

1 Any well operator, complaining coal operator, owner or  
2 lessee, if any, aggrieved by findings or an order made by an  
3 oil and gas inspector pursuant to section one-g of this article,  
4 may within fifteen days apply to the deputy director for oil  
5 and gas for annulment or revision of such order. Upon receipt  
6 of such application the deputy director for oil and gas shall  
7 make a special inspection of the well, well site or other oil and  
8 gas facility affected by such order, or cause two duly authorized  
9 oil and gas inspectors, other than the oil and gas inspector who  
10 made such order or the supervising inspector and one duly  
11 authorized oil and gas inspector other than the oil and gas in-  
12 spector who made such order, to make such inspection of such  
13 well, or well site or other oil or gas facility and to report there-  
14 on to them. Upon making such special inspection himself, or  
15 upon receiving the report of such special inspection, as the  
16 case may be, the deputy director for oil and gas shall make

17 an order which shall include his findings and shall annul, re-  
18 vise or affirm the order of the oil and gas inspector.

19 The deputy director for oil and gas shall cause notice of  
20 each finding and order made under this section to be given  
21 promptly to the operator of the well, well site or other oil  
22 or gas facility to which such findings and order pertain, and  
23 the complainant under section one-f, if any.

24 At any time while an order made pursuant to section one-g  
25 of this article is in effect, the operator of the well, well site or  
26 other oil or gas facility affected by such order may apply to  
27 the deputy director for oil and gas for annulment or revision  
28 of such order. The deputy director for oil and gas shall there-  
29 upon proceed to act upon such application in the manner pro-  
30 vided in this section.

31 In view of the urgent need for prompt decision of matters  
32 submitted to the deputy director for oil and gas under this  
33 article, all actions which he, or oil and gas inspectors, or the  
34 supervising inspector, is required to take under this article,  
35 shall be taken as rapidly as practicable, consistent with ade-  
36 quate consideration of the issues involved.

**§22-4-1j. Judicial review of final orders of deputy director for  
oil and gas.**

1 (a) Any well operator, complaining coal operator, owner  
2 or lessee, if any, adversely affected by a final order issued by  
3 the deputy director under section one-h of this article shall be  
4 entitled to judicial review thereof. All of the pertinent pro-  
5 visions of section four, article five, chapter twenty-nine-a of  
6 this code shall apply to and govern such judicial review with  
7 like effect as if the provisions of said section four were set forth  
8 in extenso in this section.

9 (b) The judgment of the circuit court shall be final unless  
10 reversed, vacated or modified on appeal to the supreme court  
11 of appeals in accordance with the provisions of section one,  
12 article six, chapter twenty-nine-a of this code.

13 (c) Legal counsel and services for the deputy director in  
14 all appeal proceedings in any circuit court and the supreme  
15 court of appeals shall be provided by the attorney general or  
16 his assistants and in any circuit court by the prosecuting

17 attorney of the county as well, all without additional com-  
18 pensation. The deputy director, with written approval of the  
19 attorney general, may employ special counsel to represent the  
20 deputy director at any such appeal proceedings.

**§22-4-1k. Permits required; application for permit; information;  
responsible agent; drilling permit number; when per-  
mits not to be issued; penalty.**

1 It shall be unlawful for any well to be drilled, redrilled,  
2 deepened, fractured, stimulated, plugged, pressured, con-  
3 verted, combined or physically changed to allow the migration  
4 of fluid from one formation to another unless a permit therefor  
5 has been issued by the department. An application for any  
6 such permit shall be filed with the deputy director and shall  
7 contain the following:

8 (a) The name and address of the well operator;

9 (b) The name and address of the owner of the surface lands  
10 upon which the well is or may be located;

11 (c) The name and address of every coal operator operating  
12 coal seams under the tract of land on which the well is or  
13 may be located, or the coal seam owner of record and lessee  
14 of record required to be given notice by section two, if any, if  
15 said owner or lessee is not yet operating said coal seams;

16 (d) The name and address of the agent of the well operator,  
17 if any such agent is required to be designated under the pro-  
18 visions of this section;

19 (e) The approximate depth to which the well is to be  
20 drilled;

21 (f) The proposed casing program of such well including  
22 the sizes of all such casing, the depth to which all casing is  
23 to be run and the extent to which such casing is to be cemented;

24 (g) The proposed method of reclamation which shall  
25 comply with the requirements of section twelve-b of this  
26 article; and

27 (h) Any other information which the deputy director by  
28 rule or regulation may require.

29 If the well operator named in such application is a cor-

30 poration, partnership or a nonresident of the state of West  
31 Virginia, then there shall be designated the name and address  
32 of an agent for such operator who shall be the attorney-in-fact  
33 for the operator and who shall be a resident of the state of  
34 West Virginia upon whom notices, orders or other com-  
35 munications issued pursuant to this article or article five-a,  
36 chapter twenty, may be served, and upon whom process may  
37 be served. Every well operator required to designate an agent  
38 under this section shall within five days after the termination  
39 of such designation notify the department of such termination  
40 and designate a new agent.

41 The well owner or operator shall install the permit number  
42 as issued by the deputy director in a legible and permanent  
43 manner to the well upon completion of any permitted work.  
44 The dimensions, specifications and manner of installation  
45 shall be in accordance with the administrative rules and  
46 regulations of the department.

47 For the purpose of ascertaining whether or not issuance of  
48 any permit to drill, redrill, deepen, case, fracture, stimulate,  
49 pressure, operate, plug, abandon, convert or combine any  
50 well, or physically change any well or allow the migration  
51 of fluid from one formation to another, will contribute to an  
52 existing pollution problem, the deputy director shall have the  
53 right and it shall be his duty to consult with the director of  
54 the department of natural resources. In the event the issuance  
55 of any such permit may reasonably be expected to contribute  
56 to any such existing pollution then the deputy director will  
57 not issue such permit.

58 Any person who violates any provision of this section shall  
59 be guilty of a misdemeanor, and, upon conviction thereof,  
60 shall be punished by a fine not exceeding two thousand dollars,  
61 or imprisonment in jail for not exceeding twelve months, or  
62 both such fine and imprisonment.

**§22-4-2. Plats prerequisite to drilling or fracturing wells; prepara-  
tion and contents; notice and information furnished to  
coal operators, owners or lessees; issuance of permits;  
performance bonds or securities in lieu thereof; bond  
forfeiture.**

1 Before drilling for oil or gas, or before fracturing or stimu-



2     lating a well on any tract of land, the well operator shall have  
3     a plat prepared by a licensed land surveyor or registered engi-  
4     neer showing the district and county in which the tract of land  
5     is located, the name and acreage of the same, the names of the  
6     owners of adjacent tracts, the proposed or actual location of the  
7     well determined by survey, the courses and distances of such lo-  
8     cation from two permanent points or landmarks on said tract  
9     and the number to be given the well and the date of drilling  
10    completion of a well when it is proposed that such well be frac-  
11    tured and shall forward by registered or certified mail a copy of  
12    the plat to the department of mines. In the event the tract of  
13    land on which the said well proposed to be drilled or fractured  
14    is located is known to be underlaid with one or more coal  
15    seams, copies of the plat shall be forwarded by registered or  
16    certified mail to each and every coal operator operating said  
17    coal seams beneath said tract of land, who has mapped the  
18    same and filed his maps with the department in accordance  
19    with article two of this chapter, or the coal seam owner of  
20    record and lessee of record, if any, if said owner or lessee has  
21    recorded the declaration provided in section twenty of this arti-  
22    cle, and if said owner or lessee is not yet operating said coal  
23    seams beneath said tract of land. With each of such plats there  
24    shall be enclosed a notice (form for which shall be furnished on  
25    request by the department of mines) addressed to the depart-  
26    ment of mines and to each such coal operator, owner and  
27    lessee, if any, at their respective addresses, informing them that  
28    such plat and notice are being mailed to them respectively by  
29    registered or certified mail, pursuant to the requirements of this  
30    article. If no objections are made, or are found by the depart-  
31    ment, to such proposed location or proposed fracturing within  
32    fifteen days from receipt of such plat and notice by the depart-  
33    ment of mines, the same shall be filed and become a permanent  
34    record of such location or fracturing subject to inspection at any  
35    time by any interested person, and the department may forth-  
36    with issue to the well operator a permit reciting the filing of  
37    such plat, that no objections have been made by the coal opera-  
38    tors, owners and lessees, if any, or found thereto by the depart-  
39    ment, and authorizing the well operator to drill at such location,  
40    or to fracture the well. Unless the department has objections to  
41    such proposed location or proposed fracturing or stimulating,

42 such permit may be issued prior to the expiration of such fifteen  
43 day period upon the obtaining by the well operator of the con-  
44 sent in writing of the coal operator or operators, owners and  
45 lessees, if any, to whom copies of the plat and notice shall have  
46 been mailed as herein required, and upon presentation of such  
47 written consent to the department. The notice above provided  
48 for may be given to the coal operator by delivering or mailing it  
49 by registered or certified mail as above to any agent or superin-  
50 tendent in actual charge of mines.

51 A permit to drill, or to fracture or stimulate an oil or gas  
52 well, shall not be issued unless the application therefor is ac-  
53 companied by a bond of the operator in the sum of two thou-  
54 sand five hundred dollars, payable to the state of West Virginia,  
55 with a corporate bonding or surety company authorized to do  
56 business in this state as surety thereon, conditioned on full  
57 compliance with all laws, rules and regulations relating to the  
58 drilling, redrilling, deepening, casing, plugging, abandonment  
59 and reclamation of wells and for furnishing such reports and  
60 information as may be required by the department: *Provided,*  
61 That when such operator makes or has made application for  
62 permits to drill a number of wells or fracture or stimulate a  
63 well or wells the operator may in lieu of furnishing a separate  
64 bond furnish a blanket bond in the sum of fifteen thousand  
65 dollars, payable to the state of West Virginia, with a corporate  
66 bonding or surety company authorized to do business in this  
67 state as surety thereon, and conditioned as aforesaid: *Pro-*  
68 *vided, however,* That in lieu of corporate surety on a separate  
69 or blanket bond, as the case may be, the operator may elect to  
70 deposit with the deputy director for oil and gas cash or the  
71 following collateral securities or any combination thereof: (1)  
72 Bonds of the United States or agency thereof, or those guaran-  
73 teed by, or for which the credit of the United States or agency  
74 therefor is pledged for the payment of the principal and interest  
75 thereof; (2) direct general obligation bonds of this state, or  
76 any other state, or territory of the United States, or the Dis-  
77 trict of Columbia, unconditionally guaranteed as to the princi-  
78 pal and interest by such other state or territory of the United  
79 States, or the District of Columbia if such other state, terri-  
80 tory, or the District of Columbia has the power to levy taxes

81 for the payment of the principal and interest of such securities,  
82 and if at the time of the deposit such other state, territory, or  
83 the District of Columbia is not in default in the payment of  
84 any part of the principal or interest owing by it upon any part  
85 of its funded indebtedness; (3) direct general obligation bonds  
86 of any county, district, city, town, village, school district or  
87 other political subdivision of this state issued pursuant to law  
88 and payable from ad valorem taxes levied on all the taxable  
89 property located herein, that the total indebtedness after de-  
90 ducting sinking funds and all debts incurred for self-sustaining  
91 public works does not exceed five percent of the assessed value  
92 of all taxable property therein at the time of the last assessment  
93 made before the date of such deposit, and that the issuer has  
94 not, within five years prior to the making thereof, been in  
95 default for more than ninety days in the payment of any  
96 part of the principal or interest on any debt evidenced by its  
97 bonds; (4) revenue bonds issued by this state or any agency of  
98 this state when such bonds are payable from revenues or earn-  
99 ings specifically pledged for the payment of principal and  
100 interest, and a lawful sinking fund or reserve fund has been  
101 established and is being maintained for the payment of such  
102 bonds; (5) revenue bonds issued by a municipality in this  
103 state for the acquisition, construction, improvement or exten-  
104 sion of a waterworks system, or a sewerage system, or a com-  
105 bined waterworks and sewerage system, when such bonds are  
106 payable from revenue or earnings specifically pledged for the  
107 payment of principal and interest, and a lawful sinking fund or  
108 reserve fund has been established and is being maintained for  
109 the payment of such bonds; (6) revenue bonds issued by a  
110 public service board of a public service district in this state for  
111 the acquisition, construction, improvement or extension of any  
112 public service properties, or for the reimbursement or payment  
113 of the costs and expenses of creating the district, when such  
114 bonds are payable from revenue or earnings specifically pledg-  
115 ed for the payment of principal and interest, and a lawful  
116 sinking fund or reserve fund has been established and is being  
117 maintained for the payment of such bonds; (7) revenue bonds  
118 issued by a board of trustees of a sanitary district in this state  
119 for the corporate purposes of such district, when such bonds  
120 are payable from revenue or earnings specifically pledged for

121 the payment of principal and interest, and a lawful sinking  
122 fund or reserve fund has been established and is being main-  
123 tained for the payment of such bonds; and (8) bonds issued  
124 by a federal land bank or home owners' loan corporation. The  
125 cash deposit or market value, or both, of the collateral securi-  
126 ties shall be equal to or greater than the penalty of the separate  
127 or blanket bond, as the case may be. Upon receipt of any such  
128 deposit or cash or collateral securities, the deputy director for  
129 oil and gas shall immediately deliver the same to the treasurer  
130 of the state of West Virginia. The treasurer shall determine  
131 whether any such securities satisfy the requirements of this  
132 section. If the securities are approved they shall be accepted  
133 by the treasurer. If the securities are not approved, they shall  
134 be rejected and returned to the operator and no permit shall be  
135 issued until a corporate surety bond is filed or cash or proper  
136 collateral securities are filed in lieu of such surety. The trea-  
137 surer shall hold any cash or securities in the name of the state in  
138 trust for the purposes for which the deposit was made. The  
139 operator shall be entitled to all interest and income earned on  
140 the collateral securities filed by such operator so long as the  
141 operator is in full compliance with all laws, rules and regula-  
142 tions relating to the drilling, redrilling, deepening, casing,  
143 plugging, abandonment and reclamation of wells and for fur-  
144 nishing such reports and information as may be required by  
145 the department. The operator making the deposit shall be  
146 entitled from time to time to receive from the treasurer, upon  
147 the written order of the deputy director for oil and gas, the  
148 whole or any portion of such securities upon depositing with  
149 the treasurer in lieu thereof cash equal to or greater than the  
150 penalty of the bond, in other approved securities of the classes  
151 herein specified having a market value equal to or greater than  
152 the penalty of the bond, or a corporate surety bond.

153 When an operator has furnished a separate bond from a  
154 corporate bonding or surety company to drill, fracture or  
155 stimulate an oil or gas well and the well produces oil or  
156 gas, or both, its operator may deposit with the deputy  
157 director for oil and gas cash from the sale of the oil or  
158 gas, or both, until the total deposited is two thousand five  
159 hundred dollars. When the sum of the cash deposited is two  
160 thousand five hundred dollars, the separate bond for the

161 well shall be released by the department. Upon receipt of  
162 such cash, the deputy director for oil and gas shall im-  
163 mediately deliver the same to the treasurer of the state of  
164 West Virginia. The treasurer shall hold such cash in the  
165 name of the state in trust for the purpose for which the  
166 bond was furnished and the deposit was made. The operator  
167 shall be entitled to all interest and income which may be  
168 earned on the cash deposited so long as the operator is in  
169 full compliance with all laws, rules and regulations relating  
170 to the drilling, redrilling, deepening, casing, plugging, abandon-  
171 ment and reclamation of the well for which the cash was de-  
172 posited and so long as he has furnished all reports and in-  
173 formation as may be required by the department. If the cash  
174 realized from the sale of oil or gas, or both, from the well is  
175 not sufficient for the operator to deposit with the deputy  
176 director for oil and gas the sum of two thousand five hundred  
177 dollars within one year of the day the well started producing,  
178 the corporate or surety company which issued the bond on the  
179 well may notify the operator and the department of its intent  
180 to terminate its liability under its bond. The operator then  
181 shall have thirty days to furnish a new bond from a corporate  
182 bonding or surety company or collateral securities, as provided  
183 in the next preceding paragraph of this section, with the  
184 department. If a new bond or collateral securities are fur-  
185 nished by the operator, the liability of the corporate bonding  
186 or surety company under the original bond shall terminate as  
187 to any acts and operations of the operator occurring after the  
188 effective date of the new bond or the date the collateral securi-  
189 ties are accepted by the treasurer of the state of West Virginia.  
190 If the operator does not furnish a new bond or collateral securi-  
191 ties, as provided in the next preceding paragraph of this  
192 section, with the department, he shall immediately plug, fill and  
193 reclaim the well in accordance with all of the provisions of  
194 law, rules and regulations applicable thereto. In such case,  
195 the corporate or surety company which issued the original bond  
196 shall be liable for any plugging, filling or reclamation not  
197 performed in accordance with such laws, rules and regula-  
198 tions.

199 Any such bond shall remain in force until released by the  
200 department and the department shall release the same when it

201 is satisfied the conditions thereof have been fully performed.  
202 Upon the release of any such bond, any cash or collateral  
203 securities deposited shall be returned by the deputy director for  
204 oil and gas to the operator who deposited same.

205 If any of the requirements of this article or rules and regula-  
206 tions promulgated pursuant thereto or the orders of the deputy  
207 director for oil and gas have not been complied with within  
208 the time limit set by the violation notice as defined in sections  
209 one-g, one-h and one-i, article four, chapter twenty-two of  
210 this code the performance bond shall then be forfeited.

211 When any bond is forfeited pursuant to the provisions of this  
212 article or rules and regulations promulgated pursuant thereto  
213 the deputy director shall give notice to the attorney general  
214 who shall collect the forfeiture without delay.

215 All forfeitures shall be deposited in the treasury of the  
216 state of West Virginia in the special reclamation fund as de-  
217 fined in section twelve-a, article four, chapter twenty-two of  
218 this code.

**§22-4-2a. Notice to coal operators, owners or lessees and depart-  
ment of mines of intention to fracture certain other  
wells; contents of such notice; permit required.**

1 Before fracturing any well the well operator shall, by  
2 registered or certified mail, forward a notice of intention to  
3 fracture such well to the department of mines and to each  
4 and every coal operator operating coal seams beneath said tract  
5 of land, who has mapped the same and filed his maps with the  
6 department in accordance with article two of this chapter, or  
7 the coal seam owner and lessee, if any, if said owner of record  
8 or lessee of record has recorded the declaration provided in  
9 section twenty of this article, and if said owner or lessee is  
10 not yet operating said coal seams beneath said tract of land.

11 The notice shall be addressed to the department of mines  
12 and to each such coal operator at their respective addresses,  
13 shall contain the number of the drilling permit for such well  
14 and such other information as may be required by the depart-  
15 ment to enable the department and the coal operators to  
16 locate and identify such well and shall inform them that such

17 notice is being mailed to them, respectively, by registered  
18 or certified mail, pursuant to the requirements of this article.  
19 (The form for such notice of intention shall be furnished on  
20 request by the department of mines.) If no objections are  
21 made, or are found by the department, to such proposed  
22 fracturing within fifteen days from receipt of such notice by  
23 the department of mines, the same shall be filed and become  
24 a permanent record of such fracturing, subject to inspection  
25 at any time by any interested person, and the department  
26 shall forthwith issue to the well operator a permit reciting the  
27 filing of such notice, that no objections have been made by the  
28 coal operators, or found thereto by the department, and  
29 authorizing the well operator to fracture such well. Unless  
30 the department has objections to such proposed fracturing,  
31 such permit shall be issued prior to the expiration of such  
32 fifteen day period upon the obtaining by the well operator  
33 of the consent in writing of the coal operator or operators,  
34 owners or lessees, if any, to whom notice of intention to  
35 fracture shall have been mailed as herein required, and upon  
36 presentation of such written consent to the department. The  
37 notice above provided for may be given to the coal operator  
38 by delivering or mailing it by registered or certified mail as  
39 above to any agent or superintendent in actual charge of  
40 mines.

**§22-4-2b. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notice and information furnished to coal operators, owners or lessees and chief of water resources; issuance of permits; performance bonds or security in lieu thereof.**

1 Before drilling a well for the introduction of liquids for  
2 the purposes provided for in section ten-a of this article or for  
3 the introduction of liquids for the disposal of sewage, industrial  
4 waste or other waste or the effluent therefrom on any tract  
5 of land, or before converting an existing well for such purposes,  
6 the well operator shall have a plat prepared by a registered  
7 engineer or licensed land surveyor showing the district and  
8 county in which the tract of land is located, the name and  
9 acreage of the same, the names of the owners of all adjacent  
10 tracts, the proposed or actual location of the well or wells

11 determined by a survey, the courses and distances of such  
12 location from two permanent points of land marked on said  
13 tract and the number to be given to the well, and shall forward  
14 by registered or certified mail the original and one copy of  
15 the plat to the department of mines. In addition, the well  
16 operator shall provide the following information on the plat  
17 or by way of attachment thereto to the department in the man-  
18 ner and form prescribed by the department's rules and regula-  
19 tions: (a) The location of all wells, abandoned or otherwise  
20 located within the area to be affected; (b) where available, the  
21 casing records of all such wells; (c) where available, the drill-  
22 ing log of all such wells; (d) the maximum pressure to be  
23 introduced; (e) the geological formation into which such liquid  
24 or pressure is to be introduced; (f) a general description of  
25 the liquids to be introduced; (g) the location of all water-  
26 bearing horizons above and below the geological formation  
27 into which such pressure, liquid or waste is to be introduced;  
28 and (h) such other information as the deputy director by  
29 rule and regulation may require.

30 In the event the tract of land on which said well proposed  
31 to be drilled or converted for the purposes provided for in  
32 this section is located is known to be underlaid with coal  
33 seams, copies of the plat and all information required by this  
34 section shall be forwarded by the operator by registered or  
35 certified mail to each and every coal operator operating coal  
36 seams beneath said tract of land, who has mapped the same and  
37 filed his maps with the department in accordance with article  
38 two of this chapter, or the coal seam owner of record and lessee  
39 of record, if any, if said owner or lessee has recorded the dec-  
40 laration provided in section twenty of this article, and if said  
41 owner or lessee is not yet operating said seams beneath said  
42 tract of land. With each of such plats, there shall be enclosed a  
43 notice (form for which shall be furnished on request by the  
44 department of mines) addressed to the department of mines  
45 and to each such coal operator, owner or lessee, if any, at  
46 their respective addresses, informing them that such plat  
47 and notice are being mailed to them, respectively, by registered  
48 or certified mail, pursuant to the requirements of this section.  
49 The deputy director shall forward a copy of the plat, notice  
50 and all other information required by this section to the chief



51 of the division of water resources of the department of natural  
52 resources.

53 If no objections are made by any such coal operator, owner,  
54 lessee or such chief, or are found by the department to such  
55 proposed drilling or converting of the well or wells for the  
56 purposes provided for in this section within thirty days from  
57 the receipt of such plat and notice by the department of  
58 mines, the same shall be filed and become a permanent record  
59 of such location or well, subject to inspection at any time by  
60 any interested person, and the department shall forthwith  
61 issue to the well operator a permit reciting the filing of such  
62 plat and notice, that no objections have been made by the  
63 coal operators, owners and lessees, if any, or found thereto  
64 by the department of mines or by the chief, and authorizing  
65 the well operator to drill at such location or convert such  
66 existing well or wells for the purposes provided for in this  
67 section. Such permit shall be issued prior to the expiration of  
68 such thirty day period upon the obtaining by the well operator,  
69 of the consent in writing of the coal operator, owners and  
70 lessees, if any, to whom copies of the plat and notice must  
71 have been mailed as herein required and upon obtaining the  
72 consent in writing of the chief, and upon presentation of such  
73 written consent in writing of the chief, and upon presentation  
74 of such written consent to the department. The notice above  
75 provided for may be given to the coal operator by delivering  
76 or mailing it by registered or certified mail as above to any  
77 agent or superintendent in actual charge of the mines.

78 A permit to drill a well or wells or convert an existing well  
79 or wells for the purposes provided for in this section shall not  
80 be issued until all of the bonding provisions required by the  
81 provisions of section two of this article have been fully  
82 complied with and all such bonding provisions shall apply  
83 to all wells drilled or converted for the purposes provided for  
84 in this section as if such wells had been drilled for the  
85 purposes provided for in section two of this article, except  
86 that such bonds shall be conditioned upon full compliance with  
87 all laws, rules and regulations relating to the drilling of a  
88 well or the converting of an existing well for the purposes  
89 provided for in said section ten-a, or introducing of liquids

90 for the disposal of sewage, industrial waste or other waste or  
91 the effluent therefrom including the redrilling, deepening,  
92 casing, plugging or abandonment of all such wells.

**§22-4-3. Objections to proposed drilling or fracturing; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits.**

1 When the proposed drilling or fracturing site is above a seam  
2 or seams of coal, then the coal operator operating said coal  
3 seams beneath the tract of land, or the coal seam owner or  
4 lessee, if any, if said owner or lessee is not yet operating said  
5 coal seams, may within fifteen days from the receipt by the  
6 department of the plat and notice required by section two of  
7 this article, or within fifteen days from the receipt by the de-  
8 partment of notice required by section two-a of this article,  
9 file objections in writing (forms for which will be furnished by  
10 the department on request) to such proposed drilling or frac-  
11 turing with the department of mines, setting out therein as  
12 definitely as is reasonably possible the ground or grounds on  
13 which such objections are based.

14 If any objection or objections are so filed, or are made by  
15 the department, the department shall notify the well operator  
16 of the character of the objections and by whom made and fix a  
17 time and place, not less than fifteen days from the end of said  
18 fifteen day period, at which such objections will be considered  
19 of which time and place the well operator and all objecting  
20 coal operators, owners or lessees, if any, shall be given at least  
21 ten days' written notice by the department, by registered or  
22 certified mail, and summoned to appear. At the time and place  
23 so fixed the well operator and the objecting coal operators,  
24 owners or lessees, if any, or such of them as are present or  
25 represented, shall proceed to consider the objections. In the  
26 case of proposed drilling, such parties present or represented  
27 may agree upon either the location as made or so moved as to  
28 satisfy all objections and meet the approval of the department,  
29 and any change in the original location so agreed upon and  
30 approved by the department shall be indicated on said plat on  
31 file with the department, and the distance and direction of the  
32 new location from the original location shall be shown, and as  
33 so altered, the plat shall be filed and become a permanent

34 record, and in the case of proposed fracturing, such parties  
35 present or represented may agree upon conditions under which  
36 the well is to be fractured which will protect life and property  
37 and which will satisfy all objections and meet the approval of  
38 the department, at which time the plat and notice required by  
39 section two, or the notice required by section two-a, as the case  
40 may be, shall be filed and become a permanent record. Where-  
41 upon the department shall forthwith issue to the well opera-  
42 tor a drilling or fracturing permit, as the case may be, reciting  
43 the filing of the plat and notice required by said section two,  
44 or the notice required by said section two-a, as the case may  
45 be, that at a hearing duly held a location as shown on the plat  
46 or the conditions under which the fracturing is to take place  
47 for the protection of life and property were agreed upon and  
48 approved, and that the well operator is authorized to drill at  
49 such location or to fracture at the site shown on such plat, or  
50 to fracture the well identified in the notice required by section  
51 two-a, as the case may be.

52 (a) In the case, the well operator and the objecting coal  
53 operators, owners or lessees, if any, or such as are present or  
54 represented at such hearing are unable to agree upon a drilling  
55 location, or upon a drilling location that meets the approval of  
56 the department of mines, then the department shall proceed to  
57 hear the evidence and testimony in accordance with sections  
58 one and two, article five, chapter twenty-nine-a of this code,  
59 except where such provisions are inconsistent with this article.  
60 The department shall take into consideration upon its de-  
61 cision:

62 (1) Whether the drilling location is above or in close prox-  
63 imity to any mine opening or shaft, entry, traveling, air haulage,  
64 drainage or passageway, or to any proposed extension thereof,  
65 in any operated or abandoned or operating coal mine, or coal  
66 mines already surveyed and platted, but not yet being operated;

67 (2) Whether the proposed drilling can reasonably be done  
68 through an existing or planned pillar of coal, or in close prox-  
69 imity to an existing well or such pillar of coal, taking into con-  
70 sideration the surface topography;

71 (3) Whether a well can be drilled safely, taking into con-

72 sideration the dangers from creeps, squeezes or other distur-  
73 bances due to the extraction of coal;

74 (4) The extent to which the proposed drilling location un-  
75 reasonably interferes with the safe recovery of coal, oil and gas.

76 At the close of the hearing or within ten days thereafter the  
77 department shall issue an order stating:

78 (1) That it refuses to issue a permit;

79 (2) That it will issue a permit for the proposed drilling lo-  
80 cation;

81 (3) That it will issue a permit for drilling location different  
82 than that requested by the well operator.

83 The order shall state with particularity the reasons for the  
84 department's order and shall be mailed by registered or certi-  
85 fied mail to the parties present or represented at such hearing.  
86 If the department has ruled that it will issue a permit, it shall  
87 issue a permit effective ten days after it has mailed such order:  
88 Except that for good cause shown, the department may stay  
89 the issuance of a permit for a period not to exceed thirty days.

90 If a permit is issued, the department shall indicate the new  
91 drilling location on the plat on file with the department and  
92 shall number and keep an index of and docket each plat and  
93 notice mailed to it as provided in section two of this article, and  
94 each notice mailed to it as provided in section two-a of this  
95 article, entering in such docket the name of the well operator,  
96 and the names and addresses of all persons notified, the dates  
97 of hearings and all actions taken by the department, permits  
98 issued or refused, the papers filed and a transcript of the hear-  
99 ing. This shall constitute a record of the proceedings before the  
100 department and shall be open to inspection by the public.

101 (b) In the case, the well operator and the objecting coal  
102 operators, owners or lessees, if any, or such as are present  
103 or represented at such hearing, are unable to agree upon the  
104 conditions under which the well is to be fractured as to protect  
105 life and property, or upon conditions of fracturing that meet  
106 with the approval of the department, then the department shall  
107 proceed to hear the evidence and testimony in accordance with  
108 sections one and two, article five, chapter twenty-ninc-a of this

109 code, except where such provisions are inconsistent with this  
110 article,

111 The department shall take into consideration upon its de-  
112 cision whether the well can be fractured safely, taking into  
113 consideration the dangers from creeps, squeezes or other  
114 disturbances.

115 At the close of the hearing, or within ten days thereafter,  
116 the department shall issue an order stating the conditions  
117 under which the well is to be fractured, provided the well can  
118 be fractured safely, taking into consideration the dangers from  
119 creeps, squeezes or other disturbances. If such fracturing can-  
120 not be done safely, the department shall issue an order stating  
121 with particularity the reasons for refusing to issue a permit.

122 The order shall state with particularity the reasons for the  
123 department's order and shall be mailed by registered or certi-  
124 fied mail to the parties present or represented at such hearing.  
125 If the department has ruled that it will issue a permit, it shall  
126 issue a permit effective ten days after it has mailed such order:  
127 Except that for good cause shown, the department may stay the  
128 issuance of a permit for a period not to exceed thirty days.

129 If a permit is issued, the department shall indicate the well  
130 to be fractured on that plat on file with the department and  
131 shall number and keep an index of and docket each plat and  
132 notice mailed to it as provided in section two of this article,  
133 and each notice mailed to it as provided in section two-a of  
134 this article, entering in such docket the name of the well opera-  
135 tor, the names and addresses of all persons notified, the dates  
136 of hearings and all actions taken by the department, permits  
137 issued or refused, the papers filed and a transcript of the hear-  
138 ing. This shall constitute a record of the proceedings before  
139 the department and shall be open to inspection by the public.

**§22-4-3a. Objections to proposed drilling or converting for in-  
troducing liquids or waste into wells; notices and  
hearings; agreed location or conditions; indication of  
changes on plats, etc.; issuance of permits; docket  
of proceeding.**

1 When a well is proposed to be drilled or converted for the  
2 purposes provided for in section two-b of this article, and

3 is above a seam or seams of coal, then the coal operator  
4 operating said coal seams beneath the tract of land, or the  
5 coal seam owner or lessee, if any, if said owner or lessee is  
6 not yet operating said coal seams, may within fifteen days  
7 from the receipt by the department of the plat and notice  
8 required by section two of this article, file objections in  
9 writing (forms for which will be furnished by the department  
10 on request) to such proposed drilling or conversion.

11 In any case wherein a well proposed to be drilled or con-  
12 verted for the purposes provided for in section two-b of this  
13 article shall, in the opinion of the chief of the division of  
14 water resources of the department of natural resources, affect  
15 detrimentally the reasonable standards of purity and quality  
16 of the waters of the state, such chief shall, within thirty days  
17 from the receipt of the plats and notices required by section  
18 two-b, file with the department his objections in writing to  
19 such proposed drilling or conversion, setting out therein as  
20 definitely as is reasonably possible the ground or grounds upon  
21 which such objections are based and indicating the conditions,  
22 consistent with the provisions of this article and the rules or  
23 regulations promulgated thereunder, as may be necessary for  
24 the protection of the reasonable standards of the purity and  
25 quality of such waters under which such proposed drilling or  
26 conversion may be completed to overcome such objections,  
27 if any.

28 If any objection or objections are so filed, or are made by  
29 the department, the department shall notify the well operator  
30 of the character of the objections and by whom made and  
31 fix a time and place, not less than thirty days from the end  
32 of said thirty day period, at which such objections will be  
33 considered, of which time and place the well operator and  
34 all objecting coal operators, the owners or lessees, if any, or  
35 such chief, shall be given at least ten days' written notice  
36 by the department, by registered or certified mail, and  
37 summoned to appear. At the time and place so fixed the  
38 well operator and the objecting coal operators, owners or  
39 lessees, if any, or such of them as are present or represented,  
40 or such chief, shall proceed to consider the objections. In  
41 the case of proposed drilling or converting of a well for the

42 purposes provided for in section two-b, such parties present  
43 or represented may agree upon either the location as made  
44 or so moved as to satisfy all objections and meet the approval  
45 of the department, and any change in the original location  
46 so agreed upon and approved by the department shall be  
47 indicated on said plat on file with the department, and the  
48 distance and direction of the new location from the original  
49 location shall be shown, and, as so altered, the plat shall be  
50 filed and become a permanent record. In the case of proposed  
51 conversion, such parties present or represented may agree  
52 upon conditions under which the conversion is to take place  
53 for the protection of life and property or for protection of  
54 reasonable standards of purity and quality of the waters of the  
55 state. At which time the plat and notice required by section  
56 two-b shall be filed and become a permanent record. Where-  
57 upon the department shall forthwith issue to the well operator  
58 a permit to drill or convert, as the case may be, reciting the  
59 filing of the plat and notice required by said section two-b  
60 that at a hearing duly held a location as shown on the plat  
61 or the conditions under which the conversion is to take place  
62 for the protection of life and property and reasonable standards  
63 of purity and quality of the waters of the state where agreed  
64 upon and approved, and that the well operator is authorized  
65 to drill at such location or to convert at the site shown on  
66 such plat, as the case may be.

67 (a) In the case, the well operator and the objecting coal  
68 operators, owners or lessees, if any, and such chief, or such as  
69 are present or represented at such hearing are unable to  
70 agree upon a drilling location, or upon a drilling location  
71 that meets the approval of the department of mines, then  
72 the department shall proceed to hear the evidence and testi-  
73 mony in accordance with sections one and two, article five,  
74 chapter twenty-nine-a of this code, except where such pro-  
75 visions are inconsistent with this article. The department shall  
76 take into consideration upon its decision:

77 (1) Whether the drilling location is above or in close prox-  
78 imity to any mine opening or shaft, entry, traveling, air haul-  
79 age, drainage or passageway, or to any proposed extension  
80 thereof, in any operated or abandoned or operating coal mine,

81 or coal mine already surveyed and platted, but not yet being  
82 operated;

83 (2) Whether the proposed drilling can reasonably be done  
84 through an existing or planned pillar of coal, or in close  
85 proximity to an existing well or such pillar of coal, taking  
86 into consideration the surface topography;

87 (3) Whether a well can be drilled safely, taking into con-  
88 sideration the dangers from creeps, squeezes or other disturb-  
89 ances, due to the extraction of coal;

90 (4) The extent to which the proposed drilling location  
91 unreasonably interferes with the safe recovery of coal, oil  
92 and gas.

93 At the close of the hearing or within ten days thereafter the  
94 department shall issue an order stating:

95 (1) That it refuses to issue a permit;

96 (2) That it will issue a permit for the proposed drilling  
97 location;

98 (3) That it will issue a permit for a drilling location  
99 different than that requested by the well operator.

100 The order shall state with particularity the reasons for  
101 the department's order and shall be mailed by registered or  
102 certified mail to the parties present or represented at such  
103 hearing. If the department has ruled that it will issue a permit,  
104 it shall issue a permit effective ten days after it has mailed  
105 such order: Except that for good cause shown, the department  
106 may stay the issuance of a permit for a period not to exceed  
107 thirty days.

108 If a permit is issued, the department shall indicate the new  
109 drilling location on the plat on file with the department and  
110 shall number and keep an index of and docket each plat and  
111 notice mailed to it as provided in section two of this article,  
112 and each notice mailed to it as provided in section two-a of  
113 this article, entering in such docket the name of the well oper-  
114 ator, and the names and addresses of all persons notified, the  
115 dates of hearings and all actions taken by the department,  
116 permits issued or refused, the papers filed and a transcript



117 of the hearing. This shall constitute a record of the proceed-  
118 ings before the department and shall be open to inspection  
119 by the public.

120 (b) In the case, the well operator and the objecting coal  
121 operators, owners or lessees, if any, and such chief, or such  
122 as are present or represented at such hearing, are unable  
123 to agree upon the conditions under which the well is to be  
124 converted as to protect life and property, and the reasonable  
125 standards of purity and quality of the waters of the state, or  
126 upon conditions of converting that meet with the approval  
127 of the department, then the department shall proceed to hear  
128 the evidence and testimony in accordance with sections one  
129 and two, article five, chapter twenty-nine-a of this code,  
130 except where such provisions are inconsistent with this article.

131 The department shall take into consideration upon its  
132 decision:

133 (1) Whether the well can be converted safely, taking into  
134 consideration the dangers from creeps, squeezes or other  
135 disturbances;

136 (2) Whether the well can be converted, taking into con-  
137 sideration the reasonable standards of the purity and quality  
138 of the waters of the state.

139 At the close of the hearing, or within ten days thereafter,  
140 the department shall issue an order stating the conditions  
141 under which the conversion is to take place, providing the  
142 well can be converted safely, taking into consideration the  
143 dangers from creeps, squeezes or other disturbances and the  
144 reasonable standards of purity and quality of the waters of  
145 this state. If such converting cannot be done safely, or if the  
146 reasonable standards of purity and quality of such waters  
147 will be endangered, the department shall issue an order  
148 stating with particularity the reasons for refusing to issue a  
149 permit.

150 The order shall state with particularity the reasons for the  
151 department's order and shall be mailed by registered or  
152 certified mail to the parties present or represented at such  
153 hearing. If the department has ruled that it will issue a permit,

154 it shall issue a permit effective ten days after it has mailed  
155 such order: Except that for good cause shown, the depart-  
156 ment may stay the issuance of a permit for a period not to  
157 exceed thirty days.

158 If a permit is issued, the department shall indicate the well  
159 to be converted on the plat on file with the department and  
160 shall number and keep an index of and docket each plat and  
161 notice mailed to it as provided in section two-b, of this article,  
162 entering in such docket the name of the well operator, and  
163 the names and addresses of all persons notified, the dates of  
164 hearings and all actions taken by the department, permits  
165 issued or refused, the papers filed and a transcript of the  
166 hearings. This shall constitute a record of the proceedings  
167 before the department and shall be open to inspection by the  
168 public.

**§22-4-4. Appeal from order of issuance or refusal of permit to drill  
or fracture; procedure.**

1 Any party to the proceedings under section three of this  
2 article adversely affected by the issuance of a drilling permit or  
3 to the issuance of a fracturing permit or the refusal of the de-  
4 partment to grant a drilling permit or fracturing permit is en-  
5 titled to judicial review thereof. All of the pertinent provisions  
6 of section four, article five, chapter twenty-nine-a of this code  
7 shall apply to and govern such judicial review with like effect  
8 as if the provisions of said section four were set forth in extenso  
9 in this section.

10 The judgment of the circuit court shall be final unless re-  
11 versed, vacated or modified on appeal to the supreme court of  
12 appeals in accordance with the provisions of section one, article  
13 six, chapter twenty-nine-a of this code.

**§22-4-4a. Appeal from order of issuance or refusal of permit for  
drilling location for introduction of liquids or waste  
or from conditions of converting procedure.**

1 Any party to the proceedings under section three-a of this  
2 article adversely affected by the order of issuance of a drilling  
3 permit or to the issuance of a fracturing permit or the refusal  
4 of the department to grant a drilling permit or fracturing per-

5 mit is entitled to judicial review thereof. All of the pertinent  
6 provisions of section four, article five, chapter twenty-nine-a  
7 of this code shall apply to and govern such judicial review with  
8 like effect as if the provisions of section four were set forth in  
9 extenso in this section.

10 The judgment of the circuit court shall be final unless re-  
11 versed, vacated or modified on appeal to the supreme court  
12 of appeals in accordance with the provisions of section one,  
13 article six, chapter twenty-nine-a of this code.

**§22-4-8b. Well log to be filed; contents; authority to promulgate regulations.**

1 Within a reasonable time after the completion of the drilling  
2 of a well, the well operator shall file with the deputy director  
3 an accurate log. Such log shall contain the character, depth  
4 and thickness of geological formations encountered, including  
5 fresh water, coal seams, mineral beds, brine, and oil and gas  
6 bearing formations and such other information as the deputy  
7 director may require to effectuate the purposes of this article.

8 The deputy director may promulgate such reasonable rules  
9 and regulations in accordance with article three, chapter  
10 twenty-nine-a of this code, as it may deem necessary to insure  
11 that the character, depth and thickness of geological formations  
12 encountered are accurately logged: *Provided*, That the deputy  
13 director shall not require logging by the use of an electrical  
14 logging device.

**§22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.**

1 All dry or abandoned wells or wells presumed to be aban-  
2 doned under the provisions of section seven of this article shall  
3 be plugged and reclaimed in accordance with this section and  
4 the other provisions of this article and in accordance with the  
5 rules and regulations promulgated by the deputy director.

6 Prior to the commencement of plugging operations and the  
7 abandonment of any well, the well operator shall either (a)  
8 notify, by registered or certified mail, the department of mines  
9 and the coal operator operating coal seams, or the coal seam  
10 owner of record or lessee of record, if any, to whom notices are

11 required to be given by section two of this article, and to the  
12 coal operators to whom notices are required to be given by sec-  
13 tion two-a of this article, of its intention to plug and abandon  
14 any such well (using such form of notice as the department may  
15 provide), giving the number of the well and its location and fix-  
16 ing the time at which the work of plugging and filling will be  
17 commenced, which time shall be not less than five days after  
18 the day on which such notice so mailed is received or in due  
19 course should be received by the department of mines, in  
20 order that a representative or representatives of the depart-  
21 ment and such coal operator, owner or lessee, if any, may be  
22 present at the plugging and filling of the well: *Provided*, That  
23 whether such representatives appear or do not appear, the well  
24 operator may proceed at the time fixed to plug and fill the  
25 well in the manner hereinafter described, or (b) first obtain the  
26 written approval of the department of mines and such coal  
27 operator, owner or lessee, if any, or (c) in the event the well  
28 to be plugged and abandoned is one on which drilling or re-  
29 working operations have been continuously progressing pur-  
30 suant to authorization granted by the department, first obtain  
31 the verbal permission of the deputy director for oil and gas  
32 or his designated representative to plug and abandon such  
33 well, except that the well operator shall, within a reasonable  
34 period not to exceed five days after the commencement of  
35 such plugging operations, give the written notices required  
36 by subdivision (a) above.

37 No well shall be plugged or abandoned unless prior to the  
38 commencement of plugging operations and the abandonment  
39 of any well the department is furnished a bond of the opera-  
40 tor in the sum of two thousand five hundred dollars, payable  
41 to the state of West Virginia, with a corporate bonding or  
42 surety company authorized to do business in this state as surety  
43 thereon, conditioned on full compliance with all laws, rules and  
44 regulations relating to the casing, plugging, abandonment and  
45 reclamation of wells and for furnishing such reports and infor-  
46 mation as may be required by the department. When a number  
47 of wells are involved, the operator may in lieu of furnishing a  
48 separate bond furnish a blanket bond in the sum of fifteen  
49 thousand dollars, payable to the state of West Virginia, with a  
50 corporate bonding or surety company authorized to do busi-

51 ness in this state as surety thereon, and conditioned as afore-  
52 said. In lieu of corporate surety on a separate or blanket bond,  
53 as the case may be, the operator may elect to deposit with the  
54 deputy director for oil and gas cash or collateral securities as  
55 specified in section two of this article. All of the provisions  
56 of section two dealing with cash or collateral securities in lieu  
57 of corporate surety shall be fully applicable hereto except for  
58 the condition of the bond with respect to which the operator  
59 must be in full compliance in order to be entitled to the interest  
60 and income earned on such securities. The operator shall be  
61 entitled to such interest and income under this section so long  
62 as the operator is in full compliance with all laws, rules and  
63 regulations relating to the casing, plugging, abandonment and  
64 reclamation of wells and for furnishing such reports and infor-  
65 mation as may be required by the department. Any such bond  
66 shall remain in force until released by the department and  
67 the department shall release the same when it is satisfied the  
68 conditions thereof have been fully performed. Notwithstanding  
69 the foregoing provisions, any operator who, in accordance with  
70 section two of this article, has furnished a separate bond, which  
71 has not been released by the department, for the drilling, con-  
72 verting or drilling for the introduction of liquids, for the dis-  
73 posal of sewage, industrial waste or other waste or the effluent  
74 therefrom, or introducing pressure, whether liquid or gas, or  
75 introducing liquid for the purposes provided for in section ten-  
76 a of this article or fracturing of the well it is now proposed be  
77 plugged and abandoned, or who, in accordance with the pro-  
78 visions of said section two of this article, has furnished a  
79 blanket bond which has not been released by the department  
80 shall not be required by this section to furnish any other bond.  
81 When the plugging, filling and reclamation of a well have been  
82 completed, an affidavit, in triplicate, shall be made (on a form  
83 to be furnished by the department) by two experienced men  
84 who participated in the work, the deputy director for oil and  
85 gas or his designated representative, in which affidavit shall be  
86 set forth the time and manner in which the well was plugged  
87 and filled and the land reclaimed. One copy of this affidavit  
88 shall be retained by the well operator, another (or true copies  
89 of same) shall be mailed to the coal operator or operators, if  
90 any, and the third to the department of mines.

**§22-4-10. Methods of plugging well.**

1       Upon the abandonment or cessation of the operation of  
2 any well drilled for natural gas or petroleum, or drilled or  
3 converted for the introduction of pressure, whether liquid or  
4 gas, or for the introduction of liquid for the purposes pro-  
5 vided for in section ten-a of this article or for the disposal  
6 of sewage, industrial waste or other waste or the effluent  
7 therefrom the well operator, at the time of such abandonment  
8 or cessation, shall fill and plug the well in the following  
9 manner:

10       (a) Where the well does not penetrate workable coal beds,  
11 it shall either be filled with mud, clay or other nonporous  
12 material from the bottom of the well to a point twenty feet  
13 above the top of its lowest oil, gas or water-bearing stratum;  
14 or a permanent bridge shall be anchored thirty feet below  
15 its lowest oil, gas or water-bearing stratum, and from such  
16 bridge it shall be filled with mud, clay or other nonporous  
17 material to a point twenty feet above such stratum; at this  
18 point there shall be placed a plug of cement or other suitable  
19 material which will completely seal the hole. Between this  
20 sealing plug and a point twenty feet above the next higher  
21 oil, gas or water-bearing stratum, the hole shall either be  
22 filled, or bridged and filled, in the manner just described;  
23 and at such point there shall be placed another plug of  
24 cement or other suitable material which will completely seal  
25 the hole. In like manner the hole shall be filled and plugged,  
26 or bridged, filled and plugged with reference to each of its  
27 oil, gas or water-bearing strata. However, whenever such  
28 strata are not widely separated and are free from water, they  
29 may be grouped and treated as a single sand, gas or petroleum  
30 horizon, and the aforesaid filling and plugging be performed  
31 as though there were but one horizon. After the plugging  
32 of all oil, gas or water-bearing strata, as aforesaid, a final  
33 plug shall be anchored approximately ten feet below the  
34 bottom of the largest casing in the well; from this point to  
35 the surface the well shall be filled with mud, clay or other  
36 nonporous material. In case any of the oil or gas-bearing  
37 strata in a well shall have been shot, thereby creating cavities  
38 which cannot readily be filled in the manner above described,  
39 the well operator shall follow either of the following methods:

40 (1) Should the stratum which has been shot be the lowest  
41 one in the well, there shall be placed, at the nearest suitable  
42 point, but not less than twenty feet above the stratum, a  
43 plug of cement or other suitable material which will com-  
44 pletely seal the hole. In the event, however, that the shooting  
45 has been done above one or more oil or gas-bearing strata in  
46 the well, plugging in the manner specified shall be done at  
47 the nearest suitable point, but not less than twenty feet below  
48 and above the stratum shot, or (2), when such cavity shall  
49 be in the lowest oil or gas-bearing stratum in the well, a  
50 liner shall be placed which shall extend from below the stratum  
51 to a suitable point, but not less than twenty feet above the  
52 stratum in which shooting has been done. In the event,  
53 however, that the shooting has been done above one or more  
54 oil or gas-bearing strata in the well, the liner shall be so  
55 placed that it will extend not less than twenty feet above, nor  
56 less than twenty feet below, the stratum in which shooting has  
57 been done. Following the placing of the liner in the manner  
58 here specified it shall be compactly filled with cement, mud,  
59 clay or other nonporous sealing material;

60 (b) Where the well has penetrated one or more workable  
61 coal beds, it shall be filled and securely plugged in the manner  
62 aforesaid, to a point fifty feet below the lowest work-  
63 able coal bed. If, in the judgment of the well operator,  
64 the coal operator and the department of mines, a permanent  
65 outlet to the surface is required, such outlet shall be provided  
66 in the following manner: A plug of cement, or other suitable  
67 material, shall be placed in the well at a suitable point, not less  
68 than forty feet below the lowest workable coal bed. In this  
69 plug and passing through the center of it shall be securely  
70 fastened an open pipe not less than two inches in diameter,  
71 which shall extend to the surface. At or above the surface  
72 the pipe shall be provided with a device which will permit  
73 the free passage of gas, and prevent obstruction of the same.  
74 Following the setting of the cement plug and outlet pipe as  
75 aforesaid, the hole shall be filled with cement to a point  
76 twenty feet above the lowest workable coal bed. From this  
77 point the hole shall be filled with mud, clay or other non-  
78 porous material to a point forty feet beneath the next over-  
79 lying workable coal bed, if such there be, and the next

80 succeeding sixty feet of the hole filled with cement, and  
81 similarly, in case there are more overlying workable coal  
82 beds. If, in the judgment of the well operator, the coal  
83 operator and the department of mines, no outlet to the surface  
84 is considered necessary, the plugging, filling and cementing  
85 shall be as last above described.

86 Where a coal protection string of casing has been cemented  
87 in and circulated to the surface, if a coal outlet pipe is not  
88 required in a well which penetrates one or more workable  
89 coal beds, then a sixty foot cement plug shall be placed  
90 from forty feet below the casing seat. The well shall then be  
91 filled to twenty feet of surface with nonporous material, and  
92 cement plug with the monument installed in cement from  
93 twenty feet to the surface and extending thirty inches above  
94 ground level.

95 Where a coal protection string of casing has been cemented  
96 in and circulated to the surface, if a coal outlet pipe is re-  
97 quired in a well which penetrates one or more workable coal  
98 beds, then a sixty foot cement plug shall be placed in the well  
99 from thirty feet to ninety feet below casing seat completely  
100 sealing the well. The outlet pipe shall be placed twenty  
101 feet below the casing seat centrally located in the casing.  
102 A cement basket shall be installed on the outlet pipe and  
103 placed ten feet above the casing seat with twenty feet of  
104 cement in the annulus between the outlet pipe and the  
105 casing. The remaining annulus shall be filled with non-  
106 porous material to ten feet of surface. The outlet pipe and  
107 monument shall then be cemented from ten feet to the surface  
108 with a bleeder pipe which will permit the free passage of  
109 gas and prevent obstructions of the same.

110 The deputy director may from time to time promulgate  
111 reasonable rules and regulations in accordance with article  
112 three, chapter twenty-nine-a of this code for the plugging of  
113 wells for the protection and safety of persons working in or  
114 about coal seams beneath the wells.

**§22-4-12. Supervision by department of mines over drilling, mining  
and reclamation operations; complaints; hearings;  
appeals.**

1 The department shall exercise supervision over the drilling,



2 casing, plugging, filling and reclamation of all wells and of all  
3 mining operations in close proximity to any well and shall have  
4 such access to the plans, maps and other records and to the  
5 properties of the well operators and coal operators as may be  
6 necessary or proper for this purpose, and, either as the result  
7 of its own investigations or pursuant to charges made by any  
8 well operator or coal operator, the department may itself enter,  
9 or shall permit any aggrieved person to file before it, a formal  
10 complaint charging any well operator with not drilling or cas-  
11 ing, or not plugging or filling, or reclaiming any well in ac-  
12 cordance with the provisions of this article, or charging any  
13 coal operator with conducting mining operations in proximity  
14 to any well contrary to the provisions of this article, or to the  
15 order of the department. True copies of any such complaints  
16 shall be served upon or mailed by registered mail to any per-  
17 son so charged, with notice of the time and place of hearing,  
18 of which the operator or operators so charged shall be given  
19 at least five days' notice. At the time and place fixed for hear-  
20 ing, full opportunity shall be given any person so charged or  
21 complaining to be heard and to offer such evidence as desired,  
22 and after a full hearing, at which the department may offer  
23 in evidence the results of such investigations as it may have  
24 made, the department shall make its findings of fact and enter  
25 such order as in its judgment is just and right and necessary to  
26 secure the proper administration of this article, and if it deems  
27 necessary, restraining the well operator from continuing to  
28 drill or case any well or from further plugging, filling or re-  
29 claiming the same, except under such conditions as the depart-  
30 ment may impose in order to insure a strict compliance with  
31 the provisions of this article relating to such matters, or re-  
32 straining further mining operations in proximity to any well,  
33 except under such conditions as the department may impose.

34 Any well operator or coal operator adversely affected by a  
35 final decision or order of the department, may appeal in the  
36 manner set forth in section four of this article.

**§22-4-13. Rules and regulations; hearings before department of  
mines; appeals.**

- 1 (a) The department of mines may promulgate such reason-  
2 able rules and regulations as it may deem necessary or desirable

3 to implement and make effective the provisions of this article  
4 and the powers and authority conferred and the duties im-  
5 posed upon it under the provisions of this article and for  
6 securing uniformity of procedure in the administration of the  
7 provisions of article three, chapter twenty-nine-a of this code.

8 (b) Any hearing or proceeding before the department shall  
9 be in accordance with the provisions of article five, chapter  
10 twenty-nine-a of this code, except where such provisions are  
11 inconsistent with this article.

12 Any well operator, coal operator, owner or lessee, if any,  
13 who would be required to be given notice by section two, ad-  
14 versely affected by an order or final decision of the depart-  
15 ment may appeal the same in accordance with the provisions  
16 of section four, article five, chapter twenty-nine-a except  
17 where such provisions are inconsistent with this article.

**§22-4-18. Injunctive relief.**

1 (a) In addition to other remedies, and aside from various  
2 penalties provided by law, whenever it appears to the depart-  
3 ment that any person is violating or threatening to violate any  
4 provision of this article, any order or final decision of the de-  
5 partment, or any lawful rule or regulation promulgated here-  
6 under, the department may apply in the name of the state to  
7 the circuit court of the county in which the violations or any  
8 part thereof has occurred, is occurring or is about to occur, or  
9 the judge thereof in vacation, for an injunction against such  
10 persons and any other persons who have been, are or are  
11 about to be, involved in any practices, acts or admissions so in  
12 violation, enjoining such person or persons from any viola-  
13 tion or violations. Such application may be made and prose-  
14 cuted to conclusion, whether or not any violation or violations  
15 have resulted or shall result, in prosecution or conviction un-  
16 der the provisions of this article.

17 (b) Upon application by the department, the circuit courts  
18 of this state may, by mandatory or prohibitory injunction  
19 compel compliance with the provisions of this article, and all  
20 orders and final decisions of the department. The court may  
21 issue a temporary injunction in any case pending a decision on  
22 the merits of any application filed. Any other section of this

23 code to the contrary notwithstanding, the state shall not be re-  
24 quired to furnish bond or other undertaking as a prerequisite  
25 to obtaining mandatory, prohibitory or temporary injunctive  
26 relief under the provisions of this article.

27 (c) The judgment of the circuit court upon application  
28 permitted by the provisions of this section, shall be final un-  
29 less reversed, vacated or modified on appeal to the supreme  
30 court of appeals. Any such appeal shall be sought in the man-  
31 ner and within the time provided by law for appeals from  
32 circuit courts in other civil actions.

33 (d) The department shall be represented in all such pro-  
34 ceedings by the attorney general or his assistants or in such  
35 proceedings in the circuit courts by the prosecuting attorney of  
36 the several counties as well, all without additional compen-  
37 sation. The department, with the written approval of the at-  
38 torney general, may employ special counsel to represent the de-  
39 partment in any such proceedings.

40 (e) If the department shall refuse or fail to apply for an  
41 injunction to enjoin a violation or threatened violation of any  
42 provision of this article, any order or final decision of the  
43 department, or any rules or regulations promulgated hereunder,  
44 within ten days after receipt of a written request to do so by any  
45 well operator, coal operator, operating coal seams beneath the  
46 tract of land, or the coal seam owner or lessee, if any, if said  
47 owner or lessee is not yet operating said coal seams beneath  
48 said tract of land, or the chief of the division of water resources  
49 of the department of natural resources, adversely affected by  
50 such violation or threatened violation, the person making such  
51 request may apply in his own behalf for an injunction to enjoin  
52 such violation or threatened violation in any court in which  
53 the department might have brought suit. The department shall  
54 be made party defendant in such application in addition to the  
55 person or persons violating or threatening to violate any pro-  
56 vision of this article, any final order or decision of the de-  
57 partment, or any rule or regulation promulgated hereunder.  
58 The application shall proceed and injunctive relief may be  
59 granted in the same manner as if the application had been made  
60 by the department: Except that the court may require a bond  
61 or other undertaking from the plaintiff.

**§22-4-20. Declaration of oil and gas notice by owners and lessees of coal seams.**

1 For purposes of notification under this article, any owner  
2 or lessee of coal seams shall file a declaration of his interest  
3 in such coal seams with the clerk of the county commission  
4 in the county where such coal seams are located. Said clerk  
5 shall file and index such declaration in accordance with section  
6 two, article one, chapter thirty-nine of this code, and shall index  
7 the name of the owner or lessee of such coal seams in the grant-  
8 or index of the record maintained for the indexing of leases.

9 The declaration shall entitle such owner or lessee to the no-  
10 tices provided in sections two, two-a, two-b and nine of this  
11 article: *Provided*, That the declaring owner shall be the record  
12 owner of the coal seam, and the declaring lessee shall be the  
13 record lessee with his source or sources of title recorded prior  
14 to recording such lessee's declaration.

15 The declaration shall be acknowledged by such owner or  
16 lessee, and in the case of a lessee, may be a part of the coal  
17 lease under which the lessee claims. Such declaration may be  
18 in the following language:

19 "DECLARATION OF OIL AND GAS NOTICE

20 The undersigned hereby declares:

21 (1) The undersigned is the ('owner' or 'lessee') of one or  
22 more coal seams or workable coal beds as those terms are  
23 defined in section one, article four, chapter twenty-two of  
24 the code of West Virginia.

25 (2) The coal seam(s) or workable coal bed(s) owned or  
26 leased partly or wholly by the undersigned lie(s) under the  
27 surface of lands described as follows:

28 (Here insert a description legally adequate for a deed,  
29 whether by metes and bounds or other locational descrip-  
30 tion, or by title references such as a book and page legally  
31 sufficient to stand in lieu of a locational description.)

32 (3) The undersigned desires to be given all notices of oil  
33 and gas operations provided by sections two, two-a, two-b and  
34 nine, article four, chapter twenty-two of the code of West Vir-  
35 ginia, addressed as follows:

36 (Here insert the name and mailing address of the under-  
37 signed owner or lessee.)

38

39

(Signature)

40 (Here insert an acknowledgment legally adequate for a  
41 deed).”

42 The benefits of the foregoing declaration shall be personal  
43 to the declaring owner or lessee, and not transferable or  
44 assignable in any way.

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## CHAPTER 124

(Com. Sub. for H. B. 1060—By Mr. Harris and Mr. Burke)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and twelve, article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dealing in oil without consent of owner or a majority of the owners in interest thereof and penalty therefor.

*Be it enacted by the Legislature of West Virginia:*

That sections eight and twelve, article five, 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 5. TRANSPORTATION OF OILS.

§22-5-8. Dealing in oil without consent of owner.

§22-5-12. Penalty—Dealing in oil without consent of owner in interest.

#### §22-5-8. Dealing in oil without consent of owner.

1 No company, its officers or agents, or any person or persons  
2 engaged in the transportation or storage of petroleum, crude or  
3 refined, shall sell or encumber, ship, transfer, or in any manner  
4 remove or procure, or permit to be sold, encumbered, shipped,  
5 transferred, or in any manner removed from the tanks or pipes  
6 of such company engaged in the business aforesaid, any

7 petroleum, crude or refined, without the written order of the  
8 owner or a majority of the owners in interest thereof.

**§22-5-12. Penalty—Dealing in oil without consent of owner in interest.**

1 Any company, its officers or agents, who shall sell, en-  
2 cumber, transfer or remove, or cause or procure to be sold,  
3 transferred or removed from the tanks or pipes of such  
4 company, any petroleum, crude or refined, without the written  
5 consent of the owner or a majority of the owners in interest  
6 thereof, shall be guilty of a misdemeanor, and, upon convic-  
7 tion thereof, shall be fined one thousand dollars and, if the  
8 offender be a natural person, imprisoned in the county jail  
9 not less than ninety days nor more than one year.

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## CHAPTER 125

(H. B. 1403—By Mr. Teets)

[Passed April 7, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting from certification of title tax vehicles of ambulance squads organized and incorporated under the laws of the state of West Virginia as a nonprofit corporation.

*Be it enacted by the Legislature of West Virginia:*

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

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

**§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.**

1 Certificates of registration of any vehicle or registration  
2 plates therefor, whether original issues or duplicates, shall

3 not be issued or furnished by the department of motor  
4 vehicles or any other officer charged with such duty, unless  
5 the applicant therefor already has received, or shall at the same  
6 time make application for and be granted, an official certifi-  
7 cate of title of such vehicle. Such application shall be upon  
8 a blank form to be furnished by the department of motor  
9 vehicles and shall contain a full description of the vehicle,  
10 which description shall contain a manufacturer's serial or  
11 identification number or other number as determined by the  
12 commissioner and any distinguishing marks, together with a  
13 statement of the applicant's title and of any liens or encum-  
14 brances upon such vehicle, the names and addresses of the  
15 holders of such liens and such other information as the de-  
16 partment of motor vehicles may require. The application  
17 shall be signed and sworn to by the applicant. A tax is  
18 hereby imposed upon the privilege of effecting the certification  
19 of title of each vehicle in the amount equal to five percent of  
20 the value of said motor vehicle at the time of such certification.  
21 If the vehicle is new, the actual purchase price or considera-  
22 tion to the purchaser thereof shall be the value of said  
23 vehicle; if the vehicle is a used or secondhand vehicle, the  
24 present market value at time of transfer or purchase shall be  
25 deemed the value thereof for the purpose of this section:  
26 *Provided*, That so much of the purchase price or consideration  
27 as is represented by the exchange of other vehicles on which  
28 the tax herein imposed has been paid by the purchaser shall  
29 be deducted from the total actual price or consideration paid  
30 for said vehicle, whether the same be new or secondhand; if  
31 the vehicle be acquired through gift, or by any manner whatso-  
32 ever, unless specifically exempted in this section, the present  
33 market value of the vehicle at the time of the gift or transfer  
34 shall be deemed the value thereof for the purposes of this  
35 section. No certificate of title for any vehicle shall be issued  
36 to any applicant unless such applicant shall have paid to  
37 the department of motor vehicles the tax imposed by this  
38 section which shall be five percent of the true and actual  
39 value of said vehicle whether the vehicle be acquired through  
40 purchase, by gift, or by any other manner whatsoever except  
41 gifts between husband and wife or between parents and chil-  
42 dren: *Provided, however*, That husband or wife, or parents or

43 children previously have paid said tax on the vehicle so  
44 transferred to the state of West Virginia. The tax imposed by  
45 this section shall not apply to vehicles to be registered as  
46 Class H vehicles, or Class S vehicles, as defined in section  
47 one, article ten of this chapter, which are used or to be used  
48 in interstate commerce, nor shall the tax imposed by this  
49 section apply to titling of vehicles by a registered dealer of this  
50 state for resale only, nor shall the tax imposed by this section  
51 apply to titling of vehicles by this state or any political sub-  
52 divisions thereof, or by any volunteer fire department or  
53 duly chartered rescue or ambulance squad organized and  
54 incorporated under the laws of the state of West Virginia as a  
55 nonprofit corporation for protection of life or property. The  
56 total amount of revenue collected by reason of this tax shall be  
57 paid into the state road fund and expended by the commissioner  
58 of highways for matching federal aid funds allocated for West  
59 Virginia. In addition to said tax, there shall be a charge of two  
60 dollars for each original certificate of title or duplicate certifi-  
61 cate of title so issued: *Provided further*, That this state or any  
62 political subdivision thereof, or any such volunteer fire depart-  
63 ment, or duly chartered rescue squad, shall be exempted from  
64 payment of such charge.

65 Such certificate shall be good for the life of the vehicle, so  
66 long as the same is owned or held by the original holder of  
67 such certificate, and need not be renewed annually, or any  
68 other time, except as herein provided.

69 If, by will or direct inheritance, a person becomes the owner  
70 of a motor vehicle and the tax herein imposed previously has  
71 been paid, to the department of motor vehicles, on that  
72 vehicle, he shall not be required to pay such tax.

73 A person who has paid the tax imposed by this section  
74 shall not be required to pay the tax a second time for the  
75 same motor vehicle, but he shall be required to pay a charge  
76 of two dollars for the certificate of retitle of that motor  
77 vehicle, except that such tax shall be paid by such person  
78 when the title to such vehicle has been transferred either in  
79 this or another state from such person to another person and  
80 transferred back to such person.

81 Notwithstanding any provisions of this code to the contrary,



82 the owners of trailers, semitrailers and other vehicles not sub-  
83 ject to the certificate of title tax prior to the enactment of this  
84 chapter shall be subject to the privilege tax imposed by  
85 this section: *Provided*, That mobile homes, house trailers,  
86 modular homes and similar nonmotive propelled vehicles  
87 susceptible of being moved upon the highways but primarily  
88 designed for habitation and occupancy, rather than for trans-  
89 porting persons or property, or any vehicle operated on a non-  
90 profit basis and used exclusively for the transportation of  
91 mentally retarded or physically handicapped children when the  
92 application for certificate of registration for such vehicle is  
93 accompanied by an affidavit stating that such vehicle will be  
94 operated on a nonprofit basis and used exclusively for the  
95 transportation of mentally retarded and physically handicapped  
96 children, shall not be subject to the tax imposed by this section,  
97 but shall be taxable under the provisions of articles fifteen and  
98 fifteen-a, chapter eleven of this code.

99 If any person making any affidavit required under any pro-  
100 vision of this section, shall therein knowingly swear falsely, or  
101 if any person shall counsel, advise, aid or abet another in the  
102 commission of false swearing, he shall be guilty of a misde-  
103 meanor, and, on conviction thereof, shall be fined not more  
104 than one hundred dollars or be imprisoned in the county jail  
105 for a period not to exceed thirty days, or in the discretion of  
106 the court be subject to both such fine and imprisonment.

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## CHAPTER 126

(S. B. 335—By Mr. Gilligan)

[Passed March 19, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles; increasing number of state vehicles to be operated by the arson investigators of the office of state fire marshal.

*Be it enacted by the Legislature of West Virginia:*

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

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

**§17A-3-23. Registration plates for state, county, municipal and other governmental vehicles.**

1 Any motor vehicle designed to carry passengers, owned  
2 or leased by the state of West Virginia, or any of its  
3 departments, bureaus, commissions or institutions, except  
4 vehicles used by the governor, vehicles operated by the  
5 department of public safety, not to exceed six vehicles  
6 operated by conservation officers of the department of  
7 natural resources, and not to exceed ten vehicles operated  
8 by the arson investigators of the office of state fire marshal,  
9 shall not be operated or driven by any person unless it  
10 shall have displayed and attached to the front thereof,  
11 in the same manner as regular motor vehicle registration  
12 plates are attached, a plate of the same size as the regular  
13 registration plate, with white lettering on a green back-  
14 ground bearing the words "West Virginia" in one line  
15 and the words "State Car" in another line, and the  
16 lettering for the words "State Car" shall be of sufficient  
17 size to be plainly readable from a distance of one hundred  
18 feet during daylight.

19 Such vehicle shall also have attached to the rear a  
20 plate bearing a number and such other words and figures  
21 as the commissioner of motor vehicles shall prescribe.  
22 The rear plate shall also be green with the number in  
23 white.

24 On registration plates issued to vehicles owned by  
25 counties, the color shall be white on red with the word  
26 "County" on top of the plate and the words "West  
27 Virginia" on the bottom. On any registration plates  
28 issued to a city or municipality, the color shall be white  
29 on blue with the word "City" on top, and the words  
30 "West Virginia" on the bottom. The colors may not be  
31 reversed and shall be of reflectorized material. The com-

32 missioner is hereby authorized to designate the colors  
33 and design of any other registration plates that are is-  
34 sued without charge to any other agency in accordance  
35 with the motor vehicle laws. The registration plates  
36 issued to counties, municipalities and other governmental  
37 agencies authorized to receive colored plates hereunder  
38 shall be affixed to both the front and rear of such vehicles.

39 No other registration plate shall be issued for, or at-  
40 tached to, any such state-owned vehicle.

41 The commissioner of motor vehicles shall have a  
42 sufficient number of both front and rear plates produced  
43 to attach to all state-owned cars. The numbered regis-  
44 tration plates for such vehicles shall start with the number  
45 "five hundred" and the commissioner shall issue con-  
46 secutive numbers for all state-owned cars.

47 It shall be the duty of each office, department, bureau,  
48 commission or institution furnished any such vehicle  
49 to have such plates affixed thereto prior to the operation  
50 of such vehicle by any official or employee.

51 Any person violating the provisions of this section  
52 shall be guilty of a misdemeanor, and, upon conviction  
53 thereof, shall be fined not less than fifty dollars nor more  
54 than one hundred dollars.

55 Magistrates shall have concurrent jurisdiction with cir-  
56 cuit and criminal courts for the enforcement of this  
57 section.

## CHAPTER 127

(S. B. 107—By Mr. Steptoe and Mr. Beall)

[Passed April 2, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increased allowance of weight and registration fees for motor vehicles of farm class.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.**

§17A-10-1. Classification of vehicles for purpose of registration.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

**§17A-10-1. Classification of vehicles for purpose of registration.**

1 Vehicles subject to registration under the provisions  
2 of this chapter shall be placed in the following classes for  
3 the purpose of registration:

4 Class A. Motor vehicles of passenger type, other than  
5 those operated for compensation;

6 Class B. Motor vehicles designated as trucks, truck  
7 tractors, or road tractors other than those operated for  
8 compensation;

9 Class C. All trailers and semitrailers, except those  
10 operated for compensation, and except house trailers and  
11 trailers or semitrailers designed to be drawn by Class A  
12 motor vehicles and having a gross weight of less than two  
13 thousand pounds;

14 Class E. Motor vehicles designated as trucks, truck  
15 tractors, or road tractors operated for transportation of  
16 property for compensation, but being exempt from the  
17 operating jurisdiction of the public service commission,  
18 and for which a statement of exemption has been received  
19 from the public service commission;

20 Class G. Motorcycles;

21 Class H. Motor vehicles operated regularly for the  
22 transportation of persons for compensation under a certifi-  
23 cate of convenience and necessity or contract carrier  
24 permit issued by the public service commission;

25 Class J. Motor vehicles operated for transportation of  
26 persons for compensation by common carriers, not running  
27 over a regular route or between fixed termini;

28 Class K. Motor vehicles designated as trucks, truck  
29 tractors, or road tractors operated for transportation of

30 property for compensation under a certificate of con-  
31 venience and necessity or a contract carrier permit issued  
32 by the public service commission;

33 Class L. All trailers and semitrailers used for trans-  
34 portation of property for compensation;

35 Class R. House trailers;

36 Class S. Special mobile equipment as defined in sub-  
37 division (r), section one, article one of this chapter;

38 Class T. Trailers or semitrailers of a type designed  
39 to be drawn by Class A vehicles and having a gross weight  
40 of less than two thousand pounds;

41 Class U. Passenger motor vehicles rented for com-  
42 pensation without a driver;

43 Class Farm Truck. Motor vehicles designated as trucks  
44 having a minimum gross weight of more than eight thou-  
45 sand pounds and a maximum gross weight of sixty-four  
46 thousand pounds, used exclusively in the conduct of a  
47 farming business, engaged in the production of agricul-  
48 tural products by means of (a) the planting, cultivation  
49 and harvesting of agricultural, horticultural, vegetable  
50 or other products of the soil, (b) the raising, feeding and  
51 care of livestock, poultry, bees and dairy cattle. Such  
52 farm truck shall be used only for the transportation of  
53 agricultural products so produced by the owner thereof,  
54 or for the transportation of agricultural supplies used in  
55 such production, or for private passenger use.

**§17A-10-3. Registration fees for vehicles equipped with pneu-  
matic tires.**

1 The following registration fees for the classes indi-  
2 cated shall be paid annually to the department for the  
3 registration of vehicles subject to registration hereunder  
4 when equipped with pneumatic tires:

5 Class A. The registration fee for all motor vehicles of  
6 this class shall be as follows:

7 (1) For motor vehicles of a weight of three thousand  
8 pounds or less—twenty dollars.

9 (2) For motor vehicles of a weight of three thousand

10 and one pounds to four thousand pounds—twenty-four  
11 dollars.

12 (3) For motor vehicles of a weight in excess of four  
13 thousand pounds—thirty dollars.

14 For the purpose of determining the weight the actual  
15 weight of the vehicle shall be taken: *Provided*, That for  
16 vehicles owned by churches, or by trustees for churches,  
17 which vehicles are regularly used for transporting  
18 parishioners to and from church services, no license fee  
19 shall be charged, but notwithstanding such exemption,  
20 the certificate of registration and license plates shall be  
21 obtained the same as other cards and plates under this  
22 article.

23 Class B, Class E and Class K. The registration fee for  
24 all motor vehicles of these three classes shall be as  
25 follows:

26 (1) For declared gross weights of four thousand  
27 pounds or less—twenty dollars.

28 (2) For declared gross weights of four thousand and  
29 one pounds to eight thousand pounds—twenty-two dollars  
30 and fifty cents.

31 (3) For declared gross weights of eight thousand and  
32 one pounds to sixteen thousand pounds—twenty-two  
33 dollars and fifty cents plus forty-five cents for each  
34 hundred pounds or fraction thereof that gross weight of  
35 such vehicle or combination of vehicles exceeds eight  
36 thousand pounds.

37 (4) For declared gross weights greater than sixteen  
38 thousand pounds—sixty-eight dollars and fifty cents plus  
39 ninety cents for each one hundred pounds or fraction  
40 thereof that the gross weight of such vehicle or combina-  
41 tion of vehicles exceeds sixteen thousand pounds.

42 If the declared gross weight of a Class B, Class E or  
43 Class K motor vehicle includes the gross weight of a  
44 Class C or Class L vehicle used in combination with  
45 such Class B, Class E or Class K motor vehicle and the  
46 declared gross weight of the vehicles constituting such  
47 combination exceeds sixteen thousand pounds and the

48 registration fee prescribed hereunder for such Class C  
49 or Class L vehicle has been paid, there shall be deducted  
50 from the registration fee for such Class B, Class E or  
51 Class K motor vehicle the amount of seventeen dollars  
52 and fifty cents; but, there shall be no such deduction  
53 where the declared gross weight of the vehicles consti-  
54 tuting such combination is less than sixteen thousand  
55 and one pounds.

56 Class C and Class L. The registration fee for all  
57 vehicles of these two classes shall be seventeen dollars  
58 and fifty cents.

59 Class G. The registration fee for each motorcycle hav-  
60 ing two wheels shall be six dollars. The registration  
61 fee for each motorcycle having three wheels shall be  
62 seven dollars and fifty cents.

63 Class H. The registration fee for all vehicles for this  
64 class operating entirely within the state shall be five  
65 dollars; and for vehicles engaged in interstate transporta-  
66 tion of persons, the registration fee shall be fees pro-  
67 vided by this section for Class B, Class E and Class K  
68 reduced by the amount that the mileage of such vehicles  
69 operated in states other than West Virginia bears to the  
70 total mileage operated by such vehicles in all states  
71 under a formula to be established by the department of  
72 motor vehicles.

73 Class J. The registration fee for all motor vehicles of  
74 this class shall be eighty-five dollars. Ambulances and  
75 hearses used exclusively as such shall be exempted from  
76 the above special fees.

77 Class R. The registration fee for all vehicles of this  
78 class shall be ten dollars.

79 Class S. The registration fee for all vehicles of this  
80 class shall be seventeen dollars and fifty cents.

81 Class T. The registration fee for all vehicles of this  
82 class shall be six dollars.

83 Class U. The registration fee for all vehicles of this  
84 class shall be fifty-seven dollars and fifty cents.

85 Class Farm Truck. The registration fee for all motor  
86 vehicles of this class shall be as follows: (1) For farm  
87 trucks of declared gross weights of eight thousand and  
88 one pounds to sixteen thousand pounds—thirty dollars;  
89 (2) for farm trucks of declared gross weights of sixteen  
90 thousand and one pounds to twenty-two thousand pounds  
91 —sixty dollars; (3) for farm trucks of declared gross  
92 weights of twenty-two thousand and one pounds to  
93 twenty-eight thousand pounds—ninety dollars; (4) for  
94 farm trucks of declared gross weights of twenty-eight  
95 thousand and one pounds to thirty-four thousand pounds  
96 —one hundred fifteen dollars; (5) for farm trucks of  
97 declared gross weights of thirty-four thousand and one  
98 pounds to forty-four thousand pounds—one hundred  
99 sixty dollars; (6) for farm trucks of declared gross  
100 weights of forty-four thousand and one pounds to fifty-  
101 four thousand pounds—two hundred five dollars; and  
102 (7) for farm trucks of declared gross weights of fifty-  
103 four thousand and one pounds to sixty-four thousand  
104 pounds—two hundred fifty dollars.

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## CHAPTER 128

(H. B. 1056—By Mr. Farley)

(Passed April 8, 1977; in effect ninety days from passage. Approved by Governor.)

AN ACT to amend and reenact section seventeen, article one, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to traffic regulations and laws of the road; and including truss trailers within the definition of pole trailers.

*Be it enacted by the Legislature of West Virginia:*

That section seventeen, article one, 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 1. WORDS AND PHRASES DEFINED.****§17C-1-17. Pole trailer.**

1 "Pole trailer" means every vehicle without motive power  
2 designed to be drawn by another vehicle and attached to the  
3 towing vehicle by means of a reach, or pole, or by being  
4 boomed or otherwise secured to the towing vehicle, and  
5 ordinarily used for transporting long or irregularly shaped  
6 loads such as poles, pipes, trusses, or structural members  
7 capable, generally, of sustaining themselves as beams between  
8 the supporting connections.

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**CHAPTER 129**

(H. B. 1440—By Mr. Shingleton and Mr. Shiflet)

[Passed March 23, 1977; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seven, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conditions under which written accident report must be filed with department of motor vehicles and increasing amount of property damage in accident necessitating filing of such report from one hundred dollars to two hundred fifty dollars.

*Be it enacted by the Legislature of West Virginia:*

That section seven, article four, 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 4. ACCIDENTS.****§17C-4-7. Written reports of accidents.**

1 (a) The driver or the attorney or agent of such driver of a  
2 vehicle involved in an accident occurring on the public high-  
3 ways of this state resulting in bodily injury to or death of any  
4 person or total property damage to an apparent extent of two  
5 hundred fifty dollars or more shall, within five days after such

6 accident, forward a written report of such accident to the de-  
7 partment of motor vehicles.

8 (b) The department may require any driver of a vehicle  
9 involved in an accident of which report must be made as pro-  
10 vided in this section to file supplemental reports whenever the  
11 original report is insufficient in the opinion of the department  
12 and may require witnesses of accidents to render reports to  
13 the department.

14 (c) Every law-enforcement officer who, in the regular  
15 course of duty, investigates a motor vehicle accident of which  
16 report must be made as required in this section, either at the  
17 time of and at the scene of the accident or thereafter by inter-  
18 viewing participants or witnesses shall, within twenty-four  
19 hours after completing such investigation, forward a written  
20 report of such accident to the department. The department  
21 shall prepare a form for such accident report and, after ap-  
22 proval of such form by the commissioner, the superintendent  
23 of the department of public safety and the state road commis-  
24 sioner, shall supply copies of such form to police departments,  
25 sheriffs and other appropriate law-enforcement agencies. Every  
26 accident report required under the provisions of this subsection  
27 (c) shall be made on such form.

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## CHAPTER 130

(S. B. 339—By Mr. Steptoe and Mr. Gainer)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section six, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing allowable fees for inspecting certain types of vehicles.

*Be it enacted by the Legislature of West Virginia:*

That section six, article sixteen, chapter seventeen-c of the

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

**ARTICLE 16. INSPECTION OF VEHICLES.**

**§17C-16-6. Assignment, transfer and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.**

1 No permit for an official inspection station shall be  
2 assigned or transferred or used at any location other  
3 than therein designated and every said permit shall be  
4 posted in a conspicuous place at the station location  
5 designated.

6 The person operating any such station shall issue a  
7 certificate of inspection and approval, upon an official  
8 form, to the owner of a vehicle upon inspecting such  
9 vehicle and determining that its equipment required  
10 hereunder is in good condition and proper adjustment, but  
11 otherwise no certificate shall be issued, except such as may  
12 be issued pursuant to section two of this article. When  
13 required by the superintendent, a record and report shall  
14 be made of every inspection and every certificate so  
15 issued.

16 A fee of not more than four dollars fifty cents may be  
17 charged for an inspection, but the imposition of such  
18 charge shall not be mandatory.

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## CHAPTER 131

(S. B. 321—By Mr. Brotherton, Mr. President)

[Passed March 11, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preparation, publication and disposition of financial statements of municipalities.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 13. TAXATION AND FINANCE.**

**PART VII. MUNICIPAL FINANCIAL STATEMENTS.**

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

1 Every city, within ninety days after the beginning  
2 of each fiscal year, shall prepare on a form to be  
3 prescribed by the state tax commissioner and cause  
4 to be published a sworn statement revealing (a) the  
5 receipts and expenditures of the city during the previous  
6 fiscal year arranged under descriptive headings, (b) the  
7 name of each person who received more than fifty dollars  
8 from any fund during the previous fiscal year, together  
9 with the amount received and the purpose for which paid,  
10 and (c) all debts of the city, the purpose for which each  
11 debt was contracted, its due date, and to what date the  
12 interest thereon has been paid. Such statement shall be  
13 published as a Class I legal advertisement in compliance  
14 with the provisions of article three, chapter fifty-nine of  
15 this code, and the publication area for such publication  
16 shall be the city.

17 Every city shall transmit to any resident of such city  
18 requesting the same a copy of any published statement  
19 for the fiscal year designated, supplemented by a docu-  
20 ment listing the names of each person who received less  
21 than fifty dollars from any fund during such fiscal year  
22 and showing the amount paid to each and the purpose  
23 for which paid.

24 Every town or village, within one hundred twenty days  
25 after the beginning of each fiscal year, shall prepare on  
26 a form to be prescribed by the state tax commissioner  
27 a sworn statement revealing (a) the receipts and ex-  
28 penditures of the town or village during the previous  
29 fiscal year arranged under descriptive headings, (b) the

30 name of each person who received money from any fund  
31 during the previous fiscal year, together with the amount  
32 received and the purpose for which paid, and (c) all debts  
33 of the town or village, the purpose for which each debt  
34 was contracted, its due date, and to what date the interest  
35 thereon has been paid.

36 Every town or village shall transmit to any resident of  
37 such town or village requesting the same a copy of any  
38 such statement for the fiscal year designated. Any such  
39 town or village may, if the governing body thereof so  
40 elects, also publish such statement as a Class I legal  
41 advertisement in compliance with the provisions of said  
42 article three, chapter fifty-nine, and in such event, the  
43 publication area for such publication shall be the town  
44 or village.

45 The statement required by the first paragraph of this  
46 section and the statement required by the third paragraph  
47 of this section shall be sworn to by the recorder of the  
48 municipality and the mayor thereof and two members of  
49 the governing body of such municipality. As soon as  
50 practicable following the close of the fiscal year, a copy  
51 of any statement herein required shall be filed by the  
52 municipality with the state tax commissioner, and the  
53 clerk of the county commission of the county, and the  
54 clerk of the circuit court of the circuit, in which the  
55 municipality or the major portion of the territory thereof  
56 is located. If the governing body fail or refuse to perform  
57 any of the duties set forth in this section, every member  
58 of such governing body and the recorder thereof con-  
59 curring in such failure or refusal shall be guilty of a  
60 misdemeanor, and, upon conviction thereof, shall be fined  
61 not less than ten nor more than one hundred dollars. If  
62 any of the provisions of this section are violated, it shall  
63 be the duty of the prosecuting attorney of the county in  
64 which the municipality or the major portion of the terri-  
65 tory thereof is located to immediately present the evi-  
66 dence thereof to the grand jury if in session, and if not  
67 in session, he shall cause such violations to be investigated  
68 by the next succeeding grand jury.

**\*CHAPTER 132**

(S. B. 543—By Mr. Brotherton, Mr. President)

[Passed March 30, 1977; 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 twenty-a, authorizing any municipality to establish a neighborhood rehabilitation fund; providing certain legislative findings and purpose; defining terms; providing that any such neighborhood rehabilitation fund shall be used to make loans or to guarantee the repayment of loans made to certain residents of any such municipality for the rehabilitation of their residences; relating to certain written agreements setting forth the terms and conditions pertaining to such loans; limiting the liability of any such municipality to the funds on deposit in such neighborhood rehabilitation fund; and providing that any such municipality shall have the authority to provide technical and other assistance to such residents in connection with such rehabilitation.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 20A. NEIGHBORHOOD REHABILITATION.**

- §8-20A-1. Legislative findings and purpose.
- §8-20A-2. Definitions.
- §8-20A-3. Neighborhood rehabilitation fund.
- §8-20A-4. Inspection and technical assistance.

**§8-20A-1. Legislative findings and purpose.**

- 1 (a) The Legislature hereby finds and declares that
- 2 there has been for a number of years a clear trend for

\* The title to this act proposes to enact a new article 20A. Since there is an existing article 20A, this act is being treated as amending the existing article.

3 younger and more affluent persons and families residing  
4 in municipalities to move their residences from the inner  
5 urban areas of such cities to newer suburban areas; that  
6 as a result, a disproportionate number of homeowners  
7 remaining in such inner urban areas are older, less  
8 affluent and otherwise less able to afford the expense  
9 of the remodeling, repairing and rehabilitating of their  
10 residences necessary to maintain such residences in a  
11 sanitary, safe and decent condition; that because of their  
12 lack of acceptable loan collateral, the age of their resi-  
13 dences and the location and age of the neighborhoods  
14 in which their residences are located, many of such  
15 homeowners have not been able to borrow funds neces-  
16 sary to effect such remodeling, repair and rehabilitation;  
17 and that some of such homeowners who have been able  
18 to borrow funds for such purposes have been able to do  
19 so only upon rates of interest and upon other terms and  
20 conditions which are particularly onerous to such home-  
21 owners.

22 (b) The Legislature further finds and declares that the  
23 assistance authorized in this article will provide, and will  
24 encourage private lenders to provide, to such homeown-  
25 ers, more readily and at rates of interest and upon other  
26 terms and conditions significantly more favorable to such  
27 homeowners, the loans necessary to finance the cost of  
28 such remodeling, repair and rehabilitation.

29 (c) The Legislature further finds and declares that it  
30 is manifestly in the public interest to foster, in the pop-  
31 ulous inner urban areas of this state, the pride, self-  
32 respect and esteem incident to home ownership and to  
33 encourage and assist in the maintenance of residences  
34 situate in such areas in a safe, decent and sanitary condi-  
35 tion; that without the assistance authorized in this article,  
36 there will be continued deterioration of such inner urban  
37 areas with the resultant proliferation of urban decay and  
38 slums, higher crime rates and general decline in civic  
39 pride, public spirit and the quality of life, with all of  
40 the public cost, direct and indirect, attendant thereon;  
41 and that accordingly by providing such assistance, any  
42 municipality will be acting in all respects for the benefit

43 of the people of the state of West Virginia and shall  
44 thereby serve a public purpose in improving and other-  
45 wise promoting their health, welfare and prosperity.

**§8-20A-2. Definitions.**

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

3 (1) "Eligible dwelling" means real estate upon which  
4 there is located a structure designed primarily for resi-  
5 dential housing and consisting of dwelling units for not  
6 more than four families, provided that all occupancy  
7 thereof shall be limited to persons and families who  
8 would qualify as eligible residents.

9 (2) "Eligible resident" means a person or family re-  
10 siding in an eligible dwelling owned by such person or  
11 family situate within the corporate limits of a munici-  
12 pality, irrespective of race, creed, national origin or sex,  
13 with respect to whom it is determined by the governing  
14 body of such city that (a) such person or family because  
15 of financial condition, age, infirmity, family size or other  
16 reasons, is unable to obtain, on suitable terms and condi-  
17 tions, loans or other credit necessary for the rehabilita-  
18 tion of such eligible dwelling, and hence requires the  
19 assistance as provided in this article, (b) such rehabili-  
20 tation is necessary to place such eligible dwelling in a  
21 safe, sanitary and decent condition, and (c) the assistance  
22 as authorized in this article shall make financing avail-  
23 able to such person or family, or enable such person or  
24 family to obtain such financing, on terms and conditions  
25 substantially more favorable to such person or family  
26 than would otherwise be available.

27 (3) "Rehabilitation" means a specific work of improve-  
28 ment within a municipality undertaken primarily to re-  
29 model, repair or rehabilitate an eligible dwelling occu-  
30 pied by an eligible resident as his principal residence.

**§8-20A-3. Neighborhood rehabilitation fund.**

1 (a) Any municipality shall have plenary power and  
2 authority, by charter provision, ordinance or resolution,  
3 to establish a special fund of moneys made available by



4 appropriation, grant, contribution, loan or otherwise, to  
5 be known as the neighborhood rehabilitation fund of  
6 such city, to be governed, administered and accounted  
7 for by the governing body of such city as a special pur-  
8 pose account, separate and distinct from any other  
9 moneys, fund or funds owned by such city.

10 (b) The governing body of any municipality may from  
11 time to time, by resolution, establish criteria which shall  
12 govern the determination of persons and families who  
13 qualify as eligible residents.

14 (c) The purpose of such neighborhood rehabilitation  
15 fund shall be to provide funds for the making of loans,  
16 or to guarantee the repayment of loans made by private  
17 lenders, to eligible residents of such city, the proceeds of  
18 which loans are to be used exclusively for rehabilitation.

19 (d) Such loans shall be made or guaranteed only upon  
20 determination by the governing body of such city, or by  
21 a board or commission appointed for such purpose by  
22 such governing body, that the borrowers are eligible  
23 residents, that the proceeds of the loan shall be used  
24 for rehabilitation and that loans to such eligible borrow-  
25 ers for rehabilitation are not otherwise available upon  
26 reasonably equivalent terms and conditions.

27 (e) No loan shall be made or guaranteed by such city  
28 except in accordance with a written agreement between  
29 such city, the eligible resident and in the case of a  
30 guaranteed loan the lender making such loan, which  
31 agreement shall provide, without limitation, that:

32 (1) The proceeds of such loan shall be used exclu-  
33 sively for rehabilitation;

34 (2) The loan shall be in such principal amount, re-  
35 payable in such number of consecutive and substantially  
36 equal monthly installments, at such annual rate of inter-  
37 est and shall be secured in such manner as specified in  
38 such agreement;

39 (3) In the case of a guaranteed loan, such city shall  
40 be obligated to repay, from the neighborhood rehabilita-  
41 tion fund established in accordance with this article, any  
42 installment or installments of such loan as shall be in

43 default from time to time in accordance with the pro-  
44 visions of such agreement;

45 (4) In the event an eligible resident defaults on such  
46 a loan made by such city, or in the event such city incurs  
47 an obligation on a guaranteed loan such city shall be  
48 entitled, at its option, to realize on any and all security  
49 for said loan: *Provided*, That the right of such city to  
50 realize on such security with respect to a guaranteed loan  
51 shall be subordinate and secondary to the right of the  
52 lender as to such security, to the extent of the unpaid  
53 balance of such loan.

54 (f) Nothing in this article contained shall be so con-  
55 strued as to authorize any city to make any contract or  
56 incur any obligation or liability of any kind or nature,  
57 except such as shall be discharged or payable solely from  
58 the funds on deposit in such neighborhood rehabilitation  
59 fund.

**§8-20A-4. Inspection and technical assistance.**

1 In addition to all other powers and rights of a municipi-  
2 pality, any municipality shall have plenary power and  
3 authority, at the request of eligible residents, to inspect  
4 the residences of such eligible residents, to make recom-  
5 mendations concerning rehabilitation and to provide all  
6 manner of technical services and assistance in the plan-  
7 ning, processing and design of needed rehabilitation.

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## CHAPTER 133

(Com. Sub. for S. B. 275—By Mr. Gainer and Mr. Benson)

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[Passed March 19, 1977; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections one, three and four, article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authorization of municipalities and counties to contribute to and secure federal grants for certain nonstock, nonprofit corporations or health institutions for

certain public purposes; requiring that such corporations be either chartered in this state or licensed or authorized to do business therein; and authorizing county commissions to appropriate funds for health institutions.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 32. INTERGOVERNMENTAL RELATIONS—CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS OR HEALTH INSTITUTIONS FOR PUBLIC PURPOSES.**

**PART I. MUSEUMS; CULTURAL CENTERS, ETC.**

§8-32-1. Legislative findings; authority of municipalities and counties to make appropriations, conveyances or leases; limitations and restrictions.

**PART III. OBTAINING FEDERAL GRANTS.**

§8-32-3. Power to secure federal grants for certain nonprofit organizations.

**PART IV. HEALTH INSTITUTIONS.**

§8-32-4. Legislative findings; authority of municipalities and county commissions to make appropriations; limitations and restrictions.

**PART I. MUSEUMS; CULTURAL CENTERS, ETC.**

§8-32-1. Legislative findings; authority of municipalities and counties to make appropriations, conveyances or leases; limitations and restrictions.

1 (a) The Legislature hereby finds that the support of  
2 nonstock, nonprofit corporations dedicated to making  
3 available to the general public (1) museums, historic  
4 landmarks, facilities or cultural centers for the apprecia-  
5 tion, advancement or enjoyment of art, crafts, music,  
6 dance, drama, nature, science or other educational and  
7 cultural activities or (2) parks, playgrounds, athletic  
8 fields, stadiums, swimming pools, skating rinks, arenas  
9 or other public park and recreational facilities for the  
10 promotion, advancement or enjoyment of education,  
11 recreation and health is for the general welfare of the  
12 public and is a public purpose. This section is enacted

13 in view of this finding and shall be liberally construed in  
14 the light thereof.

15 (b) When a nonstock, nonprofit corporation, chartered  
16 under the laws of this state, or licensed to do business  
17 in this state, (1) is organized for the construction, mainte-  
18 nance or operation of (i) museums, historic landmarks,  
19 facilities or cultural centers for the appreciation, ad-  
20 vancement or enjoyment of art, crafts, music, dance,  
21 drama, nature, science or other educational and cultural  
22 activities or (ii) parks, playgrounds, athletic fields,  
23 stadiums, swimming pools, skating rinks, arenas or other  
24 public park and recreational facilities for the promotion,  
25 advancement or enjoyment of education, recreation and  
26 health and provides in its charter that its buildings or  
27 facilities, or a designated portion thereof, shall be de-  
28 voted to the use by the public for all purposes set forth  
29 in such charter without regard to race, sex, religion,  
30 national origin or economic circumstance, and free from  
31 charge except such as is necessary to provide the means  
32 to keep the buildings, facilities and grounds in proper  
33 condition and repair, and to pay the cost of insurance,  
34 care, management, operations, teaching and attendants,  
35 so that the general public may have the benefit of such  
36 establishment for the uses set forth in such corporation's  
37 charter at as little expense as possible, (2) provides in  
38 its charter that no member trustee, or member of the  
39 board of directors (by whatever name the same may  
40 be called), of the corporation shall receive any compen-  
41 sation, gain or profit from such corporation, and (3) is  
42 operated in compliance with such charter provisions as  
43 aforesaid, then, notwithstanding any statutory or municip-  
44 al charter provisions to the contrary, any municipality  
45 in which such nonstock, nonprofit corporation is oper-  
46 ating or which is or will be served by such nonstock,  
47 nonprofit corporation, if any, and the county commission  
48 of any county in which such nonstock, nonprofit corpora-  
49 tion is operating or which is or will be served by such  
50 nonstock, nonprofit corporation, may appropriate funds,  
51 subject to the provisions and limitations set forth in sub-  
52 sections (c) and (d) of this section, to such nonstock,  
53 nonprofit corporation, for such public purposes or convey

54 or lease real or personal property, with or without con-  
55 sideration, to such nonstock, nonprofit corporation, for  
56 such public purposes, except that no such conveyance  
57 or lease may be made by a municipality or a county  
58 commission to such nonstock, nonprofit corporation for  
59 any of the public purposes set forth in (2) of subsection  
60 (a) of this section if such county has a county parks  
61 and recreation commission or board operating in or for  
62 such county, or participates in a consolidated recreation  
63 commission or board with a municipality as the case may  
64 be: *Provided*, That if at any time such property ceases  
65 to be used for such public purposes, it shall by operation  
66 of law revert to and vest in the municipality or county  
67 commission which conveyed or leased the same and such  
68 nonstock, nonprofit corporation shall thereafter have no  
69 right, title or interest therein or thereto.

70 In every such case, the governing body of any such  
71 municipality or any such county commission and such  
72 corporation may agree for the appointment of additional  
73 members to the board of directors of such corporation  
74 by such governing body or county commission, either  
75 as regular members or in an ex officio capacity.

76 (c) No funds appropriated by a municipality or county  
77 commission under the authority of this section shall be  
78 disbursed by any such nonstock, nonprofit corporation  
79 unless and until the expenditure thereof has been ap-  
80 proved by the governing body of such municipality or  
81 any such county commission, as the case may be, which  
82 made such appropriation, and such corporation shall upon  
83 demand at any time make a full and complete accounting  
84 of all such funds to such governing body or county com-  
85 mission, as the case may be, and shall in every event  
86 without demand make to such governing body or county  
87 commission an annual accounting thereof.

88 (d) Under no circumstances whatever shall any action  
89 taken by any municipality or county commission under  
90 the authority of this section give rise to or create any  
91 indebtedness on the part of the municipality, the gov-  
92 erning body of such municipality, the county, such county

93 commission, any member of such governing body or the  
94 county commission or any municipal or county official or  
95 employee.

### PART III. OBTAINING FEDERAL GRANTS.

#### **§8-32-3. Power to secure federal grants for certain nonprofit organizations.**

1 (a) Notwithstanding any statutory or charter provi-  
2 sions to the contrary, every municipality is, subject to  
3 the provisions and limitations set forth in subsections  
4 (b) and (c) of this section, hereby empowered and  
5 authorized to make application for, receive and accept  
6 grants from the federal government, or any agency  
7 thereof, for, on behalf of and for use by a nonstock, non-  
8 profit corporation chartered under the laws of this state,  
9 or licensed to do business in this state, for charitable,  
10 patriotic or philanthropic or other public purposes and  
11 operating within the corporate limits of said munici-  
12 pality. The Legislature hereby finds that the support  
13 of such nonstock, nonprofit corporations is for the general  
14 welfare of the public and is a public purpose. This sec-  
15 tion is enacted in view of this finding and shall be liberally  
16 construed in the light thereof.

17 (b) No federal funds received by a municipality under  
18 the authority of this section shall be disbursed by any  
19 such nonstock, nonprofit corporation unless and until the  
20 expenditure thereof has been approved by the govern-  
21 ing body of such municipality, and such corporation shall  
22 upon demand at any time make a full and complete ac-  
23 counting of all such funds to such governing body.

24 (c) Under no circumstances whatever shall any action  
25 taken by any municipality under the authority of this  
26 section give rise to or create any indebtedness on the  
27 part of such municipality, the governing body of such  
28 municipality, any member thereof or any municipal of-  
29 ficial or employee.

## PART IV. HEALTH INSTITUTIONS.

**§6-32-4. Legislative findings; authority of municipalities and county commissions to make appropriations; limitations and restrictions.**

1 (a) The Legislature hereby finds that the support of  
2 public or nonprofit health institutions dedicated to making  
3 available to the general public health and mental health  
4 services is for the general welfare of the public and is a  
5 public purpose for which funds of a municipality or  
6 county commission may be lawfully expended. This  
7 section is enacted in view of this finding and shall be  
8 liberally construed in the light thereof. As used in this  
9 section, the term "health institution" means a hospital,  
10 health or mental health clinic, regional or community  
11 health or mental health center, mental retardation  
12 facility, extended care facility, nursing home, or other  
13 health or mental health institution, which is open to the  
14 general public.

15 (b) Notwithstanding any statutory or charter provision  
16 to the contrary, municipalities and county commissions  
17 are hereby empowered and authorized to appropriate  
18 funds, subject to the conditions and limitations set forth  
19 in this section, for the establishment, cost, operation,  
20 maintenance and projects of any health institution,  
21 whether such health institution be situate within or  
22 without the confines of any such municipality or county.  
23 Funds may not be appropriated by a municipality or  
24 county commission for the benefit and use of any health  
25 institution unless such health institution is either owned  
26 and operated by a unit of government, or is owned and  
27 operated by a nonstock, nonprofit corporation chartered  
28 under the laws of or licensed to do business in this state  
29 which provides in its charter that no member trustee or  
30 member of the board of directors (by whatever name  
31 the same may be called) shall receive any compensation,  
32 gain or profit from such corporation and which is operat-  
33 ed in compliance with such charter provisions. Any such  
34 appropriation shall be made from the general funds of  
35 such municipality or county commission not otherwise

36 appropriated or from federal revenue sharing funds  
37 received by such municipality or county commission.

38 (c) The recipient of any funds appropriated under the  
39 provisions of this section shall upon demand at any time  
40 make a full and complete accounting of all such funds  
41 to the governing body of the municipality or county  
42 commission which made such appropriation and shall in  
43 every event without demand make to such governing  
44 body an annual accounting thereof.

45 (d) Under no circumstances whatever shall any action  
46 taken by any municipality or county commission under the  
47 authority of this section give rise to or create any in-  
48 debtedness on the part of the municipality, the county,  
49 the governing body of such municipality, the county  
50 commission, any member of such governing body or  
51 county commission or any municipal or county official or  
52 employee.

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## CHAPTER 134

(S. B. 391—By Mr. Gainer)

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[Passed April 8, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing director of department of natural resources to appoint two deputy directors.

*Be it enacted by the Legislature of West Virginia:*

That section eight, 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.**

#### **§20-1-8. Personnel management.**

1 A merit system of personnel management shall be



2 established and maintained for all personnel of the de-  
3 partment in order to ensure and provide for impartial  
4 selection of competent and qualified personnel and to  
5 accord to all department employees rights of tenure and  
6 advancement during satisfactory discharge of their duties.

7 In lieu of establishment of a merit system of personnel  
8 management for the department, the director may resort  
9 to and rely upon the civil service commission and civil  
10 service system for personnel and personnel services of the  
11 department.

12 The director may select a personal secretary and two  
13 deputy directors of the department to serve at the di-  
14 rector's will and pleasure. The director shall fix the  
15 compensation of the secretary and the two deputy di-  
16 rectors and shall prescribe their duties and responsi-  
17 bilities. The director, the secretary and the two deputy  
18 directors shall not have and enjoy merit system status,  
19 as herein provided, but any deputy director, when  
20 selected from department personnel ranks, shall retain  
21 and be accorded all of the rights of his merit system  
22 status regardless of his selection and tenure as deputy  
23 director.

24 The director shall select and designate a competent  
25 and qualified person as department personnel officer who  
26 shall be responsible for personnel management, person-  
27 nel records and general personnel services. The per-  
28 sonnel officer, under supervision of the director and  
29 subject to merit system rules, regulations and require-  
30 ments, shall prescribe qualifications, classifications and  
31 salary scales for department personnel. He shall furnish  
32 to the director information and data relating to qualified  
33 personnel available for the various offices, positions and  
34 places of employment and may make recommendations  
35 concerning the selection, retention and advancement of  
36 personnel of the department.

## CHAPTER 135

(H. B. 1588—By Mr. Shifflet and Mr. Ballouz)

[Passed April 2, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen, relating to requiring director of department of natural resources to prepare and maintain long-range, comprehensive management plan for state recreational facilities; legislative findings and purpose; and requiring plan to be delivered to governor and Legislature by the first day of December of each year.

*Be it enacted by the Legislature of West Virginia:*

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

### ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

**§20-1-19. Director to prepare and maintain long-range, comprehensive management plan for state recreational facilities; legislative findings and purpose; delivery of plan to governor and Legislature.**

1 The Legislature finds and declares that state recreational  
 2 facilities should and must be managed in a professional man-  
 3 ner. The Legislature finds that the department of natural  
 4 resources does not have a long-range, comprehensive manage-  
 5 ment plan for state recreational facilities and that such a plan  
 6 is essential in order for the Legislature to understand and  
 7 provide the needs of the department of natural resources for  
 8 state recreational facilities. The Legislature's purpose and in-  
 9 tent in enacting this section is to require the director to pre-  
 10 pare and maintain a long-range, comprehensive management  
 11 plan for state recreational facilities.

12 The director shall prepare a comprehensive five-year plan

13 for state recreational facilities, update it yearly, and deliver  
14 it to the governor and the Legislature no later than the first  
15 day of December of each year.

16 The plan shall include, but is not limited to, the following:

17 (1) A policy on the final limits to which state recrea-  
18 tional facilities should be developed, including the total number  
19 and area of state parks, forests and public hunting and fishing  
20 areas;

21 (2) Recommendations for the establishment and devel-  
22 opment of new state parks, forests and public hunting and  
23 fishing areas, the development of existing state recreational  
24 facilities, and the phasing out, replacement, construction,  
25 expansion and maintenance of buildings, roads, recreational  
26 facilities and other facilities and the costs thereof; and

27 (3) Recommendations on personnel, including their num-  
28 ber, compensation, benefits and training.

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## CHAPTER 136

(S. B. 479—By Mr. Susman and Mr. Gainer)

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(Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.)

AN ACT to amend article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty, relating to limitations on acquisition of land for state recreational facilities; limitations on construction of state recreational facilities; legislative findings and purpose; and exceptions to limitations.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 1. ORGANIZATION AND ADMINISTRATION.****§20-1-20. Limitations on acquisition of land for state recreational facilities; limitations on construction of state recreational facilities; legislative findings and purpose; exceptions to limitations.**

1 The Legislature finds that the acquisition of land to  
2 construct new or to expand existing state recreational  
3 facilities is becoming more costly. Also, the Legislature  
4 finds that the construction of new or the expansion of  
5 existing state recreational facilities is becoming more  
6 costly. After such facilities are constructed, they must be  
7 maintained indefinitely and, in many instances, personnel  
8 must be employed to operate the facilities. This  
9 necessitates and places a continuing burden on state  
10 revenues. Furthermore, these costs are also increasing  
11 continually. The Legislature hereby declares that there is  
12 an ultimate limit to how many recreational facilities this  
13 state, with its size, population and financial resources can  
14 or should support. Further, the Legislature hereby de-  
15 clares that it must establish, provide for, and maintain,  
16 limits on state recreational facilities. The Legislature  
17 hereby declares that is the purpose of this section.

18 After the effective date of this section, neither the  
19 director, nor any other officer, or employee, or agent of  
20 the department of natural resources may, without the  
21 express authorization of the Legislature:

22 (1) Acquire, or authorize the acquisition of, land for  
23 any new state park, forest, public fishing and hunting  
24 area, or other recreational facility; or

25 (2) Construct, or authorize the construction of, any  
26 new facility or building in any state park, forest, public  
27 hunting and fishing area, or other recreational facility.

28 Nothing in this section shall prohibit the director from  
29 expending any appropriations made on or before the  
30 effective date of this section to the department of natural  
31 resources for the purposes for which such appropriations  
32 were designated, including the acquisition of land or the  
33 construction of facilities or buildings.

34 Nothing in this section shall prohibit the director from  
35 expending any appropriations made at any time which  
36 are designated to complete land acquisitions for state  
37 parks, forests, public hunting and fishing areas, or other  
38 recreational areas, which are in existence on the effective  
39 date of this section. Nothing in this section shall prohibit  
40 the director from expending any appropriation made at  
41 any time which is designated to complete the construc-  
42 tion of facilities and buildings, including electric, water  
43 and sewage systems for state parks, forests, public hunt-  
44 ing and fishing areas, or other recreational areas, which  
45 are in existence on the effective date of this section.

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## CHAPTER 137

(S. B. 394—By Mr. Gainer)

[Passed April 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to when it is unlawful to carry uncased or loaded guns in woods; making it unlawful to pursue, take, kill, etc., wild mammals protected by conventions between United States, Great Britain and United Mexican States; and setting forth when it is unlawful to train dogs on wild animals or wild birds.

*Be it enacted by the Legislature of West Virginia:*

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

### ARTICLE 2. WILDLIFE RESOURCES.

#### PART I. WILDLIFE MANAGEMENT.

##### §20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it is unlawful  
2 at any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless  
4 it is plainly visible to him;

5 (2) Dig out, cut out, or smoke out, or in any manner  
6 take or attempt to take any live wild animal or wild bird  
7 out of its den or place of refuge, except as may be  
8 authorized by regulations promulgated by the director  
9 or by law;

10 (3) Make use of, or take advantage of, any artificial  
11 light in hunting, locating, attracting, taking, trapping, or  
12 killing any wild bird or wild animal, or to attempt to do  
13 so, while having in his possession or subject to his con-  
14 trol, or for any person accompanying him to have in his  
15 possession or subject to his control, any firearm, whether  
16 cased or uncased, bow, arrow, or both, or other implement  
17 or device suitable for taking, killing or trapping a wild  
18 bird or animal: *Provided*, That it shall not be unlawful  
19 to hunt or take raccoon, opossum or skunk by the use of  
20 artificial lights. No person shall be guilty of a violation  
21 of this subdivision merely because he looks for, looks at,  
22 attracts or makes motionless a wild bird or wild animal  
23 with or by the use of an artificial light, unless at such  
24 time he has in his possession a firearm, whether cased or  
25 uncased, bow, arrow, or both, or other implement or device  
26 suitable for taking, killing or trapping a wild bird or wild  
27 animal, or unless such artificial light (other than the head  
28 lamps of an automobile or other land conveyance) is  
29 attached to, a part of, or used from within or upon an  
30 automobile or other land conveyance.

31 Any person violating the provisions of this subdivision  
32 shall be guilty of a misdemeanor, and, upon conviction  
33 thereof, shall for each offense be fined not less than one  
34 hundred dollars nor more than five hundred dollars and  
35 shall be imprisoned in the county jail for not less than  
36 ten days nor more than one hundred days;

37 (4) Hunt for, take, kill, wound or shoot at wild animals  
38 or wild birds from an airplane, or other airborne con-  
39 veyance, an automobile, or other land conveyance, or from  
40 a motor-driven water conveyance, except as may be  
41 authorized by regulations promulgated by the director;

42 (5) Take any beaver or muskrat by any means other  
43 than by trap;

44 (6) Catch, capture, take or kill by seine, net, bait, trap  
45 or snare or like device of any kind, any wild turkey, ruffed  
46 grouse, pheasant or quail;

47 (7) Destroy or attempt to destroy needlessly or will-  
48 fully the nest or eggs of any wild bird or have in his  
49 possession such nest or eggs unless authorized to do so  
50 under regulations or under a permit by the director;

51 (8) Except as provided in section six of this article,  
52 carry an uncased or loaded gun in any of the woods of  
53 this state except during the open firearms hunting season  
54 for wild animals and nonmigratory wild birds within  
55 any county of the state, unless he has in his possession a  
56 permit in writing issued to him by the director: *Provided*,  
57 That this section shall not prohibit hunting or taking of  
58 unprotected species of wild animals and wild birds and  
59 migratory wild birds, during the open season, in the open  
60 fields, open water and open marshes of the state;

61 (9) Except as provided in section six of this article,  
62 carry an uncased or loaded gun after the hour of five  
63 o'clock antemeridian on Sunday in any woods or on any  
64 highway, railroad right-of-way, public road, field or stream  
65 of this state, except at a regularly used rifle, pistol, skeet,  
66 target or trapshooting ground or range;

67 (10) Have in his possession a loaded firearm or a fire-  
68 arm from the magazine of which all shells and cartridges  
69 have not been removed, in or on any vehicle or convey-  
70 ance, or its attachments, within the state, except as may  
71 otherwise be provided by law or regulation. Except as  
72 hereinafter provided, between five o'clock postmeridian of  
73 one day and seven o'clock antemeridian, eastern standard  
74 time of the day following, any unloaded firearm, being  
75 lawfully carried in accordance with the foregoing provi-  
76 sions, shall be so carried only when in a case or taken  
77 apart and securely wrapped. During the period from July  
78 first to September thirtieth, inclusive, of each year, the  
79 foregoing requirements relative to carrying certain un-  
80 loaded firearms shall be permissible only from eight-

81 thirty o'clock postmeridian to five o'clock antemeridian,  
82 eastern standard time;

83 (11) Hunt, catch, take, kill, trap, injure or pursue with  
84 firearms or other implement by which wildlife may be  
85 taken after the hour of five o'clock antemeridian on  
86 Sunday any wild animals or wild birds: *Provided*, That  
87 traps previously and legally set may be tended after the  
88 hour of five o'clock antemeridian on Sunday, if the person  
89 so doing shall not have firearms or long bow of any  
90 description in his possession;

91 (12) Hunt with firearms or long bow while under the  
92 influence of intoxicating liquor;

93 (13) Possess a ferret;

94 (14) Buy raw furs, pelts or skins of fur-bearing  
95 animals unless licensed to do so;

96 (15) Have in his possession or about his premises,  
97 without the written permission of the director, any hunt-  
98 ing or fishing paraphernalia which cannot be used lawfully  
99 in this state for hunting or fishing, and any conservation  
100 officer shall remove and destroy such hunting and fishing  
101 paraphernalia, whenever found in this state, and the per-  
102 son or persons claiming ownership shall have no recourse  
103 at law against such confiscation and destruction;

104 (16) Catch, take, kill, or attempt to catch, take or  
105 kill any fish at any time by any means other than by rod,  
106 line, and hooks with natural or artificial lures unless  
107 otherwise authorized by law or regulation issued by the  
108 director: *Provided*, That snaring of any species of suckers,  
109 carp, fallfish and creek chubs shall at all times be lawful;

110 (17) Employ or hire, or induce or persuade, by the use  
111 of money or other things of value, or by any means, any  
112 person to hunt, take, catch or kill, any wild animal or  
113 wild bird except those species on which there is no closed  
114 season, or to fish for, catch, take or kill any fish, amphibian  
115 or aquatic life which is protected by the provisions of  
116 this chapter or regulations of the director, or the sale  
117 of which is prohibited;



118 (18) Hunt, catch, take, kill, capture, pursue, trans-  
119 port, possess or use any migratory game or nongame  
120 birds included in the terms of conventions between the  
121 United States and Great Britain and between the United  
122 States and United Mexican States for the protection of  
123 migratory birds and wild mammals concluded, respective-  
124 ly, August sixteen, one thousand nine hundred sixteen, and  
125 February seven, one thousand nine hundred thirty-six,  
126 except during the time and in the manner and numbers  
127 prescribed by the Federal Migratory Bird Treaty Act and  
128 regulations made thereunder;

129 (19) Kill, take, catch, or have in his possession living  
130 or dead, any wild bird, other than a game bird; or expose  
131 for sale, or transport within or without the state any  
132 such bird, except as aforesaid. No part of the plumage,  
133 skin or body of any protected bird shall be sold or had in  
134 possession for sale, except mounted or stuffed plumage,  
135 skin, bodies or heads of such birds legally taken and  
136 stuffed or mounted, irrespective of whether such bird  
137 was captured within or without this state, except the  
138 English or European sparrow (*Passer domesticus*), star-  
139 ling (*Sturnus vulgaris*), crow (*Corvus brachyrhynchos*)  
140 and cowbird (*Molothrus ater*), which shall not be pro-  
141 tected and the killing thereof at any time is lawful;

142 (20) Use dynamite or any like explosive or poisonous  
143 mixture placed in any waters of the state for the purpose  
144 of killing or taking fish. Any person violating the provi-  
145 sions of this subdivision shall be guilty of a felony, and,  
146 upon conviction thereof, shall be fined not more than  
147 five hundred dollars or imprisoned for not less than six  
148 months nor more than three years, or both fined and im-  
149 prisoned;

150 (21) Have a bow and gun, or have a gun and any arrow  
151 or arrows, in the fields or woods at the same time;

152 (22) Have a crossbow in the woods or fields or use a  
153 crossbow to hunt for, take or attempt to take any  
154 wildlife;

155 (23) Take or attempt to take turkey, bear, elk or deer  
156 with any arrow unless the same is equipped with a point

157 having at least two sharp cutting edges measuring in  
158 excess of three fourths of an inch wide;

159 (24) Take or attempt to take any wildlife with an  
160 arrow having an explosive head or shaft, a poisoned  
161 arrow, or an arrow which would affect wildlife by any  
162 chemical action;

163 (25) Shoot an arrow across any public highway or from  
164 aircraft, motor-driven watercraft, motor vehicle or other  
165 land conveyance;

166 (26) Permit any dog owned by him or under his con-  
167 trol to chase, pursue or follow upon the track of any wild  
168 animal or wild bird, either day or night, between the first  
169 day of May and the fifteenth day of August next follow-  
170 ing: *Provided*, That dogs may be trained on wild animals  
171 and wild birds, except deer and wild turkeys, and field  
172 trials may be held or conducted on the grounds of lands  
173 of the owner or by his bona fide tenant or tenants or upon  
174 the grounds or lands of another person with his written  
175 permission or on public lands, at any time: *Provided*,  
176 *however*, That notwithstanding any of the above provi-  
177 sions, no person may train a dog in any county in which  
178 there is a legal bear hunting season, except that residents  
179 may train dogs in such counties after the twenty-fourth  
180 day of August through the end of the legal small game  
181 hunting season: *Provided further*, That nonresidents shall  
182 not train dogs in this state at any time except during the  
183 legal small game hunting season: *And provided further*,  
184 That the person training said dogs does not have firearms  
185 or other implements in his possession during the closed  
186 season on such wild animals and wild birds, whereby wild  
187 animals or wild birds could be taken or killed;

188 (27) Conduct or participate in a field trial, water  
189 race or wild hunt hereafter referred to as trial: *Provided*,  
190 That any person, group of persons, club or organiza-  
191 tion may hold such trial at any time of the year upon  
192 obtaining such permit as is provided for in section fifty-  
193 six of this article. The person responsible for obtaining  
194 said permit shall prepare and keep an accurate record  
195 of the names and addresses of all persons participating

196 in said trial, and make same readily available for in-  
197 spection by any conservation officer upon request; and

198 (28) Except as provided in section four of this article,  
199 hunt, catch, take, kill or attempt to hunt, catch, take or  
200 kill any wild animal, wild bird or wild fowl except during  
201 the open season established by regulation of the director  
202 as authorized by subdivision six, section seven, article  
203 one of this chapter.

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## CHAPTER 138

(S. B. 485—By Mr. Gainer)

[Passed April 9, 1977; in effect January 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact sections thirty-nine, forty, forty-a, forty-three and forty-six-b, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing fees for Class A, B, AB, E and N hunting and fishing licenses, providing for issuance of Class H six-day, non-resident small game hunting license, and providing fee for Class H license is eight dollars.

*Be it enacted by the Legislature of West Virginia:*

That sections thirty-nine, forty, forty-a, forty-three and 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.**

§20-2-39. Class A resident statewide hunting and trapping license.

§20-2-40. Class B resident statewide fishing license.

§20-2-40a. Class AB combination resident statewide hunting, trapping and fishing license.

§20-2-43. Class E, Class F, Class G and Class H licenses for nonresidents.

§20-2-46b. Class N special deer hunting license; fee; exceptions; regulations; limitations; authority of director.

**§20-2-39. Class A resident statewide hunting and trapping license.**

1 A Class A license shall be a resident statewide hunting  
2 and trapping license and shall entitle the licensee to  
3 hunt and trap all legal species of game in all counties of  
4 the state, except as prohibited by rules or regulations  
5 of the director. It shall be issued only to citizens of the  
6 United States and to unnaturalized persons who possess  
7 the permit referred to in section twenty-nine of this  
8 article who are residents of this state. The fee therefor  
9 shall be six dollars.

**§20-2-40. Class B resident statewide fishing license.**

1 A Class B license shall be a resident statewide fishing  
2 license and shall entitle the licensee to fish for all legal  
3 fish in all counties of the state, except as prohibited by  
4 rules or regulations of the director. It shall be issued  
5 only to citizens of the United States, and unnaturalized  
6 persons possessing the permit mentioned in section  
7 twenty-nine of this article, who are residents of this  
8 state. The fee therefor shall be six dollars.

**§20-2-40a. Class AB combination resident statewide hunting, trapping and fishing license.**

1 A Class AB combination license shall be a resident  
2 statewide hunting, trapping and fishing license and shall  
3 entitle the licensee to hunt and trap for all legal species  
4 of game, and fish for all legal species of fish and frogs  
5 in all counties of the state, except as prohibited by rules  
6 or regulations of the director. It shall be issued only to  
7 citizens of the United States and to unnaturalized per-  
8 sons who possess the permit referred to in section  
9 twenty-nine of this article who are residents of this state.  
10 The fee therefor shall be ten dollars.

**§20-2-43. Class E, Class F, Class G and Class H licenses for nonresidents.**

1 A Class E license shall be a nonresident hunting  
2 license and shall entitle the licensee to hunt all game in  
3 all counties of the state, except wild boar. It shall be is-

4 sued only to citizens of the United States and to unnat-  
5 uralized persons who possess the permit referred to in  
6 section twenty-nine of this article who are not residents of  
7 this state. The fee therefor shall be forty dollars.

8 A Class F license shall be a nonresident fishing license  
9 and shall entitle the licensee to fish for all fish in all  
10 counties of the state. It shall be issued only to citizens  
11 of the United States and to unnaturalized persons who  
12 possess the permit referred to in section twenty-nine of  
13 this article who are not residents of this state. The fee  
14 therefor shall be twenty dollars.

15 A Class G license shall be a nonresident family fishing  
16 license and shall entitle the licensee and members of his  
17 family to fish within the territorial limits of state parks  
18 and state forests and in the waters of streams bounding  
19 same, for a distance of not to exceed one hundred yards  
20 from the exterior boundary of any state park or state  
21 forest, for a period not to exceed one week. It may be  
22 issued to any adult nonresident who is temporarily re-  
23 siding in any state park or forest as tenant or lessee of  
24 the state. The fee therefor shall be three dollars for the  
25 head of the family, plus fifty cents additional for each  
26 member of his family to whom the privileges of such  
27 license are extended. Class G licenses may be issued  
28 in such manner and under such regulations as the di-  
29 rector may see fit to prescribe.

30 A Class H license shall be a nonresident small game  
31 hunting license and shall entitle the licensee to hunt  
32 small game in all counties of the state for a period of  
33 six days beginning with the date it is issued. It shall be  
34 issued only to citizens of the United States who are not  
35 residents of this state. The fee therefor shall be eight  
36 dollars. As used in this section, "small game" means all  
37 game except bear, deer, wild turkey and wild boar.

**§20-2-46b. Class N special deer hunting license; fee; exceptions;  
regulations; limitations; authority of director.**

1 A Class N license shall be a special deer hunting license  
2 for antlerless deer of either sex and shall entitle the

3 licensee to hunt for and kill one antlerless deer of either  
4 sex during the Class N license season: *Provided*, That  
5 if a hunter kills a buck deer during the regular deer  
6 hunting season, he shall also be permitted to hunt for  
7 and kill one antlerless deer during Class N license season  
8 if he has applied for and has had issued to him a Class  
9 N license. Only one Class N license may be acquired  
10 during any calendar year in which such Class N license  
11 season is held, and such Class N license can be used only  
12 by the applicant. The fee for a Class N license shall be  
13 eight dollars.

14 The Class N license shall be issued only for the purpose  
15 of removing antlerless deer on a post-season basis when  
16 the director deems it essential for proper management  
17 of wildlife resources. The director shall establish such  
18 rules and regulations governing the issuance of such  
19 Class N licenses as he deems necessary to limit, on a  
20 fair and equitable basis, the number of persons who may  
21 hunt for antlerless deer in any county or any part of a  
22 county: *Provided, however*, That no more than four Class  
23 N licenses shall be issued for each deer that the director  
24 desires to have killed during the Class N season.

25 When the director deems it essential that Class N  
26 license season be held in a particular county or part of  
27 a county, such season shall be held on the Friday and  
28 Saturday following regular deer hunting season, and  
29 shall be extended beyond such two-day period only upon  
30 order of the director when necessary to accomplish the  
31 desired kill.

32 Bona fide resident landowners or their resident chil-  
33 dren, or bona fide resident tenants of such land shall not  
34 be required to have a Class N license in their possession  
35 while hunting antlerless deer on their own land during  
36 the Class N license season.

37 Notwithstanding any provision of this code to the con-  
38 trary, no Class N license shall be issued for a county or  
39 a part of a county unless, during the regular deer hunting  
40 season in the previous year, two bucks have been killed

41 per square mile of deer range in that county or part of  
42 the county in which the hunt is to be held, and the direc-  
43 tor deems the holding of such Class N season advisable.

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## CHAPTER 139

(H. B. 1419—By Mr. Ballouz and Mr. Goodwin)

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[Passed April 1, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-six-d, relating to issuance of Class P special resident boar hunting license, fee and authority of director to promulgate rules and regulations limiting the number of such licenses to be issued.

*Be it enacted by the Legislature of West Virginia:*

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

### ARTICLE 2. WILDLIFE RESOURCES.

**§20-2-46d. Class P special resident boar hunting license; fee; authority of director to promulgate rules and regulations limiting the number of licenses issued.**

1 A Class P license shall be a special resident boar hunting  
2 license for wild boar of either sex and shall entitle the licensee  
3 to hunt and kill such boar during the Class P license season. A  
4 Class P license may be issued only to residents. Only one Class  
5 P license may be acquired during any calendar year in which  
6 a wild boar season is held and a Class P license may be used  
7 only by the applicant to whom such license is issued. The fee  
8 for a Class P license shall be five dollars.

9       The director shall promulgate rules and regulations govern-  
10 ing the issuance of Class P licenses he deems necessary to  
11 limit on a fair and equitable basis the number of persons who  
12 may hunt wild boar in any county or any part of a county.

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## CHAPTER 140

(S. B. 611—By Mr. Brotherton, Mr. President)

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[Passed April 8, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, five, six, eight, nine, thirteen, fourteen and fifteen, article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article five-c by adding thereto three new sections, designated sections six-a, sixteen-a and sixteen-b, all relating to the West Virginia water development authority; expanding the definition of certain terms; relating to the number of members of the West Virginia water development board which shall constitute a quorum; clarifying the authority to finance water development projects by making loans to governmental agencies from the proceeds of water development revenue bonds and notes; providing for the execution of and certain provisions to be contained in loan agreements for loans from the authority to governmental agencies to acquire or construct water development projects; power of the authority to collect service charges and the exercise of other powers; requirements and manner of issuance of water development revenue bonds and notes; providing for the certification to the governor of any deficiencies in reserves pledged for payment of revenue bonds and notes; powers, duties and responsibilities of the authority generally; power of such authority to charge and collect principal of and interest, fees and charges on loans to governmental agencies; contents of trust agreement; designating securities in which excess funds of the authority may be invested; specifying that



certain provisions as to rental and other revenues from water development projects shall apply only to such projects as are owned by the authority; maintenance, operation and repair of projects; providing for the redemption of bonds and notes issued by the authority; and providing for the issuance of refunding bonds.

*Be it enacted by the Legislature of West Virginia:*

That sections three, four, five, six, eight, nine, thirteen, fourteen and fifteen, article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article five-c be further amended by adding thereto three new sections, designated sections six-a, sixteen-a and sixteen-b, all to read as follows:

**ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT AUTHORITY.**

- §20-5C-3. Definitions.
- §20-5C-4. West Virginia water development authority created; West Virginia water development board created; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority.
- §20-5C-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies shall be subject to terms of loan agreements.
- §20-5C-6. Powers, duties and responsibilities of authority, generally.
- §20-5C-6a. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.
- §20-5C-8. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.
- §20-5C-9. Trustee for bondholders; contents of trust agreement.
- §20-5C-13. Investment of funds by authority.
- §20-5C-14. Rentals and other revenues from water development projects owned by the authority; contracts and leases of authority; cooperation of other governmental agencies; bonds of such agencies.
- §20-5C-15. Maintenance, operation and repair of projects, reports by authority to governor and Legislature.
- §20-5C-16a. Purchase and cancellation of notes or bonds.
- §20-5C-16b. Refunding bonds.

**§20-5C-3. Definitions.**

- 1 As used in this article, unless the context clearly re-
- 2 quires a different meaning:

3 (1) "Authority" means the West Virginia water de-  
4 velopment authority created in section four of this ar-  
5 ticle, the duties, powers, responsibilities and functions  
6 of which are specified in this article.

7 (2) "Beneficial use" means a use of water by a person  
8 or by the general public that is consistent with  
9 the public interest, health and welfare in utilizing  
10 the water resources of this state, including, but not  
11 limited to, domestic, agricultural, irrigation, industrial,  
12 manufacturing, mining, power, public, sanitary, fish and  
13 wildlife, state, county, municipal, navigational, recrea-  
14 tional, aesthetic and scenic use.

15 (3) "Board" means the West Virginia water develop-  
16 ment authority board created in section four of this  
17 article, which shall manage and control the West Virginia  
18 water development authority.

19 (4) "Bond" or "water development revenue bond"  
20 means a revenue bond or note issued by the West Vir-  
21 ginia water development authority to effect the intents  
22 and purposes of this article.

23 (5) "Construction" includes reconstruction, enlarge-  
24 ment, improvement and providing furnishings or equip-  
25 ment.

26 (6) "Cost" means, as applied to water development  
27 projects, the cost of their acquisition and construction;  
28 the cost of acquisition of all land, rights-of-way, prop-  
29 erty rights, easements, franchise rights and interests  
30 required by the authority for such acquisition and con-  
31 struction; the cost of demolishing or removing any  
32 buildings or structures on land so acquired, including  
33 the cost of acquiring any lands to which such buildings  
34 or structures may be moved; the cost of acquiring or  
35 constructing and equipping a principal office and sub-  
36 offices of the authority; the cost of diverting highways,  
37 interchange of highways, access roads to private prop-  
38 erty, including the cost of land or easements therefor;  
39 the cost of all machinery, furnishings, and equipment;  
40 all financing charges, and interest prior to and during  
41 construction and for no more than eighteen months after

42 completion of construction; the cost of all engineering  
43 services and all expenses of research and develop-  
44 ment with respect to waste water facilities; the cost  
45 of all legal services and expenses; the cost of all plans,  
46 specifications, surveys and estimates of cost and revenues;  
47 all working capital and other expenses necessary or in-  
48 cident to determining the feasibility or practicability  
49 of acquiring or constructing any such project; all ad-  
50 ministrative expenses and such other expenses as may  
51 be necessary or incident to the acquisition or construc-  
52 tion of the project; the financing of such acquisition or  
53 construction, including the amount authorized in the  
54 resolution of the authority providing for the issuance  
55 of water development revenue bonds to be paid into any  
56 special funds from the proceeds of such bonds; and  
57 the financing of the placing of any such project in  
58 operation. Any obligation or expenses incurred after  
59 the effective date of this section by any governmental  
60 agency, with the approval of the authority, for surveys,  
61 borings, preparation of plans and specifications and other  
62 engineering services in connection with the acqui-  
63 sition or construction of a project shall be regarded  
64 as a part of the cost of such project and shall be reim-  
65 bursed out of the proceeds of loans or water develop-  
66 ment revenue bonds as authorized by the provisions of  
67 this article.

68 (7) "Establishment" means an industrial establish-  
69 ment, mill, factory, tannery, paper or pulp mill, mine,  
70 colliery, breaker or mineral processing operation, quarry,  
71 refinery, well, and each and every industry or plant or  
72 works or activity in the operation or process of which  
73 industrial wastes, or other wastes are produced.

74 (8) "Governmental agency" means the state govern-  
75 ment or any agency, department, division or unit thereof;  
76 counties; municipalities; watershed improvement dis-  
77 tricts; soil conservation districts; sanitary districts; pub-  
78 lic service districts; drainage districts; regional govern-  
79 mental authorities and any other governmental agency,  
80 entity, political subdivision, public corporation or agency  
81 having the authority to acquire, construct or operate

82 waste water facilities; the United States government or  
83 any agency, department, division or unit thereof; and  
84 any agency, commission or authority established pur-  
85 suant to an interstate compact or agreement.

86 (9) "Industrial wastes" means any liquid, gaseous,  
87 solid or other waste substance, or any combination  
88 thereof, resulting from or incidental to any process of  
89 industry, manufacturing, trade or business, or from or  
90 incidental to the development, processing or recovery of  
91 any natural resources; and the admixture with such  
92 industrial wastes of sewage or other wastes, as defined  
93 in this section, shall also be considered industrial  
94 wastes.

95 (10) "Other wastes" means garbage, refuse, decayed  
96 wood, sawdust, shavings, bark and other wood debris  
97 and residues, sand, lime, cinders, ashes, offal, night soil,  
98 silt, oil, tar, dyestuffs, acids, chemicals, and all other  
99 materials or substances not sewage or industrial wastes  
100 which may cause or might reasonably be expected  
101 to cause or to contribute to the pollution of any  
102 of the waters of this state.

103 (11) "Owner" includes all persons, copartnerships or  
104 governmental agencies having any title or interest in  
105 any property rights, easements and interests authorized  
106 to be acquired by this article.

107 (12) "Person" means any public or private corpora-  
108 tion, institution, association, firm or company organized  
109 or existing under the laws of this or any other state or  
110 country; the United States or the state of West Virginia;  
111 any federal or state governmental agency; political sub-  
112 division; county court; municipality; industry, sanitary  
113 district; public service district; drainage district; soil  
114 conservation district; watershed improvement district;  
115 partnership; trust; estate; person or individual; group  
116 of persons or individuals acting individually or as  
117 a group or any other legal entity whatever.

118 (13) "Pollution" means (a) the discharge, release,  
119 escape, deposit or disposition, directly or indirectly, of  
120 treated or untreated sewage, industrial wastes, or other

121 wastes, of whatever kind or character, in or near any  
122 waters of the state, in such condition, manner or quan-  
123 tity, as does, will, or is likely to (1) contaminate or  
124 substantially contribute to the contamination of any of  
125 such waters, or (2) alter or substantially contribute  
126 to the alteration of the physical, chemical or biological  
127 properties of any of such waters, if such contamination  
128 or alteration, or the resulting contamination or alter-  
129 ation where a person only contributes thereto, is to such  
130 an extent as to make any of such waters (i) di-  
131 rectly or indirectly harmful, detrimental or injurious  
132 to the public health, safety and welfare, or (ii) di-  
133 rectly or indirectly detrimental to existing animal, bird,  
134 fish, aquatic or plant life, or (iii) unsuitable for present  
135 or future domestic, commercial, industrial, agricultural,  
136 recreational, scenic or other legitimate uses; and also  
137 means (b) the discharge, release, escape, deposit, or dis-  
138 position, directly or indirectly, of treated or untreated  
139 sewage, industrial wastes or other wastes, of whatever  
140 kind or character, in or near any waters of the state in  
141 such condition, manner or quantity, as does, will, or is  
142 likely to reduce the quality of the waters of the state  
143 below the standards established therefor by the United  
144 States or any department, agency, board or com-  
145 mission of this state authorized to establish such  
146 standards.

147 (14) "Project" or "water development project" means  
148 any waste water facility, the acquisition or construction  
149 of which is authorized in whole or in part by the West  
150 Virginia water development authority or the acquisi-  
151 tion or construction of which is financed in whole or in  
152 part from funds made available by grant or loan by,  
153 or through, the authority as provided in this article, in-  
154 cluding all buildings and facilities which the authority  
155 deems necessary for the operation of the project, together  
156 with all property, rights, easements and interest which  
157 may be required for the operation of the project,  
158 but excluding all buildings and facilities used to pro-  
159 duce electricity other than electricity for consumption  
160 by the authority in the operation and maintenance of  
161 the project.

162 (15) "Public roads" mean all public highways, roads  
163 and streets in this state, whether maintained by the state,  
164 county, municipality or other political subdivision.

165 (16) "Public utility facilities" mean public utility  
166 plants or installations and includes tracks, pipes, mains,  
167 conduits, cables, wires, towers, poles and other equip-  
168 ment and appliances of any public utility.

169 (17) "Revenue" means any money or thing of value  
170 collected by, or paid to, the West Virginia water devel-  
171 opment authority as rent, use or service fee or charge  
172 for use of, or in connection with, any water development  
173 project, or as principal of or interest, charges or other  
174 fees on loans, or any other collections on loans made by  
175 the West Virginia water development authority to gov-  
176 ernmental agencies to finance in whole or in part the  
177 acquisition or construction of any water development  
178 project or projects, or other money or property which is  
179 received and may be expended for or pledged as revenues  
180 pursuant to this article.

181 (18) "Sewage" means water-carried human or animal  
182 wastes from residences, buildings, industrial establish-  
183 ments or other places, together with such ground water  
184 infiltration and surface waters as may be present.

185 (19) "Water resources," "water" or "waters" mean  
186 any and all water on or beneath the surface of the ground,  
187 whether percolating, standing, diffused or flowing, wholly  
188 or partially within this state, or bordering this state and  
189 within its jurisdiction, and shall include, without limit-  
190 ing the generality of the foregoing, natural or artificial  
191 lakes, rivers, streams, creeks, branches, brooks, ponds  
192 (except farm ponds, industrial settling basins and ponds  
193 and water treatment facilities), impounding reservoirs,  
194 springs, wells and watercourses.

195 (20) "Waste water" means any water containing sew-  
196 age, industrial wastes, other wastes or contaminants de-  
197 rived from the prior use of such water, and shall include  
198 without limiting the generality of the foregoing, surface  
199 water of the type storm sewers are designed to collect  
200 and dispose of.

201 (21) "Waste water facilities" mean facilities for the  
202 purpose of treating, neutralizing, disposing of, stabili-  
203 zing, cooling, segregating or holding waste water, in-  
204 cluding without limitation the generality of the foregoing,  
205 facilities for the treatment and disposal of sewage, in-  
206 dustrial wastes, or other wastes, waste water, and the  
207 residue thereof; facilities for the temporary or perma-  
208 nent impoundment of waste water, both surface and un-  
209 derground; and sanitary sewers or other collection sys-  
210 tems, whether on the surface or underground, designed  
211 to transport waste water together with the equipment  
212 and furnishings thereof and their appurtenances and sys-  
213 tems, whether on the surface or underground, including  
214 force mains and pumping facilities therefor.

**§20-5C-4. West Virginia water development authority created;  
West Virginia water development board created;  
organization of authority and board; appointment  
of board members; their term of office, compensa-  
tion and expenses; director of authority.**

1 There is hereby created the West Virginia water devel-  
2 opment authority. The authority is a governmental instru-  
3 mentality of the state and a body corporate. The exercise  
4 by the authority of the powers conferred by this article  
5 and the carrying out of its purposes and duties shall be  
6 deemed and held to be, and are hereby determined to be,  
7 essential governmental functions and for a public pur-  
8 pose.

9 The authority shall be controlled, managed and operated  
10 by the seven-member board known as the West Virginia  
11 water development board, which is hereby created. The  
12 director of the department of natural resources, and the  
13 director of the department of health and the state officer  
14 or employee who in the judgment of the governor is  
15 most responsible for economic or community development  
16 shall be members ex officio of the board. The governor  
17 shall designate annually the member who is the state  
18 officer or employee most responsible for economic or  
19 community development. The other four members of  
20 the board shall be appointed by the governor, by and  
21 with the advice and consent of the Senate, for terms of

22 two, three, four and six years, respectively. The successor  
23 of each such appointed member shall be appointed for a  
24 term of six years in the same manner the original ap-  
25 pointments were made, except that any person appointed  
26 to fill a vacancy occurring prior to the expiration of the  
27 term for which his predecessor was appointed shall be  
28 appointed only for the remainder of such term. Each board  
29 member shall serve until the appointment and qualifica-  
30 tion of his successor. No more than two of the appointed  
31 board members shall at any one time belong to the same  
32 political party. Appointed board members may be re-  
33 appointed to serve additional terms: *Provided*, That each  
34 person serving as a member of the West Virginia  
35 water development board, for a term which has not ex-  
36 pired on the effective date of this article, shall be appoint-  
37 ed by the governor without Senate confirmation to the  
38 West Virginia water development board, as one of the  
39 four appointed members, for the term ending the thirtieth  
40 day of June in the year in which his term would expire  
41 as a member of the West Virginia water development  
42 board.

43 All members of the board shall be citizens of the state.  
44 Each appointed member of the board, before entering upon  
45 his duties, shall comply with the requirements of article  
46 one, chapter six of this code and give bond in the sum  
47 of twenty-five thousand dollars in the manner provided  
48 in article two, chapter six of this code. The governor  
49 may remove any board member for cause as provided in  
50 article six, chapter six of this code.

51 Annually the board shall elect one of its appointed  
52 members as chairman and another as vice-chairman, and  
53 shall appoint a secretary-treasurer, who need not be a  
54 member of the board. Four members of the board shall  
55 constitute a quorum and the affirmative vote of four  
56 members shall be necessary for any action taken by vote  
57 of the board. No vacancy in the membership of the board  
58 shall impair the rights of a quorum by such vote to  
59 exercise all the rights and perform all the duties of the  
60 board and the authority. The person appointed as  
61 secretary-treasurer, including a board member if he is so



62 appointed, shall give bond in the sum of fifty thousand  
63 dollars in the manner provided in article two, chapter six  
64 of this code.

65 The director of the department of natural resources, the  
66 director of the department of health and the state officer  
67 or employee most responsible for economic or community  
68 development shall not receive any compensation for  
69 serving as board members. Each of the four appointed  
70 members of the board shall receive an annual salary of  
71 five thousand dollars, payable in monthly installments.  
72 Each of the seven board members shall be reimbursed for  
73 all reasonable and necessary expenses actually incurred  
74 in the performance of his duties as a member of such  
75 board. All such expenses incurred by the board shall be  
76 payable solely from funds of the authority or from funds  
77 appropriated for such purpose by the Legislature and no  
78 liability or obligation shall be incurred by the authority  
79 beyond the extent to which moneys are available from  
80 funds of the authority or from such appropriations.

81 There shall also be a director of the authority ap-  
82 pointed by the board.

**§20-5C-5. Authority may construct, finance, maintain, etc.,  
water development projects; loans to governmental  
agencies shall be subject to terms of loan agree-  
ments.**

1 To accomplish the public policies and purposes and  
2 to meet the responsibility of the state as set forth in this  
3 article, the West Virginia water development authority  
4 may initiate, acquire, construct, maintain, repair and  
5 operate water development projects or cause the same  
6 to be operated pursuant to a lease, sublease or agreement  
7 with any person or governmental agency; may make  
8 loans and grants to governmental agencies for the acqui-  
9 sition or construction of water development projects by  
10 such governmental agencies; and may issue water de-  
11 velopment revenue bonds of this state, payable solely  
12 from revenues, to pay the cost of, or finance, in whole  
13 or in part, by loans to governmental agencies, such  
14 projects. A water development project shall not be

15 undertaken unless it has been determined by the au-  
16 thority to be consistent with any applicable compre-  
17 hensive plan of water management approved by the  
18 director of the department of natural resources or in  
19 the process of preparation by such director and to be  
20 consistent with the standards set by the state water re-  
21 sources board, for the waters of the state affected thereby.  
22 Any resolution of the authority providing for acquiring  
23 or constructing such projects or for making a loan or  
24 grant for such projects shall include a finding by the  
25 authority that such determinations have been made. A  
26 loan agreement shall be entered into between the au-  
27 thority and each governmental agency to which a loan  
28 is made for the acquisition or construction of a water  
29 development project, which loan agreement shall in-  
30 clude without limitation the following provisions:

31 (1) The cost of such project, the amount of the loan,  
32 the terms of repayment of such loan and the security  
33 therefor, which may include, in addition to the pledge  
34 of all revenues from such project after a reasonable  
35 allowance for operation and maintenance expenses, a  
36 deed of trust or other appropriate security instrument  
37 creating a lien on such project;

38 (2) The specific purposes for which the proceeds of  
39 the loan shall be expended, the procedures as to the  
40 disbursement of loan proceeds and the duties and obliga-  
41 tions imposed upon the governmental agency in regard  
42 to the construction or acquisition of the project;

43 (3) The agreement of the governmental agency to  
44 impose, collect, and, if required to repay the obligations  
45 of such governmental agency under the loan agreement,  
46 increase, service charges from persons using said project,  
47 which service charges shall be pledged for the repay-  
48 ment of such loan together with all interest, fees and  
49 charges thereon and all other financial obligations of  
50 such governmental agency under the loan agreement;  
51 and

52 (4) The agreement of the governmental agency to  
53 comply with all applicable laws, rules and regulations

54 issued by the authority or other state, federal and local  
55 bodies in regard to the construction, operation, mainte-  
56 nance and use of the project.

**§20-5C-6. Powers, duties and responsibilities of authority,  
generally.**

1 The West Virginia water development authority is  
2 hereby granted, has and may exercise all powers neces-  
3 sary or appropriate to carry out and effectuate its cor-  
4 porate purpose. The authority shall have the power and  
5 capacity to:

6 (1) Adopt, and from time to time, amend and repeal  
7 bylaws necessary and proper for the regulation of its  
8 affairs and the conduct of its business and rules and  
9 regulations to implement and make effective its powers  
10 and duties, such rules and regulations to be promulgated  
11 in accordance with the provisions of chapter twenty-  
12 nine-a of this code.

13 (2) Adopt an official seal.

14 (3) Maintain a principal office and, if necessary,  
15 regional suboffices at locations properly designated or  
16 provided.

17 (4) Sue and be sued in its own name and plead and  
18 be impleaded in its own name, and particularly to  
19 enforce the obligations and covenants made under sec-  
20 tions eight, nine and fourteen of this article. Any ac-  
21 tions against the authority shall be brought in the circuit  
22 court of Kanawha county in which the principal office  
23 of the authority shall be located.

24 (5) Make loans and grants to governmental agencies  
25 for the acquisition or construction of water development  
26 projects by any such governmental agency and, in ac-  
27 cordance with the provisions of chapter twenty-nine-a of  
28 this code, adopt rules and procedures for making such  
29 loans and grants.

30 (6) Acquire, construct, reconstruct, enlarge, improve,  
31 furnish, equip, maintain, repair, operate, lease or rent  
32 to, or contract for operation by a governmental agency

33 or person, water development projects, and, in accordance  
34 with the provisions of chapter twenty-nine-a of this code,  
35 adopt rules and regulations for the use of such projects.

36 (7) Make available the use or services of any water  
37 development project to one or more persons, one or  
38 more governmental agencies, or any combination  
39 thereof.

40 (8) Issue water development revenue bonds and notes  
41 and water development revenue refunding bonds of the  
42 state, payable solely from revenues as provided in sec-  
43 tion eight of this article unless the bonds are refunded  
44 by refunding bonds, for the purpose of paying all or  
45 any part of the cost of, or financing by loans to govern-  
46 mental agencies, one or more water development proj-  
47 ects or parts thereof.

48 (9) Acquire by gift or purchase, hold and dispose of  
49 real and personal property in the exercise of its powers  
50 and the performance of its duties as set forth in this  
51 article.

52 (10) Acquire in the name of the state, by purchase  
53 or otherwise, on such terms and in such manner as it  
54 deems proper, or by the exercise of the right of eminent  
55 domain in the manner provided in chapter fifty-four of  
56 this code, such public or private lands, or parts thereof  
57 or rights therein, rights-of-way, property, rights, ease-  
58 ments and interests it deems necessary for carrying out  
59 the provisions of this article, but excluding the acquisi-  
60 tion by the exercise of the right of eminent domain of  
61 any waste water facility operated under permits issued  
62 pursuant to the provisions of article five-a, chapter  
63 twenty of this code and owned by any person or gov-  
64 ernmental agency, and compensation shall be paid for  
65 public or private lands so taken.

66 (11) Make and enter into all contracts and agreements  
67 and execute all instruments necessary or incidental to  
68 the performance of its duties and the execution of its  
69 powers. When the cost under any such contract or  
70 agreement, other than compensation for personal ser-  
71 vices, involves an expenditure of more than two thou-

72 sand dollars, the authority shall make a written contract  
73 with the lowest responsible bidder after public notice  
74 published as a Class II legal advertisement in compliance  
75 with the provisions of article three, chapter fifty-nine  
76 of this code, the publication area for such publication to  
77 be the county wherein the work is to be performed or  
78 which is affected by the contract, which notice shall  
79 state the general character of the work and the general  
80 character of the materials to be furnished, the place  
81 where plans and specifications therefor may be examined  
82 and the time and place of receiving bids, but a contract  
83 or lease for the operation of a water development  
84 project constructed and owned by the authority or an  
85 agreement for cooperation in the acquisition or construc-  
86 tion of a water development project pursuant to section  
87 fourteen of this article is not subject to the foregoing  
88 requirements and the authority may enter into such  
89 contract or lease or such agreement pursuant to negotia-  
90 tion and upon such terms and conditions and for such  
91 period as it finds to be reasonable and proper under  
92 the circumstances and in the best interests of proper  
93 operation or of efficient acquisition or construction of  
94 such project. The authority may reject any and all  
95 bids. A bond with good and sufficient surety, approved  
96 by the authority, shall be required of all contractors in  
97 an amount equal to at least fifty percent of the contract  
98 price, conditioned upon the faithful performance of the  
99 contract.

100 (12) Employ managers, superintendents and other em-  
101 ployees, who shall be covered by the state civil service  
102 system, and retain or contract with consulting engineers,  
103 financial consultants, accounting experts, architects,  
104 attorneys and such other consultants and independent  
105 contractors as are necessary in its judgment to carry  
106 out the provisions of this article, and fix the compensa-  
107 tion or fees thereof. All expenses thereof shall be pay-  
108 able solely from the proceeds of water development  
109 revenue bonds or notes issued by the authority, from  
110 revenues and from funds appropriated for such purpose  
111 by the Legislature.

112 (13) Receive and accept from any federal agency,  
113 subject to the approval of the governor, grants for or  
114 in aid of the construction of any water development  
115 project or for research and development with respect to  
116 waste water facilities and receive and accept aid or  
117 contributions from any source or money, property, labor  
118 or other things of value, to be held, used and applied  
119 only for the purposes for which such grants and con-  
120 tributions are made.

121 (14) Engage in research and development with re-  
122 spect to waste water facilities.

123 (15) Purchase property coverage and liability insur-  
124 ance for any water development project and for the  
125 principal office and suboffices of the authority, insur-  
126 ance protecting the authority and its officers and em-  
127 ployees against liability, if any, for damage to property  
128 or injury to or death of persons arising from its opera-  
129 tions and any other insurance the authority may agree  
130 to provide under any resolution authorizing the issuance  
131 of water development revenue bonds or in any trust  
132 agreement securing the same.

133 (16) Charge, alter and collect rentals and other  
134 charges for the use or services of any water develop-  
135 ment project as provided in this article, and charge and  
136 collect reasonable interest, fees and charges in connec-  
137 tion with the making and servicing of loans to govern-  
138 mental agencies in the furtherance of the purposes of  
139 this article.

140 (17) Establish or increase reserves from moneys re-  
141 ceived or to be received by the authority to secure or  
142 to pay the principal of and interest on the bonds and  
143 notes issued by the authority pursuant to this article.

144 (18) Do all acts necessary and proper to carry out  
145 the powers expressly granted to the authority in this  
146 article.

**§20-5C-6a. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.**

1 In order to ensure that the public purposes to be

2 served by the authority may be properly carried out and  
3 in order to assure the timely payment to the authority of  
4 all sums due and owing under loan agreements with  
5 governmental agencies, as referred to in section five  
6 of this article, notwithstanding any provision to the  
7 contrary elsewhere contained in this code, in event of  
8 any default by a governmental agency under such a loan  
9 agreement, the authority shall have, and may, at its  
10 option, exercise the following rights and remedies in  
11 addition to the rights and remedies conferred by law or  
12 pursuant to said loan agreement:

13 (1) The authority may directly impose, in its own  
14 name and for its own benefit service charges determined  
15 by it to be necessary under the circumstances upon all  
16 users of the water development project to be acquired  
17 or constructed pursuant to such loan agreement, and  
18 proceed directly to enforce and collect such service  
19 charges, together with all necessary costs of such en-  
20 forcement and collection.

21 (2) The authority may exercise, in its own name or in  
22 the name of and as agent for the governmental agency,  
23 all of the rights, authority, powers and remedies of the  
24 governmental agency with respect to the water develop-  
25 ment project or which may be conferred upon the gov-  
26 ernmental agency by statute, rule, regulation or judicial  
27 decision, including without limitation all rights and  
28 remedies with respect to users of such water development  
29 project.

30 (3) The authority may, by civil action, mandamus or  
31 other judicial or administrative proceeding, compel per-  
32 formance by such governmental agency of all of the  
33 terms and conditions of such loan agreement including  
34 without limitation the adjustment and increase of service  
35 charges as required to repay the loan or otherwise satisfy  
36 the terms of such loan agreement, the enforcement and  
37 collection of such service charges and the enforcement  
38 by such governmental agency of all rights and remedies  
39 conferred by statute, rule, regulation or judicial decision.

**§20-5C-8. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.**

1 The authority is hereby empowered to issue from  
2 time to time water development revenue bonds and notes  
3 of the state in such principal amounts as the authority  
4 deems necessary to pay the cost of or finance in whole  
5 or in part by loans to governmental agencies, one or  
6 more water development projects, but the aggregate  
7 amount of all issues of bonds and notes outstanding at  
8 one time for all projects authorized hereunder shall not  
9 exceed that amount capable of being serviced by reve-  
10 nues received from such projects.

11 The authority may, from time to time, issue renewal  
12 notes, issue bonds to pay such notes and whenever it  
13 deems refunding expedient, refund any bonds by the  
14 issuance of water development revenue refunding bonds  
15 by the state pursuant to the provisions of section six-  
16 teen-b of this article. Except as may otherwise be ex-  
17 pressly provided in this article or by the authority, every  
18 issue of its bonds or notes shall be obligations of the  
19 authority payable out of the revenues and reserves  
20 created for such purposes by the authority, which are  
21 pledged for such payment, without preference or priority  
22 of the first bonds issued, subject only to any agreements  
23 with the holders of particular bonds or notes pledging  
24 any particular revenues. Such pledge shall be valid and  
25 binding from the time the pledge is made and the reve-  
26 nues so pledged and thereafter received by the authority  
27 shall immediately be subject to the lien of such pledge  
28 without any physical delivery thereof or further act and  
29 the lien of any such pledge shall be valid and binding  
30 as against all parties having claims of any kind in tort,  
31 contract or otherwise against the authority irrespective  
32 of whether such parties have notice thereof.

33 All such bonds and notes shall have and are hereby de-  
34 clared to have all the qualities of negotiable instruments.

35 The bonds and notes shall be authorized by resolu-  
36 tion of the authority, shall bear such date and shall



37 mature at such time, in the case of any such note or  
38 any renewals thereof not exceeding five years from the  
39 date of issue of such original note, and in the case of any  
40 such bond not exceeding fifty years from the date of  
41 issue, as such resolution may provide. The bonds and  
42 notes shall bear interest at such rate, be in such denomi-  
43 nations, be in such form, either coupon or registered, carry  
44 such registration privileges, be payable in such medium  
45 of payment, at such place and be subject to such terms  
46 of redemption as the authority may authorize. The bonds  
47 and notes of the authority may be sold by the authority,  
48 at public or private sale, at or not less than the price  
49 the authority determines. The bonds and notes shall be  
50 executed by the chairman and vice-chairman of the  
51 authority, both of whom may use facsimile signatures.  
52 The official seal of the authority or a facsimile thereof  
53 shall be affixed thereto or printed thereon and attested,  
54 manually or by facsimile signature, by the secretary-  
55 treasurer of the authority, and any coupons attached  
56 thereto shall bear the signature or facsimile signature of  
57 the chairman of the authority. In case any officer whose  
58 signature, or a facsimile of whose signature, appears on  
59 any bonds, notes or coupons ceases to be such officer  
60 before delivery of such bonds or notes, such signature  
61 or facsimile is nevertheless sufficient for all purposes  
62 the same as if he had remained in office until such de-  
63 livery and in case the seal of the authority has been  
64 changed after a facsimile has been imprinted on such  
65 bonds or notes such facsimile seal will continue to be  
66 sufficient for all purposes.

67 Any resolution authorizing any bonds or notes or any  
68 issue thereof may contain provisions (subject to such agree-  
69 ments with bondholders or noteholders as may then exist,  
70 which provisions shall be a part of the contract with the  
71 holders thereof) as to pledging all or any part of the reve-  
72 nues of the authority to secure the payment of the bonds or  
73 notes or of any issue thereof; the use and disposition  
74 of revenues of the authority; a covenant to fix, alter and  
75 collect rentals and other charges so that pledged reve-  
76 nues will be sufficient to pay the costs of operation,

77 maintenance and repairs, pay principal of and interest  
78 on bonds or notes secured by the pledge of such reve-  
79 nues and provide such reserves as may be required by  
80 the applicable resolution or trust agreement; the setting  
81 aside of reserve funds, sinking funds or replacement and  
82 improvement funds and the regulation and disposition  
83 thereof; the crediting of the proceeds of the sale of  
84 bonds or notes to and among the funds referred to or  
85 provided for in the resolution authorizing the issuance  
86 of the bonds or notes; the use, lease, sale or other dis-  
87 position of any water development project or any other  
88 assets of the authority; limitations on the purpose to  
89 which the proceeds of sale of bonds or notes may be  
90 applied and pledging such proceeds to secure the pay-  
91 ment of the bonds or notes or of any issue thereof;  
92 notes issued in anticipation of the issuance of bonds, the  
93 agreement of the authority to do all things necessary for  
94 the authorization, issuance and sale of such bonds in  
95 such amounts as may be necessary for the timely re-  
96 tirement of such notes; limitations on the issuance of  
97 additional bonds or notes; the terms upon which addi-  
98 tional bonds or notes may be issued and secured; the  
99 refunding of outstanding bonds or notes; the procedure,  
100 if any, by which the terms of any contract with bond-  
101 holders or noteholders may be amended or abrogated,  
102 the amount of bonds or notes the holders of which  
103 must consent thereto and the manner in which such  
104 consent may be given; limitations on the amount of  
105 moneys to be expended by the authority for operating,  
106 administrative or other expenses of the authority; secur-  
107 ing any bonds or notes by a trust agreement; and any  
108 other matters, of like or different character, which in  
109 any way affect the security or protection of the bonds  
110 or notes.

111 In the event that the sum of all reserves pledged to  
112 the payment of such bonds or notes shall be less than  
113 the minimum reserve requirements established in any  
114 resolution or resolutions authorizing the issuance of such  
115 bonds or notes, the chairman of the authority shall  
116 certify, on or before the first day of December of each

117 year, the amount of such deficiency to the governor of  
118 the state, for inclusion, if the governor shall so elect,  
119 of the amount of such deficiency in the budget to be  
120 submitted to the next session of the Legislature for  
121 appropriation to the authority to be pledged for pay-  
122 ment of such bonds or notes: *Provided*, That the Legis-  
123 lature shall not be required to make any appropriation  
124 so requested, and the amount of such deficiencies shall  
125 not constitute a debt or liability of the state.

126 Neither the members of the authority nor any person  
127 executing the bonds or notes shall be liable personally  
128 on the bonds or notes or be subject to any personal  
129 liability or accountability by reason of the issuance  
130 thereof.

**§20-5C-9. Trustee for bondholders; contents of trust agreement.**

1 In the discretion of the authority, any water develop-  
2 ment revenue bonds or notes or water development  
3 revenue refunding bonds issued by the authority under  
4 this article may be secured by a trust agreement between  
5 the authority and a corporate trustee, which trustee may  
6 be any trust company or banking institution having the  
7 powers of a trust company within or without this state.

8 Any such trust agreement may pledge or assign rev-  
9 enues of the authority to be received, but shall not  
10 convey or mortgage any water development project or  
11 any part thereof. Any such trust agreement or any reso-  
12 lution providing for the issuance of such bonds or notes  
13 may contain such provisions for protecting and enforcing  
14 the rights and remedies of the bondholders or notehold-  
15 ers as are reasonable and proper and not in violation  
16 of law, including the provisions contained in section  
17 eight of this article and covenants setting forth the  
18 duties of the authority in relation to the acquisition of  
19 property, the construction, improvement, maintenance,  
20 repair, operation and insurance of the water develop-  
21 ment project the cost of which is paid in whole or in part  
22 from the proceeds of such bonds or notes, the rentals or  
23 other charges to be imposed for the use or services of any  
24 water development project, provisions with regard to

25 the payment of the principal of and interest, charges  
26 and fees on loans made to governmental agencies from  
27 the proceeds of such bonds or notes, the custody, safe-  
28 guarding, and application of all moneys and provisions  
29 for the employment of consulting engineers in connec-  
30 tion with the construction or operation of such water  
31 development project. Any banking institution or trust  
32 company incorporated under the laws of this state which  
33 may act as depository of the proceeds of bonds or notes or  
34 of revenues shall furnish such indemnifying bonds or  
35 pledge such securities as are required by the authority.  
36 Any such trust agreement may set forth the rights and  
37 remedies of the bondholders and noteholders and of the  
38 trustee and may restrict individual rights of action by  
39 bondholders and noteholders as customarily provided in  
40 trust agreements or trust indentures securing similar  
41 bonds. Such trust agreement may contain such other  
42 provisions as the authority deems reasonable and proper  
43 for the security of the bondholders or noteholders. All  
44 expenses incurred in carrying out the provisions of any  
45 such trust agreement may be treated as a part of the  
46 cost of the operation of the water development project.  
47 Any such trust agreement or resolution authorizing the  
48 issuance of water development revenue bonds may pro-  
49 vide the method whereby the general administrative  
50 overhead expenses of the authority shall be allocated  
51 among the several projects acquired or constructed by it  
52 as a factor of the operating expenses of each such  
53 project.

**§20-5C-13. Investment of funds by authority.**

1 The authority is hereby authorized and empowered to  
2 invest any funds not needed for immediate disbursement  
3 in any of the following securities:

4 (1) Direct obligations of or obligations guaranteed by  
5 the United States of America;

6 (2) Bonds, debentures, notes or other evidences of  
7 indebtedness issued by any of the following agencies:  
8 Banks for cooperatives; federal intermediate credit banks;  
9 federal home loan bank system; Export-Import Bank of

10 the United States; federal land banks; the Federal Na-  
11 tional Mortgage Association or the Government National  
12 Mortgage Association;

13 (3) Public housing bonds issued by public agencies or  
14 municipalities and fully secured as to the payment of  
15 both principal and interest by a pledge of annual contri-  
16 butions under an annual contributions contract or con-  
17 tracts with the United States of America; or temporary  
18 notes issued by public agencies or municipalities or pre-  
19 liminary loan notes issued by public agencies or munici-  
20 palities, in each case, fully secured as to the payment of  
21 both principal and interest by a requisition or payment  
22 agreement with the United States of America;

23 (4) Certificates of deposit secured by obligations of  
24 the United States of America;

25 (5) Direct obligations of or obligations guaranteed by  
26 the state of West Virginia;

27 (6) Direct and general obligations of any other state  
28 within the territorial United States, to the payment of  
29 the principal of and interest on which the full faith and  
30 credit of such state is pledged: *Provided*, That at the time  
31 of their purchase, such obligations are rated in either  
32 of the two highest rating categories by a nationally  
33 recognized bond-rating agency; and

34 (7) Any fixed interest bond, note or debenture of any  
35 corporations organized and operating within the United  
36 States: *Provided, however*, That such corporation shall  
37 have a minimum net worth of fifteen million dollars and  
38 its securities or its parent corporation's securities are  
39 listed on one or more of the national stock exchanges:  
40 *Provided further*, That (i) such corporation has earned  
41 a profit in eight of the preceding ten fiscal years as re-  
42 flected in its statements, and (ii) such corporation has not  
43 defaulted in the payment of principal or interest on any  
44 of its outstanding funded indebtedness during its preceding  
45 ten fiscal years, and (iii) the bonds, notes or debentures  
46 of such corporation to be purchased are rated "AA" or  
47 the equivalent thereof or better than "AA" or the equiv-  
48 alent thereof at least two or more nationally recognized

49 rating services such as Standard and Poor's, Dun & Brad-  
50 street or Moody's.

**§20-5C-14. Rentals and other revenues from water develop-  
ment projects owned by the authority; contracts  
and leases of authority; cooperation of other  
governmental agencies; bonds of such agencies.**

1 This section shall apply to any water development proj-  
2 ect or projects which are owned in whole or in part by  
3 the authority. The authority may charge, alter and collect  
4 rentals or other charges for the use or services of any water  
5 development project, and contract in the manner pro-  
6 vided by this section with one or more persons, one or  
7 more governmental agencies, or any combination there-  
8 of, desiring the use or services thereof, and fix the terms,  
9 conditions, rentals or other charges for such use or ser-  
10 vices. Such rentals or other charges shall not be subject  
11 to supervision or regulation by any other authority, de-  
12 partment, commission, board, bureau or agency of the state,  
13 and such contract may provide for acquisition by such per-  
14 son or governmental agency of all or any part of such water  
15 development project for such consideration payable over  
16 the period of the contract or otherwise as the authority in  
17 its sole discretion determines to be appropriate, but subject  
18 to the provisions of any resolution authorizing the issuance of  
19 water development revenue bonds or notes or water devel-  
20 opment revenue refunding bonds of the authority or any  
21 trust agreement securing the same. Any governmental  
22 agency which has power to construct, operate and maintain  
23 waste water facilities may enter into a contract or lease  
24 with the authority whereby the use or services of any water  
25 development project of the authority will be made avail-  
26 able to such governmental agency and pay for such use or  
27 services such rentals or other charges as may be agreed to  
28 by such governmental agency and the authority.

29 Any governmental agency or agencies or combination  
30 thereof may cooperate with the authority in the ac-  
31 quisition or construction of a water development project  
32 and shall enter into such agreements with the authority  
33 as are necessary, with a view to effective cooperative  
34 action and safeguarding of the respective interests of the

35 parties thereto, which agreements shall provide for such  
36 contributions by the parties thereto in such proportion  
37 as may be agreed upon and such other terms as may be  
38 mutually satisfactory to the parties, including without  
39 limitation the authorization of the construction of the  
40 project by one of the parties acting as agent for all of the  
41 parties and the ownership and control of the project by  
42 the authority to the extent necessary or appropriate for  
43 purposes of the issuance of water development revenue  
44 bonds by the authority. Any governmental agency may  
45 provide such contribution as is required under such agree-  
46 ments by the appropriation of money or, if authorized by  
47 a favorable vote of the electors to issue bonds or notes or  
48 levy taxes or assessments and issue notes or bonds in  
49 anticipation of the collection thereof, by the issuance of  
50 bonds or notes or by the levying of taxes or assessments  
51 and the issuance of bonds or notes in anticipation of the  
52 collection thereof, and by the payment of such appro-  
53 priated money or the proceeds of such bonds or notes to  
54 the authority pursuant to such agreements.

55 Any governmental agency, pursuant to a favorable vote  
56 of the electors in an election held before or after the  
57 effective date of this section for the purpose of issuing  
58 bonds to provide funds to acquire, construct or equip, or  
59 provide real estate and interests in real estate for a waste  
60 water facility, whether or not the governmental agency  
61 at the time of such election had the authority to pay the  
62 proceeds from such bonds or notes issued in anticipation  
63 thereof to the authority as provided in this section, may  
64 issue such bonds or notes in anticipation of the issuance  
65 thereof and pay the proceeds thereof to the authority in  
66 accordance with an agreement between such govern-  
67 mental agency and the authority: *Provided*, That the  
68 legislative authority of the governmental agency finds  
69 and determines that the water development project to be  
70 acquired or constructed by the authority in cooperation  
71 with such governmental agency will serve the same public  
72 purpose and meet substantially the same public need as  
73 the facility otherwise proposed to be acquired or con-  
74 structed by the governmental agency with the proceeds  
75 of such bonds or notes.

**§20-5C-15. Maintenance, operation and repair of projects; reports by authority to governor and Legislature.**

1 Each water development project, when constructed  
2 and placed in operation, shall be maintained and kept in  
3 good condition and repair by the authority or if owned  
4 by a governmental agency, by such governmental agency,  
5 or the authority or such governmental agency shall cause  
6 the same to be maintained and kept in good condition and  
7 repair. Each such project owned by the authority shall  
8 be operated by such operating employees as the authority  
9 employs or pursuant to a contract or lease with a govern-  
10 mental agency or person. All public or private property  
11 damaged or destroyed in carrying out the provisions of  
12 this article and in the exercise of the powers granted  
13 hereunder with regard to any project shall be restored or  
14 repaired and placed in its original condition, as nearly as  
15 practicable, or adequate compensation made therefor out  
16 of funds provided in accordance with the provisions of  
17 this article.

18 As soon as possible after the close of each fiscal year,  
19 the authority shall make an annual report of its activities  
20 for the preceding fiscal year to the governor and the  
21 Legislature. Each such report shall set forth a complete  
22 operating and financial statement covering the authority's  
23 operations during the preceding fiscal year. The authority  
24 shall cause an audit of its books and accounts to be made  
25 at least once each fiscal year by certified public ac-  
26 countants and the cost thereof may be treated as a part  
27 of the cost of construction or of operations of its proj-  
28 ects.

**§20-5C-16a. Purchase and cancellation of notes or bonds.**

1 The authority, subject to such agreements with note-  
2 holders or bondholders as may then exist, shall have  
3 power, out of any funds available therefor, to purchase  
4 notes or bonds of the authority.

5 If the notes or bonds are then redeemable, the price  
6 of such purchase shall not exceed the redemption price  
7 then applicable plus accrued interest to the next interest



8 payment date thereon. If the notes or bonds are not then  
9 redeemable, the price of such purchase shall not exceed  
10 the redemption price applicable on the first date after  
11 such purchase upon which the notes or bonds become  
12 subject to redemption plus accrued interest to such date.  
13 Upon such purchase such notes or bonds shall be  
14 canceled.

**§20-5C-16b. Refunding bonds.**

1 Any bonds issued hereunder and at any time outstand-  
2 ing may at any time and from time to time be refunded  
3 by the authority by the issuance of its refunding bonds  
4 in such amount as it may deem necessary to refund the  
5 principal of the bonds so to be refunded, together with  
6 any unpaid interest thereon; to provide additional funds  
7 for the purposes of the authority; and any premiums and  
8 commissions necessary to be paid in connection there-  
9 with. Any such refunding may be effected whether the  
10 bonds to be refunded shall have then matured or shall  
11 thereafter mature, either by sale of the refunding bonds  
12 and the application of the proceeds thereof for the re-  
13 demption of the bonds to be refunded thereby, or by  
14 exchange of the refunding bonds for the bonds to be re-  
15 funded thereby: *Provided*, That the holders of any bonds  
16 so to be refunded shall not be compelled without their  
17 consent to surrender their bonds for payment or ex-  
18 change prior to the date on which they are payable or,  
19 if they are called for redemption, prior to the date on  
20 which they are by their terms subject to redemption.  
21 Any refunding bonds issued under the authority of this  
22 article shall be payable from the revenues out of which  
23 the bonds to be refunded thereby were payable, or from  
24 other moneys or the principal of and interest on or other  
25 investment yield from, investments or proceeds of bonds  
26 or other applicable funds and moneys, including invest-  
27 ments of proceeds of any refunding bonds, and shall be  
28 subject to the provisions contained in section eight of  
29 this article and shall be secured in accordance with the  
30 provisions of sections eight and nine of this article.

## CHAPTER 141

(H. B. 1382—By Mr. Ballour and Mr. Arnold)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections eight-a and eighteen-a, providing for a limitation on the issuance of any new permits for surface mining and requiring a special surface mining permit when coal is removed incidental to commercial, residential, industrial or civic construction.

*Be it enacted by the Legislature of West Virginia:*

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

### ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-8a. Limitation on the issuance of new permits for surface mining.

§20-6-18a. Special permits for the removal of coal incidental to the development of land.

#### §20-6-8a. Limitation on the issuance of new permits for surface mining.

1 On and after the effective date of this section, no new per-  
 2 mits, including prospecting permits, may be issued under the  
 3 provisions of article six of this chapter for the surface mining  
 4 of coal in any county, unless the operator is required to perform  
 5 the following:

6 (1) Ensure to the satisfaction of the director that, when  
 7 engaged in surface mining on slopes of twenty degrees or  
 8 greater, no debris, abandoned or disabled equipment, spoil  
 9 material or waste mineral matter will be placed on the natural  
 10 downslope below the initial bench or mining cut: *Provided,*  
 11 That soil or spoil material from the initial cut of earth in a  
 12 new surface-mining operation may be placed on a limited  
 13 specified area of the downslope below the initial cut if the

14 permittee can establish to the satisfaction of the director that  
15 the soil or spoil will not slide and that the other requirements of  
16 this section can still be met;

17 (2) Backfill, compact (where advisable to ensure stability  
18 or to prevent leaching of toxic materials) and grade to restore  
19 the approximate original contour of the disturbed land with all  
20 highwalls, spoil piles and depressions eliminated (unless small  
21 depressions are needed in order to retain moisture to assist  
22 revegetation or as otherwise authorized pursuant to this  
23 article); and

24 (3) Comply with all other provisions of article six of this  
25 chapter: *Provided*, That in the event of any inconsistency be-  
26 tween the provisions of this section and other provisions of  
27 article six of this chapter, the provisions of this section shall  
28 govern and control.

29 This subdivision shall not be construed so as to abrogate  
30 or limit in any way the authority of the director to modify  
31 reclamation requirements to bring about more desirable land  
32 uses or watershed control, including, but not limited to, moun-  
33 tain top removal and valley fill techniques: *Provided*, That the  
34 use of any such technique shall be subject to the prior written  
35 approval of the director.

36 This subdivision shall not be construed so as to prohibit the  
37 retention of a properly maintained haul road on the disturbed  
38 land after reclamation has been completed or to prohibit the  
39 installation of diversion ditches and other minor deviations  
40 from the approximate original contour of the disturbed land:  
41 *Provided*, That the director has given his prior written approval  
42 for the haul road, diversion ditch or other minor deviation.

43 (4) Notwithstanding the provisions of sections nineteen  
44 and thirty-one, section six of this article, all surface-mining  
45 permits previously issued which are valid on the effective date  
46 of this section and all applications for surface-mining permits  
47 which have been received by the department of natural re-  
48 sources on the effective date of this section and all surface-  
49 mining operations conducted or to be conducted thereunder  
50 are hereby exempted from the requirements of this section.

**§20-6-18a. Special permits for the removal of coal incidental to the development of land.**

1 It shall hereafter be unlawful for any person to engage  
2 in surface mining as defined in this article as an incident  
3 to the development of land for commercial, residential,  
4 industrial or civic use without having first obtained from the  
5 department of natural resources a surface-mine permit there-  
6 for as provided in section eight of this article, unless a special  
7 permit therefor shall have been first obtained from the de-  
8 partment as provided in this section.

9 Application for a special permit to engage in surface min-  
10 ing as an incident to the development of land for commercial,  
11 residential, industrial or civic use shall be made in writing on  
12 forms prescribed by the department and shall be signed and  
13 verified by the applicant. The application shall be accom-  
14 panied by:

15 (1) A site preparation plan prepared and certified by or  
16 under the supervision of a registered professional civil engineer  
17 or by a land surveyor approved by the director, showing the  
18 tract of land which the applicant proposes to develop for com-  
19 mercial, residential, industrial or civic use; the probable bound-  
20 aries and areas of the natural coal deposit to be mined and  
21 removed from said tract of land incident to the proposed com-  
22 mercial, residential, industrial or civic use thereof, and such  
23 other information as prescribed by the director;

24 (2) A development plan for the proposed commercial, resi-  
25 dential, industrial or civic use of said land;

26 (3) The owner or owners of the surface of the land to be  
27 developed;

28 (4) The owner or owners of the mineral to be mined inci-  
29 dent to the development of the land;

30 (5) A reasonable estimate of the number of acres of mineral  
31 that would be mined as a result of the proposed development  
32 of said land: *Provided*, That in no event may such number of  
33 acres to be mined exceed five acres;

34 (6) Such other information as the director may require to  
35 satisfy and assure the director that the surface mining under

36 the special permit is incidental or secondary to the proposed  
37 commercial, residential, industrial or civic use of said land.

38 There shall be attached to the application for the special per-  
39 mit a certificate of insurance certifying that the applicant has in  
40 force a public liability insurance policy issued by an insurance  
41 company authorized to do business in this state covering all  
42 development operations of the applicant in this state and af-  
43 fording personal injury protection in an amount not less than  
44 one hundred thousand dollars and property damage, including  
45 blasting damage, protection in an amount not less than three  
46 hundred thousand dollars.

47 The application for the special permit shall also be accom-  
48 panied by a bond, or cash or collateral securities or certificates  
49 of the same type, in the form as prescribed by the director and  
50 in the minimum amount of three thousand dollars per acre, for  
51 a maximum disturbance of five acres. A special reclamation tax  
52 of sixty dollars for each acre of land to be disturbed in the  
53 mining operation, with the exception of roadway, storage areas  
54 and processing plants shall be paid to the director before a  
55 permit is issued.

56 The bond shall be payable to the state of West Virginia and  
57 conditioned that the applicant shall complete the site prepara-  
58 tion for the proposed commercial, residential, industrial or  
59 civic use of said land. At the conclusion of the site prepara-  
60 tion, in accordance with the site preparation plan submitted  
61 with the application, the bond conditions shall be satisfied and  
62 the bond released and any cash, securities or certificates fur-  
63 nished with said bond shall be returned to the applicant.

64 The filing fee for the special permit shall be one thousand  
65 dollars.

66 The special permit shall be valid until work permitted is com-  
67 pleted.

68 The purpose of this section is to vest jurisdiction in the de-  
69 partment of natural resources over the aspect of surface min-  
70 ing involved where the surface mining is incidental or second-  
71 ary to preparation of land for commercial, residential, industrial  
72 or civic use and where, as an incident to such preparation of  
73 land, coal must be removed, such as the building and con-

74 struction of highways, railroads, shopping malls, factory and  
75 industrial sites, residential and building sites, recreational areas,  
76 etc. Anyone who has been issued a special permit shall not be  
77 issued an additional special permit on the same or adjacent  
78 tract of land unless satisfactory evidence has been submitted  
79 to the director that the same is necessary to subsequent de-  
80 velopment or construction. As long as the operator complies  
81 with the purpose and provisions of this section, the other  
82 sections of this article shall not be applicable to the operator  
83 holding a special permit: *Provided*, That this section shall not  
84 apply to a landowner engaged in the construction of a single  
85 family dwelling which construction does not require the dis-  
86 turbance of more than one acre of privately owned land.

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## CHAPTER 142

(Com. Sub. for H. B. 834—By Mrs. Neal)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seven-a, relating to defining certain terms; vandalism of caves; prohibiting the sale of speleothems; prohibiting destruction or removal of certain plant or animal life; requiring archaeological permits in certain instances; specifying liability of owners of caves and their agents; and providing penalties for specific violations.

*Be it enacted by the Legislature of West Virginia:*

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

### ARTICLE 7A. CAVE PROTECTION.

§20-7A-1. Definitions.

§20-7A-2. Vandalism; penalties.

§20-7A-3. Sale of speleothems unlawful; penalties.

§20-7A-4. Biological policy; penalties for violation.

§20-7A-5. Archaeology; permits for excavation; how obtained; prohibitions; penalties.

§20-7A-6. Liability of owners and agents.

**§20-7A-1. Definitions.**

1 Unless the context in which used clearly requires a differ-  
2 ent meaning, as used in this article:

3 (a) "Cave" means any naturally occurring subterranean  
4 cavity. The word "cave" includes or is synonymous with cav-  
5 ern, pit, pothole, well, sinkhole and grotto.

6 (b) "Commercial cave" means any cave with improved  
7 trails and lighting utilized by the owner for the purpose of  
8 exhibition to the general public as a profit or nonprofit enter-  
9 prise, wherein a fee is collected for entry.

10 (c) "Gate" means any structure or device located to limit  
11 or prohibit access or entry to any cave.

12 (d) "Person or persons" means any individual, partnership,  
13 firm, association, trust or corporation.

14 (e) "Speleothem" means a natural mineral formation or  
15 deposit occurring in a cave. This includes or is synonymous  
16 with stalagmites, stalactites, helectites, anthodites, gypsum  
17 flowers, needles, angel's hair, soda straws, draperies, bacon,  
18 cave pearls, popcorn (coral), rimstone dams, columns, palettes,  
19 flowstone, et cetera. Speleothems are commonly composed of  
20 calcite, epsomite, gypsum, aragonite, celestite and other simi-  
21 lar minerals.

22 (f) "Owner" means a person who owns title to land where  
23 a cave is located, including a person who owns title to a lease-  
24 hold estate in such land.

**§20-7A-2. Vandalism; penalties.**

1 It is unlawful for any person, without express, prior,  
2 written permission of the owner, to willfully or knowingly:

3 (a) Break, break-off, crack, carve upon, write, burn or  
4 otherwise mark upon, remove, or in any manner destroy,  
5 disturb, deface, mar or harm the surfaces of any cave or any  
6 natural material therein, including speleothems;

7 (b) Disturb or alter in any manner the natural condition  
8 of any cave;

9 (c) Break, force, tamper with or otherwise disturb a lock,  
10 gate, door or other obstruction designed to control or pre-  
11 vent access to any cave, even though entrance thereto may  
12 not be gained.

13 Any person violating a provision of this section shall be  
14 guilty of a misdemeanor, and, upon conviction thereof, shall  
15 be fined not less than one hundred fifty dollars nor more  
16 than five hundred dollars, and in addition thereto, may be  
17 imprisoned in the county jail for not less than ten days nor  
18 more than six months.

**§20-7A-3. Sale of speleothems unlawful; penalties.**

1 It is unlawful to sell or offer for sale any speleothems in  
2 this state, or to export them for sale outside the state. A  
3 person who violates any of the provisions of this section shall  
4 be guilty of a misdemeanor, and, upon conviction thereof,  
5 shall be fined not less than one hundred fifty dollars nor more  
6 than five hundred dollars and in addition thereto, may be  
7 imprisoned in the county jail for not less than ten days nor  
8 more than six months.

**§20-7A-4. Biological policy; penalties for violation.**

1 It is unlawful to remove, kill, harm or disturb any plant or  
2 animal life found within any cave: *Provided*, That scientific  
3 collecting permits may be obtained from the director as  
4 provided in section fifty, article two of this chapter. Gates  
5 employed at the entrance or at any point within any cave shall  
6 be of open construction to allow free and unimpeded passage  
7 of air, insects, bats and aquatic fauna. A person who violates  
8 any provision of this section shall be guilty of a misdemeanor,  
9 and, upon conviction thereof, shall be fined not less than two  
10 hundred dollars nor more than five hundred dollars and in  
11 addition thereto, may be imprisoned in the county jail for not  
12 less than fifteen days nor more than six months.

**§20-7A-5. Archaeology; permits for excavation; how obtained; prohibitions; penalties.**

1 (a) No person may excavate, remove, destroy, injure or



2 deface any historic or prehistoric ruins, burial grounds,  
3 archaeological or paleontological site including saltpeter work-  
4 ings, relics or inscriptions, fossilized footprints, bones or any  
5 other such features which may be found in any cave.

6 (b) Notwithstanding the provisions of subsection (a) of  
7 this section, a permit to excavate or remove archaeological,  
8 paleontological, prehistoric and historic features may be ob-  
9 tained from the director of natural resources. Such permit shall  
10 be issued for a period of two years and may be renewed at  
11 expiration. It is not transferable but this does not preclude  
12 persons from working under the direct supervision of the per-  
13 son holding the permit.

14 A person applying for such a permit must:

15 (1) Provide a detailed statement to the director of natural  
16 resources giving the reasons and objectives for excavation or  
17 removal and the benefits expected to be obtained from the  
18 contemplated work.

19 (2) Provide data and results of any completed excavation,  
20 study or collection at the first of each calendar year.

21 (3) Obtain the prior written permission of the director of  
22 natural resources if the site of the proposed excavation is on  
23 state-owned lands and prior written permission of the owner  
24 if the site of such proposed excavation is on privately owned  
25 land.

26 (4) Carry the permit while exercising the privileges granted.

27 A person who violates any provision of subsection (a) of this  
28 section shall be guilty of a misdemeanor, and, upon conviction  
29 thereof, shall be fined not less than one hundred dollars nor  
30 more than five hundred dollars, and may be imprisoned in  
31 the county jail for not less than ten days nor more than six  
32 months. A person who violates any of the provisions of sub-  
33 section (b) of this section shall be guilty of a misdemeanor, and,  
34 upon conviction thereof, shall be fined not less than one hun-  
35 dred dollars nor more than five hundred dollars, and the per-  
36 mit herein authorized shall be revoked.

**§20-7A-6. Liability of owners and agents.**

1 (a) Neither the owner of a cave nor his authorized agents

2 acting within the scope of their authority are liable for injuries  
3 sustained by any person using such features for recreational or  
4 scientific purpose if the prior consent of the owner has been ob-  
5 tained and if no charge has been made for the use of such fea-  
6 tures.

7 (b) An owner of a commercial cave is not liable for an  
8 injury sustained by a spectator who has paid to view the cave,  
9 unless such injury is sustained as a result of such owner's  
10 negligence in connection with the providing and maintaining  
11 of trails, stairs, electrical wires or other modifications, and  
12 such negligence is the proximate cause of the injury.

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## CHAPTER 143

(H. B. 875—By Mr. Tompkins)

[Passed February 25, 1977; in effect ninety days from passage. Approved by the Governor.]

- AN ACT to amend and reenact section three, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to criminal procedure; probation and parole; and providing for suspension of sentence and release on probation of persons eligible for probation before the convicted person has been imprisoned for sixty days.

*Be it enacted by the Legislature of West Virginia:*

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

### ARTICLE 12. PROBATION AND PAROLE.

#### §62-12-3. Suspension of sentence and release on probation.

1 Whenever, upon the conviction of any person eligible  
2 for probation under the preceding section, it shall appear  
3 to the satisfaction of the court that the character of the  
4 offender and the circumstances of the case indicate that he

5 is not likely again to commit crime and that the public good  
6 does not require that he be fined or imprisoned, the court,  
7 upon application or of its own motion, may suspend the  
8 imposition or execution of sentence and release the offender  
9 on probation for such period and upon such conditions as are  
10 provided by this article; but in no case, except as provided  
11 by the following section, shall the court have authority to  
12 suspend the execution of a sentence after the convicted  
13 person has been imprisoned for sixty days under the sentence.

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## CHAPTER 144

(Com. Sub. for H. B. 1237—By Mrs. Pitsenberger)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the number of members of the board of dental examiners from five to six members, providing for the appointment, term and qualifications of a licensed dental hygienist to the board; providing that the dental hygienist on the board vote only on matters relating to dental hygiene; and method of appointment.

*Be it enacted by the Legislature of West Virginia:*

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

### **ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.**

#### **§30-4-4. Board of dental examiners.**

1 The "West Virginia Board of Dental Examiners" heretofore  
2 established shall be continued and shall be composed of six  
3 members. The members of the board in office on the date  
4 this section takes effect shall, unless sooner removed, con-  
5 tinue to serve until their respective terms expire and until

6 their successors have been appointed and have qualified.  
7 Members of the board shall serve for a term of five years.  
8 In addition to the five practicing dentists appointed to the  
9 board, there shall be appointed one dental hygienist with a  
10 degree in dental hygiene from an accredited college, who  
11 shall be appointed for a term beginning on the first day of  
12 July, one thousand nine hundred seventy-seven. The member  
13 of the board who is a licensed dental hygienist may vote only  
14 on those matters which concern the prerequisites to practice  
15 dental hygiene, the licensing of dental hygienists, the revoca-  
16 tion of licenses of dental hygienists, the promulgation or  
17 adoption of rules and regulations concerning the practice of  
18 dental hygiene or any other matter directly affecting the  
19 practice of dental hygiene. The member of the board who is  
20 a licensed dental hygienist is empowered to participate in all  
21 other transactions of the board without voting privileges.

22 All members of the board shall be appointed by the  
23 governor, by and with the advice and consent of the Senate.  
24 Each member of the board, at the time of his appointment  
25 and during his term as such member, shall have been a  
26 citizen of this state and shall have been either a licensed  
27 dentist or a licensed dental hygienist for a period of not less  
28 than five years immediately preceding his appointment.

29 No person may be eligible for appointment to the board  
30 who is connected with or interested in any dental college or  
31 dental department of any institution of learning or in a dental  
32 supply business.

33 Except for the dental hygienist, any member shall be eligible  
34 for reappointment for one additional consecutive term.

35 Each appointment of a licensed dentist, whether for a  
36 full term or to fill a vacancy, shall be made by the governor  
37 from among three nominees therefor selected by the West  
38 Virginia dental society and each appointment of a licensed  
39 dental hygienist, whether for a full term or to fill a vacancy,  
40 shall be made by the governor from among three nominees  
41 therefor selected by the West Virginia dental hygienists'  
42 association. In the case of an appointment for a full term  
43 such nominations shall be submitted to the governor not  
44 later than eight months prior to the date on which the

45 appointment shall become effective. In the case of an ap-  
46 pointment to fill a vacancy, such nominations shall be  
47 submitted to the governor within thirty days after a request  
48 for such nominations shall have been made by the governor  
49 to the president of the West Virginia dental society or the  
50 president of the West Virginia dental hygienists' association.  
51 In the event of the failure of the society or the association  
52 to submit to the governor nominations for an appointment  
53 in accordance with the requirements of this section, the gov-  
54 ernor may make the appointment without such nominations.

55 Each member of the board shall receive forty dollars for  
56 each day actually spent in attending meetings of the board, or  
57 of its committees, and shall also be reimbursed for all  
58 reasonable and necessary expenses actually incurred in the  
59 discharge of his duties under the provisions of this article.

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## CHAPTER 145

(Com. Sub. for S. B. 557—By Mr. Saville, Mr. Hatfield, Mr. Nelson and Mr. Jones)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the requirements for applicants for a license to practice chiropractic; accreditation of schools and colleges.

*Be it enacted by the Legislature of West Virginia:*

That section four, article sixteen, 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 16. CHIROPRACTORS.**

#### **§30-16-4. Application for license; qualifications of applicant.**

1 Any person wishing to practice chiropractic in this state  
2 shall apply to the secretary of the board for a license so to

3 practice. Each applicant shall establish the fact to the  
4 board that he has satisfied the following requirements:  
5 (a) That he is eighteen years of age or over; (b) that he  
6 is of good moral character; (c) that he is a graduate of an  
7 accredited high school giving a four-year course or has an  
8 education equivalent to the same; (d) that he has attended  
9 for at least two academic years consisting of no less than  
10 sixty semester hours, an academic college equal in stand-  
11 ing to the West Virginia University; (e) that he is a  
12 graduate of a chiropractic school or college approved by  
13 the West Virginia Board of Chiropractic Examiners and  
14 having status with an accrediting agency recognized by  
15 the United States department of health, education and  
16 welfare as an acceptable accrediting agency for granting  
17 accreditation in chiropractic education in a resident course  
18 of not less than four academic years of nine months each,  
19 and active attendance at the same for a minimum of four  
20 thousand hours of fifty minutes each of classroom and  
21 laboratory instruction: *Provided*, That this requirement  
22 shall not be construed to disqualify applicants that grad-  
23 uated from chiropractic schools or colleges before the  
24 passage of this article which taught a resident course  
25 of at least three academic years of eight months each or a  
26 minimum of two thousand hours of fifty minutes each and  
27 required active attendance upon the same. Attendance at  
28 the academic college as set forth in requirement (d) shall  
29 be prior to entrance into the chiropractic training as set  
30 forth in requirement (e): *Provided, however*, That this  
31 requirement of sequence of attendance at an academic  
32 college then chiropractic school or college shall not apply  
33 to those applicants who at the time of passage of this  
34 article have completed or are in the process of fulfilling  
35 the requirements set forth in (e) above; nor shall such  
36 requirement of sequence of attendance at an academic  
37 college then chiropractic school or college apply to such  
38 applicants who have, subsequent to the passage of this  
39 article, commenced the fulfillment of requirement (c)  
40 under the educational provisions of the Federal Service-  
41 men's Readjustment Act now in force or as may hereafter  
42 be amended, or such federal act of similar effect, benefit  
43 or purpose as may hereafter be enacted by Congress.

## CHAPTER 146

(S. B. 483—By Mr. Galperin and Mr. Kusic)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-three, relating generally to the practice of radiologic technology and the licensing of persons engaging in the practice of radiologic technology; setting forth certain legislative findings and a declaration of purpose; defining terms; requiring the licensing of persons engaged in the practice of radiologic technology; providing prohibitions and restrictions on certain activities; creating the West Virginia radiologic technology board of examiners; relating to the appointment, qualifications, terms of office, oath, removal and expenses of members of the board; relating to the officers, meetings and quorum of the board; relating to vacancies on the board; specifying powers and duties of the board; relating to the receipt and disbursement of funds; establishing qualifications of applicants for license; providing for reciprocal licensing of certain radiologic technologists; exempting certain persons from license requirements; authorizing issuance of license to persons who have practiced radiologic technology at least one of the last five years under certain circumstances, without examination and without meeting certain educational requirements; relating to applications and fees; providing for the issuance of license, renewal thereof and fees in connection therewith; relating to the issuance of a temporary permit to practice radiologic technology; authorizing the board to suspend or revoke license or temporary permit and establishing the grounds therefor; authorizing board to conduct investigations and hold hearings; relating to hearing procedures; providing a time and place for such hearings; specifically making chapter twenty-nine-a of the code applicable; authorizing the board to issue subpoenas and subpoenas duces tecum; providing automatic stay or suspension of certain orders of board pending hearing; re-

lating to the cost of any such hearing; providing for judicial review of decisions of the board entered following hearing; providing for appeals to the supreme court of appeals; providing legal representation for the board; providing for injunctive relief; and establishing criminal offenses and penalties.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.**

- §30-23-1. Legislative findings and declarations of public policy.
- §30-23-2. Definitions.
- §30-23-3. License required.
- §30-23-4. Creation of board of examiners of radiologic technologists; members; appointment by governor; qualifications; terms; vacancies; officers; oath; compensation; general provisions.
- §30-23-5. Board of examiners; powers and duties; funds of board.
- §30-23-6. Qualifications of applicants; exceptions; applications; fee.
- §30-23-7. Issuance of license; renewal of license; renewal fee.
- §30-23-8. Temporary permits.
- §30-23-9. Suspension or revocation of license or temporary permit.
- §30-23-10. Procedures for hearing.
- §30-23-11. Judicial review; appeal to supreme court of appeals; legal representation for board.
- §30-23-12. Actions to enjoin violations.
- §30-23-13. Penalties.

**§30-23-1. Legislative findings and declarations of public policy.**

- 1 The Legislature finds and declares that in the interest
- 2 of public health, the people of this state should be pro-
- 3 tected from excessive and improper exposure to ionizing
- 4 radiation. It is the purpose of this article to establish
- 5 minimum standards of education, training and experience
- 6 for radiologic technologists and to prescribe means for
- 7 assuring that these standards are met.

**§30-23-2. Definitions.**

- 1 Unless the context in which used clearly requires a
- 2 different meaning, as used in this article:
- 3 (a) "Board" means the West Virginia radiologic
- 4 technology board of examiners.



5 (b) "License" means a license granted and issued by  
6 the board for the practice of radiologic technology.

7 (c) "Licensed practitioner" means a person licensed to  
8 practice medicine, chiropractic, podiatry, osteopathy or  
9 dentistry.

10 (d) "Licensee" means any person holding a license or  
11 a temporary permit issued under the provisions of this  
12 article.

13 (e) "Radiologic technologist" means a person, other  
14 than a licensed practitioner who applies X rays or as-  
15 sists in the application of X rays to human beings for  
16 diagnostic or therapeutic purposes under the supervision  
17 of a licensed practitioner.

18 (f) "Radiologic technology" means the application of  
19 X rays or assisting in the application of X rays to human  
20 beings for diagnostic or therapeutic purposes under the  
21 supervision of a licensed practitioner.

22 (g) "Radiologist" means a licensed practitioner who  
23 specializes in the use of ionizing radiation for the diag-  
24 nosis or treatment of disease.

25 (h) "Radiology resident" means a licensed practitioner  
26 who is in training to become a radiologist and who uses  
27 ionizing radiation in the diagnosis or treatment of disease,  
28 under the supervision of a radiologist.

29 (i) "Supervision" means responsibility for and control  
30 of quality, radiation safety and technical aspects in the  
31 application of ionizing radiation of human beings for  
32 diagnostic or therapeutic purposes.

33 (j) "Technology" hereinafter relates to radiologic  
34 technology.

### §30-23-3. License required.

1 (a) No person may engage in, offer to engage in, or  
2 hold himself out to the public as being engaged in, the  
3 practice of radiologic technology in this state, nor may  
4 any person use in connection with any trade, business,  
5 profession or occupation, except in those instances  
6 specifically provided in subdivisions (1), (2), (3) and

7 (4), subsection (c), section six of this article, the word  
8 radiologic technologist or any other title, word or ab-  
9 breviation which induces or tends to induce the belief  
10 that such person is qualified to engage or is engaged in  
11 the practice of radiologic technology, unless and until  
12 he first obtains a license or temporary permit to engage  
13 in the practice of radiologic technology in accordance  
14 with the provisions of this article, which license or  
15 temporary permit remains unexpired, unsuspended and  
16 unrevoked: *Provided*, That no such license or temporary  
17 permit may be required for a radiologic technologist  
18 who is not a resident of this state, who is the holder of  
19 a license or certificate to engage in the practice of radio-  
20 logic technology issued by a state with licensing or  
21 certification requirements determined by the board to  
22 be at least equal to those provided in this article,  
23 who has no regular place of practice in this state and  
24 who engages in the practice of radiologic technology in  
25 this state for a period of not more than ten days in  
26 any calendar year.

27 (b) No firm, association or corporation may, except  
28 through a licensee or licensees, render any service or  
29 engage in any activity which if rendered or engaged in  
30 by any individual would constitute the practice of radio-  
31 logic technology.

**§30-23-4. Creation of board of examiners of radiologic technologists; members; appointment by governor; qualifications; terms; vacancies; officers; oath; compensation; general provisions.**

1 There is hereby created a West Virginia radiologic  
2 technology board of examiners, hereinafter called the  
3 board. The governor shall appoint the members of such  
4 board, by and with the advice and consent of the Senate.  
5 The board shall consist of seven members, composed of  
6 one member from the division of radiologic health of  
7 the West Virginia state department of health, three  
8 licensed practitioners, two of whom shall be radiologists,  
9 and three radiologic technologists who are licensed here-  
10 under, or, in the case of the members first appointed,

11 are eligible for a license hereunder without passing a  
12 proficiency examination if such person has a total of  
13 three years' experience as a radiologic technologist im-  
14 mediately prior to the effective date of this article.

15 Each member shall be appointed for a term of three  
16 years and shall serve until a successor has been ap-  
17 pointed and has qualified: *Provided*, That of the first  
18 appointees, a licensed practitioner and a radiologic  
19 technologist shall each be appointed for a term of one  
20 year, a licensed practitioner and a radiologic technologist  
21 shall each be appointed for a term of two years and a  
22 licensed practitioner, a radiologic technologist and a  
23 representative from the division of radiologic health,  
24 West Virginia state department of health shall each be  
25 appointed for a term of three years. All members of the  
26 board shall be residents of West Virginia. A member  
27 may succeed himself. Vacancies shall be filled by ap-  
28 pointment by the governor for the unexpired term. Be-  
29 fore entering upon the performance of his duties, each  
30 member shall take and subscribe to the oath required  
31 by section five, article four of the constitution of this  
32 state.

33 The board shall elect from its membership a chair-  
34 man and secretary who shall serve at the will and  
35 pleasure of the board. A majority of the members of  
36 the board constitutes a quorum, and meetings shall be  
37 held at the call of the chairman or upon the written  
38 request of three members at such time and place as  
39 designated in such call or request, and, in any event,  
40 the board shall meet at least twice annually to conduct  
41 the examination hereinafter provided for and to trans-  
42 act such other business as may come before it. The board  
43 shall hold its first meeting within thirty days after the  
44 appointment of the members. The members of the board  
45 shall receive no compensation for their services as  
46 members, but shall be reimbursed for all reasonable and  
47 necessary expenses actually incurred in the performance  
48 of their duties under this article. Any member may be  
49 removed by the governor in case of incompetency,  
50 neglect of duty, gross immorality or malfeasance in office.

**§30-23-5. Board of examiners; powers and duties; funds of board.**

1 (a) The board shall:

2 (1) Promulgate reasonable rules and regulations im-  
3 plementing the provisions of this article and the powers  
4 and duties conferred upon the board hereby and such  
5 reasonable rules and regulations shall be promulgated  
6 in accordance with the provisions of article three, chapter  
7 twenty-nine-a of this code;

8 (2) Examine applicants and determine their eligibility  
9 for a license or temporary permit to practice radiologic  
10 technology;

11 (3) Prepare, conduct and grade an examination of  
12 applicants for a license and determine the satisfactory  
13 passing score thereon;

14 (4) Issue, renew, deny, suspend or revoke licenses  
15 and temporary permits to engage in the practice of  
16 radiologic technology in accordance with the provisions  
17 of this article and, in accordance with the administra-  
18 tive procedures hereinafter provided, review, affirm,  
19 reverse, vacate or modify its order with respect to any  
20 such denial, suspension or revocation;

21 (5) Investigate alleged violations of provisions of this  
22 article, reasonable rules and regulations promulgated  
23 hereunder and orders and final decisions of the board  
24 and take appropriate disciplinary action against any  
25 licensee for the violation thereof or institute appro-  
26 priate legal action for the enforcement of the provisions  
27 of this article, rules and regulations promulgated here-  
28 under and orders and final decisions of the board;

29 (6) Employ, direct, discharge and define the duties of  
30 full or part-time professional, clerical or other personnel  
31 necessary to effectuate the provisions of this article;

32 (7) Keep accurate and complete records of its pro-  
33 ceedings, certify the same as may be appropriate, and  
34 prepare, from time to time, a list showing the names  
35 and addresses of all licensees;

36 (8) Provide standards for approved schools of  
37 technology, procedures for obtaining and maintaining  
38 approval, and procedures of revocation of approval  
39 where standards are not maintained: *Provided*, That such  
40 standards for approved schools meet at least the minimal  
41 requirements of the American society of radiologic tech-  
42 nologists;

43 (9) Whenever it deems it appropriate, confer with the  
44 attorney general or his assistants in connection with all  
45 legal matters and questions; and

46 (10) Take such other action as may be reasonably  
47 necessary or appropriate to effectuate the provisions of  
48 this article.

49 (b) All moneys paid to the board shall be accepted  
50 by a person designated by the board and deposited by  
51 him with the treasurer of the state and credited to an  
52 account to be known as the "board of examiners of radio-  
53 logic technologist fund." The reimbursement of all rea-  
54 sonable and necessary expenses actually incurred by  
55 members of the board and all other costs and expenses  
56 incurred by the board in the administration of this article  
57 shall be paid from such fund, and no part of the state's  
58 general revenue fund shall be expended for this purpose.

**§30-23-6. Qualifications of applicants; exceptions; applications;  
fee.**

1 (a) To be eligible for a license to practice radiologic  
2 technology the applicant must:

3 (1) Be of good moral character;

4 (2) Have completed four years of high school educa-  
5 tion or its equivalent;

6 (3) Have successfully completed a minimum twenty-  
7 four-month course in radiologic study in a school of  
8 radiologic technology approved by the board;

9 (4) Have passed the examination prescribed by the  
10 board, which examination shall cover the basic subject  
11 matter of radiologic technology, skills and techniques;  
12 and

13 (5) Not have been convicted of a felony in any court  
14 in this state or any federal court in this or any other  
15 state within ten years preceding the date of application  
16 for registration, which conviction remains unreversed;  
17 and not have been convicted of a felony in any court  
18 in this state or any federal court in this or any other  
19 state at any time if the offense for which he was con-  
20 victed related to the practice of radiologic technology,  
21 which conviction remains unreversed.

22 (b) Any person who holds a license or certificate,  
23 including the American Registry of Radiologic Tech-  
24 nologists, to practice radiologic technology issued by any  
25 other state, the requirements for which license or certifi-  
26 cate are found by the board to be at least equal to  
27 those provided in this article, shall be eligible for a  
28 license to practice radiologic technology in this state  
29 without examination.

30 (c) The following persons are not required to obtain  
31 a license in accordance with the provisions of this article:

32 (1) A technology student enrolled in or attending an  
33 approved school of technology who as part of his course  
34 of study applies ionizing radiation to a human being  
35 under the supervision of a licensed practitioner;

36 (2) A person acting as a dental assistant who under  
37 the supervision of a licensed dentist operates only radio-  
38 graphic dental equipment for the sole purpose of dental  
39 radiography;

40 (3) A person engaged in performing the duties of a  
41 technologist in his employment by an agency, bureau  
42 or division of the government of the United States; and

43 (4) Any licensed practitioner, radiologist or radiology  
44 resident.

45 (d) Any person who has engaged in the practice of  
46 radiologic technology in this state for a period of three  
47 years or more within the last five years as of the ef-  
48 fective date of this article is eligible for a license to  
49 engage in the practice of radiologic technology without  
50 examination and without meeting the requirements of

51 subdivision (3), subsection (a) of this section, if ap-  
52 plication for such license is made within twelve months  
53 after the effective date of this article and if such person  
54 meets the requirements of subdivisions (1), (2) and (5),  
55 subsection (a) of this section.

56 (e) Any person who has been engaged as a radiologic  
57 technologist for at least one of the three years im-  
58 mediately prior to the effective date of this article and  
59 passes a proficiency examination prepared by the board  
60 is eligible for a license to engage in the practice of  
61 radiologic technology without further examination and  
62 without meeting the requirements of subdivision (3),  
63 subsection (a) of this section, if application for such  
64 license is made within twelve months after the  
65 effective date of this article and if such person  
66 meets the requirements of subdivisions (1), (2) and (5),  
67 subsection (a) of this section.

68 (f) Any applicant for any such license shall submit  
69 an application therefor at such time (subject to the time  
70 limitation set forth in subsection (d) of this section), in  
71 such manner, on such forms and containing such informa-  
72 tion as the board may from time to time by reasonable  
73 rule and regulation prescribe, and pay to the board a  
74 license fee of thirty dollars, which fee shall be returned  
75 to the applicant if he is denied a license.

**§30-23-7. Issuance of license; renewal of license; renewal fee.**

1 Whenever the board finds that an applicant meets all  
2 the requirements of this article for a license to engage in  
3 the practice of radiologic technology, it shall forthwith  
4 issue to him such license; and otherwise the board shall  
5 deny the same. The license is valid for a period of two  
6 years from the date issued and shall be renewed every two  
7 years without examination upon application for renewal  
8 on a form prescribed by the board and payment to the  
9 board of a renewal fee of twenty dollars: *Provided*, That  
10 the board may deny an application for renewal for any  
11 reason which would justify the denial of an original  
12 application for a license.

**§30-23-8. Temporary permits.**

1 Upon proper application the board may issue a tempo-  
2 rary permit to engage in the practice of radiologic technol-  
3 ogy in this state to an applicant who meets the qualifica-  
4 tions of subdivisions (1), (2), (3) and (5), subsection (a),  
5 section six of this article, pending examination of such  
6 applicant, which temporary permit shall expire thirty  
7 days after the board gives written notice of the results of  
8 the examination held following the issuance of such tem-  
9 porary permit, and such permit may not be renewed or  
10 another thereof issued to the same person.

**§30-23-9. Suspension or revocation of license or temporary permit.**

1 (a) The board may at any time upon its own motion and  
2 shall upon the verified written complaint of any person  
3 conduct an investigation to determine whether there are  
4 grounds for suspension or revocation of a license or a  
5 temporary permit issued under the provisions of this  
6 article.

7 (b) The board shall suspend or revoke any license or  
8 temporary permit when it finds the holder thereof has:

9 (1) Been convicted of a felony in any court in this  
10 state or any federal court in this or any other state within  
11 ten years preceding the date of the motion or complaint,  
12 which conviction remains unreversed; or been convicted of  
13 a felony in any court in this state or any federal court in  
14 this or any other state at any time if the offense for which  
15 he was convicted related to the practice of radiologic  
16 technology, which conviction remains unreversed;

17 (2) Obtained a license or temporary permit by means  
18 of fraud or deceit;

19 (3) Been incompetent, grossly negligent, or guilty of  
20 other malpractice as defined by the board by reasonable  
21 rules and regulations;

22 (4) Failed or refused to comply with the provisions of  
23 this article or any reasonable rule and regulation promul-  
24 gated by the board hereunder or any order or final deci-  
25 sion of the board; or



26 (5) Except in emergency situations, failed to obtain  
27 written authorization from the attending licensed prac-  
28 titioner or from the patient, and if the patient is a minor,  
29 from a parent or a person having custody of the minor.

30 (c) The board shall also suspend or revoke any license  
31 or temporary permit if it finds the existence of any  
32 grounds which would justify the denial of an application  
33 for such license or temporary permit if application were  
34 then being made for it.

**§30-23-10. Procedures for hearing.**

1 (a) Whenever the board denies an application for any  
2 original or renewal license or denies an application for  
3 a temporary permit or suspends or revokes any license  
4 or temporary permit, it shall make an interim order to  
5 that effect and serve a copy thereof on the applicant or  
6 licensee, as the case may be, by certified mail, return  
7 receipt requested. Such order shall state the grounds  
8 for the action taken and shall require that any license or  
9 temporary permit suspended or revoked thereby shall be  
10 returned to the board by the holder within twenty days  
11 after receipt of said copy of said order.

12 (b) Any person adversely affected by any such order  
13 is entitled to a hearing thereon (as to all issues not  
14 excluded from the definition of a "contested case" as set  
15 forth in article one, chapter twenty-nine-a of this code)  
16 if, within twenty days after receipt of a copy thereof,  
17 he files with the board a written demand for such hear-  
18 ing. A demand for hearing shall operate automatically  
19 to stay or suspend the execution of any order suspend-  
20 ing or revoking a license or temporary permit or denying  
21 an application for a renewal license. The board may re-  
22 quire the person demanding such hearing to give reason-  
23 able security for the cost thereof and if such person does  
24 not substantially prevail at such hearing such cost shall  
25 be assessed against him and may be collected by civil  
26 action or other proper remedy.

27 (c) Upon receipt of a written demand for such hear-  
28 ing, the board shall set a time and place therefor not  
29 less than ten and not more than thirty days thereafter.

30 Any scheduled hearing may be continued by the board  
31 upon its own motion or for good cause shown by the  
32 person demanding the hearing.

33 (d) All of the pertinent provisions of article five,  
34 chapter twenty-nine-a of this code apply to and govern  
35 the hearing and the administrative procedures in connec-  
36 tion with and following such hearing, with like effect  
37 as if the provisions of said article five were set forth in  
38 this subsection.

39 (e) Any such hearing shall be conducted by a quorum  
40 of the board. For the purpose of conducting any such  
41 hearing any member of the board may issue subpoenas  
42 and subpoenas duces tecum which shall be issued and  
43 served within the time, for the fees and shall be enforced  
44 as specified in section one, article five of said chapter  
45 twenty-nine-a, and all of the said section one provisions  
46 dealing with subpoenas and subpoenas duces tecum shall  
47 apply to subpoenas and subpoenas duces tecum issued  
48 for the purpose of a hearing hereunder.

49 (f) At any such hearing the person who demanded  
50 the same may represent himself or be represented by  
51 an attorney-at-law admitted to practice before any circuit  
52 court of this state. Upon request by the board, it shall  
53 be represented at any such hearing by the attorney  
54 general or his assistants without additional compensa-  
55 tion.

56 (g) After any such hearing and consideration of all  
57 testimony, evidence and record in the case, the board  
58 shall render its decision in writing. The written decision  
59 of the board shall be accompanied by findings of fact  
60 and conclusions of law as specified in section three, article  
61 five, chapter twenty-nine-a of this code, and a copy of  
62 such decision and accompanying findings and conclusions  
63 shall be served by certified mail, return receipt requested,  
64 upon the person demanding such hearing, and his at-  
65 torney of record if any.

66 (h) The decision of the board is final unless reversed,  
67 vacated or modified upon judicial review thereof in

68 accordance with the provisions of section eleven of this  
69 article.

**§30-23-11. Judicial review; appeal to supreme court of appeals;  
legal representation for board.**

1 Any person adversely affected by a decision of the  
2 board rendered after a hearing held in accordance with  
3 the provisions of section ten of this article is entitled to  
4 judicial review thereof. All of the pertinent provisions  
5 of section four, article five, chapter twenty-nine-a of this  
6 code apply to and govern such judicial review with like  
7 effect as if the provisions of said section four were set  
8 forth in this section.

9 The judgment of the circuit court is final unless re-  
10 versed, vacated or modified on appeal to the supreme  
11 court of appeals in accordance with the provisions of sec-  
12 tion one, article six, chapter twenty-nine-a of this code.

13 Legal counsel and services for the board in all appeal  
14 proceedings in any circuit court and the supreme court  
15 of appeals shall be provided by the attorney general or  
16 his assistants and in any circuit court by the prosecuting  
17 attorney of the county as well, all without additional  
18 compensation.

**§30-23-12. Actions to enjoin violations.**

1 Whenever it appears to the board that any person has  
2 been or is violating or is about to violate any provision  
3 of this article, any reasonable rule and regulation promul-  
4 gated hereunder or any order or final decision of the  
5 board, the board may apply in the name of the state to  
6 the circuit court of the county in which the violation or  
7 violations or any part thereof has occurred, is occurring  
8 or is about to occur, for an injunction against any such  
9 person and any such other persons who have been, are or  
10 are about to be, involved in any practice, acts or omissions,  
11 so in violation, enjoining such person or persons from  
12 any such violation or violations. Such application may  
13 be made and prosecuted to conclusion whether or not any  
14 such violation or violations have resulted or shall result  
15 in prosecution or conviction under the provisions of  
16 section thirteen of this article.

17 Upon application by the board, the circuit courts of  
18 this state may by mandatory or prohibitory injunction  
19 compel compliance with the provisions of this article, the  
20 reasonable rules and regulations promulgated hereunder  
21 and all orders and final decisions of the board. The court  
22 may issue a temporary injunction in any case pending  
23 a decision on the merits of any application filed.

24 The judgment of the circuit court upon any application  
25 permitted by the provisions of this section shall be final  
26 unless reversed, vacated or modified on appeal to the  
27 supreme court of appeals. Any such appeal shall be  
28 sought in the manner and within the time provided by  
29 law for appeals from circuit courts in other civil actions.

30 The board shall be represented in all such proceedings  
31 by the attorney general or his assistants and in such  
32 proceedings in the circuit court by the prosecuting at-  
33 torneys of the several counties as well, all without  
34 additional compensation.

### §30-23-13. Penalties.

1 Any person who violates any provisions of this article,  
2 any of the reasonable rules and regulations promulgated  
3 hereunder or any order or any final decision of the board  
4 shall be guilty of a misdemeanor, and, upon conviction  
5 thereof, shall be fined not more than one thousand dollars,  
6 or imprisoned in the county jail not more than six months,  
7 or both fined and imprisoned.

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## CHAPTER 147

(Com. Sub. for H. B. 838—By Mr. Sattas)

[Passed April 1, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter twenty-nine-b, relating to public access to and inspection of public records; declaration of policy; definitions of terms; inspection and copying of public records

and exemptions therefrom; rules and regulations for the protection of the records; enforcement of right of inspection; violations of article and penalties therefor.

*Be it enacted by the Legislature of West Virginia:*

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

## **CHAPTER 29B. FREEDOM OF INFORMATION.**

### **ARTICLE 1. PUBLIC RECORDS.**

- §29B-1-1. Declaration of policy.
- §29B-1-2. Definitions.
- §29B-1-3. Inspection and copying.
- §29B-1-4. Exemptions.
- §29B-1-5. Enforcement.
- §29B-1-6. Violation of article; penalties.

#### **§29B-1-1. Declaration of policy.**

1 Pursuant to the fundamental philosophy of the American  
2 constitutional form of representative government which holds to  
3 the principle that government is the servant of the people, and  
4 not the master of them, it is hereby declared to be the public  
5 policy of the state of West Virginia that all persons are, unless  
6 otherwise expressly provided by law, entitled to full and complete  
7 information regarding the affairs of government and the  
8 official acts of those who represent them as public officials  
9 and employees. The people, in delegating authority, do not  
10 give their public servants the right to decide what is good for  
11 the people to know and what is not good for them to know.  
12 The people insist on remaining informed so that they may  
13 retain control over the instruments of government they have  
14 created. To that end, the provisions of this article shall be  
15 liberally construed with the view of carrying out the above  
16 declaration of public policy.

#### **§29B-1-2. Definitions.**

1 As used in this article:

2 (1) "Custodian" means the elected or appointed official  
3 charged with administering a public body.

4 (2) "Person" includes any natural person, corporation,  
5 partnership, firm or association.

6 (3) "Public body" means every state officer, agency, depart-  
7 ment, including the executive, legislative and judicial depart-  
8 ments, division, bureau, board and commission; every county  
9 and city governing body, school district, special district, munic-  
10 ipal corporation, and any board, department, commission  
11 council or agency thereof; and any other body which is created  
12 by state or local authority or which is primarily funded by the  
13 state or local authority.

14 (4) "Public record" includes any writing containing infor-  
15 mation relating to the conduct of the public's business, pre-  
16 pared, owned and retained by a public body.

17 (5) "Writing" includes any books, papers, maps, photo-  
18 graphs, cards, tapes, recordings or other documentary materials  
19 regardless of physical form or characteristics.

**§29B-1-3. Inspection and copying.**

1 (1) Every person has a right to inspect or copy any public  
2 record of a public body in this state, except as otherwise ex-  
3 pressly provided by section four of this article.

4 (2) A request to inspect or copy any public record of a  
5 public body shall be made directly to the custodian of such  
6 public record.

7 (3) The custodian of any public records, unless otherwise  
8 expressly provided by statute, shall furnish proper and reason-  
9 able opportunities for inspection and examination of the records  
10 in his office and reasonable facilities for making memoranda or  
11 abstracts therefrom, during the usual business hours, to all  
12 persons having occasion to make examination of them. The  
13 custodian of the records may make reasonable rules and  
14 regulations necessary for the protection of the records and to  
15 prevent interference with the regular discharge of his duties.

16 (4) All requests for information must state with reasonable  
17 specificity the information sought. The custodian, upon de-  
18 mand for records made under this statute, shall as soon as is  
19 practicable but within a maximum of five days not including  
20 Saturdays, Sundays or legal holidays:

- 21 (a) Furnish copies of the requested information;
- 22 (b) Advise the person making the request of the time and  
23 place at which he may inspect and copy the materials; or
- 24 (c) Deny the request stating in writing the reasons for  
25 such denial.

26 Such a denial shall indicate that the responsibility of the  
27 custodian of any public records or public body to produce  
28 the requested records or documents is at an end, and shall  
29 afford the person requesting them the opportunity to institute  
30 proceedings for injunctive or declaratory relief in the circuit  
31 court in the county where the public record is kept.

32 (5) The public body may establish fees reasonably cal-  
33 culated to reimburse it for its actual cost in making repro-  
34 ductions of such records.

#### §29B-1-4. Exemptions.

1 The following categories of information are specifically  
2 exempt from disclosure under the provisions of this article:

3 (1) Trade secrets, as used in this section, which may in-  
4 clude, but are not limited to, any formula, plan pattern,  
5 process, tool, mechanism, compound, procedure, production  
6 data, or compilation of information which is not patented  
7 which is known only to certain individuals within a com-  
8 mercial concern who are using it to fabricate, produce or  
9 compound an article or trade or a service or to locate minerals  
10 or other substances, having commercial value, and which gives  
11 its users an opportunity to obtain business advantage over  
12 competitors;

13 (2) Information of a personal nature such as that kept  
14 in a personal, medical or similar file, if the public disclosure  
15 thereof would constitute an unreasonable invasion of privacy,  
16 unless the public interest by clear and convincing evidence  
17 requires disclosure in the particular instance: *Provided*, That  
18 nothing in this article shall be construed as precluding an in-  
19 dividual from inspecting or copying his own personal, medical  
20 or similar file;

21 (3) Test questions, scoring keys and other examination

22 data used to administer a licensing examination, examination  
23 for employment or academic examination;

24 (4) Records of law-enforcement agencies that deal with  
25 the detection and investigation of crime and the internal  
26 records and notations of such law-enforcement agencies which  
27 are maintained for internal use in matters relating to law  
28 enforcement;

29 (5) Information specifically exempted from disclosure by  
30 statute;

31 (6) Records, archives, documents or manuscripts describ-  
32 ing the location of undeveloped historic, prehistoric, archaeo-  
33 logical, paleontological and battlefield sites or constituting gifts  
34 to any public body upon which the donor has attached restric-  
35 tions on usage or the handling of which could irreparably  
36 damage such record, archive, document or manuscript;

37 (7) Information contained in or related to examination,  
38 operating or condition reports prepared by, or on behalf of, or  
39 for the use of any agency responsible for the regulation or  
40 supervision of financial institutions, except those reports  
41 which are by law required to be published in newspapers; and

42 (8) Internal memoranda or letters received or prepared by  
43 any public body.

**§29B-1-5. Enforcement.**

1 (1) Any person denied the right to inspect the public  
2 record of a public body may institute proceedings for in-  
3 junctive or declaratory relief in the circuit court in the county  
4 where the public record is kept.

5 (2) In any suit filed under subsection one of this section,  
6 the court has jurisdiction to enjoin the custodian or public body  
7 from withholding records and to order the production of any  
8 records improperly withheld from the person seeking disclosure.  
9 The court shall determine the matter de novo and the burden  
10 is on the public body to sustain its action. The court, on its  
11 own motion, may view the documents in controversy in  
12 camera before reaching a decision. Any custodian of any  
13 public records of the public body found to be in noncompli-  
14 ance with the order of the court to produce the documents



15 or disclose the information sought, may be punished as being  
16 in contempt of court.

17 (3) Except as to causes the court considers of greater  
18 importance, proceedings arising under subsection one of this  
19 section shall be assigned for hearing and trial at the earliest  
20 practicable date.

**§29B-1-6. Violation of article; penalties.**

1 Any custodian of any public records who shall willfully  
2 violate the provisions of this article shall be guilty of a mis-  
3 demeanor, and, upon conviction thereof, shall be fined not  
4 less than one hundred dollars nor more than five hundred  
5 dollars, or be imprisoned in the county jail for not more  
6 than ten days, or, in the discretion of the court, by both such  
7 fine and imprisonment.

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## CHAPTER 148

(S. B. 497—By Mr Savilla, Mr. Oates and Mr. Baylor)

[Passed April 7, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one, relating to payment of tuition and fees of members of the national guard attending institutions of higher education.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 1B. NATIONAL GUARD.**

**§15-1B-21. Tuition and fees for guard members at institutions of higher education.**

1 Any member of the national guard who is enrolled in a

2 course of undergraduate study at and is attending any  
3 accredited college, university, business or trade school  
4 located in West Virginia, shall be entitled to payment of  
5 tuitions and fees at such college, university, business or  
6 trade school during the period of his service in the na-  
7 tional guard: *Provided*, That such payment shall be con-  
8 tingent upon appropriations being made by the Legisla-  
9 ture for this express purpose.

10 The amount of such payment for members attending  
11 a state-supported school shall be the actual amount of  
12 such tuitions and fees at such school. The amount of such  
13 payment for members attending a private school shall be  
14 determined by the adjutant general, but in no event shall  
15 exceed the highest amounts payable at any state-supported  
16 school.

17 The adjutant general is charged with the administra-  
18 tion of tuition and fee payments under this section and  
19 shall promulgate rules and regulations for the same.

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## CHAPTER 149

(Com. Sub. for H. B. 1008—By Mrs. Neal and Mr. Stacy)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia department of public safety reorganization act; continuing the department of public safety; providing for reorganization of the department; providing for companies, districts and detachments within the department; providing for training of members and other peace officers; providing for appointment of commissioned and noncommissioned officers, other members and temporary positions as advisors to the superintendent; providing for salaries, bond, compensation and leave for members in the national guard or reserves; creating a procedure for appeals, convening of appeals boards,

and selection of board members by lot; providing for establishment of a cadet selection board; appointment and qualifications for membership; providing for equal employment opportunity; providing for employment of civilian employees; providing for appointment of chaplains; promotions and promotion evaluation board; uniforms, provision of authorized weapons and equipment, and group insurance; territorial jurisdiction of department; establishing mission and purpose of department of public safety; powers of superintendent and members; providing limitations upon members; prescribing oath for superintendent and members; disposition of prisoners; prohibiting interference with members and giving false or misleading information to officers and providing a penalty therefor; prohibiting unauthorized use of uniform or insignia or impersonation of a member and providing a penalty therefor; proscribing members from performing duties for private persons and providing a penalty therefor; making it unlawful to bribe members, etc., and providing a penalty therefor; authorized transfers, prohibiting transfers for disciplinary purposes and notice and expenses in transfers; discipline of members, suspension, demotion, discharge and right to appeal; assignment of assistant attorney general and employment of legal counsel; duty of department to maintain statistics as to aliens, etc.; criminal identification bureau; rules and regulations generally; carrying weapons; retirement and continuation of death, disability and retirement fund; retirement awards and benefits for disability incurred in performance of duty and otherwise; physical examination; recall to duty and termination; awards and benefits to dependents for death in performance of duty and otherwise; awards and benefits when member dies after retirement or after serving twenty years; termination of benefits to dependents; refunds to members upon discharge or resignation; refunds to dependents and use of the term "dependent child or children"; removing penalty for resignation without consent of superintendent; removing provisions permitting governor to discharge a company; removing requirement of governor's consent for disciplined member to be reappointed; and removing requirement for common carriers to provide transportation to members at no cost.

*Be it enacted by the Legislature of West Virginia:*

That article two, chapter fifteen of the code of West Virginia,

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

**ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.**

- §15-2-1. Short title.
- §15-2-2. Superintendent; departmental headquarters.
- §15-2-3. Companies, districts and detachments; how established.
- §15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.
- §15-2-5. Salaries; bond; leave time for members called to duty in national guard or reserves.
- §15-2-6. Departmental appeals boards; appeal procedures.
- §15-2-7. Cadet selection board; qualifications for and appointment to membership in department; civilian employees.
- §15-2-8. Chaplains.
- §15-2-9. Promotions; promotion evaluation board to be established.
- §15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.
- §15-2-11. Territorial jurisdiction.
- §15-2-12. Mission of the department; powers of superintendent, officers and members; patrol of turnpike.
- §15-2-13. Limitations upon members.
- §15-2-14. Oath of superintendent and members.
- §15-2-15. Disposition of prisoners.
- §15-2-16. Interference with officers or members; false information; penalty.
- §15-2-17. Unauthorized use of uniform, badge or other insignia; impersonation of member; penalty.
- §15-2-18. Officers or members performing duties for private persons; general penalty.
- §15-2-19. Bribing, etc., officers or members; penalty.
- §15-2-20. Transfer authorized; use for disciplinary purposes prohibited; notice required under certain circumstances; relocation expense; regulation of member's residence.
- §15-2-21. Suspension, demotion or discharge of members; right of appeal.
- §15-2-22. Assignment of assistant attorney general; employment of legal counsel.
- §15-2-23. Duties of superintendent as to statistics, aliens and labor conditions.
- §15-2-24. Criminal identification bureau; establishment; supervision; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; offenses and penalties.
- §15-2-25. Rules and regulations generally; carrying of weapons.
- §15-2-26. Continuation of death, disability and retirement fund; retirement board.
- §15-2-27. Retirement; awards and benefits.
- §15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict.
- §15-2-29. Awards and benefits for disability—Incurred in performance of duty.

- §15-2-30. Same—Due to other causes.  
§15-2-31. Same—Physical examinations; recall to active duty; termination.  
§15-2-32. Retired member not to exercise police authority; retention of group insurance.  
§15-2-33. Awards and benefits to dependents of member—When member dies in performance of duty, etc.  
§15-2-34. Same—When member dies from nonservice-connected causes.  
§15-2-35. Same—When member dies after retirement or after serving twenty years.  
§15-2-36. Same—Termination.  
§15-2-37. Refunds to certain members upon discharge or resignation.  
§15-2-38. Refund to dependents upon death of member not eligible for benefits.  
§15-2-39. Dependent child or children—Qualifications.

### §15-2-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Department of Public Safety Reorganization
- 3 Act."

### §15-2-2. Superintendent; departmental headquarters.

- 1 The department of public safety, heretofore established,
- 2 shall be continued. The governor shall nominate, and by
- 3 and with the advice and consent of the Senate, appoint a
- 4 superintendent to be the executive and administrative head of
- 5 the department. The superintendent shall hold the rank of
- 6 colonel and is entitled to all rights, benefits and privileges of
- 7 regularly enlisted members. On the date of his appointment,
- 8 the superintendent shall be at least thirty years of age. Before
- 9 entering upon the discharge of the duties of his office, he shall
- 10 execute a bond in the penalty of ten thousand dollars, payable
- 11 to the state of West Virginia and conditioned upon the faith-
- 12 ful performance of his duties. Such bond both as to form and
- 13 security shall be approved as to form by the attorney general,
- 14 and to sufficiency by the governor.

- 15 Before entering upon the duties of his office the superinten-
- 16 dent shall subscribe to the oath hereinafter provided. The
- 17 headquarters of the department, shall be located in Kanawha
- 18 County.

### §15-2-3. Companies, districts and detachments; how established.

- 1 The superintendent shall create, appoint and equip a depart-
- 2 ment of public safety, which shall consist of the number of

3 companies, districts and detachments as are required for the  
4 proper administration of the department. Each company, dis-  
5 trict or detachment shall be composed of the number of officers  
6 and members the superintendent determines are required for  
7 the efficient operation of the department.

8 The superintendent shall provide adequate facilities for the  
9 training of all members of the department and shall prescribe  
10 a basic training course for newly enlisted members. He shall  
11 also provide advanced or in-service training from time to time  
12 for all members of the department. The superintendent shall  
13 hold training classes for other peace officers in the state with-  
14 out cost to such officers, except actual expenses for food, lodg-  
15 ing and school supplies.

**§15-2-4. Appointment of commissioned officers, noncommissioned  
officers, other members; temporary and permanent  
positions.**

1 The superintendent shall appoint, from the enlisted member-  
2 ship of the department, a deputy superintendent who shall hold  
3 the rank of lieutenant colonel and be next in authority to the  
4 superintendent. The superintendent shall appoint, from the  
5 enlisted membership of the department, the number of other  
6 officers and members he deems necessary to operate and main-  
7 tain the executive offices, training school, scientific laboratory,  
8 keep records relating to crimes and criminals, coordinate  
9 traffic safety activities, maintain a system of supplies and  
10 accounting and perform other necessary services.

11 The ranks within the membership of the department shall be  
12 colonel, lieutenant colonel, major, captain, lieutenant, master  
13 sergeant, first sergeant, sergeant, corporal, trooper first class or  
14 trooper. Each such member while in uniform shall wear the  
15 insignia of rank as provided by law and departmental regula-  
16 tions.

17 The superintendent may appoint from the membership of the  
18 department eleven principal supervisors who shall receive the  
19 compensation and hold the temporary rank of lieutenant  
20 colonel, major or captain at the will and pleasure of the  
21 superintendent. Such appointments shall be exempt from any  
22 merit standards established by the promotion evaluation

23 board. Any person appointed to a temporary rank under the  
24 provisions of this article shall retain his permanent rank and  
25 shall remain eligible for promotion if his permanent rank is  
26 below that of captain. Upon the termination of a temporary  
27 appointment by the superintendent, the member shall be  
28 entitled to the full rights and privileges of his permanent rank  
29 and shall remain eligible for subsequent appointment to a  
30 temporary rank.

**§15-2-5. Salaries; bond; leave time for members called to duty in national guard or reserves.**

1 Members of the department shall receive annual salaries  
2 pursuant to appropriation by the Legislature, payable at least  
3 monthly as follows:

4 Any lieutenant colonel shall receive an annual salary of  
5 nineteen thousand five hundred ninety-three dollars; any  
6 major shall receive an annual salary of seventeen thousand  
7 seven hundred thirty-five dollars; any captain shall receive an  
8 annual salary of sixteen thousand three hundred thirteen  
9 dollars; any lieutenant shall receive an annual salary of  
10 fifteen thousand, three hundred eleven dollars; any master  
11 sergeant or first sergeant shall receive an annual salary of  
12 fourteen thousand three hundred sixty-seven dollars; any  
13 sergeant shall receive an annual salary of thirteen thousand six  
14 hundred sixty-six dollars; any corporal shall receive an annual  
15 salary of twelve thousand nine hundred thirty dollars; any  
16 trooper first class shall receive an annual salary of twelve  
17 thousand one hundred forty dollars; and any newly enlisted  
18 trooper shall receive a salary of eight hundred seventy-nine dol-  
19 lars monthly during the period of his basic training, and upon  
20 the satisfactory completion of such training and assignment to  
21 active duty each such trooper shall receive, during the remain-  
22 der of his first year's service, a salary of nine hundred fifty dol-  
23 lars monthly. During the second year of his service in the de-  
24 partment each trooper shall receive an annual salary of eleven  
25 thousand six hundred sixty-five dollars; during the third year  
26 of his service each such trooper shall receive an annual salary  
27 of eleven thousand eight hundred thirty-seven dollars; and  
28 during the fourth year and fifth year of such trooper's service  
29 and for each year thereafter he shall receive an annual salary

30 of eleven thousand nine hundred ninety-five dollars. Each  
31 member of the department whose salary is specified herein  
32 shall receive and be entitled to an increase in salary over  
33 that hereinbefore set forth, for grade in rank, based on length  
34 of service, including that heretofore and hereafter served  
35 with the department, as follows: At the end of five years of  
36 service with the department, such member shall receive a  
37 salary increase of three hundred dollars to be effective during  
38 his next three years of service and a like increase at three-  
39 year intervals thereafter, with such increases to be cumulative.

40 In applying the foregoing salary schedule where salary in-  
41 creases are provided for length of service, members of the de-  
42 partment in service at the time this article becomes effective  
43 shall be given credit for prior service and shall be paid such  
44 salaries as the same length of service will entitle them to re-  
45 ceive under the provisions hereof.

46 Each member of the department, except the superintendent  
47 and civilian employees, shall execute before entering upon the  
48 discharge of his duties, a bond with security in the sum of five  
49 thousand dollars payable to the state of West Virginia, condi-  
50 tioned upon the faithful performance of his duties, and such  
51 bond shall be approved as to form by the attorney general  
52 and to sufficiency by the governor.

53 Any member of the department who is called to perform  
53 active duty for training or inactive duty training in the national  
54 guard or any reserve component of the armed forces of the  
55 United States annually shall be granted upon request leave  
56 time not to exceed thirty days for the purpose of performing  
57 such active duty for training or inactive duty training, and the  
58 time so granted shall not be deducted from any leave ac-  
59 cumulated as a member of the department.

**§15-2-6. Departmental appeals boards; appeal procedures.**

1 Appeals of transfers, suspensions, demotions in rank and  
2 discharges shall be heard by boards of appeals convened pur-  
3 suant to the provisions of this section. The boards shall each  
4 consist of seven members and five members shall constitute a  
5 quorum. A new board shall be convened to hear and deter-  
6 mine each new appeal filed by a member of the department.  
7 There may be more than one board in existence at the same



8 time meeting on different appeals. A member of the retire-  
9 ment board is eligible to serve on an appeals board.

10 The members of a board shall be chosen by lot by the  
11 superintendent with one member to be so chosen from among  
12 all the members of each of the seven ranks of trooper through  
13 lieutenant, inclusive. No department member may serve on  
14 an appeals board if his rank is the same, or if he is a member  
15 of the same detachment, as the person making the appeal. If  
16 the person making the appeal is a member of one of the  
17 ranks of lieutenant through trooper, inclusive, then a captain  
18 shall be chosen by lot from among all members of that rank  
19 to serve on the board. Within ten days after he has been  
20 notified of his selection and assignment to serve on a board,  
21 a member may for cause request to be relieved of such  
22 assignment. The superintendent shall determine whether the  
23 reasons alleged by the member are sufficient cause to relieve  
24 the member of such assignment. If such request is granted  
25 by the superintendent, a new board member shall be selected  
26 by lot from the same rank to replace the member who has  
27 been relieved of such assignment.

28 A chairman shall be selected by the members of the board.  
29 Each member of a board shall be reimbursed for all reason-  
30 able and necessary expenses actually incurred in attending  
31 meetings of a board. All expenses of a board shall be paid  
32 from appropriations to the department.

33 Within fifteen days after a member of the department  
34 has received a notice of transfer or a statement of charges  
35 and an order of suspension, demotion in rank or discharge  
36 by the superintendent, he may appeal the transfer or order  
37 to an appeals board by filing a written notice of appeal with  
38 the superintendent. The superintendent shall promptly record  
39 and file each appeal, select a board, notify each new board  
40 member of his selection, and furnish to each board member  
41 a copy of the notice or order appealed from and the notice  
42 of appeal. A hearing by an appeals board shall be held  
43 within thirty days after the superintendent has received a  
44 member's notice of appeal. At least fifteen days prior to the  
45 hearing date, the board shall notify the superintendent and  
46 the member making the appeal of the date, time and place  
47 of the hearing.

48 Any member of the department who makes such appeal,  
49 as aforesaid, may be represented by an attorney or by any  
50 member of the department or retired member who is re-  
51 ceiving benefits from the death, disability and retirement  
52 fund. The superintendent may be represented by counsel of  
53 his choice. In the appeal of a transfer, the member has the  
54 burden of proof that the transfer is not for the purpose  
55 of the operational needs of the department. In any other  
56 appeal the superintendent has the burden of proof as to the  
57 charges alleged. The procedure in any hearing before the  
58 board shall be informal and without adherence to the tech-  
59 nical rules of evidence required in proceedings in courts  
60 of record. All evidence submitted to the board shall be  
61 submitted under oath. The chairman, or any member of  
62 the board, shall have authority to administer oaths to witnesses.

63 The board shall designate a reporter for any such hearing  
64 who shall record and transcribe all of the proceedings. Upon  
65 his demand, the member making the appeal shall have a  
66 public hearing on the charges, and in the absence of such  
67 demand, the board may determine whether or not the hearing  
68 should be public. Any hearing may be continued, recessed  
69 or adjourned by the board.

70 The superintendent shall provide reasonable space for the  
71 conduct of hearings. The charges of the reporter shall be paid  
72 by the superintendent from available appropriations. At the  
73 conclusion of the hearing, the board shall determine whether  
74 or not the superintendent's order shall be sustained. The  
75 board's decision shall be issued in writing, with copies thereof  
76 being sent by the board to the superintendent and to the  
77 appealing member by certified mail, return receipt requested.  
78 A hearing shall be conducted by at least five members of  
79 the board and the decision of the board shall be made by a  
80 majority vote of all the members of the board.

81 Either party aggrieved by a decision of a board of appeals  
82 may appeal the decision to the circuit court of Kanawha  
83 County within sixty days of receipt of a copy of the board's  
84 decision.

85 The court shall hear the appeal upon the record and deter-  
86 mine all questions submitted to it on appeal.

87 In the event any decision sustaining the superintendent's  
88 order or notice is reversed upon judicial review, which reversal  
89 is final, the superintendent shall return the member to his  
90 status prior to the superintendent's order or notice, with full  
91 payment of any compensation withheld and with full credit  
92 for service between the date the superintendent issued his  
93 order or notice and the date of the final judicial decision re-  
94 versing the decision of the board.

**§15-2-7. Cadet selection board; qualifications for and appointment to membership in department; civilian employees.**

1 (a) The superintendent shall establish within the depart-  
2 ment of public safety a cadet selection board which shall be  
3 representative of commissioned and noncommissioned officers  
4 within the department.

5 (b) The superintendent shall appoint a member to the  
6 position of trooper from among the top three names on the  
7 current list of eligible applicants established by the cadet  
8 selection board.

9 (c) Preference in making appointments shall be given  
10 whenever possible to honorably discharged members of the  
11 armed forces of the United States and to residents of West Vir-  
12 ginia. Each applicant for appointment shall be a person not less  
13 than twenty-one nor more than thirty years of age, of sound  
14 constitution and good moral character; shall be required to  
15 pass such mental examination and meet other requirements as  
16 may be provided for in regulations promulgated by the cadet  
17 selection board; and shall be required to pass such physical  
18 examination as may be provided for in regulations promulgated  
19 by the retirement board: *Provided*, That a former member  
20 may, at the discretion of the superintendent, be reenlisted if the  
21 period of his former service subtracted from his age does not  
22 exceed thirty years.

23 (d) No person may be barred from becoming a member of  
24 the department because of his religious or political convictions.

25 (e) The superintendent shall adhere to the principles of  
26 equal employment opportunity set forth in article eleven,  
27 chapter five of this code, and shall take positive steps to

28 encourage applications for department membership from fe-  
29 males and minority groups within the state.

30 (f) Except for the superintendent, no person may be ap-  
31 pointed or enlisted to membership in the department at a grade  
32 or rank above the grade of trooper.

33 (g) The superintendent shall appoint such civilian em-  
34 ployees as may be necessary, and all such employees may be  
35 included in the classified service of the civil service system  
36 except those in positions exempt under the provisions of  
37 article six, chapter twenty-nine of this code.

**§15-2-8. Chaplains.**

1 The superintendent may also appoint for each company not  
2 more than two chaplains, residing within the state of West Vir-  
3 ginia, who shall serve without pay, and who may not be re-  
4 quired to perform any duties of members of the department,  
5 nor shall any bond be required. The superintendent is  
6 authorized to furnish each such chaplain one official uniform,  
7 with proper chaplain insignia, to be worn at any ceremonial  
8 occasion conducted officially by the department where the  
9 presence of a member of the clergy is customary. Such chap-  
10 lains may be reimbursed by the superintendent for all rea-  
11 sonable and necessary expenses actually incurred in attending  
12 such ceremonies.

**§15-2-9. Promotions; promotion evaluation board to be established.**

1 The superintendent shall establish within the department of  
2 public safety a promotion evaluation board, which shall be  
3 representative of commissioned and noncommissioned officers  
4 within the department. The promotion evaluation board shall  
5 prescribe merit standards for promotion and maintain lists of  
6 eligible candidates.

7 The superintendent shall promote a member to the per-  
8 manent rank of trooper first class, corporal, sergeant, first  
9 sergeant, master sergeant or lieutenant from among the top  
10 three names on the current list of eligible candidates established  
11 by the promotion evaluation board for each rank.

**§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.**

1 (a) The standard uniform to be used by the department  
2 of public safety after the effective date of this article shall  
3 be as follows: Forestry green blouse with West Virginia  
4 state police emblem on sleeve; black shoulder strap, one-  
5 inch black stripe around sleeve, four inches from end of  
6 sleeve; forestry green breeches with one-inch black stripe  
7 down the side; trousers (slacks) with one-inch black stripe  
8 down the side for officers and clerks regularly enlisted  
9 in the department; forestry green shirts with West Virginia  
10 state police emblem on sleeve; black shoulder straps; forestry  
11 green mackinaw with West Virginia state police emblem on  
12 sleeve; black shoulder straps; one-inch black stripe around  
13 sleeve four inches from end of sleeve; campaign hat of olive  
14 drab color; black Sam Browne belt with holster; black  
15 leggings and shoes; the officer's uniform will have one and  
16 one-quarter inch black stripe around the sleeve of blouse and  
17 mackinaw four inches from end of sleeve circumposed with  
18 one-half inch gold braid, also black collars on blouse, with  
19 two silver shoulder bars for captains, one silver shoulder bar  
20 for first lieutenant. For noncommissioned officers the uniform  
21 blouse and shirt will have thereon black chevrons of the ap-  
22 propriate rank.

23 (b) The superintendent shall establish the weapons and  
24 enforcement equipment which shall be authorized for use by  
25 members of the department, and shall provide for periodic  
26 inspection of such weapons and equipment. He shall provide  
27 for the discipline of members using other than authorized  
28 weapons and enforcement equipment.

29 (c) The superintendent shall provide the members of the  
30 department with suitable arms and weapons, and, when he  
31 deems it necessary, with suitably equipped automobiles, motor-  
32 cycles, watercraft, airplanes and other means of conveyance,  
33 to be used by the department of public safety, the governor,  
34 and other officers and executives in the discretion of the  
35 governor, in times of flood, disaster, and other emergencies,

36 for traffic study and control, criminal and safety work, and in  
37 other matters of official business. He shall also provide the  
38 standard uniforms for all members of the department, for  
39 officers, noncommissioned officers and troopers herein provided  
40 for. All uniforms and all arms, weapons and other property  
41 furnished the members of the department by the state of  
42 West Virginia shall be and remain the property of the state.

43 (d) The superintendent is authorized to purchase and  
44 maintain on behalf of members group life insurance not to  
45 exceed the amount of five thousand dollars on behalf of each  
46 member.

47 (e) The superintendent is authorized to contract and fur-  
48 nish at department expense medical and hospital services  
49 for treatment of illness or injury of a member which shall be  
50 determined by the superintendent to have been incurred by  
51 such member while engaged in the performance of duty and  
52 from causes beyond control of such members.

53 (f) The superintendent shall establish and maintain local  
54 headquarters at such places in West Virginia as are in his  
55 judgment suitable and proper to render the department of  
56 public safety most efficient for the purpose of preserving the  
57 peace, protecting property, preventing crime, apprehending  
58 criminals and carrying into effect all other provisions of this  
59 article. The superintendent shall provide, by lease or o'her-  
60 wise, for housing and quarters for the accommodation of the  
61 members of the department of public safety, and shall provide  
62 all equipment and supplies necessary for them to perform their  
63 duties.

#### **§15-2-11. Territorial jurisdiction.**

1 The jurisdiction of the department shall extend anywhere in  
2 the state of West Virginia.

#### **§15-2-12. Mission of the department; powers of superintendent, of- ficers and members; patrol of turnpike.**

1 (a) The West Virginia department of public safety shall  
2 have the mission of statewide enforcement of criminal and  
3 traffic laws with emphasis on providing basic enforcement  
4 and citizen protection from criminal depredation throughout

5 the state and maintaining the safety of the state's public  
6 streets, roads and highways.

7 (b) The superintendent and each of the officers and mem-  
8 bers of the department are hereby empowered:

9 (1) To make arrests anywhere within the state of any  
10 persons charged with the violation of any law of this state,  
11 or of the United States, and when a witness to the perpetra-  
12 tion of any offense or crime, or to the violation of any law  
13 of this state, or of the United States, may arrest without  
14 warrant; to arrest and detain any persons suspected of  
15 the commission of any felony or misdemeanor whenever  
16 complaint is made and warrant is issued thereon for such  
17 arrest, and any person so arrested shall be forthwith brought  
18 before the proper tribunal for examination and trial in  
19 the county where the offense for which any such arrest  
20 has been made was committed;

21 (2) To serve criminal process issued by any court or  
22 magistrate anywhere within this state (they shall not serve  
23 civil process); and

24 (3) To cooperate with local authorities in detecting crime  
25 and in apprehending any person or persons engaged in  
26 or suspected of the commission of any crime, misdemeanor  
27 or offense against the law of this state, or of the United States,  
28 or of any ordinance of any municipality in this state; and  
29 to take affidavits in connection with any application to  
30 the department of highways, department of motor vehicles  
31 and department of public safety of West Virginia for any  
32 license, permit or certificate that may be lawfully issued by  
33 these departments of state government.

34 (c) Members of the department of public safety are  
35 hereby created forest patrolmen and game and fish wardens  
36 throughout the state to do and perform any duties and  
37 exercise any powers of such officers, and may apprehend  
38 and bring before any court or magistrate having jurisdiction  
39 of such matters, anyone violating any of the provisions of  
40 chapters twenty, sixty and sixty-one of this code, and the  
41 department of public safety shall at any time be subject to  
42 the call of the West Virginia alcohol beverage control com-

43 missioner to aid in apprehending any person violating any  
44 of the provisions of said chapter sixty of this code. They  
45 shall serve and execute warrants for the arrest of any person  
46 and warrants for the search of any premises issued by any  
47 properly constituted authority, and shall exercise all of the  
48 powers conferred by law upon a sheriff. They shall not serve  
49 any civil process or exercise any of the powers of such officer  
50 in civil matters.

51 (d) Any member of the department of public safety  
52 knowing or having reason to believe that anyone has violated  
53 the law may make complaint in writing before any court or  
54 officer having jurisdiction and procure a warrant for such  
55 offender, execute the same and bring such person before  
56 the proper tribunal having jurisdiction. He shall make return  
57 on all such warrants to such tribunals and his official title  
58 shall be "member of the department of public safety." Mem-  
59 bers of the department of public safety may execute any  
60 summons or process issued by any tribunal having jurisdiction  
61 requiring the attendance of any person as a witness before  
62 such tribunal and make return thereon as provided by  
63 law, and any return by a member of the department of public  
64 safety showing the manner of executing such warrant or  
65 process shall have the same force and effect as if made by  
66 a sheriff.

67 (e) Each member of the department of public safety, when  
68 called by the sheriff of any county, or when the governor by  
69 proclamation so directs, shall have full power and authority  
70 within such county, or within the territory defined by the gover-  
71 nor, to direct and command absolutely the assistance of any  
72 sheriff, deputy sheriff, chief of police, policeman, game and fish  
73 warden, and peace officer of the state, or of any county or  
74 municipality therein, or of any able-bodied citizen of the United  
75 States, to assist and aid in accomplishing the purposes ex-  
76 pressed in this article. When so called, any officer or person  
77 shall, during the time his assistance is required, be for all  
78 purposes, a member of the department of public safety and  
79 subject to all the provisions of this article.

80 (f) The superintendent may also assign members of the de-  
81 partment to perform police duties on any turnpike or toll road,



82 or any section thereof, operated by the West Virginia turnpike  
83 commission: *Provided*, That such turnpike commission shall  
84 reimburse the department of public safety for salaries paid to  
85 such members, and shall either pay directly or reimburse the  
86 department for all other expenses of such group of members in  
87 accordance with actual or estimated costs determined by the  
88 superintendent.

**§15-2-13. Limitations upon members.**

1 No member of the department of public safety may in any  
2 way interfere with the rights or property of any person except  
3 for the prevention of crime.

4 No member of the department of public safety may in any  
5 way become active or take part in any political contest or at  
6 any time participate in any political party caucus, committee,  
7 primary, assembly or convention, or in any general or special  
8 election, except to cast his ballot.

9 No member of the department of public safety may be de-  
10 tailed or ordered to duty at or near any voting precinct where  
11 any election or convention is held on the day of such election or  
12 convention; nor shall any member thereof remain in, about or  
13 near such voting precinct or place of convention, except to cast  
14 his vote. After voting he shall forthwith retire from such voting  
15 precinct. No member of the department may act as an election  
16 official. If any member of the department of public safety is  
17 found guilty of violating any of the provisions of this section he  
18 shall be dismissed from the department by the superintendent  
19 as hereinafter provided.

20 No officer or member of the department of public safety  
21 may, in any labor trouble or dispute between employer and em-  
22 ployee, aid or assist either party thereto, but shall in such cases  
23 see that the statutes and laws of this state are enforced in a  
24 legal way and manner.

**§15-2-14. Oath of superintendent and members.**

1 The superintendent and each of the other members of the de-  
2 partment of public safety, before entering upon the discharge of  
3 his duties, shall take and subscribe to an oath which shall be in  
4 form and effect as follows, to wit: State of West Virginia,

5 County of \_\_\_\_\_, to wit:

6 I, \_\_\_\_\_, do solemnly swear that I will sup-  
7 port the Constitution of the United States, the Constitution  
8 of the State of West Virginia, and I will honestly and faithfully  
9 perform the duties imposed upon me under the provisions  
10 of law as a member of the Department of Public Safety to the  
11 best of my skill and judgment.

12

13 Taken, subscribed and sworn to before me, this the \_\_\_\_\_  
14 day of \_\_\_\_\_.

15

16 All such oaths, except that of the superintendent, shall be  
17 filed and preserved in the office of the department of public  
18 safety.

**§15-2-15. Disposition of prisoners.**

1 It shall be the duty of all officers of the state, or of  
2 any county or municipality thereof, or jailers having the  
3 charge and custody of any jail or place of detention, to  
4 receive any prisoners arrested by any officer or mem-  
5 ber of the department of public safety and to detain them  
6 in custody until ordered released by a tribunal of competent  
7 jurisdiction, and any such officer, jailer or person having  
8 custody of any jail or place of detention who shall fail or  
9 refuse so to receive and detain such prisoner shall be guilty  
10 of a misdemeanor, and, upon conviction thereof, shall be  
11 fined not less than twenty-five dollars nor more than two  
12 hundred dollars, or imprisoned in the county jail for not more  
13 than sixty days, or both fined and imprisoned.

**§15-2-16. Interference with officers or members; false information;  
penalty.**

1 Any person who shall at any time intercept, molest or  
2 interfere with any officer or member of the department of  
3 public safety while on duty, or any state, county or municipal  
4 officer or person then under the charge and direction of  
5 some officer or member of the department of public safety  
6 while on duty, or who knowingly gives false or misleading in-  
7 formation to a member of the department, shall be guilty of a

8 misdemeanor, and, upon conviction thereof, shall be fined  
9 not less than twenty-five dollars nor more than two hundred  
10 dollars, or imprisoned in the county jail for not more than  
11 sixty days, or both fined and imprisoned.

**§15-2-17. Unauthorized use of uniform, badge or other insignia;  
impersonation of member; penalty.**

1 Every person who is not a member of the department is  
2 hereby forbidden to wear, use, order to be used or worn, copy  
3 or imitate in any respect or manner the uniform prescribed for  
4 members of the department of public safety, and any person  
5 who shall violate the provisions of this article, for which no  
6 other penalty is expressly provided, and any person who shall  
7 falsely represent himself to be an officer or member of the  
8 department of public safety, or to be under the order or  
9 direction of any officer or member of said department, or  
10 who shall, unless an officer or member thereof, wear the uni-  
11 form prescribed for members of said department, or the  
12 badge or other insignia adopted or used by said department,  
13 shall be guilty of a misdemeanor, and, upon conviction thereof,  
14 shall be fined not more than two hundred dollars, or impris-  
15 oned in the county jail for not more than six months, or both  
16 fined and imprisoned.

**§15-2-18. Officers or members performing duties for private per-  
sons; general penalty.**

1 If any officer or member of the department of public safety  
2 hires himself to any person, firm or corporation to guard his  
3 private property, or demands or receives from any person, firm  
4 or corporation any money or other thing of value as a consider-  
5 ation for the performance of, or the failure to perform, his  
6 duties under the regulations of the superintendent and the  
7 provisions of this article, shall be guilty of a felony, and, upon  
8 conviction thereof, he shall be confined in the penitentiary for  
9 not less than one nor more than five years, and any such of-  
10 ficer or member of the department of public safety who vio-  
11 lates any other provisions of this article, for which no other  
12 penalty is expressly provided, shall be guilty of a misdemeanor,  
13 and, upon conviction thereof, shall be fined not less than  
14 twenty-five dollars nor more than two hundred dollars, or im-

15   prisoned in the county jail for not more than four months, or  
16   both fined and imprisoned.

**§15-2-19. Bribing, etc., officers or members; penalty.**

1     If any person, firm or corporation shall give or offer to give  
2     any money or other thing of value to any officer or member of  
3     the department of public safety as a consideration for the  
4     performance of, or the failure to perform, any duty of such  
5     officer or member of the department of public safety under  
6     the rules and regulations of the superintendent and the pro-  
7     visions of this article, he or it shall be guilty of a felony, and  
8     if a person, upon conviction thereof, shall be confined in the  
9     penitentiary for a term of not less than one year nor more than  
10    five years, and if a firm or corporation, shall be fined not  
11    less than three thousand dollars nor more than ten thousand  
12    dollars.

**§15-2-20. Transfer authorized; use for disciplinary purposes pro-  
hibited; notice required under certain circumstances;  
relocation expense; regulation of member's residence.**

1     The superintendent may transfer members to meet the  
2     operational needs of the department. A transfer may not be  
3     made as a disciplinary measure.

4     Whenever any member of the department is to be transferred  
5     from one station to another station, for a period of time in  
6     excess of sixty days, the superintendent shall give written notice  
7     of such proposed transfer to such member at least fifteen days  
8     in advance of such transfer. The superintendent shall not, how-  
9     ever, be required to give such notice in the event the transfer  
10    is at the request of the member who is to be transferred. In  
11    the event that a member appeals a transfer in accordance with  
12    section six of this article, the transfer shall not take effect pend-  
13    ing the appeal before the board. If the board upholds the  
14    transfer, such transfer shall be effective upon the issuance of  
15    the board's decision and shall remain in effect pending any ap-  
16    peal of such decision by the member.

17    Whenever any member of the department is transferred from  
18    one station to another station, for a period of time in excess of  
19    sixty days, all reasonable and necessary transportation expenses  
20    actually incurred in moving the household furniture and effects

21 of such member and of his immediate family from his former  
22 station to his new station shall be paid by the department: *Pro-*  
23 *vided*, That if any such member owns and resides in a mobile  
24 home, the department shall pay all reasonable and necessary  
25 transportation expenses actually incurred in moving such  
26 mobile home from such member's former station to his new  
27 station, but the department may not pay transportation ex-  
28 penses for moving such mobile home in excess of the amount  
29 which would have been paid for moving an equivalent amount  
30 of household furniture and effects had such member not owned  
31 such mobile home.

32 A member transferred shall also be given a relocation ex-  
33 pense of three hundred dollars if the transfer necessitated re-  
34 location of the member's family.

35 The superintendent shall not restrict a member from residing  
36 in a county other than that in which the member is stationed,  
37 except that the superintendent may promulgate by appropriate  
38 written regulation to be applied uniformly throughout the de-  
39 partment a restriction as to either: (1) The number of miles  
40 distant from his station which a member may reside, or (2) the  
41 time necessary under ordinary traffic conditions for a member  
42 to travel between his residence and station.

43 The member may appeal the superintendent's order of trans-  
44 fer to the board of appeals created for such purpose or to the  
45 circuit court of Kanawha County in accordance with the pro-  
46 visions of section six of this article and all of the original papers  
47 in such cases shall be delivered to the appeals board or the  
48 circuit court, as the case may be. The right of a member to  
49 appeal a transfer shall not apply until the member has com-  
50 pleted the eighteen-month probationary period with the de-  
51 partment.

**§15-2-21. Suspension, demotion or discharge of members; right of appeal.**

1 The superintendent may suspend, demote in rank or dis-  
2 charge from the service any member of the department of  
3 public safety for any of the following causes: Refusing to  
4 obey the lawful orders of his superior officer, neglect of duty,  
5 drunkenness, immorality, inefficiency, abuse of his authority,

6 interference with the lawful right of any person, participation  
7 in political activities, primaries, conventions or elections,  
8 conviction for a crime or any action proscribed under this  
9 article. The superintendent shall cause an investigation to be  
10 made when notice of any one or more of such causes is brought  
11 to his attention and shall determine whether or not the member  
12 should be suspended, demoted in rank or discharged. If the  
13 superintendent orders the member suspended, demoted in rank  
14 or discharged, a written statement of the charges and a written  
15 order of suspension, demotion in rank or discharge shall be  
16 delivered personally to the member by his commanding offi-  
17 cer, or next in command in the absence of his commanding  
18 officer. The superintendent shall explicitly set forth in any  
19 such written statement of charges the details giving rise to the  
20 cause or causes upon which he ordered such suspension, de-  
21 motion in rank or discharge. The member may appeal the  
22 superintendent's order to the board of appeals created for such  
23 purpose or to the circuit court of Kanawha County in accor-  
24 dance with the provisions of section six of this article and all of  
25 the original papers in such cases shall be delivered to the ap-  
26 peals board or the circuit court, as the case may be.

27 The right to appeal a suspension or discharge shall not apply  
28 to members until they have completed their probationary  
29 period with the department, which shall be for a period of  
30 eighteen months.

**§15-2-22. Assignment of assistant attorney general; employment of  
legal counsel.**

1 (a) The attorney general may, upon request of the superin-  
2 tendent, assign an assistant attorney general to the depart-  
3 ment.

4 (b) Notwithstanding the provisions of section one, article  
5 three, chapter five of this code, the superintendent may  
6 authorize any member of the department to employ an attorney  
7 of such member's choice to act in proceedings wherein criminal  
8 charges are brought against such member because of action in  
9 line of duty. For such attorney's services an amount deter-  
10 mined by the judge in whose court the action is pending, not  
11 to exceed one thousand dollars, may be expended in any one  
12 case.

**§15-2-23. Duties of superintendent as to statistics, aliens and labor conditions.**

1 The superintendent of the department of public safety is  
2 authorized from time to time to collect statistics and distribute  
3 information throughout the state, and in this to cooperate with  
4 the state superintendent of public schools and other educational  
5 agencies of the state, to secure the naturalization and Ameri-  
6 canization of all foreign-born inhabitants; to employ all agen-  
7 cies in his power to secure a harmonious feeling and under-  
8 standing between the employers of labor and their employees;  
9 and to secure this end he may call upon the educational and  
10 other state institutions for public speakers, and is authorized to  
11 hold public meetings at any point in the state where, in his  
12 judgment, such meetings will be of advantage to carry out  
13 the spirit of this law.

**§15-2-24. Criminal identification bureau; establishment; supervision; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; offenses and penalties.**

1 (a) The superintendent of the department shall establish,  
2 equip and maintain at the departmental headquarters a  
3 criminal identification bureau, for the purpose of receiving  
4 and filing fingerprints, photographs, records and other infor-  
5 mation pertaining to the investigation of crime and the appre-  
6 hension of criminals, as hereinafter provided. The superin-  
7 tendent shall appoint or designate a supervisor to be in charge  
8 of the criminal identification bureau and such supervisor shall  
9 be responsible to the superintendent for the affairs of the  
10 bureau. Members of the department assigned to the criminal  
11 identification bureau shall carry out their duties and assign-  
12 ments in accordance with internal management rules and  
13 regulations pertaining thereto promulgated by the superin-  
14 tendent.

15 (b) The criminal identification bureau shall cooperate with  
16 identification bureaus of other states and of the United States  
17 to develop and carry on a complete interstate, national and  
18 international system of criminal identification.

19 (c) The criminal identification bureau may furnish finger-

20 prints, photographs, records or other information to authorized  
21 law-enforcement and governmental agencies of the United  
22 States and its territories, of foreign countries duly authorized  
23 to receive the same, of other states within the United States  
24 and of the state of West Virginia upon proper request stating  
25 that the fingerprints, photographs, records or other informa-  
26 tion requested are necessary in the interest of and will be  
27 used solely in the administration of official duties and the  
28 criminal laws.

29 (d) The criminal identification bureau may furnish, with  
30 the approval of the superintendent, fingerprints, photographs,  
31 records or other information to any private or public agency,  
32 person, firm, association, corporation or other organization,  
33 other than a law-enforcement or governmental agency as to  
34 which the provisions of subsection (c) of this section shall  
35 govern and control, but all requests under the provisions of  
36 this subsection (d) for such fingerprints, photographs, records  
37 or other information must be accompanied by a written  
38 authorization signed and acknowledged by the person whose  
39 fingerprints, photographs, records or other information is to  
40 be released.

41 (e) The criminal identification bureau may furnish finger-  
42 prints, photographs, records and other information of persons  
43 arrested or sought to be arrested in this state to the identifica-  
44 tion bureau of the United States government and to other  
45 states for the purpose of aiding law enforcement.

46 (f) Persons in charge of any penal or correctional institu-  
47 tion, including any city or county jail in this state, shall take,  
48 or cause to be taken, the fingerprints and description of all  
49 persons lawfully committed thereto or confined therein and  
50 furnish the same in duplicate to the criminal identification  
51 bureau, department of public safety. Such fingerprints shall  
52 be taken on forms approved by the superintendent of the  
53 department of public safety. All such officials as herein named  
54 may, when possible to do so, furnish photographs to the crim-  
55 inal identification bureau of such persons so fingerprinted.

56 (g) Members of the department of public safety, and all  
57 other state law-enforcement officials, sheriffs, deputy sheriffs,  
58 and each and every peace officer in this state, shall take or



59 cause to be taken the fingerprints and description of all persons  
60 arrested or detained by them, charged with any crime or offense  
61 in this state, in which the penalty provided therefor is confine-  
62 ment in any penal or correctional institution, or of any person  
63 who they have reason to believe is a fugitive from justice or an  
64 habitual criminal, and furnish the same in duplicate to the crim-  
65 inal identification bureau of the department of public safety on  
66 forms approved by the superintendent of said department.  
67 All such officials as herein named may, when possible to do  
68 so, furnish to the criminal identification bureau, photographs  
69 of such persons so fingerprinted. For the purpose of obtaining  
70 data for the preparation and submission to the governor and  
71 the Legislature by the department of public safety of an annual  
72 statistical report on crime conditions in the state, the clerk of  
73 any court of record, the magistrate of any magistrate court and  
74 the mayor or clerk of any municipal court before which a  
75 person appears on any criminal charge shall report to the  
76 criminal identification bureau the sentence of the court or  
77 other disposition of the charge and the prosecuting attorney  
78 of every county shall report to the criminal identification  
79 bureau such additional information as the bureau may require  
80 for such purpose, and all such reports shall be on forms  
81 prepared and distributed by the department of public safety,  
82 shall be submitted monthly and shall cover the period of the  
83 preceding month.

84 (h) All persons arrested or detained pursuant to the re-  
85 quirements of this article shall give fingerprints and information  
86 required by subsections (f) and (g) of this section. Any person  
87 who has been fingerprinted or photographed in accordance with  
88 the provisions of this section, who is acquitted of the charges  
89 upon which he or she was arrested, and who has no previous  
90 criminal record, may, upon the presentation of satisfactory  
91 proof to the department, have such fingerprints or photographs,  
92 or both, returned to them.

93 (i) All state, county and municipal law-enforcement agen-  
94 cies shall submit to the bureau uniform crime reports setting  
95 forth their activities in connection with law enforcement. It  
96 shall be the duty of the bureau to adopt and promulgate rules  
97 and regulations prescribing the form, general content, time and  
98 manner of submission of such uniform crime reports. Willful

99 or repeated failure by any state, county or municipal law-  
100 enforcement official to submit the uniform crime reports re-  
101 quired by this article shall constitute neglect of duty in public  
102 office. The bureau shall correlate the reports submitted to it  
103 and shall compile and submit to the governor and the Legisla-  
104 ture semiannual reports based on such reports. A copy of such  
105 reports shall be furnished to all prosecuting attorneys and law-  
106 enforcement agencies.

107 (j) Neglect or refusal of any person mentioned in this sec-  
108 tion to make the report required herein, or to do or perform  
109 any act on his or her part to be done or performed in connec-  
110 tion with the operation of this section, shall constitute a misde-  
111 meanor, and such person shall, upon conviction thereof, be  
112 punished by a fine of not less than twenty-five dollars nor more  
113 than two hundred dollars, or by imprisonment in the county jail  
114 for a period of not more than sixty days, or both. Such neglect  
115 shall constitute misfeasance in office and subject such persons  
116 to removal from office. Any person who willfully removes,  
117 destroys or mutilates any of the fingerprints, photographs,  
118 records or other information of the department of public safety,  
119 shall be guilty of a misdemeanor, and such person shall, upon  
120 conviction thereof, be punished by a fine of not more than one  
121 hundred dollars, or by imprisonment in the county jail for a  
122 period of not more than six months, or both.

**§15-2-25. Rules and regulations generally; carrying of weapons.**

1 Subject to the written approval of the governor and the  
2 provisions of this article, the superintendent may make and  
3 promulgate proper rules and regulations for the government,  
4 discipline and control of the department of public safety, and  
5 shall also cause to be established proper rules and regulations  
6 for the examinations of all applicants for appointment thereto.  
7 The members of the department of public safety shall be per-  
8 mitted to carry arms and weapons, and no license shall be re-  
9 quired for such privilege.

**§15-2-26. Continuation of death, disability and retirement fund;  
retirement board.**

1 There shall be continued the death, disability and retirement  
2 fund heretofore created for the benefit of members of the de-

3 partment of public safety and any dependent of a retired or  
4 deceased member thereof.

5 There shall be deducted from the monthly payroll of each  
6 member of the department of public safety and paid into such  
7 fund six percent of the amount of his salary, and an additional  
8 twelve percent of the monthly salary of each member of said  
9 department shall be paid by the state of West Virginia monthly  
10 into such fund out of the annual appropriation for said depart-  
11 ment. All moneys payable into such fund shall be deposited in  
12 the state treasury, and the treasurer and auditor shall keep a  
13 separate account thereof on their respective books.

14 The moneys in this fund, and the right of a member to a  
15 retirement allowance, to the return of contributions, or to  
16 any benefit under the provisions of this article, are hereby  
17 exempt from any state or municipal tax; shall not be subject  
18 to the execution, garnishment, attachment or any other process  
19 whatsoever; and shall be unassignable except as is provided  
20 in this article.

21 The death, disability and retirement fund shall be adminis-  
22 tered by a retirement board which shall consist of the attorney  
23 general, state treasurer, the superintendent and two members in  
24 active service of the department: *Provided*, That members of  
25 said retirement board shall not be entitled to receive any com-  
26 pensation in addition to the salary of their respective offices  
27 for any service rendered as a member of said retirement board:  
28 *Provided, however*, That the superintendent may pay out of  
29 funds appropriated for operation of said department the rea-  
30 sonable expenses of members of said board necessarily incurred  
31 in connection with dispatch of any business properly before  
32 such board. The two members of said department shall be  
33 elected to membership on the retirement board by vote of the  
34 members of the department of public safety; such election to be  
35 held on the first Tuesday in June next following the passage of  
36 this article and on the first Tuesday in June each two years  
37 thereafter. The attorney general, state treasurer and the  
38 superintendent of the department of public safety shall pro-  
39 mulgate any and all necessary rules and regulations for holding  
40 in a fair and impartial manner the election on the first Tuesday  
41 in June next following the passage of this article and thereafter

42 the retirement board consisting of the attorney general,  
43 state treasurer, superintendent and the two duly elected  
44 members of said department shall have authority to promulgate  
45 and, from time to time, revise rules and regulations for holding  
46 all subsequent elections in a fair and impartial manner. All  
47 elections shall be held under the direction of the superintendent  
48 of said department in accordance with said rules and regula-  
49 tions. The members of the department chosen to serve on said  
50 retirement board shall hold office for a period of two years  
51 commencing on the first day of July next following the date of  
52 such election. When any member elected to the retirement  
53 board shall die, resign from the board, resign or be discharged  
54 from service in the department, make application for retire-  
55 ment, be retired, or become disabled, the office of such member  
56 of the retirement board shall be declared vacant by the superin-  
57 tendent of said department, and said superintendent, to fill such  
58 vacancy, shall appoint the member in active service of said de-  
59 partment who as an unsuccessful candidate at the preceding  
60 election of members to said retirement board received the great-  
61 est number of votes. No member of the retirement board shall  
62 participate in any hearing at which his own petition for retire-  
63 ment or the petition of any member of said department who is  
64 related to him by blood or marriage shall be presented for con-  
65 sideration.

66 At its first meeting following each election of members to the  
67 retirement board said board shall elect one of its members to  
68 serve as chairman and a second member to serve as secretary  
69 thereof. The retirement board shall have the power to make  
70 rules and regulations, not inconsistent with the provisions here-  
71 of, governing procedure and order and manner of business by  
72 and before such board. The retirement board shall have the  
73 power to make awards and to revise and terminate awards pre-  
74 viously made for such times and under such terms and condi-  
75 tions as are hereinafter provided. The votes of a majority of  
76 the five members of the board shall be necessary to decision of  
77 any matter by the board. Decisions made by the board shall be  
78 supreme and final and there shall be no appeal therefrom.

79 It shall be the duty of the retirement board on or before  
80 the first day of July of each year to cause all future awards  
81 from such fund to be valued and, to the extent that moneys

82 shall be available, reserves based on sound actuarial principles  
83 for payment thereof to be carried on the funds account as a  
84 liability against the reserve fund. The board shall have the  
85 authority to employ an actuary for such purpose. The board  
86 shall cause a system of accounting to be installed and main-  
87 tained to reflect currently and truly all transactions or develop-  
88 ments pertaining to age of members and eligible dependents  
89 surviving deceased members, periods of service and aggregate  
90 earnings of all members eligible to participate in said fund and  
91 any other matter relating to maintenance of said fund or ad-  
92 ministration thereof, and each year to cause to be made and  
93 submitted to each member of said department a statement of  
94 the condition of said fund. Costs and expenses incurred in  
95 making actuarial studies, audits and installations and main-  
96 tenance of such accounting system shall be paid by the super-  
97 intendent from funds appropriated for operation of the de-  
98 partment of public safety.

99 All moneys paid into and accumulated in said death, dis-  
100 ability and retirement fund, except such amounts as shall  
101 be designated or set aside by the retirement board for pay-  
102 ments of death, disability and retirement benefits and awards,  
103 shall be invested by the state board of investments as provided  
104 by law.

**§15-2-27. Retirement; awards and benefits.**

1 (a) The retirement board shall retire any member of the  
2 department of public safety when the member has both attained  
3 the age of fifty-five years and completed twenty-five years of  
4 service as a member of the department, including military ser-  
5 vice credit granted under the provisions of section twenty-eight  
6 of this article.

7 (b) The retirement board shall retire any member of the  
8 department of public safety who has lodged with the secretary  
9 of the retirement board his voluntary petition in writing for  
10 retirement, and

11 (1) Has or shall have completed twenty-five years of ser-  
12 vice as a member of the department (including military service  
13 credit granted under the provisions of section twenty-eight of  
14 this article); or

15 (2) Has or shall have attained the age of fifty years and has  
16 or shall have completed twenty years of service as a member of  
17 the department (excluding military service credit granted under  
18 section twenty-eight of this article); or

19 (3) Being under the age of fifty years has or shall have  
20 completed twenty years of service as a member of the depart-  
21 ment (excluding military service credit granted under section  
22 twenty-eight of this article).

23 (c) When the retirement board retires any member under  
24 any of the following provisions of this section, the board shall,  
25 by order in writing, make an award directing that the member  
26 shall be entitled to receive annually and that there shall be paid  
27 to the member from the death, disability and retirement fund in  
28 equal monthly installments during the natural lifetime of the  
29 member while in status of retirement one or the other of two  
30 amounts, whichever is the greater:

31 (1) An amount equal to four and one-half percent of the  
32 aggregate of salary paid to the member during the whole  
33 period of service as a member of the department of public  
34 safety; or

35 (2) The sum of three thousand dollars.

36 When a member has or shall have served twenty years or  
37 longer but less than twenty-five years as a member of the  
38 department and shall be retired under any of the provisions  
39 of this section before he shall have attained the age of  
40 fifty years, payment of monthly installments of the amount  
41 of retirement award to such member shall commence on the  
42 date he attains the age of fifty years.

**§15-2-28. Credit toward retirement for member's prior military  
service; credit toward retirement when member has  
joined armed forces in time of armed conflict.**

1 (a) For purposes of this section, the term "active mili-  
2 tary duty" means full-time active duty with the armed forces  
3 of the United States, namely, the United States air force,  
4 army, coast guard, marines or navy; and service with the  
5 national guard or reserve military forces of any of such  
6 armed forces when the member has been called to active

7 full-time duty and has received no compensation during the  
8 period of such duty from any person other than the armed  
9 forces.

10 (b) Any member of the department who has previously  
11 served on active military duty shall be entitled to and  
12 receive credit on the minimum period of service required by  
13 law for retirement pay from the service of the department  
14 of public safety under the provisions of this article for a period  
15 equal to the active military duty not to exceed five years,  
16 subject to the following:

17 (1) That he has been honorably discharged from the  
18 armed forces;

19 (2) That he substantiates by appropriate documentation  
20 or evidence his period of active military duty;

21 (3) That he is receiving no benefits from any other  
22 retirement system for his active military duty; and

23 (4) That, except with respect to disability retirement  
24 pay awarded under section thirty of this article, he has actually  
25 served with the department for twenty years exclusive of his  
26 active military duty.

27 The amount of retirement pay to which any such member is  
28 entitled shall be calculated and determined as if he had  
29 been receiving for the period of his active military duty a  
30 monthly salary from the department equal to the average  
31 monthly salary which he actually received from the de-  
32 partment for his total service with the department exclusive  
33 of the active military duty. The superintendent is authorized  
34 to transfer and pay into the death, disability and retirement  
35 fund from moneys appropriated for the department a sum  
36 equal to eighteen percent of the aggregate of the salaries  
37 on which the retirement pay of all such members has been  
38 calculated and determined for their periods of active military  
39 duty. In addition, any person who while a member of the  
40 department was commissioned, enlisted or inducted into the  
41 armed forces of the United States or, being a member of the  
42 reserve officers' corps, was called to active duty in said armed  
43 forces between the first day of September, one thousand nine  
44 hundred forty, and the close of hostilities in World War II, or

45 between the twenty-seventh day of June, one thousand nine  
46 hundred fifty, and the close of the armed conflict in Korea  
47 on the twenty-seventh day of July, one thousand nine hundred  
48 fifty-three, between the first day of August, one thousand nine  
49 hundred sixty-four and the close of the armed conflict in  
50 Vietnam, or during any other period of armed conflict by the  
51 United States whether sanctioned by a declaration of war by the  
52 Congress or by executive or other order of the President,  
53 shall be entitled to and receive credit on the minimum period  
54 of service required by law for retirement pay from the service  
55 of the department of public safety for a period equal to the full  
56 time he has or shall, pursuant to such commission, enlistment,  
57 induction or call, have served with said armed forces subject to  
58 the following:

59 (1) That he has been honorably discharged from the  
60 armed forces;

61 (2) That within ninety days after honorable discharge  
62 from the armed forces he has presented himself to the  
63 superintendent and offered to resume service as an active  
64 member of the department; and

65 (3) That he has made no voluntary act, whether by reenlist-  
66 ment, waiver of discharge, acceptance of commission or other-  
67 wise, to extend or participate in extension of the period of ser-  
68 vice with the armed forces beyond the period of service for  
69 which he was originally commissioned, enlisted, inducted or  
70 called.

71 That amount of retirement pay to which any such member  
72 shall be entitled shall be calculated and determined as if the  
73 member has continued in the active service of the department  
74 at the rank or grade to him appertaining at the time of such  
75 commission, induction, enlistment or call, during a period co-  
76 extensive with the time the member served with the armed  
77 forces pursuant to the commission, induction, enlistment or  
78 call. The superintendent of the department is authorized to  
79 transfer and pay each month into the death, disability and re-  
80 tirement fund from moneys appropriated for the department a  
81 sum equal to eighteen percent of the aggregate of salary which  
82 all such members would have been entitled to receive had they  
83 continued in the active service of the department during a



84 period coextensive with the time such members served with the  
85 armed forces pursuant to the commission, induction, enlistment  
86 or call: *Provided*, That the total amount of military service  
87 credit allowable under this section shall not exceed five years.

**§15-2-29. Awards and benefits for disability—Incurred in performance of duty.**

1 Any member of said department who has been or shall  
2 become physically or mentally permanently disabled by injury,  
3 illness or disease resulting from any occupational risk or  
4 hazard inherent in or peculiar to the services required of  
5 members of said department and incurred pursuant to or  
6 while such member was or shall be engaged in the performance  
7 of his duties as a member of said department shall, if, in  
8 the opinion of the retirement board, he is by reason of such  
9 cause unable to perform adequately the duties required of him  
10 as a member of said department, be retired from active  
11 service by the retirement board and thereafter such member  
12 shall be entitled to receive annually and there shall be  
13 paid to such member from the death, disability and retire-  
14 ment fund in equal monthly installments during the natural  
15 lifetime of such member or until such disability shall sooner  
16 terminate, an amount equal to five percent of the total salary  
17 which would have been earned during twenty-five years of  
18 service in said department based on the average earnings  
19 of such member while employed as a member of said depart-  
20 ment. If such disability shall be permanent and total to the  
21 extent that such member is or shall be incapacitated ever  
22 to engage in any gainful employment, such member shall be  
23 entitled to receive annually and there shall be paid to such  
24 member from the death, disability and retirement fund in  
25 equal monthly installments during the natural lifetime of  
26 such member or until such disability shall sooner terminate,  
27 an amount equal to eight percent of the total salary which  
28 would have been earned by such member during twenty-five  
29 years of service in said department based on the average  
30 earnings of such member while employed as a member of  
31 said department.

32 The superintendent is authorized to expend moneys from  
33 funds appropriated for the department in payment of medical,

34 surgical, laboratory, X ray, hospital, ambulance and dental  
35 expenses and fees, and reasonable costs and expenses in-  
36 curred in purchase of artificial limbs and other approved  
37 appliances which may be reasonably necessary for any member  
38 of said department who has or shall become temporarily,  
39 permanently or totally disabled by injury, illness or disease  
40 resulting from any occupational risk or hazard inherent in  
41 or peculiar to the service required of members of said  
42 department and incurred pursuant to or while such member  
43 was or shall be engaged in the performance of duties as a  
44 member of said department. Whenever the superintendent  
45 shall determine that any disabled member is ineligible to  
46 receive any of the aforesaid benefits at public expense the  
47 superintendent shall, at the request of such disabled member,  
48 refer such matter to the retirement board for hearing and  
49 final decision.

**§15-2-30. Same—Due to other causes.**

1 If any member while in active service of said department  
2 has or shall, in the opinion of the retirement board, become  
3 permanently disabled to the extent that such member cannot  
4 adequately perform the duties required of a member of the  
5 department from any cause other than those set forth in the  
6 next preceding section and not due to vicious habits, intem-  
7 perance or willful misconduct on his part, such member shall  
8 be retired by the retirement board and, if such member at the  
9 time of such retirement under this section, shall have served less  
10 than twenty years as a member of said department, such  
11 member shall be entitled to receive annually and there shall be  
12 paid to such member while in status of retirement, from the  
13 death, disability and retirement fund in equal monthly install-  
14 ments during a period equal to one half the time such member  
15 has served as a member of said department, a sum equal to  
16 four and one-half percent of the total salary which would have  
17 been earned during twenty-five years of service in said depart-  
18 ment based on the average earnings of such member while  
19 employed as a member of said department, but if such member,  
20 at the time of such retirement under the terms of this section,  
21 shall have served twenty years or longer as a member of said  
22 department, such member shall be entitled to receive annually

23 and there shall be paid to such member from the death, dis-  
24 ability and retirement fund in equal monthly installments,  
25 commencing on the date such member shall be retired and  
26 continuing during the natural lifetime of such member while in  
27 status of retirement, one or the other of the two amounts, based  
28 upon either the aggregate of salary paid to such member dur-  
29 ing the whole period of service of such member or the period  
30 of twenty years or longer during which such member at the  
31 time of such retirement has, or shall have served as a member  
32 of said department, whichever shall be the greater, to be deter-  
33 mined in the manner provided by subdivisions (1) and (2),  
34 subsection (c), section twenty-seven of this article.

**§15-2-31. Same—Physical examinations; recall to active duty; ter-  
mination.**

1 The superintendent may require any member who has been  
2 or who shall be retired with compensation on account of dis-  
3 ability to submit to a physical and/or mental examination by  
4 a physician or physicians selected or approved by the retire-  
5 ment board and cause all costs incident to such examination  
6 including hospital, laboratory, X ray, medical and physicians'  
7 fees to be paid out of funds appropriated to defray the cur-  
8 rent expense of said department, and a report of the findings  
9 of such physician or physicians shall be submitted in writing  
10 to the retirement board for its consideration. If from such  
11 report or from such report and hearing thereon the retirement  
12 board shall be of opinion and find that such disabled member  
13 shall have recovered from such disability to the extent that he  
14 is able to perform adequately the duties of a member of said  
15 department, the superintendent shall order such member to  
16 reassume active duty as a member of said department and  
17 thereupon all payments from the death, disability and retire-  
18 ment fund shall be terminated.

**§15-2-32. Retired member not to exercise police authority; reten-  
tion of group insurance.**

1 A member who has been or shall be retired shall not  
2 while in retirement status exercise any of the powers con-  
3 ferred upon active members by section twelve of this article;  
4 but shall be entitled to receive free of cost to such member

5 and retain as his separate property one complete standard  
6 uniform prescribed by section nine of this article: *Provided,*  
7 That such uniform may be worn by a member in retirement  
8 status only on such occasions as shall be prescribed by the  
9 superintendent. The superintendent is authorized to maintain  
10 at public expense for the benefit of all members in retirement  
11 status that group life insurance mentioned in section  
12 ten of this article. The superintendent when he shall  
13 be of opinion that the public safety shall require, may recall  
14 to active duty during such period as the superintendent shall  
15 determine any member who shall be retired under the pro-  
16 visions of section twenty-seven of this article, provided the  
17 consent of such member to reassume duties of active member-  
18 ship shall first be had and obtained. When any member in  
19 retirement shall reassume status of active membership such  
20 member, during the period such member shall remain in  
21 active status, shall not be entitled to receive retirement pay  
22 or benefits but in lieu thereof shall be entitled to receive that  
23 rate of salary and allowance pertinent to the rank or grade  
24 held by such member when retired. When such member  
25 shall be released from active duty he shall reassume the  
26 status of retirement and shall thereupon be entitled to receive  
27 appropriate benefits as provided by this article: *Provided,* That  
28 the amount of such benefits shall in no event be less than  
29 the amount determined by the order of the retirement board  
30 previously made in his behalf.

**§15-2-33. Awards and benefits to dependents of member—When member dies in performance of duty, etc.**

1 The surviving spouse or the dependent child or children  
2 or dependent parent or parents of any member who has lost  
3 or shall lose his life by reason of injury, illness or disease  
4 resulting from an occupational risk or hazard inherent in or  
5 peculiar to the service required of members while such mem-  
6 ber was or shall be engaged in the performance of his  
7 duties as a member of said department or if said member  
8 shall die from any cause after having been retired pursuant  
9 to the provisions of section twenty-nine of this article, shall be  
10 entitled to receive and shall be paid from the death, disability  
11 and retirement fund benefits as follows: To the surviving

12 spouse annually, in equal monthly installments during his or  
13 her lifetime or until his or her remarriage one or the other of  
14 two amounts, whichever shall be the greater, namely:

15 (1) An amount equal to five percent of the total salary  
16 which would have been earned by said deceased member  
17 during twenty-five years of service in said department based  
18 on the average earnings of such member while employed as  
19 a member of said department; or

20 (2) The sum of three thousand dollars.

21 In addition thereto such surviving spouse shall be entitled  
22 to receive and there shall be paid to such person one hundred  
23 dollars monthly for each dependent child or children. If such  
24 surviving spouse shall die or remarry or if there be no  
25 surviving spouse there shall be paid monthly to such de-  
26 pendent child or children from the death, disability and  
27 retirement fund the sum of one hundred dollars each. If  
28 there be no surviving spouse and no dependent child or  
29 children, there shall be paid annually in equal monthly in-  
30 stallments from said death, disability and retirement fund  
31 to the dependent parents of said deceased member during  
32 their joint lifetimes a sum equal to the amount which a  
33 surviving spouse, without children, would have received:  
34 *Provided*, That when there shall be but one dependent parent  
35 surviving, such parent shall be entitled to receive during his  
36 or her lifetime one half the amount which both parents, if  
37 living, would have been entitled to receive.

**§15-2-34. Same—When member dies from nonservice-connected causes.**

1 In any case where a member while in active service of said  
2 department, before having completed twenty years of service  
3 as a member of said department, has died or shall die from  
4 any cause other than those specified in this article and not due  
5 to vicious habits, intemperance or willful misconduct on his  
6 part, there shall be paid annually in equal monthly install-  
7 ments from said death, disability and retirement fund to the  
8 surviving spouse of such member during his or her natural  
9 lifetime or until such time said surviving spouse remarries, a  
10 sum equal to two and one-quarter percent of the total salary

11 which would have been earned by said member during twenty-  
12 five years of service in said department based on his or her  
13 average earnings while employed as a member of said depart-  
14 ment. If there be no surviving spouse there shall be paid from  
15 said fund to each dependent child or children of said deceased  
16 member the sum of one hundred dollars monthly. If there be  
17 no surviving spouse and no dependent child or children there  
18 shall be paid annually in equal monthly installments from said  
19 fund to the dependent parents of said deceased member during  
20 their joint lifetimes a sum equal to the amount which a surviv-  
21 ing spouse would have been entitled to receive: *Provided*, That  
22 when there shall be but one dependent parent surviving then  
23 such dependent parent shall be entitled to receive during his  
24 or her lifetime one half the amount which both parents, if  
25 living, would have been entitled to receive.

**§15-2-35. Same—When member dies after retirement or after serv-  
ing twenty years.**

1 When any member of said department has heretofore com-  
2 pleted or hereafter shall complete twenty years of service or  
3 longer as a member of said department and has died or shall  
4 die from any cause or causes other than those specified in  
5 this article before having been retired by the retirement  
6 board, and when a member in retirement status has died or  
7 shall die after having been retired by the retirement board  
8 under the provisions of this article, there shall be paid an-  
9 nually in equal monthly installments from said fund to the  
10 surviving spouse of said member, commencing on the date of  
11 the death of said member and continuing during the lifetime or  
12 until remarriage of said surviving spouse an amount equal to  
13 one half the retirement benefits said deceased member was  
14 receiving while in status of retirement, or would have been  
15 entitled to receive to the same effect as if such member had  
16 been retired under the provisions of this article immediately  
17 prior to the time of his death; and in addition thereto said  
18 surviving spouse shall be entitled to receive and there shall be  
19 paid to such surviving spouse from said fund the sum of one  
20 hundred dollars monthly for each dependent child or children.  
21 If such surviving spouse die or remarry, or if there be no  
22 surviving spouse there shall be paid monthly from said fund

23 to each dependent child or children of said deceased member  
24 the sum of one hundred dollars. If there be no surviving  
25 spouse or no surviving spouse eligible to receive benefits and  
26 no dependent child or children there shall be paid annually in  
27 equal monthly installments from said fund to the dependent  
28 parents of said deceased member during their joint lifetimes a  
29 sum equal to the amount which a surviving spouse without  
30 children would have been entitled to receive: *Provided*, That  
31 when there shall be but one dependent parent surviving, such  
32 parent shall be entitled to receive during his or her lifetime one  
33 half the amount which both parents, if living, would have  
34 been entitled to receive.

**§15-2-36. Same—Termination.**

1 When any surviving spouse of a member shall die or remarry  
2 while receiving or being entitled to receive any benefits under  
3 this article, such surviving spouse shall not from the date of  
4 such remarriage, nor shall the estate from the date of the  
5 death of such surviving spouse, be entitled to receive any bene-  
6 fits hereunder whatsoever: *Provided*, That in any case where  
7 under the terms of this article benefits are provided for a  
8 child or children surviving the death or remarriage of such  
9 surviving spouse, payment of such benefits to such child or  
10 children shall be calculated for payment from the date such  
11 surviving spouse shall die or remarry.

**§15-2-37. Refunds to certain members upon discharge or resignation.**

1 Any member who shall be discharged by order of the  
2 superintendent after such member has or shall have served  
3 two full years or more as a member of said department shall,  
4 at the request of such member, be entitled to receive from  
5 said fund a sum equal to the aggregate of the principal  
6 amount of moneys deducted from the salary of such member  
7 and paid into said death, disability and retirement fund as  
8 provided and required by this article: *Provided*, That the  
9 superintendent shall forthwith refund to any member who has  
10 or shall have served more than two but less than twenty  
11 years as a member of said department and has resigned

12 or shall resign or who has been or shall be discharged from  
13 the service for cause, a sum equal to the aggregate of the  
14 principal amount of all moneys deducted from the salary  
15 of such member and paid into said fund as aforesaid: *Pro-*  
16 *vided further*, That if any such refund shall be made to any  
17 member, such member shall not be entitled to any benefits pro-  
18 vided by this article, and should any such member thereafter be  
19 again enlisted as a member of said department no credit or any  
20 period of service required of a member as a condition of retire-  
21 ment shall be allowed to such member on account of such  
22 former service, unless following such reenlistment such member  
23 shall redeposit in said fund the amount of the refund, together  
24 with interest thereon at the rate of four percent per annum from  
25 the date of withdrawal to the date of redeposit, in which  
26 case he shall receive the same credit on account of his former  
27 service as if no refund had been made. When any member  
28 has or shall have served as a member of said department  
29 during twenty years or longer and shall, in the opinion of the  
30 superintendent, become unfit for any reason for further active  
31 service such member shall, in lieu of being discharged, be  
32 retired by the retirement board under the provision or provi-  
33 sions of this article most favorable to such member.

**§15-2-38. Refund to dependents upon death of member not eligible  
for benefits.**

1 If any member while in active status shall die after having  
2 served two full years or longer as a member of said depart-  
3 ment and the retirement board shall be of opinion after  
4 hearing thereon that the dependent or dependents of said  
5 member are ineligible under the provisions of this article to  
6 receive any of the benefits provided herein, the superintendent  
7 shall refund to the spouse, if surviving, but if not surviving,  
8 to the children of such member, and if there be no surviving  
9 spouse or children, to the dependent parents, a sum equal to  
10 the aggregate of the principal amount of all moneys deducted  
11 from the salary of such member and paid into such fund as  
12 aforesaid, and if there be no surviving spouse or children or  
13 dependent parent or parents, then the same shall remain in  
14 the fund. Whenever any such refund shall be made the  
15 surviving spouse or other dependents of such deceased member



16 shall not be entitled to any other rights or benefits on account  
17 of said fund under the provisions of this article.

**§15-2-39. Dependent child or children—Qualifications.**

1 In any case where under the terms of this article benefits  
2 are provided for “dependent child or children” such phrase  
3 shall mean any child or children born to or adopted by a  
4 member of the department under the age of eighteen or where  
5 such child or children after reaching eighteen years of age  
6 continues as a full-time student in an accredited high school,  
7 college, university, business or trade school, until such child  
8 reaches the age of twenty-three years or where such child  
9 or children is an invalid as long as such child or children  
10 remains an invalid, such benefits provided for shall be paid.  
11 Benefits provided under the terms of this article for “depen-  
12 dent child or children” shall be paid for so long as they meet  
13 the foregoing qualifications and no longer.

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## CHAPTER 150

(S. B. 495—By Mr. Palumbo)

[Passed March 25, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to waiver of the jurisdiction of the public service commission to permit certain areas to be served by out-of-state utilities.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

**§24-2-1. Jurisdiction of commission.**

1 The jurisdiction of the commission shall extend to all

2 public utilities in this state, and shall include any utility  
3 engaged in any of the following public services:

4 Common carriage of passengers or goods, whether by air,  
5 railroad, street railroad, motor or otherwise, by express  
6 or otherwise, by land, water or air, whether wholly or  
7 partly by land, water or air; mass transit authorities;  
8 transportation of oil, gas or water by pipeline; transporta-  
9 tion of coal and its derivatives and all mixtures and com-  
10 binations thereof with other substances by pipeline; sleep-  
11 ing car or parlor car services; transmission of messages  
12 by telephone, telegraph or radio; generation and trans-  
13 mission of electrical energy by hydroelectric or other  
14 utilities for service to the public, whether directly or  
15 through a distributing utility; supplying water, gas or  
16 electricity, by municipalities or others; sewer systems  
17 servicing twenty-five or more persons or firms other than  
18 the owner of the sewer systems; any public service dis-  
19 trict created under the provisions of article thirteen-a,  
20 chapter sixteen of this code; toll bridges, wharves, ferries;  
21 and any other public service.

22 The commission may, upon application, waive its juris-  
23 diction and allow a utility operating in an adjoining  
24 state to provide service in West Virginia when:

25 (1) An area of West Virginia cannot be practicably  
26 and economically served by a utility licensed to operate  
27 within the state of West Virginia;

28 (2) Said area can be provided with utility service  
29 by a utility which operates in a state adjoining West  
30 Virginia;

31 (3) The utility operating in the adjoining state is  
32 regulated by a regulatory agency or commission of the  
33 adjoining state; and

34 (4) The number of customers to be served is not sub-  
35 stantial.

36 The rates the out-of-state utility charges West Virginia  
37 customers shall be the same as the rate the utility is  
38 duly authorized to charge in the adjoining jurisdiction.

39 The commission, in the case of any such utility, may  
40 revoke its waiver of jurisdiction for good cause.

## CHAPTER 151

(S. B. 434—By Mr. Steptoe and Mr. Sharpe)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact sections nine and ten, 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 and to the authorization of the pari-mutuel system of wagering; to commissions deducted by licensee from pari-mutuel pools; to the retention of breakage from pari-mutuel pools; to the auditing of records of horse and dog racetracks; to wagering by minors; and to daily license tax and pari-mutuel pools tax of racetracks.

*Be it enacted by the Legislature of West Virginia:*

That sections nine and ten, 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 VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED; COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.**

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

#### **PART VII. TAXATION OF HORSE AND DOG RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.**

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid.

#### **PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED; COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.**

§19-23-9. **Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.**

- 1 (a) The pari-mutuel system of wagering upon the re-
- 2 sults of any horse or dog race at any horse or dog race

3 meeting conducted or held by any licensee is hereby  
4 authorized, if and only if such pari-mutuel wagering is  
5 conducted by such licensee within the confines of such  
6 licensee's horse racetrack or dog racetrack, and the provi-  
7 sions of section one, article ten, chapter sixty-one of this  
8 code, relating to gaming, shall not apply to the pari-mutuel  
9 system of wagering in manner and form as provided for  
10 in this article at any horse or dog race meeting within  
11 this state where horse or dog racing shall be permitted  
12 for any purse by any licensee. A licensee shall permit  
13 or conduct only the pari-mutuel system of wagering  
14 within the confines of such licensee's racetrack at which  
15 any horse or dog race meeting is conducted or held.

16 (b) A licensee is hereby expressly authorized to deduct  
17 a commission from the pari-mutuel pools, as follows:

18 (1) The commission deducted by any licensee from the  
19 pari-mutuel pools on thoroughbred horse racing, except  
20 from thoroughbred horse racing pari-mutuel pools in-  
21 volving what is known as multiple betting in which the  
22 winning pari-mutuel ticket or tickets are determined by  
23 a combination of three or more winning horses, shall not  
24 exceed seventeen and one-fourth percent of the total of  
25 such pari-mutuel pools for the day. Out of such com-  
26 mission, as is mentioned in this paragraph, the licensee  
27 shall pay the pari-mutuel pools tax provided for in sub-  
28 section (b), section ten of this article, shall make a  
29 deposit into a special fund to be established by the  
30 licensee and to be used for the payment of regular purses  
31 offered for thoroughbred racing by the licensee, which  
32 deposits out of pari-mutuel pools for each day during  
33 the months of January, February, November and  
34 December shall be six and seventy-five one hundredths  
35 percent of such pari-mutuel pools, and which, out of  
36 pari-mutuel pools for each day during all other months,  
37 shall be five and seventy-five one hundredths percent  
38 of such pari-mutuel pools, and shall pay one tenth of  
39 one percent of such pari-mutuel pools into the general  
40 fund of the county commission of the county in which  
41 the racetrack is located, except if within a municipality,  
42 then to such municipal general fund. The remainder of  
43 the commission shall be retained by the licensee.

44 The commission deducted by any licensee from the pari-  
45 mutuel pools on thoroughbred horse racing involving  
46 what is known as multiple betting in which the winning  
47 pari-mutuel ticket or tickets are determined by a com-  
48 bination of three or more winning horses, shall not ex-  
49 ceed twenty-five percent of the total of such pari-mutuel  
50 pools for the day. Out of such commission, as is mentioned  
51 in this paragraph, the licensee (i) shall pay the pari-  
52 mutuel pools tax provided for in subsection (b), section  
53 ten of this article, (ii) shall make a deposit into a special  
54 fund to be established by the licensee and to be used for  
55 the payment of regular purses offered for thoroughbred  
56 racing by the licensee, which deposits out of pari-mutuel  
57 pools for each day during the months of January,  
58 February, November and December shall be ten and  
59 seventy-five one hundredths percent of such pari-  
60 mutuel pools, and which, out of pari-mutuel pools for  
61 each day during all other months, shall be nine and  
62 seventy-five one hundredths percent of such pari-mutuel  
63 pools, and (iii) shall pay one tenth of one percent of such  
64 pari-mutuel pools into the general fund of the county  
65 commission of the county in which the racetrack is located,  
66 except if within a municipality, then to such municipal  
67 general fund. The remainder of the commission shall be  
68 retained by the licensee.

69 (2) The commission deducted by any licensee from the  
70 pari-mutuel pools on harness racing shall not exceed  
71 seventeen and one-half percent of the total of such pari-  
72 mutuel pools for the day. Out of such commission, the  
73 licensee shall pay the pari-mutuel pools tax provided  
74 for in subsection (c), section ten of this article, and shall  
75 pay one tenth of one percent into the general fund of the  
76 county commission of the county in which the racetrack  
77 is located, except if within a municipality, then to such  
78 municipal general fund. The remainder of the commission  
79 shall be retained by the licensee.

80 (3) The commission deducted by any licensee from the  
81 pari-mutuel pools on dog racing shall not exceed sixteen  
82 and one-fourth percent of the total of such pari-mutuel

83 pools for the day. Out of such commission, the licensee  
84 shall pay the pari-mutuel pools tax provided for in sub-  
85 section (d), section ten of this article. The remain-  
86 der of the commission shall be retained by the licensee.

87 (c) In addition to any such commission, a licensee of  
88 horse race or dog race meetings shall also be entitled to  
89 retain the legitimate breakage, which shall be made and  
90 calculated to the dime.

91 (d) The director of audit, and any other auditors em-  
92 ployed by the racing commission who shall also be certi-  
93 fied public accountants or experienced public accountants,  
94 shall have free access to the space or enclosure where the  
95 pari-mutuel system of wagering is conducted or cal-  
96 culated at any horse or dog race meeting for the purpose  
97 of ascertaining whether or not the licensee is deduct-  
98 ing and retaining only a commission as provided in this  
99 section and is otherwise complying with the provisions of  
100 this section. They shall also, for the same purposes only,  
101 have full and free access to all records and papers per-  
102 taining to such pari-mutuel system of wagering, and shall  
103 report to the racing commission in writing, under oath,  
104 whether or not the licensee has deducted and retained any  
105 commission in excess of that permitted under the pro-  
106 visions of this section or has otherwise failed to comply  
107 with the provisions of this section.

108 (e) No licensee shall permit or allow any individual  
109 under the age of eighteen years to wager at any horse or  
110 dog racetrack, knowing or having reason to believe that  
111 such individual is under the age of eighteen years.

**PART VII. TAXATION OF HORSE AND DOG RACING AND  
PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.**

**§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes  
paid.**

1 (a) Any racing association conducting thoroughbred  
2 racing at any horse racetrack in this state shall pay each  
3 day upon which horse races are run a daily license tax  
4 of two hundred fifty dollars. Any racing association con-  
5 ducting harness racing at any horse racetrack in this

6 state shall pay each day upon which horse races are run  
7 a daily license tax of one hundred fifty dollars. Any  
8 racing association conducting dog races shall pay each  
9 day upon which dog races are run a daily license tax  
10 of one hundred fifty dollars. In the event thoroughbred  
11 racing, harness racing, dog racing, or any combination  
12 of the foregoing are conducted on the same day at the  
13 same racetrack by the same racing association, only one  
14 daily license tax in the amount of two hundred fifty  
15 dollars shall be paid for that day. Any such daily license  
16 tax shall not apply to any local, county or state fair, horse  
17 show or agricultural or livestock exposition at which  
18 horse racing is conducted for not more than six days.

19 (b) Any racing association licensed by the racing com-  
20 mission to conduct thoroughbred racing and permitting  
21 and conducting pari-mutuel wagering under the provisions  
22 of this article shall, in addition to the aforementioned  
23 daily license tax, pay to the racing commission, from  
24 the commission deducted each day by such licensee from  
25 the pari-mutuel pools on thoroughbred racing a tax cal-  
26 culated on the total daily contribution of all such pari-  
27 mutuel pools conducted or made at any and every  
28 thoroughbred race meeting of the licensee licensed under  
29 the provisions of this article, which tax, on the pari-  
30 mutuel pools conducted or made each day during the  
31 months of January, February, November and December  
32 shall be calculated at five and twenty-five one hun-  
33 dredths percent of such pools, and, on the pari-mutuel  
34 pools conducted or made each day during all other  
35 months, shall be calculated at five and seventy-five one  
36 hundredths percent of such pools: *Provided*, That any  
37 such racing association operating a horse racetrack in this  
38 state having an average daily pari-mutuel pool on horse  
39 racing of one hundred fifty thousand dollars or less per  
40 day for the race meetings of the preceding calendar year  
41 shall, in lieu of payment of the pari-mutuel pool tax,  
42 calculated as hereinbefore in this subsection provided, be  
43 permitted to conduct pari-mutuel wagering at such horse  
44 racetrack on the basis of a daily pari-mutuel pool tax  
45 fixed as follows: On the daily pari-mutuel pool not ex-

46 ceeding one hundred fifty thousand dollars the daily pari-  
47 mutuel pool tax shall be four thousand dollars plus five  
48 and three-fourths percent of the daily pari-mutuel pool,  
49 if any, in excess of one hundred fifty thousand dollars.

50 (c) Any racing association licensed by the racing com-  
51 mission to conduct harness racing and permitting and  
52 conducting pari-mutuel wagering under the provisions of  
53 this article shall, in addition to the aforementioned daily  
54 license tax, pay to the racing commission, from the com-  
55 mission deducted each day by the licensee from the pari-  
56 mutuel pools on harness racing, as a tax, three percent  
57 of the first one hundred thousand dollars wagered, or  
58 any part thereof; four percent of the next one hundred  
59 fifty thousand dollars; and five and three-fourths percent  
60 of all over that amount wagered each day in all such  
61 pari-mutuel pools conducted or made at any and every  
62 harness race meeting of the licensee licensed under the  
63 provisions of this article.

64 (d) Any racing association licensed by the racing com-  
65 mission to conduct dog racing and permitting and con-  
66 ducting pari-mutuel wagering under the provisions of  
67 this article shall, in addition to the aforementioned daily  
68 license tax, pay to the racing commission, from the com-  
69 mission deducted each day by such licensee from the  
70 pari-mutuel pools on dog racing, as a tax, four percent  
71 of the first fifty thousand dollars or any part thereof of  
72 such pari-mutuel pools, five percent of the next fifty  
73 thousand dollars of such pari-mutuel pools, six percent  
74 of the next one hundred thousand dollars of such pari-  
75 mutuel pools, seven percent of the next one hundred fifty  
76 thousand dollars of such pari-mutuel pools, and eight  
77 percent of all over three hundred fifty thousand dollars  
78 wagered each day.

79 (e) All daily license and pari-mutuel pools tax pay-  
80 ments required under the provisions of this section shall  
81 be made to the racing commission or its agent after the  
82 last race of each day of each horse or dog race meeting,  
83 and the pari-mutuel pools tax payments shall be made  
84 from all contributions to all pari-mutuel pools to each  
85 and every race of the day.



## CHAPTER 152

(Com. Sub. for H. B. 1627—By Mr. Speaker, Mr. Kopp)

[Passed April 9, 1977; in effect from passage. Approved by the Governor.]

**AN ACT** authorizing the issuance and sale by the governor of bonds of the state of West Virginia, under authority of the Better Highways Amendment of 1973, in an amount not exceeding one hundred fifty million dollars and in several issuances, none of which may exceed fifty million dollars, during the fiscal year ending the thirtieth day of June, one thousand nine hundred seventy-seven or thereafter, for the sole purpose of raising funds for the building, construction, reconstruction, improving, upgrading and completion of state roads and highways and for the replacement and improvement of bridges as provided for by the constitution and the laws enacted thereunder; requiring notification and report to be given to the president of the Senate and the speaker of the House of Delegates of specific projects and amounts thereof awarded; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; allocating proceeds in certain amounts; permitting the commissioner of the department of highways to determine the uses of the total proceeds from bonds issued; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such bonds from taxation by the state, or by any county, district or municipality thereof; setting forth the form of coupon and registered bonds and coupons; stating what moneys shall be paid into the state road fund; providing for the disposition and investment of the state road fund; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of bonds shall be paid into a separate and distinct account in the state road fund and for expenditures from such account; providing for annual accountability status report; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; pro-

viding for the state treasurer to be financial advisor or to obtain financial advisor assistance; providing for the attorney general or his duly appointed legal representative to serve as bond counsel; and providing that all necessary expenses, including legal expenses, approved by the attorney general, incurred in the execution of this act shall be paid out of the state road fund on warrants of the auditor of the state drawn on the state treasurer.

*Be it enacted by the Legislature of West Virginia:*

**ISSUANCE AND SALE OF ROAD BONDS.**

- §1. Road bonds; amount; purposes; when may issue.
- §2. Transfer fee; registration fee; where payable; interest rate; tax exempt.
- §3. Form of bond.
- §4. Form of coupon.
- §5. Listing by auditor.
- §6. State road fund sources used to pay bonds and interest; investment of remainder.
- §7. Covenants of state.
- §8. Sale by governor; minimum price.
- §9. Proceeds paid into separate account in state road fund; expenditures; investment; annual accountability status report.
- §10. Plates, etc., property of state.
- §11. Auditor to be custodian of unsold bonds.
- §12. Interim certificates.
- §13. State treasurer to be financial advisor.
- §14. Attorney general or his duly appointed legal representative to serve as bond counsel.
- §15. Approval and payment of all necessary expenses.

**§1. Road bonds; amount; purposes; when may issue.**

1 Bonds of the state of West Virginia, under authority of  
 2 the Better Highways Amendment of 1973, of the par value  
 3 not to exceed one hundred fifty million dollars during the fiscal  
 4 year ending the thirtieth day of June, one thousand nine  
 5 hundred seventy-seven or thereafter, are hereby authorized  
 6 to be issued and sold for the sole purpose of raising funds  
 7 for the building, construction, reconstruction, improving, up-  
 8 grading and completion of state roads and highways and  
 9 for the replacement and improvement of bridges as provided  
 10 for by the constitution and the laws enacted thereunder and  
 11 and such funds shall be designated for the following purposes  
 12 in the following amounts:

13 (1) Bridge replacement and improvement program—not to  
14 exceed thirty-nine million dollars;

15 (2) Appalachian highway system—not to exceed sixteen  
16 million dollars;

17 (3) Upgrading sections of trunkline and feeder systems—  
18 not to exceed ten million dollars;

19 (4) Upgrading West Virginia State Route 2—not to exceed  
20 eighteen million dollars;

21 (5) Upgrading state local service roads—not to exceed  
22 forty million dollars;

23 (6) Construction, reconstruction, improving and upgrading  
24 of U. S. Route 52 between Huntington and Bluefield, West  
25 Virginia—not to exceed twenty-seven million dollars.

26 No later than ten days after the close of each month, the  
27 commissioner of the department of highways shall submit to the  
28 president of the Senate and the speaker of the House of Dele-  
29 gates of the Legislature of West Virginia a report of the specific  
30 projects and amount thereof awarded by the department of  
31 highways and for which such bond proceed moneys have been  
32 obligated or expended.

33 Such bonds may be issued by the governor in such amounts,  
34 in coupon or registered form, in such denominations, at such  
35 time, bearing such date or dates, as the governor may deter-  
36 mine, based upon an examination of the West Virginia de-  
37 partment of highways' yearly program which justified the  
38 issuance by the governor of said bonds, and shall become due  
39 and payable serially, annually or semiannually, in such amounts  
40 and mature in such years as the governor may determine:  
41 *Provided*, That such bonds shall be sold in increments not to  
42 exceed fifty million dollars: *Provided, however*, That all  
43 bonds authorized to be issued and sold under this act shall  
44 mature within and not exceeding twenty-five years from their  
45 date: *Provided further*, That the governor must offer said  
46 bonds for competitive bids from recognized financial investment  
47 institutions before said bonds may be sold.

**§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.**

1 The auditor and the treasurer are hereby authorized to  
2 arrange for the transfer of registered bonds and for each such  
3 transfer a fee of one dollar shall be charged by and paid to  
4 the state of West Virginia, to the credit of the state road fund.  
5 Bonds taken in exchange shall be canceled by the auditor and  
6 treasurer and be carefully preserved by the treasurer. The  
7 treasurer shall make provisions for registering "payable to  
8 bearer" bonds, and for each bond registered a fee of one dol-  
9 lar shall likewise be charged by and paid to the state of West  
10 Virginia, to the credit of the state road fund. All such bonds  
11 shall be payable at the office of the treasurer of the state of  
12 West Virginia, or, at the option of the holder, at a bank in the  
13 city of New York to be designated by the governor, or, at the  
14 option of the holder at such other bank or banks, within the  
15 state as may be designated or approved by the governor. The  
16 bonds shall bear interest, payable semiannually, to bearer, at  
17 the office of the treasurer of the state of West Virginia, at  
18 the capitol of the state, or at the banks designated and ap-  
19 proved by the governor, upon presentation and surrender of  
20 interest coupons then due, in the case of coupon bonds. For  
21 the payment of interest on registered bonds, the treasurer of  
22 the state of West Virginia shall requisition a warrant from the  
23 auditor of the state to be drawn on the state treasurer, and  
24 shall mail such warrant to the registered owner at the address  
25 as shown by the record of registration. Both the principal and  
26 interest of the bonds shall be payable in lawful money of the  
27 United States of America and the bonds shall be exempt from  
28 taxation by the state of West Virginia, or by any county,  
29 district or municipality thereof, which facts shall appear on the  
30 face of the bonds as part of the contract with the holder  
31 thereof.

**§3. Form of bond.**

1 The bonds shall be executed on behalf of the state of  
2 West Virginia, by the manual or facsimile signature of the  
3 treasurer thereof, under the great seal of the state or a  
4 facsimile thereof, and countersigned by the manual or facsimile  
5 signature of the auditor of the state: *Provided*, That one

6 of said signatures on said bonds shall be a manual signature  
7 and said bonds shall be in the following form or to the  
8 following effect, as nearly as may be, namely:

9                                   COUPON ROAD BOND  
10                   (Or registered road bond, as the case may be)  
11                                   OF THE  
12                                   STATE OF WEST VIRGINIA

13 \$..... No. ....

14       The state of West Virginia, under and by virtue of authority  
15 of an amendment to the constitution, which was proposed by  
16 Senate Joint Resolution No. 17, adopted the thirteenth day of  
17 April, one thousand nine hundred seventy-three, and was  
18 ratified by a vote of the people at the special election on the  
19 sixth day of November, one thousand nine hundred seventy-  
20 three, which is hereby made a part hereof as fully as if set  
21 forth at length herein, acknowledges itself to be indebted to  
22 and hereby promises to pay to the bearer hereof (in case of  
23 a coupon bond) or to ..... or assigns (the  
24 owner of record, in case of registered bonds) on the .....  
25 date of ..... 19....., in lawful money of the United  
26 States of America at the office of the treasurer of the state  
27 of West Virginia at the capitol of said state, or, at .....  
28 bank in the city of New York, or, at ..... bank,  
29 within the state, at the option of the holder, the sum of  
30 ..... dollars, with interest thereon at .....  
31 percent a year from the date, payable semiannually in like  
32 lawful money of the United States of America at the treasurer's  
33 office or banks aforesaid, on the first day of .....,  
34 and the first day of ..... of each year (and in the  
35 case of coupon bonds) according to the tenor of the annexed  
36 coupons bearing the facsimile signature of the treasurer of  
37 the state of West Virginia upon surrender of such coupons.  
38 This bond (in case of a coupon bond) may be exchanged for  
39 a registered bond of like tenor upon application to the trea-  
40 surer of the state of West Virginia. (Redemption provisions, if  
41 any, to be inserted here.)

42       To secure the payment of the principal and interest of

43 this bond, the state of West Virginia covenants and agrees  
 44 with the holder as follows: (1) That this bond shall con-  
 45 stitute a direct and general obligation of the state of West  
 46 Virginia; (2) that the full faith and credit of the state is  
 47 pledged to secure the payment of the principal and interest  
 48 of this bond; (3) that an annual state tax shall be collected  
 49 in an amount sufficient to pay as it may accrue the interest  
 50 on this bond and the principal thereof; and (4) that such  
 51 tax shall be levied in any year only to the extent that the  
 52 moneys in the state road fund irrevocably set aside and ap-  
 53 propriated for and applied to the payment of the interest on  
 54 and principal of this bond becoming due and payable in such  
 55 year are insufficient therefor.

56 This bond is hereby made exempt from any taxation by  
 57 the state of West Virginia, or by any county, district or munic-  
 58 ipal corporation thereof.

59 In testimony whereof, witness the manual or facsimile  
 60 signature of the treasurer of the state of West Virginia, and  
 61 the manual or facsimile countersignature of the auditor of  
 62 the state, hereto affixed according to law, dated the \_\_\_\_\_  
 63 day of \_\_\_\_\_, one thousand nine hundred \_\_\_\_\_  
 64 \_\_\_\_\_, and the seal of the state of West Virginia or a facsimile  
 65 thereof.

66

67

Treasurer of the State of West Virginia

68

(SEAL)

69 Countersigned:

70

71 Auditor of the State of West Virginia.

#### §4. Form of coupon.

1 The form of coupon shall be substantially as follows, to wit:

2

STATE OF WEST VIRGINIA

3

Bond No. \_\_\_\_\_ Coupon No. \_\_\_\_\_

4

On the first day of \_\_\_\_\_, 19\_\_\_\_,

5

the state of West Virginia will pay to the bearer, in lawful

6

money of the United States of America, at the office of the

7 treasurer of the state, or, at \_\_\_\_\_ bank  
 8 in the city of New York, or, at \_\_\_\_\_ bank  
 9 within the state, at the option of the holder, the sum of  
 10 \_\_\_\_\_ dollars, the same being semiannual  
 11 interest on Road Bond No. \_\_\_\_\_.

12  
 13

\_\_\_\_\_  
 Treasurer of the State of West Virginia

14 The signature of the treasurer to such coupon shall be  
 15 by his facsimile signature and the coupons shall be numbered  
 16 in the order of their maturity, from number one consecutively.  
 17 The bonds and coupons may be signed, as provided in this act,  
 18 by the present treasurer and auditor, or by any of their  
 19 respective successors in office, and the bonds signed by the  
 20 persons now in the office may be sold by the governor or his  
 21 successor in office without being signed by the successor in  
 22 office of the present treasurer or auditor.

**§5. Listing by auditor.**

1 All coupons and registered bonds issued under this act shall  
 2 be separately listed by the auditor of the state in books pro-  
 3 vided for the purpose, in each case giving the date, number,  
 4 character and amount of obligations issued, and in case of  
 5 registered bonds, the name and post-office address of the  
 6 person, firm or corporation registered as the owner thereof.

**§6. State road fund sources used to pay bonds and interest; invest-  
 ment of remainder.**

1 Into the state road fund there shall be paid all money from  
 2 any and all appropriations made by the state from the state  
 3 road fund for the purpose of paying the interest on such bonds  
 4 or paying off and retiring the bonds, from transfer and regis-  
 5 tration fees as herein provided, and from any other source  
 6 whatsoever which is made liable by law for the payment of  
 7 the principal of such bonds or the interest thereon.

8 All such funds shall be kept by the treasurer in a separate  
 9 account, under the designation aforesaid, and all moneys be-  
 10 longing to the fund shall be deposited in the state treasury to  
 11 the credit thereof.

12 Such fund shall be applied by the treasurer of the state

13 first to the payment of the semiannual interest on such bonds  
14 as it shall become due as herein provided. The remainder of  
15 the fund shall be invested by the state treasurer in obligations  
16 of the government of the United States of America, bonds of  
17 the state of West Virginia, or any political subdivision there-  
18 of: *Provided*, That bonds or other obligations so purchased by  
19 the state treasurer shall mature so as to provide sufficient  
20 money to pay off all bonds herein provided to be issued as they  
21 become due; and the money so paid into the state road fund  
22 under the provisions of this act shall be expended for the  
23 purpose of paying the interest and principal of the bonds  
24 hereby provided for as they severally become due and payable.

**§7. Covenants of state.**

1 The state of West Virginia covenants and agrees with the  
2 holders of the bonds issued pursuant hereto as follows:  
3 (1) That such bonds shall constitute a direct and general  
4 obligation of the state of West Virginia; (2) that the full  
5 faith and credit of the state is hereby pledged to secure  
6 the payment of the principal and interest of such bonds;  
7 (3) that an annual state tax shall be collected in an amount  
8 sufficient to pay as it may accrue the interest on such bonds  
9 and the principal thereof; and (4) that such tax shall be  
10 levied in any year only to the extent that the moneys in  
11 the state road fund irrevocably set aside and appropriated  
12 for and applied to the payment of the interest on and  
13 principal of said bonds becoming due and payable in such  
14 year are insufficient therefor.

**§8. Sale by governor; minimum price.**

1 The governor shall sell the bonds herein authorized at such  
2 time or times as he may determine necessary to provide funds  
3 for the building, construction, reconstruction, improving, up-  
4 grading and completion of state roads and highways, and for  
5 bridge replacement and improvement, as herein provided,  
6 upon the recommendation of the West Virginia commissioner  
7 of highways, and after reviewing the program of the West  
8 Virginia department of highways and subject to the limitations  
9 contained in this bill. All sales shall be at not less than par  
10 and accrued interest. All interest coupons becoming payable



11 prior to the sale date shall be canceled by the treasurer and  
12 rendered ineffective before the delivery of the bonds so sold.

**§9. Proceeds paid into separate account in state road fund; expenditures; investment; annual accountability status report.**

1 The proceeds of all sales of bonds herein authorized shall  
2 be paid into a separate and distinct account in the state road  
3 fund and shall be used and appropriated solely for the building,  
4 construction, reconstruction, improving, upgrading and com-  
5 pletion of state roads and highways and for bridge replace-  
6 ment and improvement as provided for by the state consti-  
7 tution and the laws enacted thereunder.

8 Except for such sums necessary for current operating  
9 balances, such account shall be invested by the state treasurer  
10 in obligations of the government of the United States, bonds  
11 of the state of West Virginia, or any political subdivision  
12 thereof: *Provided*, That no such investment may adversely  
13 affect the current operating balances of such fund: *Provided*,  
14 *however*, That all interest accruing from such investment shall  
15 be paid into the state road fund for debt service on the bonds  
16 issued.

17 On or before the thirty-first day of January of each year,  
18 the commissioner of the department of highways shall submit  
19 to the legislative auditor an accountability status report of all  
20 moneys received or expended within the state road fund, here-  
21 in provided and any other information required to fully account  
22 in respect to the handling of bonds issued and moneys expend-  
23 ed under the authority of the Better Highways Amendment of  
24 1973. No moneys shall be expended by the commissioner  
25 other than as authorized in said amendment.

**§10. Plates, etc., property of state.**

1 The plates, casts, dies or other forms from which the bonds  
2 authorized by this bill are produced or made shall be the  
3 property of the state of West Virginia.

**§11. Auditor to be custodian of unsold bonds.**

1 The state auditor shall be the custodian of all unsold  
2 bonds issued pursuant to the provisions of this bill.

**§12. Interim certificates.**

1 The governor may authorize the issuance of interim certifi-  
2 cates to be issued to the purchasers of such bonds to be  
3 held by them in lieu of permanent bonds. When interim certifi-  
4 cates are so issued, they shall become full and legal obliga-  
5 tions of the state of West Virginia under all of the provisions  
6 of this bill just as fully and completely as the permanent  
7 bonds.

**§13. State treasurer to be financial advisor.**

1 The state treasurer shall serve as financial advisor to the  
2 governor and may obtain financial advisor assistance for the  
3 issuance and sale of such bonds.

**§14. Attorney general or his duly appointed legal representative to serve as bond counsel.**

1 The attorney general, or his duly appointed legal repre-  
2 sentative, shall serve as bond counsel and shall be responsible  
3 for the issuance of a final approving opinion regarding the  
4 legality of the sale of such bonds.

**§15. Approval and payment of all necessary expenses.**

1 All necessary expenses, including legal expenses approved  
2 by the attorney general, incurred in the execution of this act  
3 shall be paid out of the state road fund on warrants of the  
4 auditor of the state drawn on the state treasurer.

## CHAPTER 153

(Com. Sub. for H. B. 1206—By Mr. Teets and Mr. Swann)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article three, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state sinking fund commission; continuing the commission and designating it the West Virginia municipal bond commission; providing for changes in the

composition of the commission, relating to terms of appointment, vacancies, and removal from office; providing appointment of chief administrative officer; relating to meetings; defining a quorum; providing compensation and expenses for members of commission; providing for legal representation; establishing an executive committee and providing powers and duties of executive committee; requiring bonds of officers and employees of commission; establishing powers and duties of commission; authorizing securities for investment; relating to limitations and prohibitions on purchase, sale or exchange of securities; providing for the proration of interest amount; various accounts; relating to the custody of securities; providing for the notification by issuer of bond sale; relating to the collection, deposit and accounting of funds; creating the municipal bond commission fund; relating to accounts to be kept by commission issuing annual statements and return of canceled bonds and coupons; providing for issuance of levy statements; providing methods for the destruction of canceled coupons and bonds; relating to appointment of substitute paying agents; authorizing the transfer and investment of funds; and providing for annual reports.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 3. MUNICIPAL BOND COMMISSION.**

- §13-3-1. Commission continued.
- §13-3-2. Composition of commission; terms of appointment; vacancies; removal from office.
- §13-3-3. Officers; employees; chief administrative officer; meetings; quorum; compensation and expenses; legal representation.
- §13-3-4. Executive committee; powers and duties.
- §13-3-5. Officer and employee bonds.
- §13-3-6. Powers and duties of commission.
- §13-3-7. Permissible investments; limitations and prohibitions on purchase, sale or exchange of securities; public records; combining funds and proration of interest; custody of securities.
- §13-3-8. Notification by issuer of bond sale.
- §13-3-9. Collection, deposit and accounting of funds.
- §13-3-10. Accounts of bond issues; annual statements, canceled bonds and coupons.
- §13-3-11. Statement by commission to political subdivision showing levy required.

§13-3-12. Destruction of canceled bonds and coupons.

§13-3-13. Substitute paying agents.

§13-3-14. Authorizing the transfer and investment of funds raised by levy, sale of bonds or otherwise

§13-3-15. Reports of commission.

**§13-3-1. Commission continued.**

1 The state sinking fund commission is hereby continued in  
2 all respects as heretofore constituted under prior provisions  
3 of this article, but is hereby designated as the West Virginia  
4 municipal bond commission.

**§13-3-2. Composition of commission; terms of appointment; vacancies; removal from office.**

1 (a) The commission shall be composed of five members as  
2 follows: (1) The auditor of the state, by virtue of his office;  
3 (2) the treasurer of the state, by virtue of his office; (3) the  
4 state tax commissioner, by virtue of his office; and (4) two  
5 residents of the state appointed by the governor by and with  
6 the advice and consent of the Senate. Of the two appointed  
7 members, one shall be, or shall have been, the mayor of a  
8 municipality, and one shall be, or shall have been, a member  
9 of a county commission: *Provided*, That if such mayor or  
10 member of a county commission is not presently serving in  
11 such position, he shall have served in such position within the  
12 six years preceeding the term for which such member is to be  
13 appointed. No more than one of the members appointed by  
14 the governor may belong to the same political party.

15 (b) The appointed members of the commission shall serve  
16 overlapping terms of four years each and until their respec-  
17 tive successors have been appointed and qualified, except for  
18 the original appointments, one member shall be appointed for  
19 a term of four years and until his successor has been appointed  
20 and qualified, one member shall be appointed for two years  
21 and until his successor has been appointed and qualified. Each  
22 member shall take and subscribe to the oath required by sec-  
23 tion five, article four of the constitution of this state.

24 (c) Vacancies shall be filled by appointment by the governor  
25 for the unexpired term of the member whose office is vacant  
26 and such appointment shall be made within sixty days of the  
27 occurrence of such vacancy.

28 (d) No member of the board appointed by the governor  
29 may be removed from office except for official misconduct,  
30 incompetency, neglect of duty or gross immorality.

**§13-3-3. Officers; employees; chief administrative officer; meetings; quorum; compensation and expenses; legal representation.**

1 (a) The state tax commissioner shall be chairman of the  
2 commission and the state treasurer shall be treasurer of the  
3 commission.

4 (b) The members of the commission shall appoint a chief  
5 administrative officer and may fix his title, duties and com-  
6 pensation. The commissioner is authorized to employ such  
7 other employees as may be necessary and such consultants  
8 as the commission deems advisable and fix their compensa-  
9 tion and prescribe their duties.

10 (c) Appointed members of the commission shall be paid  
11 fifty dollars for each day or substantial portion thereof that  
12 they are engaged in the work of the commission. Each mem-  
13 ber of the commission may be reimbursed for all reasonable  
14 and necessary expenses actually incurred in the performance  
15 of duties on behalf of the commission.

16 (d) The commission shall hold at least three meetings in  
17 each fiscal year, one of which meetings shall be held in  
18 July and shall be the annual meeting. Such meetings shall  
19 be held on such dates and at such places as the chairman may  
20 prescribe. Additional meetings may be held at the call of  
21 the chairman or upon the written request of three members at  
22 such time and place as designated in such call or request.  
23 Four members of the commission constitute a quorum.

24 (e) The attorney general shall be the legal advisor to the  
25 commission.

**§13-3-4. Executive committee; powers and duties.**

1 The state tax commissioner, the state treasurer, and  
2 the state auditor constitute the executive committee of the  
3 municipal bond commission. The executive committee is  
4 vested with all the powers of the commission when it is not  
5 in session, except that the executive committee may not

6 overrule, reverse or disregard any action of the full com-  
7 mission. Action of the executive committee shall be taken  
8 by resolution adopted by a majority of the executive com-  
9 mittee. The chairman may call meetings of the executive  
10 committee at any time.

**§13-3-5. Officer and employee bonds.**

1 The state treasurer shall give a separate and additional  
2 bond for the faithful performance of his duties as custodian  
3 of the moneys, securities and other investments of the com-  
4 mission in such amount as shall, from time to time, be fixed  
5 by the commission. The chief administrative officer and the  
6 employees designated by the commission shall furnish bonds  
7 in such form and in such amounts, as the commission shall,  
8 from time to time, determine. The costs of such bonds shall  
9 be paid by the commission and such bonds shall be filed in  
10 the same office as are the bonds of state officers. The  
11 attorney general's approval of all bonds required by this sec-  
12 tion shall be obtained.

**§13-3-6. Powers and duties of commission.**

1 The commission is hereby granted, has and may exercise  
2 all powers necessary or appropriate to effectuate the purposes  
3 of this article.

**§13-3-7. Permissible investments; limitations and prohibitions on  
purchase, sale or exchange of securities; public records;  
combining funds and proration of interest; custody of  
securities.**

1 (a) Notwithstanding any provisions of this code to the con-  
2 trary, the commission may invest funds under its control in  
3 the following classes of securities and not otherwise:

4 (1) Securities of the United States or agency thereof which  
5 are guaranteed by or for which the full faith and credit of the  
6 United States is pledged for the payment of the principal and  
7 interest;

8 (2) General obligations of the state or any of its agencies,  
9 boards or commissions; and

10 (3) General obligations of any county, municipality or school  
11 district in this state.

12 (b) Securities purchased or held under the provisions of this  
13 article may be sold or exchanged for other securities: *Provided*,  
14 That (1) no security shall be purchased, sold or exchanged  
15 without the concurrence or ratification of a majority of all  
16 members of the board, (2) no security shall be purchased at  
17 a price above, nor sold or exchanged at a price below its  
18 prevailing fair market value, (3) no security shall be pur-  
19 chased, sold or exchanged for the purpose of aiding any indi-  
20 vidual, firm or corporation by the payment of brokerage com-  
21 missions or fees thereto, (4) no security purchased, sold or  
22 exchanged shall benefit any member or employee of the com-  
23 mission, and (5) no security shall be received in exchange  
24 which does not comply with the requirements of this article.

25 (c) The commission shall record all pertinent information  
26 related to any purchase, sale or exchange of securities and  
27 make such information available for public inspection during  
28 normal office hours of the commission.

29 (d) Funds from several or all accounts may be combined  
30 for investment and any interest earned shall be prorated and  
31 credited to the various contributing accounts on the basis of  
32 amount thereof invested, calculated according to an average  
33 periodic balance or other generally accepted accounting prin-  
34 ciple: *Provided*, That such proration shall be calculated at least  
35 once a year or upon specific request made to the commission.

36 (e) All securities purchased by the commission as an in-  
37 vestment for the funds shall remain in the custody of the state  
38 treasurer until the same are sold, exchanged, retired or ma-  
39 ture and are paid.

### §13-3-8. Notification by issuer of bond sale.

1 Prior to the issuance of any general obligation bond  
2 or refunding bond by the state of West Virginia acting  
3 through its departments, commissions, boards or agencies or by  
4 any county, municipality or school district, the issuer shall  
5 notify the commission of any proposed bond sale. Within  
6 thirty days after issuance of bonds, the commission shall be

7 notified of the terms of the sale and provided with a copy of  
8 the bond ordinance or resolution.

**§13-3-9. Collection, deposit and accounting of funds.**

1 All interest and other funds on hand July first of each  
2 year and belonging to the counties, municipalities or school  
3 districts for the purpose of amortizing bonded indebtedness,  
4 shall be, by the treasurer or collector thereof, not later  
5 than the following September, forwarded to the commission to  
6 be deposited in the state treasury to the credit of the state.

7 Whenever the amount deposited for any issuer is not  
8 sufficient to meet the interest or principal due, it shall be  
9 the duty of the treasurer or collector of such issuer, upon  
10 being notified of the fact by the commission, to remit a  
11 sufficient amount of interest or principal that may be in his  
12 possession to meet the interest or principal due.

13 Any taxes to provide for the payment of principal, crea-  
14 tion of a reserve or sinking fund, or for the payment of  
15 interest on bonds by any county, municipality or school  
16 district which shall be collected by any state officer, shall  
17 be paid by such officer to the commission, to be at once  
18 applied to the payment of the debt of the county, municipality  
19 or school district and the fact of such application of such  
20 fund shall be reported by the auditor to the treasurer or  
21 collector of such issuer, which report shall be a receipt for  
22 the amount therein named.

23 The state auditor and the state treasurer shall carry an  
24 account to be known as the municipal bond commission fund.  
25 All deposits shall be carried as a part of such fund.

26 The commission shall deposit all collections and receipts  
27 with the treasurer daily.

**§13-3-10. Accounts of bond issues; annual statements, canceled  
bonds and coupons.**

1 The commission shall keep separate accounts for each  
2 bond issue showing in detail all receipts and disbursements:  
3 *Provided*, That accounts of one issuer for the same purpose  
4 may be consolidated into one account. Within thirty days



5 after the end of the fiscal year, the commission shall submit  
6 to each issuer a statement of all receipts and disbursements  
7 of the preceding fiscal year. At the same time, the commission  
8 shall surrender to each issuer coupons and bonds which have  
9 been paid and canceled or certificates of destruction as  
10 provided for in section twelve of this article.

**§13-3-11. Statement by commission to political subdivision showing  
levy required.**

1 The commission shall, annually, at least thirty days before  
2 the time for making up the estimate for levy purposes, render  
3 to each political subdivision having outstanding general ob-  
4 ligation bonds, a statement showing the levy required to pay  
5 the interest on and provide for the retirement of the sub-  
6 division's outstanding general obligation bonds.

**§13-3-12. Destruction of canceled bonds and coupons.**

1 Any canceled bonds and interest coupons of any issue  
2 for which the commission acts as fiscal agent or paying  
3 agent may be destroyed in the discretion of the commission  
4 by one of the two methods described herein below.

5 Method I—The commission shall maintain a permanent  
6 record for the purpose of recording the destruction of bonds  
7 and coupons, showing the following: (1) With respect to  
8 bonds, the purpose of issuance, the date of issue, serial num-  
9 bers (if any), denomination, maturity date, and total principal  
10 amount; and (2) with respect to coupons, the purpose of  
11 issue and date of the bonds to which the coupons appertain,  
12 the maturity date of the coupons and, as to each maturity  
13 date, the denomination, quantity, and total amount of coupons.

14 After recording the specified information, the commis-  
15 sion shall have the canceled bonds and coupons destroyed  
16 by either burning or shredding, in the presence of the chair-  
17 man of the commission and any three commission mem-  
18 bers, each of whom shall certify that he saw the canceled  
19 bonds and coupons destroyed. Such certificates shall be  
20 made a part of the permanent record. Canceled bonds or  
21 coupons shall not be destroyed until after one year from the  
22 date of payment.

23 Method II—The commission may contract with any bank  
24 or trust company acting as paying agent or co-paying agent  
25 for a bond issue for the destruction of bonds and interest  
26 coupons which have been canceled by the paying agent. The  
27 contract shall require that the paying agent give the com-  
28 mission a written certificate containing the same information  
29 required by Method I. The certificates shall be made part  
30 of the permanent record book of the commission. Each  
31 contract shall also require that the paying agent be respon-  
32 sible for proper payment and disposition of all bonds and  
33 coupons, and for any duplicate payments to unauthorized per-  
34 sons and nonpayment to authorized persons occurring as a  
35 result of destruction of bonds or coupons under this section.  
36 In addition, the commission may require the paying agent  
37 to submit an indemnity bond, in an amount to be determined  
38 by the commission, to assure performance of the duties  
39 specified in this section. Canceled bonds or coupons may not  
40 be destroyed until one year from the date of payment.

**§13-3-13. Substitute paying agents.**

1 The commission may appoint a new paying agent on any  
2 issue for which the commission acts as fiscal agent, in the  
3 event of the insolvency, threat of insolvency, malfeasance,  
4 misfeasance, incompetence, or discontinuance from business  
5 of the paying agent or in the case of discontinuance of the  
6 place of payment as designated by the terms of such bonds.  
7 Upon appointment of a substitute paying agent, the com-  
8 mission shall publish notice of such action as a Class II  
9 legal advertisement in compliance with the provisions of  
10 article three, chapter fifty-nine of this code, and the publica-  
11 tion area for such publication shall be the county in which  
12 the former paying agent had residence. Upon designation  
13 of another place of payment, publication of notice shall be  
14 made in the county in which was located the former place of  
15 payment.

**§13-3-14. Authorizing the transfer and investment of funds raised by levy, sale of bonds or otherwise.**

1 Any funds of a political subdivision or of any of the agen-  
2 cies, boards, commission or departments of the state of West

3 Virginia raised by levy, sale of bonds or otherwise and which  
4 cannot be used within a reasonable time may be transferred to  
5 the municipal bond commission. Any funds so transferred  
6 shall be invested by the commission in accordance with the  
7 provisions of this article. Any such funds so transferred may  
8 be withdrawn by the public body which transferred the same  
9 as authorized by this article upon one hundred twenty days'  
10 notice in writing to the commission.

### §13-3-15. Reports of commission.

1 The commission shall prepare a complete and full report of  
2 its operations and investments at the close of each fiscal year  
3 and furnish a copy thereof to the governor, president of the  
4 Senate, speaker of the House of Delegates and the legislative  
5 auditor on or before the first day of the next regular session  
6 of the Legislature. Copies of the report shall be available upon  
7 request for a reasonable fee to any citizen of the state:  
8 *Provided*, That such report shall be available for public in-  
9 spection during regular office hours of the commission.

## CHAPTER 154

(Com. Sub. for S. B. 219—By Mr. Neeley and Mr. Hinkle)

[Passed April 9, 1977; in effect July 1, 1977. 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-six, relating to the adoption of the West Virginia resource recovery—solid waste disposal authority act; short title; legislative findings, declaration of policy and responsibility, purpose and intent of article; definitions of terms; creation of the West Virginia resource recovery—solid waste disposal authority for the performance of essential governmental functions; creation of the West Virginia resource recovery—solid waste disposal authority board, its organization and composition; desig-

nation and appointment of board members, their qualifications, term of office, oath, bond, compensation and expenses; meetings of board; appointment of director of authority by board; authorizing the authority to provide solid waste disposal projects; powers, duties and responsibility of authority; power of authority to collect service charges and exercise other powers of governmental agencies in event of default; venue of actions against the authority; authorizing the authority to purchase property and exercise the right of eminent domain; relating to development and designation of solid waste disposal sheds by authority; expenditure of funds for study and engineering of proposed solid waste disposal projects; issuance of solid waste disposal revenue bonds, notes, renewal bonds and renewal notes; requirements for their issuance; relating generally to all such revenue bonds and notes and resolutions authorizing the same; limiting the total amount of bonded indebtedness to fifty million dollars; trust agreements to secure all such revenue bonds and notes; legal remedies of bondholders and trustees; involvement of the authority and counties, municipalities and other political subdivisions in the establishment of solid waste disposal projects and the maintenance and operation thereof; specifying that such revenue bonds and notes are not debt of state, or of any county, municipality or political subdivision in state; relating to use of moneys, properties and assets by authority and restrictions on their use; investment of funds by authority; rentals, fees, service charges and other revenues the authority may derive from solid waste disposal projects; relating generally to contracts and agreements with respect to such projects; authorizing governmental and other contributions to authority; authorizing proceeds of other bond issues to be used to aid authority; maintenance, operation and repair of solid waste disposal projects and the taking, destroying and damaging of property; requiring reports by authority; making solid waste disposal revenue bonds lawful investments; providing exemption from taxation for authority; prohibiting officers, members and employees of the authority from having financial interest in contracts, sale of property and activities of authority and setting forth criminal penalties for

violation of such prohibition; meetings and records of authority to be open to public with certain exceptions; continuing regulation of solid waste collectors and haulers by public service commission and bringing about their compliance with solid waste disposal shed plan and projects; relating to cooperation of authority and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.; and rule of construction of provisions of article.

*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-six, to read as follows:

**ARTICLE 26. WEST VIRGINIA RESOURCE RECOVERY—SOLID WASTE DISPOSAL AUTHORITY.**

- §16-26-1. Short title.
- §16-26-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.
- §16-26-3. Definitions.
- §16-26-4. West Virginia resource recovery—solid waste disposal authority and board created; organization of authority and board; appointment and qualifications of board members; their term of office, compensation and expenses; director of authority.
- §16-26-5. Authority to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.
- §16-26-6. Powers, duties and responsibilities of authority generally.
- §16-26-7. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.
- §16-26-8. Development and designation of solid waste disposal sheds by authority.
- §16-26-9. Expenditure of funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department.
- §16-26-10. Authority empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.
- §16-26-11. Trustee for bondholders; contents of trust agreement.
- §16-26-12. Legal remedies of bondholders and trustees.
- §16-26-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.
- §16-26-14. Use of funds, properties, etc., by authority; restrictions thereon.
- §16-26-15. Investment of funds by authority.
- §16-26-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of authority; cooperation of other governmental agencies; bonds of such agencies.

- §16-26-17. Maintenance, operation and repair of projects; repair of damaged property; reports by authority to governor and Legislature.
- §16-26-18. Solid waste disposal revenue bonds lawful investments.
- §16-26-19. Exemption from taxation.
- §16-26-20. Governmental agencies authorized to convey property.
- §16-26-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.
- §16-26-22. Meetings and records of authority to be open to public with certain exceptions.
- §16-26-23. Regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.
- §16-26-24. Cooperation of authority and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.
- §16-26-25. Liberal construction of article.

**§16-26-1. Short title.**

1 This article shall be known and cited as the "West  
2 Virginia Resource Recovery—Solid Waste Disposal  
3 Authority Act."

**§16-26-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.**

1 The Legislature finds that uncontrolled, inadequately  
2 controlled and improper collection and disposal of solid  
3 waste (1) is a public nuisance and a clear and present  
4 danger to people; (2) provides harborages and breeding  
5 places for disease-carrying, injurious insects, rodents and  
6 other pests harmful to the public health, safety and wel-  
7 fare; (3) constitutes a danger to livestock and domestic  
8 animals; (4) decreases the value of private and public  
9 property, causes pollution, blight and deterioration of the  
10 natural beauty and resources of the state and has adverse  
11 economic and social effects on the state and its citizens;  
12 and (5) results in the squandering of valuable nonrenew-  
13 able and nonreplenishable resources contained in solid  
14 waste.

15 Further, the Legislature finds that governmental  
16 agencies in the state and the private sector do not have  
17 the financial and other resources needed to provide for  
18 the proper collection and disposal of solid waste; that  
19 solid waste disposal sheds and projects must be estab-  
20 lished on a relatively large scale to be economically  
21 feasible and stable; and that proper solid waste collection

22 and disposal at the lowest minimum cost can only be  
23 achieved through comprehensive solid waste manage-  
24 ment.

25 It is declared to be the public policy and a responsi-  
26 bility of this state to assist efforts of governmental  
27 agencies and the private sector to provide for the proper  
28 collection, disposal and recycling of solid waste and to  
29 solve and prevent the problems set forth in this article.  
30 It is the purpose and intent of the Legislature in enacting  
31 this article to provide for the necessary, dependable,  
32 effective and efficient collection, disposal and recycling  
33 of solid waste and to assist and cooperate with govern-  
34 mental agencies and the private sector in achieving all  
35 the purposes set forth in this article, and to encourage  
36 the recycling or extraction of recoverable resources from  
37 such solid waste.

38 The Legislature finds that the public policy and re-  
39 sponsibility of the state as set forth in this section cannot  
40 be effectively attained without the funding, establishment,  
41 operation and maintenance of solid waste disposal proj-  
42 ects as provided in this article.

### §16-26-3. Definitions.

1 As used in this article, unless the context clearly re-  
2 quires a different meaning:

3 (1) "Authority" means the West Virginia resource  
4 recovery—solid waste disposal authority created in sec-  
5 tion four of this article, the duties, powers, responsibil-  
6 ities and functions of which are specified in this article.

7 (2) "Board" means the West Virginia resource recovery  
8 —solid waste disposal authority board created in section  
9 four of this article, which shall manage and control the  
10 West Virginia resource recovery—solid waste disposal  
11 authority as provided in this article.

12 (3) "Bond" or "solid waste disposal revenue bond"  
13 means a revenue bond or note issued by the West Virginia  
14 resource recovery—solid waste disposal authority to effect  
15 the intents and purposes of this article.

16 (4) "Construction" includes reconstruction, enlarge-

17 ment, improvement and providing furnishings or equip-  
18 ment for a solid waste disposal project.

19 (5) "Cost" means, as applied to solid waste disposal  
20 projects, the cost of their acquisition and construction;  
21 the cost of acquisition of all land, rights-of-way, property,  
22 rights, easements, franchise rights and interests required  
23 by the authority for such acquisition and construction; the  
24 cost of demolishing or removing any buildings or struc-  
25 tures on land so acquired, including the cost of acquiring  
26 any land to which such buildings or structures may be  
27 moved; the cost of diverting highways, interchange of  
28 highways and access roads to private property, including  
29 the cost of land or easements therefor; the cost of all  
30 machinery, furnishings and equipment; all financing  
31 charges and interest prior to and during construction and  
32 for no more than eighteen months after completion of  
33 construction; the cost of all engineering services and all  
34 expenses of research and development with respect to  
35 solid waste disposal facilities; the cost of all legal ser-  
36 vices and expenses; the cost of all plans, specifications,  
37 surveys and estimates of cost and revenues; all working  
38 capital and other expenses necessary or incident to de-  
39 termining the feasibility or practicability of acquiring or  
40 constructing any such project; all administrative expenses  
41 and such other expenses as may be necessary or incident  
42 to the acquisition or construction of the project; the  
43 financing of such acquisition or construction, including the  
44 amount authorized in the resolution of the authority  
45 providing for the issuance of solid waste disposal revenue  
46 bonds to be paid into any special funds from the proceeds  
47 of such bonds; and the financing of the placing of any  
48 such project in operation. Any obligation or expenses  
49 incurred after the effective date of this article by any  
50 governmental agency, with the approval of the authority,  
51 for surveys, borings, preparation of plans and specifica-  
52 tions and other engineering services in connection with  
53 the acquisition or construction of a project shall be re-  
54 garded as a part of the cost of such project and shall  
55 be reimbursed out of the proceeds of loans or solid waste  
56 disposal revenue bonds as authorized by the provisions  
57 of this article.



58 (6) "Governmental agency" means the state govern-  
59 ment or any agency, department, division or unit thereof;  
60 counties; municipalities; watershed improvement districts;  
61 soil conservation districts; sanitary districts; public ser-  
62 vice districts; drainage districts; regional governmental  
63 authorities and any other governmental agency, entity,  
64 political subdivision, public corporation or agency having  
65 the authority to acquire, construct or operate solid waste  
66 disposal facilities; the United States government or any  
67 agency, department, division or unit thereof; and any  
68 agency, commission or authority established pursuant to  
69 an interstate compact or agreement.

70 (7) "Industrial waste" means any solid waste substance  
71 resulting from or incidental to any process of industry,  
72 manufacturing, trade or business, or from or incidental to  
73 the development, processing or recovery of any natural  
74 resource.

75 (8) "Owner" includes all persons, partnerships or  
76 governmental agencies having any title or interest in any  
77 property rights, easements and interests authorized to be  
78 acquired by this article.

79 (9) "Person" means any public or private corporation,  
80 institution, association, firm or company organized or  
81 existing under the laws of this or any other state or  
82 country; the United States or the state of West Virginia;  
83 governmental agency; political subdivision; county com-  
84 mission; municipality; industry; sanitary district; public  
85 service district; drainage district; soil conservation dis-  
86 trict; solid waste disposal shed district; partnership; trust;  
87 estate; individual; group of individuals acting individually  
88 or as a group; or any other legal entity whatever.

89 (10) "Pollution" means the discharge, release, escape  
90 or deposit, directly or indirectly, of solid waste of what-  
91 ever kind or character, on lands or in waters in the state  
92 in an uncontrolled, unregulated or unapproved manner.

93 (11) "Revenue" means any money or thing of value  
94 collected by, or paid to, the West Virginia resource  
95 recovery—solid waste disposal authority as rent, use fee,  
96 service charge or other charge for use of, or in connection

97 with, any solid waste disposal project, or as principal of  
98 or interest, charges or other fees on loans, or any other  
99 collections on loans made by the West Virginia solid  
100 waste disposal authority to governmental agencies to  
101 finance in whole or in part the acquisition or construction  
102 of any solid waste development project or projects, or  
103 other money or property which is received and may be  
104 expended for or pledged as revenues pursuant to this  
105 article.

106 (12) "Solid waste" means all putrescible and non-  
107 putrescible solid waste substances, except human excreta,  
108 including but not limited to garbage, rubbish, ashes, in-  
109 cinerator residue, street refuse, dead animals, demolition  
110 and construction waste, vehicles and parts thereof, tires,  
111 appliances, sewage plant sludge, commercial and indus-  
112 trial waste and special waste, including but not limited  
113 to explosives, pathological waste and radioactive material,  
114 except those commercial and industrial wastes and special  
115 wastes which are under the control of the department  
116 of natural resources or the West Virginia air pollution  
117 control commission, or both, or of the United States gov-  
118 ernment.

119 (13) "Solid waste disposal facility" means any method,  
120 system or facility to collect, transport, treat, neutralize,  
121 dispose of, stabilize, segregate, recover, recycle or hold  
122 solid waste, including without limiting the generality of  
123 the foregoing, the equipment, furnishings and appurte-  
124 nances thereof.

125 (14) "Solid waste disposal project" or "project" means  
126 any solid waste disposal facility the acquisition or con-  
127 struction of which is authorized by the West Virginia  
128 resource recovery—solid waste disposal authority or any  
129 acquisition or construction which is financed in whole or  
130 in part from funds made available by grant or loan by, or  
131 through, the authority as provided in this article, in-  
132 cluding all buildings and facilities which the authority  
133 deems necessary for the operation of the project, together  
134 with all property, rights, easements and interests which  
135 may be required for the operation of the project.

136 (15) "Solid waste disposal shed" or "shed" means a

137 geographical area which the West Virginia resource  
138 recovery—solid waste disposal authority designates as  
139 provided in section eight of this article for solid waste  
140 management.

**§16-26-4. West Virginia resource recovery—solid waste disposal authority and board created; organization of authority and board; appointment and qualification of board members; their term of office, compensation and expenses; director of authority.**

1 The West Virginia resource recovery—solid waste disposal  
2 authority is hereby created. The authority is a  
3 governmental instrumentality of the state and a body  
4 corporate. The exercise by the authority of the powers  
5 conferred on it by this article and the carrying out of its  
6 purposes and duties are essential governmental functions  
7 and for a public purpose.

8 The authority shall be controlled, managed and operated  
9 by a five-member board known as the West Virginia  
10 resource recovery—solid waste disposal authority board  
11 which is hereby created. The director of the department  
12 of health shall be a member ex officio of the board. The  
13 other four members of the board shall be appointed by  
14 the governor, by and with the advice and consent of the  
15 Senate, for terms of one, two, three and four years, respectively.  
16 One appointee shall be a member of the West  
17 Virginia association of county officials, one a member of the  
18 West Virginia municipal league and a resident  
19 of a municipality as defined in section two, article one,  
20 chapter eight of this code, one a member of a regional  
21 council as defined in section two, article twenty-five,  
22 chapter eight of this code and one a contract solid waste  
23 hauler who holds a valid certificate of convenience and  
24 necessity issued by the public service commission. The  
25 successor of each such appointed member shall be appointed  
26 for a term of four years in the same manner  
27 the original appointments were made and so that the  
28 representation on the board as set forth in this section  
29 is preserved, except that any person appointed to fill a  
30 vacancy occurring prior to the expiration of the term  
31 for which his predecessor was appointed shall be ap-

32 pointed only for the remainder of such term. Each board  
33 member shall serve until the appointment and qualifica-  
34 tion of his successor.

35 No more than two of the appointed board members  
36 may at any one time be from the same congressional  
37 district or belong to the same political party. No  
38 appointed board member may be an officer or em-  
39 ployee of the United States or this state. Appointed  
40 board members may be reappointed to serve additional  
41 terms. All members of the board shall be citizens  
42 of the state. Each appointed member of the board,  
43 before entering upon his duties, shall comply with  
44 the requirements of article one, chapter six of this  
45 code and give bond in the sum of twenty-five thousand  
46 dollars. Appointed members may be removed from the  
47 board only for the same causes as elective state officers  
48 may be removed.

49 Annually the board shall elect one of its appointed  
50 members as chairman, another as vice-chairman and  
51 appoint a secretary-treasurer, who need not be a  
52 member of the board. Three members of the board  
53 shall constitute a quorum and the affirmative vote of  
54 three members shall be necessary for any action taken  
55 by vote of the board. No vacancy in the membership  
56 of the board shall impair the rights of a quorum  
57 by such vote to exercise all the rights and perform  
58 all the duties of the board and the authority. The  
59 person appointed as secretary-treasurer shall give bond  
60 in the sum of fifty thousand dollars. If a board mem-  
61 ber is appointed as secretary-treasurer, he shall give  
62 bond in the sum of twenty-five thousand dollars in ad-  
63 dition to the bond required in the preceding para-  
64 graph.

65 The director of the department of health shall not  
66 receive any compensation for serving as a board mem-  
67 ber. Each of the four appointed members of the board  
68 shall receive compensation of fifty dollars for each day  
69 actually spent in attending meetings of the board or in  
70 the discharge of his duties as a member of the board,  
71 but not to exceed two thousand five hundred dollars in

72 any fiscal year. Each of the five board members shall  
73 be reimbursed for all reasonable and necessary expenses  
74 actually incurred in the performance of his duties as a  
75 member of the board. All such compensation and ex-  
76 penses incurred by board members shall be payable  
77 solely from funds of the authority or from funds appro-  
78 priated for such purpose by the Legislature and no li-  
79 ability or obligation shall be incurred by the authority  
80 beyond the extent to which moneys are available from  
81 funds of the authority or from such appropriation.

82 The board shall meet at least four times annually and  
83 at any time upon the call of its chairman or upon the  
84 request in writing to the chairman of three board mem-  
85 bers.

86 The board shall appoint a director of the authority.  
87 The director shall have successfully completed one full  
88 year of graduate school in the discipline of systems  
89 analysis or environmental engineering and, in addition,  
90 shall have one year of work experience in systems an-  
91 alysis and three years of work experience in solid waste  
92 management, or four years' experience in solid waste man-  
93 agement.

**§16-26-5. Authority to designate and establish disposal sheds;  
construction, maintenance, etc., of disposal proj-  
ects; loan agreements; compliance with federal  
and state law.**

1 To accomplish the public policy and purpose and to  
2 meet the responsibility of the state as set forth in this  
3 article, the West Virginia resource recovery—solid waste  
4 disposal authority shall designate and establish solid  
5 waste disposal sheds and it may initiate, acquire, con-  
6 struct, maintain, repair and operate solid waste disposal  
7 projects or cause the same to be operated pursuant to  
8 a lease, sublease or agreement with any person or gov-  
9 ernmental agency; may make loans and grants to per-  
10 sons and to governmental agencies for the acquisition  
11 or construction of solid waste disposal projects by such  
12 persons and governmental agencies; and may issue solid  
13 waste disposal revenue bonds of this state, payable solely  
14 from revenues, to pay the cost of, or finance, in whole or

15 in part, by loans to governmental agencies, such projects.  
16 A solid waste disposal project shall not be undertaken  
17 unless the authority determines that the project is con-  
18 sistent with federal law, with its solid waste disposal shed  
19 plan, with the standards set by the state water resources  
20 board and the division of water resources of the depart-  
21 ment of natural resources for any waters of the state which  
22 may be affected thereby, with the air quality standards set  
23 by the West Virginia air pollution control commission and  
24 with health standards set by the department of health.  
25 Any resolution of the authority providing for acquiring  
26 or constructing such projects or for making a loan or grant  
27 for such projects shall include a finding by the authority  
28 that such determinations have been made. A loan agree-  
29 ment shall be entered into between the authority and each  
30 governmental agency to which a loan is made for the ac-  
31 quisition or construction of a solid waste disposal project,  
32 which loan agreement shall include without limitation the  
33 following provisions:

34 (1) The cost of such project, the amount of the loan, the  
35 terms of repayment of such loan and the security therefor,  
36 which may include, in addition to the pledge of all  
37 revenues from such project after a reasonable allowance  
38 for operation and maintenance expenses, a deed of trust  
39 or other appropriate security instrument creating a lien  
40 on such project;

41 (2) The specific purposes for which the proceeds of  
42 the loan shall be expended, the procedures as to the  
43 disbursement of loan proceeds and the duties and obliga-  
44 tions imposed upon the governmental agency in regard  
45 to the construction or acquisition of the project;

46 (3) The agreement of the governmental agency to  
47 impose, collect, and, if required to repay the obligations  
48 of such governmental agency under the loan agreement,  
49 increase service charges from persons using said project,  
50 which service charges shall be pledged for the repayment  
51 of such loan together with all interest, fees and charges  
52 thereon and all other financial obligations of such govern-  
53 mental agency under the loan agreement; and

54 (4) The agreement of the governmental agency to  
55 comply with all applicable laws, rules and regulations

56 issued by the authority or other state, federal and local  
57 bodies in regard to the construction, operation, mainte-  
58 nance and use of the project.

59 The authority shall comply with all of the provisions  
60 of federal law and of article one of this chapter and any  
61 rules and regulations promulgated thereunder which per-  
62 tain to solid waste collection and disposal.

**§16-26-6. Powers, duties and responsibilities of authority generally.**

1 The West Virginia resource recovery—solid waste  
2 disposal authority may exercise all powers necessary or  
3 appropriate to carry out and effectuate its corporate  
4 purpose. The authority may:

5 (1) Adopt, and from time to time, amend and repeal  
6 bylaws necessary and proper for the regulation of its  
7 affairs and the conduct of its business, and rules and  
8 regulations, promulgated pursuant to the provisions  
9 of chapter twenty-nine-a of this code, to implement  
10 and make effective its powers and duties.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office which shall be in  
13 Kanawha county, and, if necessary, regional suboffices  
14 at locations properly designated or provided.

15 (4) Sue and be sued in its own name and plead and  
16 be impleaded in its own name, and particularly to en-  
17 force the obligations and covenants made under sections  
18 ten, eleven and sixteen of this article. Any actions  
19 against the authority shall be brought in the circuit  
20 court of Kanawha county.

21 (5) Make loans and grants to persons and to gov-  
22 ernmental agencies for the acquisition or construction  
23 of solid waste disposal projects and adopt rules and  
24 procedures for making such loans and grants.

25 (6) Acquire, construct, reconstruct, enlarge, improve,  
26 furnish, equip, maintain, repair, operate, lease or rent  
27 to, or contract for operation by a governmental agency  
28 or person, solid waste disposal projects, and, in ac-  
29 cordance with chapter twenty-nine-a of this code,

30 adopt rules and regulations for the use of such proj-  
31 ects.

32 (7) Make available the use or services of any solid  
33 waste disposal project to one or more persons, one  
34 or more governmental agencies, or any combination  
35 thereof.

36 (8) Issue solid waste disposal revenue bonds and  
37 notes and solid waste disposal revenue refunding bonds  
38 of the state, payable solely from revenues as provided in  
39 section nine of this article unless the bonds are refunded  
40 by refunding bond, for the purpose of paying all or any  
41 part of the cost of or financing by loans to governmental  
42 agencies one or more solid waste disposal projects or  
43 parts thereof.

44 (9) Acquire by gift or purchase, hold and dispose of  
45 real and personal property in the exercise of its powers  
46 and the performance of its duties as set forth in this  
47 article.

48 (10) Acquire in the name of the state, by purchase or  
49 otherwise, on such terms and in such manner as it deems  
50 proper, or by the exercise of the right of eminent domain  
51 in the manner provided in chapter fifty-four of this code,  
52 such public or private lands, or parts thereof or rights  
53 therein, rights-of-way, property, rights, easements and in-  
54 terests it deems necessary for carrying out the provisions  
55 of this article, but excluding the acquisition by the exer-  
56 cise of the right of eminent domain of any solid waste dis-  
57 posal facility operated under permits issued pursuant to  
58 the provisions of article one, chapter sixteen of this code  
59 and owned by any person or governmental agency. This  
60 article does not authorize the authority to take or disturb  
61 property or facilities belonging to any public utility or to  
62 a common carrier, which property or facilities are required  
63 for the proper and convenient operation of such public  
64 utility or common carrier, unless provision is made for the  
65 restoration, relocation or duplication of such property or  
66 facilities elsewhere at the sole cost of the authority.

67 (11) Make and enter into all contracts and agreements  
68 and execute all instruments necessary or incidental to



69 the performance of its duties and the execution of its  
70 powers. When the cost under any such contract or  
71 agreement, other than compensation for personal services,  
72 involves an expenditure of more than two thousand  
73 dollars, the authority shall make a written contract with  
74 the lowest responsible bidder after public notice pub-  
75 lished as a Class II legal advertisement in compliance  
76 with the provisions of article three, chapter fifty-nine  
77 of this code, the publication area for such publication to  
78 be the county wherein the work is to be performed or  
79 which is affected by the contract, which notice shall  
80 state the general character of the work and the general  
81 character of the materials to be furnished, the place  
82 where plans and specifications therefor may be examined  
83 and the time and place of receiving bids. A contract or  
84 lease for the operation of a solid waste disposal project  
85 constructed and owned by the authority or an agreement  
86 for cooperation in the acquisition or construction of a  
87 solid waste disposal project pursuant to section sixteen  
88 of this article is not subject to the foregoing requirements  
89 and the authority may enter into such contract or lease  
90 or such agreement pursuant to negotiation and upon  
91 such terms and conditions and for such period as it finds  
92 to be reasonable and proper under the circumstances  
93 and in the best interests of proper operation or of efficient  
94 acquisition or construction of such project. The authority  
95 may reject any and all bids. A bond with good and  
96 sufficient surety, approved by the authority, shall be re-  
97 quired of all contractors in an amount equal to at least  
98 fifty percent of the contract price, conditioned upon the  
99 faithful performance of the contract.

100 (12) Employ managers, superintendents, engineers,  
101 accountants, auditors and other employees, and retain or  
102 contract with consulting engineers, financial consultants,  
103 accounting experts, architects, attorneys and such other  
104 consultants and independent contractors as are necessary  
105 in its judgment to carry out the provisions of this article,  
106 and fix the compensation or fees thereof. All expenses  
107 thereof shall be payable solely from the proceeds of  
108 solid waste disposal revenue bonds or notes issued by the

109 authority, from revenues and from funds appropriated  
110 for such purpose by the Legislature.

111 (13) Receive and accept from any federal agency,  
112 subject to the approval of the governor, grants for or in  
113 aid of the construction of any solid waste disposal project  
114 or for research and development with respect to solid  
115 waste disposal projects and solid waste disposal sheds  
116 and receive and accept from any source aid or contribu-  
117 tions of money, property, labor or other things of value,  
118 to be held, used and applied only for the purposes for  
119 which such grants and contributions are made.

120 (14) Engage in research and development with respect  
121 to solid waste disposal projects and solid waste disposal  
122 sheds.

123 (15) Purchase fire and extended coverage and liability  
124 insurance for any solid waste disposal project and for  
125 the principal office and suboffices of the authority, in-  
126 surance protecting the authority and its officers and em-  
127 ployees against liability, if any, for damage to property  
128 or injury to or death of persons arising from its opera-  
129 tions and any other insurance the authority may agree to  
130 provide under any resolution authorizing the issuance  
131 of solid waste disposal revenue bonds or in any trust  
132 agreement securing the same.

133 (16) Charge, alter and collect rentals and other  
134 charges for the use or services of any solid waste dis-  
135 posal project as provided in this article, subject to the  
136 prior approval of the public service commission of West  
137 Virginia, and charge and collect reasonable interest, fees  
138 and other charges in connection with the making and  
139 servicing of loans to governmental agencies in furtherance  
140 of the purposes of this article.

141 (17) Establish or increase reserves from moneys re-  
142 ceived or to be received by the authority to secure or  
143 to pay the principal of and interest on the bonds and  
144 notes issued by the authority pursuant to this article.

145 (18) Do all acts necessary and proper to carry out  
146 the powers expressly granted to the authority in this  
147 article.

**§16-26-7. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.**

1 In order to insure that the public purposes to be  
2 served by the authority may be properly carried out and  
3 in order to assure the timely payment to the authority of  
4 all sums due and owing under loan agreements with  
5 governmental agencies, as referred to in section five  
6 of this article, notwithstanding any provision to the  
7 contrary elsewhere contained in this code, in event of  
8 any default by a governmental agency under such a loan  
9 agreement, the authority shall have, and may, at its  
10 option, exercise the following rights and remedies in  
11 addition to the rights and remedies conferred by law or  
12 pursuant to said loan agreement:

13 (1) The authority may directly impose, in its own  
14 name and for its own benefit, service charges determined  
15 by it to be necessary under the circumstances upon all  
16 users of the solid waste disposal project to be acquired  
17 or constructed pursuant to such loan agreement, and  
18 proceed directly to enforce and collect such service  
19 charges, together with all necessary costs of such en-  
20 forcement and collection.

21 (2) The authority may exercise, in its own name or in  
22 the name of and as agent for the governmental agency,  
23 all of the rights, authority, powers and remedies of the  
24 governmental agency with respect to the solid waste dis-  
25 posal project or which may be conferred upon the gov-  
26 ernmental agency by statute, rule, regulation or judicial  
27 decision, including without limitation all rights and  
28 remedies with respect to users of such solid waste dis-  
29 posal project.

30 (3) The authority may, by civil action, mandamus or  
31 other judicial or administrative proceeding, compel per-  
32 formance by such governmental agency of all of the  
33 terms and conditions of such loan agreement including  
34 without limitation the adjustment and increase of service  
35 charges as required to repay the loan or otherwise satisfy  
36 the terms of such loan agreement, the enforcement and

37 collection of such service charges and the enforcement  
38 by such governmental agency of all rights and remedies  
39 conferred by statute, rule, regulation or judicial decision.

**§16-26-8. Development and designation of solid waste disposal  
sheds by authority.**

1 Prior to beginning or raising the cost of the first solid  
2 waste disposal project and within one year of the effec-  
3 tive date of this article, the authority shall divide the  
4 state into geographical areas for solid waste manage-  
5 ment which shall be known as solid waste disposal sheds.  
6 Before it designates the sheds, the authority shall con-  
7 sult with the governing bodies of the counties and mu-  
8 nicipalities in the state and obtain and evaluate their  
9 opinions as to how many sheds there should be and  
10 where their boundaries should be located. The authority  
11 shall then cause informational gathering studies and fea-  
12 sibility and cost studies to be made in order for it to  
13 designate the solid waste disposal sheds within each of  
14 which the most dependable, effective, efficient and eco-  
15 nomical solid waste disposal projects may be established.  
16 The sheds shall not overlap and shall cover the entire  
17 state.

18 Although solid waste disposal sheds may be designated  
19 by the authority without respect to political or geo-  
20 graphical boundaries, it shall consider such boundaries,  
21 regions as defined in section two, article twenty-five,  
22 chapter eight of this code, and any county or municipal  
23 comprehensive plan as defined in section three, article  
24 twenty-four, chapter eight of this code in determining  
25 the area and boundary of each shed. The authority shall  
26 designate the sheds so that:

27 (1) The goal of providing solid waste collection and  
28 disposal service to each household, business and industry  
29 in the state can reasonably be achieved.

30 (2) The total cost of solid waste collection and dis-  
31 posal and the cost of solid waste collection and disposal  
32 within each shed and per person can be kept as low as  
33 possible.

34 (3) Solid waste collection and disposal service, facili-

35 ties and projects can be integrated in the most feasible,  
36 dependable, effective, efficient and economical manner.

**§16-26-9. Expenditure of funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department.**

1 With the approval of the authority, the director of  
2 the department of health shall expend out of any funds  
3 available for the purpose such moneys as are necessary  
4 for the study and engineering of any proposed solid waste  
5 disposal project and may use its employees and consul-  
6 tants for that purpose. All such expenses incurred by  
7 the director of the department of health prior to the  
8 issuance of solid waste disposal revenue bonds or notes  
9 under this article shall be paid by him and charged  
10 to the appropriate solid waste disposal project. The  
11 director of the department of health shall keep proper  
12 records and accounts showing the amounts so charged.  
13 Upon the sale of solid waste disposal revenue bonds or  
14 notes for a solid waste disposal project, the moneys so  
15 expended by the director of the department of health  
16 with the approval of the authority in connection with  
17 such project shall be repaid to the department of health  
18 from the proceeds of such bonds or notes.

**§16-26-10. Authority empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.**

1 The authority is hereby empowered to issue, from time  
2 to time, solid waste disposal revenue bonds and notes  
3 of the state in such principal amounts as the authority  
4 deems necessary to pay the cost of or finance in whole  
5 or in part by loans to governmental agencies, one or  
6 more solid waste development projects, but the ag-  
7 gregate amount of all issues of bonds and notes outstand-  
8 ing at one time for all projects authorized hereunder  
9 shall not exceed that amount capable of being serviced  
10 by revenues received from such projects, and shall not  
11 exceed in the aggregate the sum of fifty million  
12 dollars.

13 The authority may, from time to time, issue renewal  
14 notes, issue bonds to pay such notes and whenever it  
15 deems refunding expedient, refund any bonds by the is-  
16 suance of solid waste disposal revenue refunding bonds  
17 of the state. Except as may otherwise be expressly pro-  
18 vided in this article or by the authority, every issue  
19 of its bonds or notes shall be obligations of the author-  
20 ity payable out of the revenues and reserves created  
21 for such purposes by the authority, which are pledged  
22 for such payment, without preference or priority of  
23 the first bonds issued, subject only to any agreements  
24 with the holders of particular bonds or notes pledg-  
25 ing any particular revenues. Such pledge shall be  
26 valid and binding from the time the pledge is made  
27 and the revenue so pledged and thereafter received  
28 by the authority shall immediately be subject to the  
29 lien of such pledge without any physical delivery  
30 thereof or further act and the lien of any such  
31 pledge shall be valid and binding as against all  
32 parties having claims of any kind in tort, contract or  
33 otherwise against the authority irrespective of whether  
34 such parties have notice thereof. All such bonds and  
35 notes shall have all the qualities of negotiable instru-  
36 ments.

37 The bonds and notes shall be authorized by resolution  
38 of the authority, shall bear such dates and shall mature at  
39 such times, in the case of any such note or any renewals  
40 thereof not exceeding five years from the date of issue of  
41 such original note, and in the case of any such bond not  
42 exceeding fifty years from the date of issue, as such  
43 resolution may provide. The bonds and notes shall bear  
44 interest at such rate, be in such denominations, be in such  
45 form, either coupon or registered, carry such registration  
46 privileges, be payable in such medium of payment, at such  
47 place and be subject to such terms of redemption as the  
48 authority may authorize. The authority may sell such  
49 bonds and notes at public or private sale, at the price the  
50 authority determines. The bonds and notes shall be  
51 executed by the chairman and vice-chairman of the  
52 authority, both of whom may use facsimile signatures.  
53 The official seal of the authority or a facsimile thereof

54 shall be affixed thereto or printed thereon and attested,  
55 manually or by facsimile signature, by the secretary-  
56 treasurer of the authority, and any coupons attached  
57 thereto shall bear the signature or facsimile signature of  
58 the chairman of the authority. In case any officer whose  
59 signature, or a facsimile of whose signature, appears on  
60 any bonds, notes or coupons ceases to be such officer be-  
61 fore delivery of such bonds or notes, such signature or  
62 facsimile is nevertheless sufficient for all purposes the  
63 same as if he had remained in office until such delivery  
64 and, in case the seal of the authority has been changed  
65 after a facsimile has been imprinted on such bonds or  
66 notes, such facsimile seal will continue to be sufficient  
67 for all purposes.

68 Any resolution authorizing any bonds or notes or any  
69 issue thereof may contain provisions (subject to such  
70 agreements with bondholders or noteholders as may then  
71 exist, which provisions shall be a part of the contract  
72 with the holders thereof) as to pledging all or any part of  
73 the revenues of the authority to secure the payment of  
74 the bonds or notes or of any issue thereof; the use and  
75 disposition of revenues of the authority; a covenant to fix,  
76 alter and collect rentals, fees, service charges and other  
77 charges so that pledged revenues will be sufficient to pay  
78 the costs of operation, maintenance and repairs, pay prin-  
79 cipal of and interest on bonds or notes secured by the  
80 pledge of such revenues and provide such reserves as  
81 may be required by the applicable resolution or trust  
82 agreement; the setting aside of reserve funds, sinking  
83 funds or replacement and improvement funds and the  
84 regulation and disposition thereof; the crediting of the  
85 proceeds of the sale of bonds or notes to and among the  
86 funds referred to or provided for in the resolution  
87 authorizing the issuance of the bonds or notes; the use,  
88 lease, sale or other disposition of any solid waste disposal  
89 project or any other assets of the authority; limitations  
90 on the purpose to which the proceeds of sale of bonds or  
91 notes may be applied and pledging such proceeds to  
92 secure the payment of the bonds or notes or of any issue  
93 thereof; agreement of the authority to do all things  
94 necessary for the authorization, issuance and sale of bonds

95 in such amounts as may be necessary for the timely re-  
96 tirement of notes issued in anticipation of the issuance  
97 of bonds; limitations on the issuance of additional bonds  
98 or notes; the terms upon which additional bonds or notes  
99 may be issued and secured; the refunding of outstanding  
100 bonds or notes; the procedure, if any, by which the terms  
101 of any contract with bondholders or noteholders may be  
102 amended or abrogated, the holders of which must consent  
103 thereto, and the manner in which such consent may be  
104 given; limitations on the amount of moneys to be ex-  
105 pended by the authority for operating, administrative or  
106 other expenses of the authority; securing any bonds or  
107 notes by a trust agreement; and any other matters, of  
108 like or different character, which in any way affect the  
109 security or protection of the bonds or notes.

110 In the event that the sum of all reserves pledged to  
111 the payment of such bonds or notes shall be less than  
112 the minimum reserve requirements established in any  
113 resolution or resolutions authorizing the issuance of such  
114 bonds or notes, the chairman of the authority shall  
115 certify, on or before the first day of December of each  
116 year, the amount of such deficiency to the governor of  
117 the state, for inclusion, if the governor shall so elect,  
118 of the amount of such deficiency in the budget to be  
119 submitted to the next session of the Legislature for  
120 appropriation to the authority to be pledged for pay-  
121 ment of such bonds or notes: *Provided*, That the Legis-  
122 lature shall not be required to make any appropriation  
123 so requested, and the amount of such deficiencies shall  
124 not constitute a debt or liability of the state.

125 Neither the members of the authority nor any person  
126 executing the bonds or notes shall be liable personally on  
127 the bonds or notes or be subject to any personal liability  
128 or accountability by reason of the issuance thereof.

**§16-26-11. Trustee for bondholders; contents of trust agree-  
ment.**

1 In the discretion of the authority, any solid waste  
2 disposal revenue bonds or notes or solid waste disposal  
3 revenue refunding bonds issued by the authority under  
4 this article may be secured by a trust agreement between



5 the authority and a corporate trustee, which trustee may  
6 be any trust company or banking institution having the  
7 powers of a trust company within or without this state.

8 Any such trust agreement may pledge or assign rev-  
9 enues of the authority to be received, but shall not convey  
10 or mortgage any solid waste disposal project or any part  
11 thereof. Any such trust agreement or any resolution pro-  
12 viding for the issuance of such bonds or notes may  
13 contain such provisions for protecting and enforcing the  
14 rights and remedies of the bondholders or noteholders as  
15 are reasonable and proper and not in violation of law,  
16 including the provisions contained in section nine of this  
17 article, covenants setting forth the duties of the au-  
18 thority in relation to the acquisition of property, the  
19 construction, improvement, maintenance, repair, opera-  
20 tion and insurance of the solid waste disposal project,  
21 the cost of which is paid in whole or in part from the  
22 proceeds of such bonds or notes, the rentals or other  
23 charges to be imposed for the use or services of any solid  
24 waste disposal project, provisions with regard to the  
25 payment of the principal of and interest, charges and fees  
26 on loans made to governmental agencies from the proceeds  
27 of such bonds or notes, the custody, safeguarding, and  
28 application of all moneys and provisions for the employ-  
29 ment of consulting engineers in connection with the con-  
30 struction or operation of such solid waste disposal project.  
31 Any banking institution or trust company incorporated  
32 under the laws of this state which may act as depository  
33 of the proceeds of bonds or notes or of revenues shall  
34 furnish such indemnifying bonds or pledge such securities  
35 as are required by the authority. Any such trust agree-  
36 ment may set forth the rights and remedies of the bond-  
37 holders and noteholders and of the trustee and may re-  
38 strict individual rights of action by bondholders and note-  
39 holders as customarily provided in trust agreements or  
40 trust indentures securing similar bonds. Such trust agree-  
41 ment may contain such other provisions as the authority  
42 deems reasonable and proper for the security of the  
43 bondholders or noteholders. All expenses incurred in  
44 carrying out the provisions of any such trust agreement  
45 may be treated as a part of the cost of the operation of

46 the solid waste disposal project. Any such trust agree-  
47 ment or resolution authorizing the issuance of solid waste  
48 disposal revenue bonds may provide the method whereby  
49 the general administrative overhead expenses of the  
50 authority shall be allocated among the several projects  
51 acquired or constructed by it as a factor of the operating  
52 expenses of each such project.

**§16-26-12. Legal remedies of bondholders and trustees.**

1 Any holder of solid waste disposal revenue bonds is-  
2 sued under the authority of this article or any of the  
3 coupons appertaining thereto and the trustee under any  
4 trust agreement, except to the extent the rights given  
5 by this article may be restricted by the applicable resolu-  
6 tion or such trust agreement, may by civil action, man-  
7 damus or other proceeding, protect and enforce any rights  
8 granted under the laws of this state or granted under  
9 this article, by the trust agreement or by the resolution  
10 authorizing the issuance of such bonds, and may enforce  
11 and compel the performance of all duties required by  
12 this article, or by the trust agreement or resolution, to  
13 be performed by the authority or any officer or employee  
14 thereof, including the fixing, charging and collecting of  
15 sufficient rentals, fees, service charges or other charges.

**§16-26-13. Bonds and notes not debt of state, county, municipi-  
ality or of any political subdivision; expenses  
incurred pursuant to article.**

1 Solid waste disposal revenue bonds and notes and solid  
2 waste disposal revenue refunding bonds issued under  
3 authority of this article and any coupons in connection  
4 therewith shall not constitute a debt or a pledge of the  
5 faith and credit or taxing power of this state or of any  
6 county, municipality or any other political subdivision  
7 of this state, and the holders or owners thereof shall  
8 have no right to have taxes levied by the Legislature or  
9 taxing authority of any county, municipality or any other  
10 political subdivision of this state for the payment of the  
11 principal thereof or interest thereon, but such bonds and  
12 notes shall be payable solely from the revenues and funds  
13 pledged for their payment as authorized by this article

14 unless the notes are issued in anticipation of the issuance  
15 of bonds or the bonds are refunded by refunding bonds  
16 issued under authority of this article, which bonds or  
17 refunding bonds shall be payable solely from revenues  
18 and funds pledged for their payment as authorized by  
19 this article. All such bonds and notes shall contain on  
20 the face thereof a statement to the effect that the bonds  
21 or notes, as to both principal and interest, are not debts  
22 of the state or any county, municipality or political sub-  
23 division thereof, but are payable solely from revenues  
24 and funds pledged for their payment.

25 All expenses incurred in carrying out the provisions  
26 of this article shall be payable solely from funds provided  
27 under authority of this article. This article does not  
28 authorize the authority to incur indebtedness or liability  
29 on behalf of or payable by the state or any county, mu-  
30 nicipality or political subdivision thereof.

**§16-26-14. Use of funds, properties, etc., by authority; restric-  
tions thereon.**

1 All moneys, properties and assets acquired by the au-  
2 thority, whether as proceeds from the sale of solid waste  
3 disposal revenue bonds or as revenues or otherwise, shall  
4 be held by it in trust for the purposes of carrying out its  
5 powers and duties, and shall be used and reused in ac-  
6 cordance with the purposes and provisions of this article.  
7 Such moneys shall at no time be commingled with other  
8 public funds. Such moneys, except as otherwise provided  
9 in any resolution authorizing the issuance of solid waste  
10 disposal revenue bonds or in any trust agreement se-  
11 curing the same, or except when invested pursuant to  
12 section fifteen of this article, shall be kept in appro-  
13 priate depositories and secured as provided and required  
14 by law. The resolution authorizing the issuance of such  
15 bonds of any issue or the trust agreement securing such  
16 bonds shall provide that any officer to whom, or any  
17 banking institution or trust company to which, such  
18 moneys are paid shall act as trustee of such moneys and  
19 hold and apply them for the purposes hereof, subject to  
20 the conditions this article and such resolution or trust  
21 agreement provide.

**§16-26-15. Investment of funds by authority.**

1 The authority is hereby authorized and empowered to  
2 invest any funds not needed for immediate disbursement  
3 in any of the following securities:

4 (1) Direct obligations of or obligations guaranteed by  
5 the United States of America;

6 (2) Bonds, debentures, notes or other evidences of  
7 indebtedness issued by any of the following agencies:  
8 Banks for cooperatives; federal intermediate credit banks;  
9 federal home loan bank system; Export-Import Bank of  
10 the United States; federal land banks; the Federal Na-  
11 tional Mortgage Association or the Government National  
12 Mortgage Association;

13 (3) Public housing bonds issued by public agencies or  
14 municipalities and fully secured as to the payment of  
15 both principal and interest by a pledge of annual contri-  
16 butions under an annual contributions contract or con-  
17 tracts with the United States of America; or temporary  
18 notes issued by public agencies or municipalities or pre-  
19 liminary loan notes issued by public agencies or munici-  
20 palities, in each case, fully secured as to the payment of  
21 both principal and interest by a requisition or payment  
22 agreement with the United States of America;

23 (4) Certificates of deposit secured by obligations of  
24 the United States of America;

25 (5) Direct obligations of or obligations guaranteed by  
26 the state of West Virginia; or

27 (6) Direct and general obligations of any other state  
28 within the territorial United States, to the payment of  
29 the principal of and interest on which the full faith and  
30 credit of such state is pledged: *Provided*, That at the time  
31 of their purchase, such obligations are rated in either  
32 of the two highest rating categories by a nationally  
33 recognized bond-rating agency.

34 Funds of the authority in excess of current needs, ex-  
35 cept as otherwise provided in any resolution authorizing  
36 the issuance of its solid waste disposal revenue bonds or  
37 in any trust agreement securing the same, may be in-  
38 vested by the authority in any security or securities in

39 which the West Virginia state board of investments is  
40 authorized to invest under sections nine and ten, article  
41 six, chapter twelve of this code, except those securities  
42 specified in subdivisions (f) and (g) of said section nine.  
43 Income from all such investments of moneys in any fund  
44 shall be credited to such funds as the authority deter-  
45 mines, subject to the provisions of any such resolution  
46 or trust agreement and such investments may be sold at  
47 such times as the authority determines.

**§16-26-16. Rentals, fees, service charges and other revenues  
from solid waste disposal projects; contracts and  
leases of authority; cooperation of other govern-  
mental agencies; bonds of such agencies.**

1 This section shall apply to any solid waste disposal proj-  
2 ect or projects which are owned in whole or in part by  
3 the authority.

4 The authority may charge, alter and collect rentals, fees,  
5 service charges or other charges for the use or services of  
6 any solid waste disposal project, and contract in the man-  
7 ner provided by this section with one or more persons, one  
8 or more governmental agencies, or any combination  
9 thereof, desiring the use or services thereof, and fix the  
10 terms, conditions, rentals, fees, service charges or other  
11 charges for such use or services. Such rentals, fees, ser-  
12 vice charges or other charges shall not be subject to su-  
13 pervision or regulation by any other authority, depart-  
14 ment, commission, board, bureau or agency of the state,  
15 and such contract may provide for acquisition by such  
16 person or governmental agency of all or any part of such  
17 solid waste disposal project for such consideration payable  
18 over the period of the contract or otherwise as the author-  
19 ity in its sole discretion determines to be appropriate, but  
20 subject to the provisions of any resolution authorizing the  
21 issuance of solid waste disposal revenue bonds or notes or  
22 solid waste disposal revenue refunding bonds of the au-  
23 thority or any trust agreement securing the same. Any  
24 governmental agency which has power to construct, oper-  
25 ate and maintain solid waste disposal facilities may enter  
26 into a contract or lease with the authority whereby the  
27 use or services of any solid waste disposal project of the

28 authority will be made available to such governmental  
29 agency and pay for such use or services such rentals, fees,  
30 service charges or other charges as may be agreed to by  
31 such governmental agency and the authority.

32 Any governmental agency or agencies or combination  
33 thereof may cooperate with the authority in the acquisition  
34 or construction of a solid waste disposal project and  
35 shall enter into such agreements with the authority as are  
36 necessary, with a view to effective cooperative action and  
37 safeguarding of the respective interests of the parties  
38 thereto, which agreements shall provide for such contributions  
39 by the parties thereto in such proportion as  
40 may be agreed upon and such other terms as may be  
41 mutually satisfactory to the parties, including without  
42 limitation the authorization of the construction of the  
43 project by one of the parties acting as agent for all of  
44 the parties and the ownership and control of the project  
45 by the authority to the extent necessary or appropriate  
46 for purposes of the issuance of solid waste disposal revenue  
47 bonds by the authority. Any governmental agency  
48 may provide such contribution as is required under such  
49 agreements by the appropriation of money or, if authorized  
50 by a favorable vote of the electors to issue bonds or  
51 notes or levy taxes or assessments and issue notes or  
52 bonds in anticipation of the collection thereof, by the  
53 issuance of bonds or notes or by the levying of taxes or  
54 assessments and the issuance of bonds or notes in anticipation  
55 of the collection thereof, and by the payment of  
56 such appropriated money or the proceeds of such bonds  
57 or notes to the authority pursuant to such agreements.

58 Any governmental agency, pursuant to a favorable vote  
59 of the electors in an election held before or after the  
60 effective date of this section for the purpose of issuing  
61 bonds to provide funds to acquire, construct or equip, or  
62 provide real estate and interests in real estate for a  
63 solid waste disposal project, whether or not the governmental  
64 agency at the time of such election had the authority to pay  
65 the proceeds from such bonds or notes issued in anticipation  
66 thereof to the authority as provided in this section, may issue  
67 such bonds or notes in

68 anticipation of the issuance thereof and pay the proceeds  
69 thereof to the authority in accordance with an agreement  
70 between such governmental agency and the authority:  
71 *Provided*, That the legislative authority of the govern-  
72 mental agency finds and determines that the solid waste  
73 disposal project to be acquired or constructed by the  
74 authority in cooperation with such governmental agency  
75 will serve the same public purpose and meet substantially  
76 the same public need as the project otherwise proposed  
77 to be acquired or constructed by the governmental  
78 agency with the proceeds of such bonds or notes.

**§16-26-17. Maintenance, operation and repair of projects;  
repair of damaged property; reports by authority  
to governor and Legislature.**

1 Each solid waste development project, when constructed  
2 and placed in operation, shall be maintained and kept in  
3 good condition and repair by the authority or if owned  
4 by a governmental agency, by such governmental agency,  
5 or the authority or such governmental agency shall cause  
6 the same to be maintained and kept in good condition and  
7 repair. Each such project owned by the authority shall  
8 be operated by such operating employees as the authority  
9 employs or pursuant to a contract or lease with a gov-  
10 ernmental agency or person. All public or private prop-  
11 erty damaged or destroyed in carrying out the provision  
12 of this article and in the exercise of the powers granted  
13 hereunder with regard to any project shall be restored  
14 or repaired and placed in its original condition, as nearly  
15 as practicable, or adequate compensation made therefor  
16 out of funds provided in accordance with the provisions  
17 of this article.

18 As soon as possible after the close of each fiscal year,  
19 the authority shall make an annual report of its activi-  
20 ties for the preceding fiscal year to the governor and  
21 the Legislature. Each such report shall set forth a com-  
22 plete operating and financial statement covering the  
23 authority's operations during the preceding fiscal year.  
24 The authority shall cause an audit of its books and  
25 accounts to be made at least once each fiscal year by  
26 certified public accountants and the cost thereof may be  
27 treated as a part of the cost of construction or of opera-

28 tion of its projects. A report of the audit shall be sub-  
29 mitted to the governor and the Legislature.

**§16-26-18. Solid waste disposal revenue bonds lawful investments.**

1 The provisions of sections ten and eleven, article six,  
2 chapter twelve of this code notwithstanding, all solid  
3 waste disposal revenue bonds issued pursuant to this  
4 article shall be lawful investments for the West Vir-  
5 ginia state board of investments and shall also be lawful  
6 investments for financial institutions as defined in section  
7 two, article one, chapter thirty-one-a of this code, and for  
8 insurance companies.

**§16-26-19. Exemption from taxation.**

1 The authority shall not be required to pay any taxes or  
2 assessments upon any solid waste disposal project or  
3 upon any property acquired or used by the authority  
4 or upon the income therefrom. Bonds and notes issued  
5 by the authority and all interest and income thereon  
6 shall be exempt from all taxation by this state, or any  
7 county, municipality, political subdivision or agency  
8 thereof, except inheritance taxes.

**§16-26-20. Governmental agencies authorized to convey property.**

1 All governmental agencies, notwithstanding any pro-  
2 vision of law to the contrary, may lease, lend, grant or  
3 convey to the authority, at its request, upon such terms  
4 as the proper authorities of such governmental agencies  
5 deem reasonable and fair and without the necessity for  
6 an advertisement, auction, order of court or other action  
7 or formality, other than the regular and formal action  
8 of the governmental agency concerned, any real property  
9 or interests therein, including improvements thereto or  
10 personal property which is necessary or convenient to the  
11 effectuation of the authorized purposes of the authority,  
12 including public roads and other real property or interests  
13 therein, including improvements thereto or personal prop-  
14 erty already devoted to public use.



**§16-26-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.**

1 No officer, member or employee of the authority may  
2 be financially interested, directly or indirectly, in any  
3 contract of any person with the authority, or in the sale  
4 of any property, real or personal, to or by the authority.  
5 This section does not apply to contracts or purchases of  
6 property, real or personal, between the authority and  
7 any governmental agency.

8 No officer, member or employee of the authority may  
9 have or acquire any financial interest, either direct or  
10 indirect, in any project or activity of the authority or in  
11 any services or material to be used or furnished in con-  
12 nection with any project or activity of the authority.  
13 If an officer, member or employee of the authority has  
14 any such interest at the time he becomes an officer, mem-  
15 ber or employee of the authority, he shall disclose and  
16 divest himself of it. Failure to do so shall be cause for  
17 dismissal from the position he holds with the authority.  
18 No officer, member or employee of the authority may  
19 accept a gratuity from any person doing business with  
20 the authority or from any person for the purpose of  
21 gaining favor with the authority.

22 Any officer, member or employee of the authority who  
23 has any financial interest prohibited by this section or  
24 who fails to comply with its provisions shall be guilty of  
25 a misdemeanor, and, upon conviction thereof, shall be  
26 fined not more than one thousand dollars, or imprisoned  
27 in the county jail not more than one year, or both fined  
28 and imprisoned.

**§16-26-22. Meetings and records of authority to be open to public with certain exceptions.**

1 The authority shall comply with all of the requirements  
2 in article nine-a, chapter six of this code. Notwithstand-  
3 ing the provisions of subsection (b), section four of said  
4 article, all meetings of the authority shall be open to  
5 the public and the records of the authority shall be open  
6 to public inspection at all reasonable times, except the  
7 authority may, at its discretion for any reason set forth  
8 in subsection (a), section four of said article, or when

9 a secret process or secret method of manufacture or pro-  
10 duction will be discussed, hold a closed meeting and  
11 make a decision in such meeting, and records or infor-  
12 mation pertaining to any such closed meeting, process  
13 or method of manufacture or production, whether ob-  
14 tained in closed meeting or at another time, are con-  
15 fidential and shall not be disclosed by any officer, member  
16 or employee of the authority or any person acting under  
17 authority of this article.

**§16-26-23. Regulation of solid waste collectors and haulers to  
continue under public service commission; bring-  
ing about their compliance with solid waste dis-  
posal shed plan and solid waste disposal projects;  
giving testimony at commission hearings.**

1 Solid waste collectors and haulers who are "common  
2 carriers by motor vehicle", as defined in section two,  
3 article one, chapter twenty-four-a of this code, shall  
4 continue to be regulated by the public service commis-  
5 sion in accordance with the provisions of chapter twenty-  
6 four-a and rules and regulations promulgated thereunder.  
7 Nothing in this article shall give the authority any power  
8 or right to regulate such solid waste collectors and haulers  
9 in any manner, but the public service commission, when  
10 it issues a new certificate of convenience and necessity, or  
11 when it alters or adjusts the provisions of any existing  
12 certificate of convenience and necessity, or when it ap-  
13 proves the assignment or transfer of any certificate of  
14 convenience and necessity, shall consult with the author-  
15 ity regarding what action it could take which would  
16 most likely further the implementation of the authority's  
17 solid waste disposal shed plan and solid waste disposal  
18 projects and shall take any reasonable action that will  
19 lead to or bring about compliance of such waste collectors  
20 and haulers with such plan and projects.

21 At any hearing conducted by the public service com-  
22 mission pertaining to solid waste collectors and haulers  
23 on any of these matters, any member of the board, the  
24 director or an employee of the board designated by the  
25 director may appear before the commission and present  
26 evidence.

**§16-26-24. Cooperation of authority and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.**

1 The provisions of this article are complementary to  
2 those contained in article twenty-four, chapter seventeen  
3 of this code, and do not alter or diminish the authority of  
4 any enforcement agency, as defined in section two thereof,  
5 to collect and dispose of abandoned household appliances  
6 and motor vehicles, inoperative household appliances and  
7 junked motor vehicles and parts thereof, including tires.  
8 The authority and such enforcement agencies shall co-  
9 operate fully with each other in collecting and disposing  
10 of such solid waste.

**§16-26-25. Liberal construction of article.**

1 The provisions of this article are hereby declared to  
2 be remedial and shall be liberally construed to effectuate  
3 its purposes and intents.

## CHAPTER 155

(H. B. 1494—By Mrs. Snyder and Mr. Shiflet)

[Passed April 8, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assessment of real property for ad valorem tax purposes; providing that farm property be valued according to its actual use rather than at its potential use.

*Be it enacted by the Legislature of West Virginia:*

That section one, article three, 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 3. ASSESSMENTS GENERALLY.****§11-3-1. Time and basis of assessments; true and actual value; default; reassessment; special assessors.**

1 All property shall be assessed annually as of the first day  
2 of July at its true and actual value; that is to say, at the  
3 price for which such property would sell if voluntarily of-  
4 fered for sale by the owner thereof, upon such terms as  
5 such property, the value of which is sought to be ascer-  
6 tained, is usually sold, and not the price which might be  
7 realized if such property were sold at a forced sale, except  
8 that the true and actual value of all property owned, used  
9 and occupied by the owner thereof exclusively for residential  
10 purposes shall be arrived at by giving primary, but not  
11 exclusive, consideration to the fair and reasonable amount  
12 of income which the same might be expected to earn, under  
13 normal conditions in the locality wherein situated, if rented:  
14 *Provided*, That the true and actual value of all farms used,  
15 occupied and cultivated by their owners or bona fide tenants  
16 shall be arrived at according to the fair and reasonable value  
17 of the property for the purpose for which it is actually used  
18 regardless of what the value of the property would be if  
19 used for some other purpose; and that the true and actual  
20 value shall be arrived at by giving consideration to the fair  
21 and reasonable income which the same might be expected to  
22 earn under normal conditions in the locality wherein situated,  
23 if rented: *Provided, however*, That nothing herein shall alter  
24 the method of assessment of lands or minerals owned by  
25 domestic or foreign corporations. The taxes upon all property  
26 shall be paid by those who are the owners thereof on that day,  
27 whether it be assessed to them or others. If at any time after  
28 the beginning of the assessment year, it be ascertained by the  
29 tax commissioner that the assessor, or any of his deputies,  
30 is not complying with this provision or that he has failed,  
31 neglected or refused, or is failing, neglecting or refusing  
32 after five days' notice to list and assess all property therein  
33 at its true and actual value, the tax commissioner may order  
34 and direct a reassessment of any or all of the property in  
35 any county, district or municipality, where any assessor, or  
36 deputy, fails, neglects or refuses to assess the property in  
37 the manner herein provided. And, for the purpose of making

38 such assessment and correction of values, the tax commis-  
39 sioner may appoint one or more special assessors, as necessity  
40 may require, to make such assessment in any such county,  
41 and any such special assessor or assessors, as the case may  
42 be, shall have all the power and authority now vested by  
43 law in assessors, and the work of such special assessor or  
44 assessors shall be accepted and treated for all purposes by  
45 the county boards of review and equalization and the levying  
46 bodies, subject to any revisions of value on appeal, as the  
47 true and lawful assessment of that year as to all property  
48 valued by him or them. The tax commissioner shall, with  
49 the approval of the board of public works, fix the compensa-  
50 tion of all such special assessors as may be designated by him,  
51 which, together with their actual expenses, shall be paid  
52 out of the county fund by the county commission of the  
53 county in which any such assessment is ordered, upon the  
54 receipt of a certificate of the tax commissioner filed with  
55 the clerk of the county commission showing the amounts due  
56 and to whom payable, after such expenses have been audited  
57 by the county commission.

58 Any assessor who knowingly fails, neglects or refuses to  
59 assess all the property of his county, as herein provided, shall  
60 be guilty of malfeasance in office, and, upon conviction  
61 thereof, shall be fined not less than one hundred nor more  
62 than five hundred dollars, or imprisoned in the county jail  
63 not less than three nor more than six months, or both, in the  
64 discretion of the court, and upon conviction, shall be removed  
65 from office.

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## CHAPTER 156

(S. B. 331—By Mr. Brotherton, Mr. President, and Mr. Savilla)

[Passed March 25, 1977; in effect July 1, 1977. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-one, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating

to the five thousand dollar assessed value exemption for persons over sixty-five; ascertainment of age for eligibility.

*Be it enacted by the Legislature of West Virginia:*

That section twenty-one, article 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 4. ASSESSMENT OF REAL PROPERTY.**

**§11-4-21. Five thousand dollar assessed value exemption for persons over sixty-five and otherwise qualified; ascertainment of eligibility; supplying of instructions and forms and promulgation of regulations.**

1 Beginning with the first day of July, one thousand nine  
2 hundred seventy-four, and every July first thereafter the  
3 assessor shall ascertain each person in his county who  
4 owns real property, wholly or partially, including, but  
5 not limited to, a person who owns a life estate or a con-  
6 summate dower interest therein, and who occupies such  
7 real property as his primary residence and who is sixty-  
8 five years of age or older or will become sixty-five on or  
9 before June thirtieth following the July first assessment  
10 day. An exemption from ad valorem tax of the first five  
11 thousand dollars of assessed valuation of all such prop-  
12 erty is hereby granted when owned and occupied by any  
13 such qualified person.

14 The exemption of the first five thousand dollars shall  
15 be shown on the land book against the total assessed  
16 value, and taxes shall be extended against the net amount  
17 of the assessed value for the calendar tax year one thou-  
18 sand nine hundred seventy-five and every calendar tax  
19 year thereafter in which the owner and the property  
20 remain qualified under this section. Only one exemption  
21 shall be granted for each owner-occupied residence re-  
22 gardless of the number of qualified persons, sixty-five or  
23 older, residing therein.

24 When the five thousand dollar exemption is greater  
25 than the total assessed value of the residence, no taxes  
26 will be levied; and the sheriff shall issue a statement to  
27 the landowner showing that no taxes are due.

28 Only those homeowners sixty-five years of age or older  
29 on the thirtieth day of June following the assessment  
30 date will be eligible for the exemption provided by  
31 this section for the following calendar tax year. The  
32 exemption shall attach to the real estate occupied by the  
33 qualified homeowner on the July first assessment date.  
34 An exemption shall not be transferred to another parcel  
35 of real estate until the following July first. If the prop-  
36 erty of a homeowner qualified under this section is trans-  
37 ferred by deed, will or otherwise to an owner who will  
38 not be at least sixty-five years of age on the thirtieth  
39 day of June following the next July first assessment date,  
40 the five thousand dollar exemption will be removed from  
41 the property when next assessed.

42 In addition to the listing made by the assessor, every  
43 homeowner who is qualified shall have the right to  
44 appear before the assessor and register his right to the  
45 exemption provided by this section. Any person who  
46 does not appear before the assessor, by himself or his  
47 personal representative, or who does not in any way  
48 contact the assessor's office to register his right to an  
49 exemption on or before the first day of October following  
50 a July first assessment day, shall not be entitled to any  
51 exemption for the following calendar tax year. A person  
52 need only register his right to an exemption one time for  
53 any qualified real estate.

54 The tax commissioner shall prescribe and supply all  
55 necessary instructions and forms and shall promulgate  
56 all necessary regulations to effectuate the purpose of this  
57 section.

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## CHAPTER 157

(Com. Sub. for H. B. 1507—By Mr. Farley)

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[Passed April 9, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to the excise tax on soft drinks, syrups and mixes; and providing for imposition of tax by metric and other volume and weight means.

*Be it enacted by the Legislature of West Virginia:*

That section two, article nineteen, 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 19. SOFT DRINKS TAX.**

**§11-19-2. Excise tax on bottled soft drinks, syrups and dry mixtures; disposition thereof.**

1 For the purpose of providing revenue for the construction,  
2 maintenance and operation of a four-year school of medicine,  
3 dentistry and nursing of West Virginia University, an excise tax  
4 is hereby levied and imposed on and after midnight of the last  
5 day of June, one thousand nine hundred fifty-one, upon the  
6 sale, use, handling or distribution of all bottled soft drinks and  
7 all soft drink syrups, whether manufactured within or without  
8 this state, as follows:

9 (1) On each bottled soft drink, a tax of one cent on each  
10 sixteen and nine-tenths fluid ounces, or fraction thereof, or on  
11 each one-half liter, or fraction thereof contained therein.

12 (2) On each gallon of soft drink syrup, a tax of eighty  
13 cents, and in like ratio on each part gallon thereof, or on each  
14 four liters of soft drink syrup a tax of eighty-four cents, and  
15 in like ratio on each part four liters thereof.

16 (3) On each ounce by weight of dry mixture or fraction  
17 thereof used for making soft drinks, a tax of one cent or on  
18 each 28.35 grams, or fraction thereof, a tax of one cent.

19 Any person manufacturing or producing within this state  
20 any bottled soft drink or soft drink syrup for sale within this  
21 state and any distributor, wholesale dealer or retail dealer or  
22 any other person who is the original consignee of any bottled  
23 soft drink or soft drink syrup manufactured or produced  
24 outside this state, or who brings such drinks or syrups into  
25 this state, shall be liable for the excise tax hereby imposed.  
26 The excise tax hereby imposed shall not be collected more



27 than once in respect to any bottled soft drink or soft drink  
28 syrup manufactured, sold, used or distributed in this state.

29 All revenue collected by the commissioner under the pro-  
30 visions of this article, less such costs of administration as  
31 are hereinafter provided for, shall be paid by him into a special  
32 medical school fund, which is hereby created in the state  
33 treasury, to be used solely for the construction, maintenance  
34 and operation of a four-year school of medicine, dentistry and  
35 nursing, as otherwise provided by law.

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## CHAPTER 158

(S. B. 578—By Mr. Brotherton, Mr. President)

[Passed April 7, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia personal income tax act.

*Be it enacted by the Legislature of West Virginia:*

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

### **ARTICLE 21. PERSONAL INCOME TAX.**

#### **§11-21-9. Meaning of terms.**

1 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  
6 mean the provisions of the Internal Revenue Code of  
7 1954, as amended, and such other provisions of the laws  
8 of the United States as relate to the determination of  
9 income for federal income tax purposes. All amendments

10 made to the laws of the United States prior to the first  
11 day of January, one thousand nine hundred seventy-  
12 seven, shall be given effect in determining the taxes im-  
13 posed by this article for the tax period beginning the  
14 first day of January, one thousand nine hundred seventy-  
15 seven, and thereafter, but no amendment to the laws of  
16 the United States made on or after the first day of  
17 January, one thousand nine hundred seventy-seven, shall  
18 be given effect.

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## CHAPTER 159

(S. B. 577—By Mr. Brotherton, Mr. President)

[Passed April 7, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia corporation net income tax act.

*Be it enacted by the Legislature of West Virginia:*

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

### **ARTICLE 24. CORPORATION NET INCOME TAX.**

#### **PART I. DEFINITIONS, IMPOSITION OF TAX AND RATE, AND EXEMPTIONS.**

##### **§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 con-  
3 text in the laws of the United States relating to federal  
4 income taxes, unless a different meaning is clearly re-  
5 quired by the context or by definition in this article.  
6 Any reference in this article to the laws of the United  
7 States or to the Internal Revenue Code or to the federal

8 income tax law shall mean the provisions of the laws of  
9 the United States as relate to the determination of in-  
10 come for federal income tax purposes. All amendments  
11 made to the laws of the United States prior to the first  
12 day of January, one thousand nine hundred seventy-  
13 seven, shall be given effect in determining the taxes  
14 imposed by this article for the tax period beginning  
15 the first day of January, one thousand nine hundred  
16 seventy-seven, and thereafter, but no amendment to laws  
17 of the United States made on or after the first day of  
18 January, one thousand nine hundred seventy-seven, shall  
19 be given effect.

20 (b) *Certain terms defined.*—For purposes of this article:

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  
24 joint-stock company or any association which is taxable  
25 as a 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 corpo-  
29 ration 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  
36 for which the taxable income of the taxpayer is com-  
37 puted 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  
51 laws of the United States for federal income tax purposes,  
52 adjusted as provided in section six: *Provided*, That in  
53 the case of a corporation having income from business  
54 activity which is taxable without this state, its "West  
55 Virginia taxable income" shall be such portion of its  
56 taxable income as so defined and adjusted as is allocated  
57 or apportioned to this state under the provisions of sec-  
58 tion seven.

59 (12) The term "business income" means income aris-  
60 ing from transactions and activity in the regular course  
61 of the taxpayer's trade or business and includes income  
62 from tangible and intangible property if the acquisition  
63 and disposition of the property constitute integral parts  
64 of the 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  
71 Virginia.

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.

## CHAPTER 160

(H. B. 826—By Mr. Martin)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preventing failure of devise or bequest because of void residuary clause in will.

*Be it enacted by the Legislature of West Virginia:*

That section four, article three, chapter forty-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. PROVISIONS AS TO CONSTRUCTION.

#### §41-3-4. Failure or invalidity of devise or bequest.

1 Unless a contrary intention shall appear by the will, such  
2 real or personal estate, or interest therein, as shall be  
3 comprised in any devise or bequest in such will, which de-  
4 vise or bequest shall fail or be void, or be otherwise in-  
5 capable of taking effect, shall, if the estate be real estate,  
6 be included in the residuary devise, or, if the estate be personal  
7 estate, in the residuary bequest, if any residuary devise or be-  
8 quest be contained in such will, and, in the absence of such  
9 residuary devise or bequest, shall pass as in case of intestacy.  
10 However, when a devise or bequest shall be included in a  
11 residuary clause of the will, which devise or bequest shall fail or  
12 be void or be otherwise incapable of taking effect, it shall not  
13 pass as in case of intestacy but shall pass to the remaining  
14 residuary devisees or legatees or devisee or legatee, if any  
15 there be, in proportion to their respective shares or interests in  
16 the residue.

## CHAPTER 161

(Com. Sub. for H. B. 1378—By Mrs. Wehrle and Mrs. Snyder)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty, abolishing the West Virginia commission on the status of women, and establishing a new women's commission; members; powers and duties; acceptance of federal funds; cooperation of other agencies; and annual report.

*Be it enacted by the Legislature of West Virginia:*

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

### ARTICLE 20. WOMEN'S COMMISSION.

- §29-20-1. Creation; membership; appointment and terms of members; organization; reimbursement for expenses.
- §29-20-2. Powers and duties of commission.
- §29-20-3. Commission administrative personnel.
- §29-20-4. Power of commission to accept funds; assistance from other departments.
- §29-20-5. Rules and regulations.
- §29-20-6. Annual report.

#### §29-20-1. **Creation; membership; appointment and terms of members; organization; reimbursement for expenses.**

1 The West Virginia commission on the status of women is  
 2 hereby abolished, and there is hereby created within the  
 3 office of the governor the West Virginia women's com-  
 4 mission, to consist of seventeen members, six of whom shall  
 5 be ex officio members, not entitled to vote: The attorney  
 6 general, the state superintendent of schools, the commissioner  
 7 of labor, the commissioner of welfare, the director of the  
 8 human rights commission and the director of personnel of  
 9 the civil service system. Each ex officio member may designate  
 10 one representative employed by his department to meet with

11 the commission in his absence. The governor shall appoint the  
12 additional eleven members, by and with the advice and consent  
13 of the Senate, from among the citizens of the state. The gov-  
14 ernor shall designate the chairman and vice chairman of the  
15 commission and the commission may elect such other officers as  
16 it deems necessary. The members shall serve a term begin-  
17 ning the first day of July, one thousand nine hundred seventy-  
18 seven, three to serve for a term of one year, four to serve for a  
19 term of two years, and the remaining four to serve for a term of  
20 three years. The successors of the members initially appointed  
21 as provided herein, shall be appointed for a term of three years  
22 each in the same manner as the members initially appointed  
23 under this article, except that any person appointed to fill a  
24 vacancy occurring prior to the expiration of the term for  
25 which his predecessor was appointed shall be appointed for  
26 the remainder of such term. Each member shall serve until  
27 the appointment and qualification of his successor.

28 No member may receive any salary for his services, but  
29 each may be reimbursed for actual and necessary expenses  
30 incurred by him in the performance of his duties out of funds  
31 received by the commission under section four of this article,  
32 except that in the event the expenses are paid, or are to be paid,  
33 by a third party, the members shall not be reimbursed by the  
34 commission.

**§29-20-2. Powers and duties of commission.**

- 1 It is the duty of the commission
- 2 (a) To review and study the status of women in this state;
- 3 (b) To recommend methods of overcoming discrimination  
4 against women in public and private employment and in the  
5 exercise of their civil and political rights;
- 6 (c) To promote more effective methods for enabling women  
7 to develop their skills, to continue their education and to be  
8 retrained;
- 9 (d) To strengthen home life by directing attention to  
10 critical problems confronting women as wives, mothers, home-  
11 makers and workers;
- 12 (e) To make surveys in the fields of, but not limited to,

13 education, social services, labor laws and employment policies,  
14 law enforcement, health, new and expanded services of  
15 benefit to women, legal rights, family relations and volunteer  
16 services;

17 (f) To secure appropriate recognition of women's accomp-  
18 lishments and contributions to this state;

19 (g) To disseminate information for the purpose of educat-  
20 ing the public as to the existence and functions of the  
21 commission and as to matters of general beneficial interest  
22 to women; and

23 (h) To advise and consult with the human rights com-  
24 mission on matters relating generally to women.

**§29-20-3. Commission administrative personnel.**

1 The commission may employ an executive director and  
2 such other personnel as may be deemed necessary to ac-  
3 complish its objectives. All persons so employed by the  
4 commission shall be paid from funds received by the commis-  
5 sion under section four of this article.

**§29-20-4. Power of commission to accept funds; assistance from other departments.**

1 The commission may accept gifts, grants and bequests of  
2 funds from individuals, foundations, corporations, the federal  
3 government, governmental agencies and other organizations  
4 or institutions; make and sign any agreements and do and  
5 perform any acts that may be necessary to carry out the  
6 purposes of this article. The commission may request and  
7 shall receive from any department or agency of the state  
8 government such assistance, information and advice as will  
9 enable it to carry out its powers and duties hereunder.

**§29-20-5. Rules and regulations.**

1 The commission shall adopt rules and regulations con-  
2 cerning the operation of the commission, the functions and  
3 responsibilities of its officers and employees and such other  
4 matters as may be necessary to carry out the purpose of this  
5 article, subject to the applicable provisions of chapter twenty-  
6 nine-a of this code.



**§29-20-6. Annual report.**

- 1 The commission shall submit an annual report to the
- 2 Legislature and the governor, including recommendations
- 3 based on its studies.

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**CHAPTER 162****(S. B. 307—By Mr. Palumbo)**

[Passed April 8, 1977; in effect from passage. Approved by the Governor.]

AN ACT to repeal section seven, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workmen's compensation claims for hernia.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 4. DISABILITY AND DEATH BENEFITS.****§1. Repeal of section relating to workmen's compensation claims for hernia.**

- 1 Section seven, article four, chapter twenty-three of the
- 2 code of West Virginia, one thousand nine hundred thirty-
- 3 one, as amended, is hereby repealed.

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**CHAPTER 163****(S. B. 126—By Mr. Rollins)**

[Passed April 9, 1977; in effect from passage. Approved by the Governor.]

AN ACT directing the state auditor and state treasurer to transfer immediately unexpended and unencumbered moneys from the Vietnam Veterans Bonus Fund, Account No. 166, to the Revenue Sharing Trust Fund.

**VIETNAM VETERANS BONUS FUND.****§1. Transfer of moneys from fund.**

1 The state auditor and state treasurer shall immediately  
2 transfer to the Revenue Sharing Trust Fund seven million  
3 eight hundred thousand dollars of the unexpended and  
4 unencumbered sums of money remaining in the Vietnam  
5 Veterans Bonus Fund, Account No. 166, established by  
6 the provisions of chapter two, acts of the Legislature,  
7 second extraordinary session, one thousand nine hundred  
8 seventy-four, and supplemented by the provisions of  
9 chapter fourteen, acts of the Legislature, regular session,  
10 one thousand nine hundred seventy-five.

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**CHAPTER 164****(S. B. 336—By Mr. Oates)**

[Passed March 19, 1977; in effect from passage. Approved by the Governor.]

AN ACT authorizing and empowering the county commission of Hampshire County to transfer and expend thirty thousand dollars from the jail improvement fund of said county to the new building and improvement fund for the purpose of replacing the heating system in the Hampshire county courthouse.

*Be it enacted by the Legislature of West Virginia:*

**HAMPSHIRE COUNTY FUNDS TRANSFER.****§1. Hampshire county commission authorized to transfer and expend special funds.**

1 The county commission of Hampshire County is au-  
2 thorized and empowered to transfer and expend thirty  
3 thousand dollars from the jail improvement fund to the  
4 new building and improvement fund for the purpose of  
5 replacing the heating system and for other repairs and  
6 improvements in the Hampshire county courthouse.

**CHAPTER 165**

(S. B. 475—By Mr. Kusic and Miss Herndon)

[Passed March 25, 1977; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Hancock County to create a special fund for the purpose of making a loan from such fund to the Oakland public service district.

*Be it enacted by the Legislature of West Virginia:*

**HANCOCK COUNTY SPECIAL FUND.**

- §1. Special fund created.  
§2. Terms of loan.

**§1. Special fund created.**

1 The county commission of Hancock County is hereby  
2 authorized to create a special fund and transfer into it  
3 any funds remaining in any other special funds in the  
4 county and funds from the county general fund as the  
5 commission may deem proper, for the purpose of making  
6 a loan from such special fund to the Oakland public  
7 service district located within Hancock County.

**§2. Terms of loan.**

1 The loan made to the Oakland public service district  
2 from the fund created in section one preceding shall be  
3 evidenced by a proper note, shall not exceed thirty-five  
4 thousand dollars, shall be repaid to such fund in equal  
5 installments over a term not to exceed ten years and  
6 shall bear interest at a rate to be determined by the  
7 county commission of Hancock County.

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# RESOLUTIONS

## CONCURRENT RESOLUTIONS

(Only resolutions of general interest are included herein)

### HOUSE CONCURRENT RESOLUTION NO. 12

(By Mr. Caudle and Mr. Martin)

[Adopted April 6, 1977]

Requesting the United States Congress to call a Constitutional Convention for the purpose of offering an amendment to the Constitution of the United States, abolishing the electoral college.

WHEREAS, The election of presidents and vice presidents of the United States is a matter of enormous importance to the citizens of this nation, requiring the direct participation of the voters; and

WHEREAS, There is at present no direct election of presidents and vice presidents of the United States, and election to that office is by a college of electors; and

WHEREAS, Members of the electoral college have little discretion in casting their votes, are not apportioned among the states on a one-man, one-vote basis and constitute an unnecessary and anachronistic impediment to the direct participation of the voters in the selection of the chief executive; and

WHEREAS, The continued existence of the electoral college presents the opportunity for the selection of a president of this nation who obtained that office without receiving a plurality of the votes cast for that office; therefore, be it

*Resolved by the Legislature of West Virginia:*

That application is hereby made to the Congress of the United States, pursuant to Article V of the Constitution of the United States, for the calling of a convention for the purpose of proposing the following article as an amendment to the Constitution of the United States:

## "ARTICLE ----

**"Section 1.** The people of the several States and the District constituting the seat of government of the United States shall elect the President and Vice President. Each elector shall cast a single vote for two persons who shall have consented to the joining of their names as candidates for the offices of President and Vice President. No candidate shall consent to the joinder of his name with that of more than one other person.

**"Section 2.** The electors of President and Vice President in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, except that for electors of President and Vice President the legislature of any State may prescribe less restrictive residence qualifications and for electors of President and Vice President the Congress may establish uniform residence qualifications.

**"Section 3.** The persons joined as candidates for President and Vice President having the greatest number of votes shall be elected President and Vice President, if such number be at least 40 per centum of the total number of votes cast.

"If, after any such election, none of the persons joined as candidates for President and Vice President is elected pursuant to the preceding paragraph, the Congress shall assemble in special session, in such manner as the Congress shall prescribe by law, on the thirty-fourth day after the date on which the election occurred. The Congress so assembled in special session shall be composed of those persons who are qualified to serve as Members of the Senate and the House of Representatives for the regular session beginning in the year next following the year in which the election occurred. In that special session the Senate and the House of Representatives so constituted sitting in joint session, each Member having one vote, shall choose immediately, from the two pairs of persons joined as candidates for President and Vice President who received the highest numbers of votes cast in the election, one such pair by ballot. For that purpose a quorum shall consist of three fourths of the whole number of Senators and Representatives. The vote of each Member of each House shall be publicly announced and recorded. The pair of persons joined as candidates for President and Vice President receiving the greater number of votes shall be elected President and

Vice President. Immediately after such choosing, the special session shall be adjourned *sine die*.

“No business other than the choosing of a President and Vice President shall be transacted in any special session in which the Congress is assembled under this section. A regular session of the Congress shall be adjourned during the period of any such special session, but may be continued after the adjournment of such special session. The assembly of the Congress in special session under this section shall not affect the term of office in which a Member of the Congress theretofore has been elected or appointed, and this section shall not impair the powers of any Member of the Congress with respect to any matter other than proceedings conducted in special session under this section.

“Section 4. The times, places, and manner of holding such elections and entitlement to inclusion on the ballot shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations. The days for such elections shall be determined by Congress and shall be uniform throughout the United States. The Congress shall prescribe by law the times, places, and manner in which the results of such elections shall be ascertained and declared. No such election shall be held later than the first Tuesday after the first Monday in November, and the results thereof shall be declared no later than the thirtieth day after the date on which the election occurs.

“Section 5. The Congress may by law provide for the case of the death, inability, or withdrawal of any candidate for President or Vice President before a President and Vice President have been elected, and for the case of the death of both the President-elect and Vice President-elect.

“Section 6. Sections 1 through 4 of this article shall take effect two years after the ratification of this article.

“Section 7. The Congress shall have power to enforce this article by appropriate legislation.”

*Further Resolved*, That a duly attested copy of this resolution be immediately transmitted to the Secretary of the Senate of the United States, the Clerk of the House of Representatives of the United States and to each member of this State's delegation in Congress.

## HOUSE CONCURRENT RESOLUTION NO. 14

(By Mrs. Rotgin and Mr. Shiflet)

[Adopted March 7, 1977]

Expressing support of statewide standards for new residential and commercial structures.

WHEREAS, There are serious economic consequences of the State's current energy supply shortages; and

WHEREAS, There are significant energy savings to be realized through the effective implementation of energy conservation programs, one of which may be the establishment of building and thermal efficiency standards for new residential and commercial structures; and

WHEREAS, The American Society of Heating, Refrigerating and Air-Conditioning Engineers and the Building Officials and Code Administrators International, Incorporated, in cooperation with the office of Housing and Urban Development have developed building standards that may lay the foundation for building and thermal standards legislation in the State; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the matter of building and thermal efficiency standards for new residential and commercial structures is a primary concern; and, be it

*Further Resolved,* That the Clerk of the House of Delegates be directed to cause copies of this resolution to be forwarded to the Commission on Energy, Economy and Environment, Dean B. L. Atchley, West Virginia University and the Chairmen of the Senate and House Judiciary Committees.

## HOUSE CONCURRENT RESOLUTION NO. 26

(By Mrs. Withrow and Mr. Brenda)

[Adopted March 26, 1977]

Memorializing the Congress of the United States to amend the Veterans Omnibus Health Care Act of 1976.

WHEREAS, The Veterans Omnibus Health Care Act of 1976, Public



Law 94-581, passed by the Congress of the United States on October 1, 1976, denies medical services in the Veterans Administration Hospital Out Patient Clinics to nonservice connected veterans and to certain service connected veterans of our armed forces; and

WHEREAS, This law is causing great hardships and much distress to many West Virginia veterans; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature of the State of West Virginia protests and deplors the conditions existing under the operation of Public Law 94-581 and hereby petitions the Congress of the United States to amend that section of the law which denies services to nonservice connected veterans as well as to certain service connected veterans; and, be it

*Further Resolved,* That the Clerk of the House of Delegates send a copy of this resolution to the Senators and members of the House of Representatives representing the State of West Virginia in the Congress.

## SENATE CONCURRENT RESOLUTION NO. 13

(By Mr. Gainer and Mr. Susman)

[Adopted April 6, 1977]

Directing the Joint Committee on Government and Finance to conduct an in-depth study of the problems and obstacles which must be overcome to facilitate the location of coal gasification plants in this State.

WHEREAS, The strength and prosperity of this State is dependent on coal, its uses and its marketability; and

WHEREAS, There are large high sulphur coal reserves in the central and northern counties of this State, but the market for high sulphur coal has been depressed; and

WHEREAS, New markets and uses for West Virginia's coal reserves must be developed; and

WHEREAS, New coal gasification plants located within the boundaries of this State would provide new markets and new uses for

the State's coal reserves and would improve the State's economic condition; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby directed to make an in-depth study of the problems and obstacles which must be overcome to facilitate the location of coal gasification plants in this State; and, be it

*Further Resolved,* That the study shall be conducted by an eleven member committee of which three members shall be members of the Senate, appointed by the President of the Senate, three members shall be members of the House of Delegates, appointed by the Speaker of the House of Delegates, one member shall be a member of the United Mine Workers Union who is a resident of this State and shall be appointed by the President of the United Mine Workers Union of America, one member shall be a member of the West Virginia Coal Association, appointed by the President of the Coal Association, one member shall be the State Commerce Commissioner or the person he designates, one member shall be the Director of the State Office of Federal-State Relations or the person he designates and one member shall be the Dean of the School of Engineering of West Virginia University or the person he designates; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report its findings, recommendations and any proposed legislation to the regular session of the Legislature, 1978; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, prepare the report and draft any legislation proposed be paid from legislative appropriations to the Joint Committee on Government and Finance.

#### SENATE CONCURRENT RESOLUTION NO. 24

(Originating in the Committee on Energy, Industry and Mining)

[Adopted April 4, 1977]

Creating a Fossil Fuel Conservation and Development Study Committee to conduct a comprehensive study of fossil fuel conservation and development in this State, including an examination of coal mining and oil and gas drilling methods, the safety

aspects of such methods, and the respective property rights of the owners of the various fossil fuel natural resources, the royalty owners of such natural resources, and the lessors and lessees of such natural resources.

WHEREAS, The State of West Virginia has been blessed with an abundance of valuable natural resources, especially fossil fuels, including coal, oil and gas; and

WHEREAS, There is a need for conservation and wise development of those natural resources; and

WHEREAS, Any program, rule, regulation, or body of law concerning the conservation and development of those natural resources should take into account the respective rights and interests of the owners, developers, royalty owners, lessors and lessees of the different natural resources; and

WHEREAS, It is the opinion of many persons knowledgeable in the areas of fossil fuel conservation and development that there exists a need for review and revision of the articles of the Code of West Virginia concerned with the conservation and development of the fossil fuel resources found in this State; therefore, be it

*Resolved by the Legislature of West Virginia:*

That a special interim legislative committee to be known as the "Fossil Fuel Conservation and Development Study Committee" is hereby created to conduct a comprehensive and detailed interim study into the fossil fuel conservation and development laws of this State, including within its study the examination of coal mining and oil and gas drilling methods which may best promote the conservation and development of fossil fuel natural resources of this State, the safety aspects of such methods of mining and drilling, and the respective property rights of the owners of the various fossil fuel natural resources, the owners of royalties on such natural resources, and the lessors and lessees of such natural resources; and, be it

*Further Resolved,* That the Fossil Fuel Conservation and Development Study Committee submit a report of its findings, conclusions and recommendations, together with drafts of any legislation it may propose to the regular session of the Legislature, one thousand nine hundred seventy-eight; and, be it

*Further Resolved*, That the Committee with approval of the Joint Committee on Government and Finance may employ and fix the compensation of such knowledgeable consultants, professional and assistants as it considers necessary; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft proposed legislation be approved in advance by the Joint Committee on Government and Finance, and be paid from legislative appropriations to the Joint Committee on Government and Finance.

### SENATE CONCURRENT RESOLUTION NO. 36

(By Mr. Ward and Mr. Fanning)

[Adopted April 9, 1977]

Requesting the Joint Committee on Government and Finance and the Governor to appoint a citizens committee to initiate and conduct an investigation of the causes and problems of the recurring flooding in Southern West Virginia and particularly the sudden and devastating flood occurring in April, 1977.

WHEREAS, Flooding occurs frequently in Southern West Virginia which causes the citizens living in that section of the Mountain State loss of life, substantial property damage, and untold human suffering; and

WHEREAS, The April, 1977 flood caused unusual and great damage and loss to the citizens of Southern West Virginia, as exemplified by over ten thousand families being displaced, over five thousand homes being damaged, hundreds of businesses suffering major damage, and several towns and cities being almost totally destroyed; and

WHEREAS, It is in the interest and well being of the citizens of West Virginia because of the tremendous loss of property and severe economic impact upon the State of West Virginia that the Legislature investigate: (1) The adequacy of the flood warning system and release of pertinent information by the National Weather Service and utilization thereof in the State of West Virginia; (2) the capability on the part of the State of West Virginia to deal promptly and effectively with flood disasters and the assessment and delivery

of essential necessities for human survival and recovery; and (3) the topography and geographical factors of the land in Southern West Virginia; and (4) the adequacy of river channelization, locks and dams and other flood control projects which have all been studied many times before but without positive results; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance and the Governor are hereby requested to appoint a citizens committee to investigate the causes of floods which occur in Southern West Virginia and other pertinent details relating to the prevention of flooding and the servicing of human needs that arise in the aftermath of flooding, and to bring about eventual prevention of future flooding in Southern West Virginia and all other areas of the State; and, be it

*Further Resolved,* That the aforesaid citizens committee shall be composed of twelve citizens who reside in the areas affected by the flooding in Southern West Virginia; that six members be appointed by the Governor; three members be appointed by the President of the Senate and three members appointed by the Speaker of the House of Delegates; that the Joint Committee on Government and Finance do aid and assist the citizens committee in investigating the causes of the flooding and the related problems contained in this resolution and in making a report thereon; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance may employ, as the committee may deem advisable, independent specialists in the fields of engineering, geology and other specialists to assist the citizens committee in its investigation of the causes of flooding in Southern West Virginia and related problems contained in this resolution; and, be it

*Further Resolved,* That the citizens committee submit a report of its findings, conclusions and recommendations together with drafts of any legislation it may propose to the regular session of the Legislature, 1978; and, be it

*Further Resolved,* That the expenses necessary to conduct this investigation, prepare reports and draft any proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

## HOUSE JOINT RESOLUTION NO. 16

(By Mr. Shepherd)

[Adopted April 5, 1977]

Proposing an amendment to the Constitution of the State of West Virginia, amending section one-a, article ten thereof, relating to permitting the Legislature to exempt, to such extent as it may from time to time determine, inventory and warehouse goods from ad valorem property taxation by general law; 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 seventy-eight, or at any special election held prior thereto for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is that section one-a, article ten thereof be amended to read as follows:

**ARTICLE X. TAXATION AND FINANCE.****§1a. Exemption from ad valorem property taxation.**

Notwithstanding the provisions of section one of this article, bank deposits, money and household goods and personal effects if such household goods and personal effects are not held or used for profit, shall be exempt from ad valorem property taxation, and the Legislature may, in its discretion and to such extent as it may from time to time determine, exempt inventory and warehouse goods from ad valorem property taxation by general law: *Provided*, That such exemption shall not apply to inventories of natural resources held for the manufacturing and sale of energy.

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*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 amendment is hereby numbered

“Amendment No. 1” and designated as the “Freeport Amendment,” and the purpose of the proposed amendment is summarized as follows: “To amend the State Constitution to permit the Legislature to exempt inventory and warehouse goods from ad valorem property taxation by general law to such extent as it may from time to time determine.”





# LEGISLATURE OF WEST VIRGINIA

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# ACTS

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## SECOND EXTRAORDINARY SESSION, 1976

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### CHAPTER 1

(Com. Sub. for S. B. 60—By Mr. Rogerson)

[Passed November 10, 1976; 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 seventy-seven, to the West Virginia Air Pollution Commission, Account No. 476, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill".

WHEREAS, The Governor, on July 26, 1976, at the Second Extraordinary Session of the Legislature, 1976, submitted a financial statement of the General Revenue Fund in amendment and revision of his Executive Budget Document, wherein is set forth the total cash balance and investments on hand as of July 1, 1976, and the estimated revenue for fiscal year 1976-77, totaling \$866,555,217, as reduced by prior year appropriation balances forwarded of \$64,919,210 and as further reduced by regular appropriations for fiscal year 1976-77, heretofore appropriated by the Legislature, thereby leaving an unappropriated balance available for further hereby appropriated by the terms of this supplementary appropriation bill; therefore



as reduced by prior year appropriation balances forwarded of \$64,919,210 and as further reduced by regular appropriations for fiscal year 1976-77, heretofore appropriated by the Legislature, thereby leaving an unappropriated balance available for further appropriation of \$101,424,818; a portion 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. 289, Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line items:

## TITLE II—APPROPRIATIONS.

### Section 1. Appropriations from General Revenue.

#### EDUCATIONAL

#### 34—State Board of Education—Vocational Division Acct. No. 289

5a Construction of New Vocational Education	
Facilities .....	\$ 3,539,500
5b Outlay for new equipment for newly constructed	
Vocational Education Facilities .....	1,375,000
5c Replacement of equipment in existing	
Vocational Educational Facilities .....	750,000
Total .....	\$ 5,664,500

The purpose of this supplementary appropriation bill is to fund the above items as therein provided, with such funds being available for expenditure in the current fiscal year of 1976-77 and upon the effective date of this bill.

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## CHAPTER 3

(Com. Sub. for S. B. 2—By Mr. Rogerson)

[Passed July 30, 1976; 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 seventy-seven, to the State Department of Education—State Aid to Schools, Account No. 295, supplementing Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill.

WHEREAS, The Governor, on July 26, 1976, and at the Second Extraordinary Session of the Legislature, 1976, submitted a financial statement of the General Revenue Fund in amendment and revision of his Executive Budget Document, wherein is set forth the total cash balance and investments on hand as of July 1, 1976, and the estimated revenue for fiscal year 1976-77, totaling \$866,555,217, as reduced by prior year appropriation balances forwarded of \$64,919,210 and as further reduced by regular appropriations for fiscal year 1976-77, heretofore appropriated by the Legislature, thereby leaving an unappropriated balance available for further appropriation of \$101,424,818; a portion 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. 295, Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line items:

## TITLE II—APPROPRIATIONS.

### Section 1. Appropriations from General Revenue.

#### EDUCATIONAL

#### 39—State Department of Education—State Aid to Schools

#### Acct. No. 295

1	Professional Services .....	\$ 21,348,610
2	Salaries—Other Personnel .....	4,269,722
3	Fixed Charges .....	2,011,039
5	Administration .....	214,508
6	Other Current Expenses .....	2,561,834
8	Program Improvement .....	248,000

**Total** ..... \$ 30,652,713

The purpose of this supplementary appropriation is to provide salary increases in the amount of \$1,000 for professional educators and the other resultant increases within the State Basic Foundation Program, pursuant to Chapter 18, Article 9A of the Code of West Virginia of 1931, as amended. Such amounts shall be available for expenditure in the current fiscal year of 1976-77 and upon the effective date of this bill.

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## CHAPTER 4

(Com. Sub. for S. B. 4—By Mr. Rogerson)

[Passed July 30, 1976; 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 seventy-seven, to the Department of Education, Account No. 299, supplementing Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill.

WHEREAS, The Governor, on July 26, 1976, and at the Second Extraordinary Session of the Legislature, 1976, submitted a financial statement of the General Revenue Fund in amendment and revision of his Executive Budget Document, wherein is set forth the total cash balance and investments on hand as of July 1, 1976, and the estimated revenue for fiscal year 1976-77, totaling \$866,555,217, as reduced by prior year appropriation balances forwarded of \$64,919,210 and as further reduced by regular appropriations for fiscal year 1976-77, heretofore appropriated by the Legislature, thereby leaving an unappropriated balance available for further appropriation of \$101,424,818; a portion 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. 299, Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand

nine thousand seventy-six, known as the Budget Bill, be supplemented by adding thereto the following sum to the designated line item:

**TITLE II—APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**

**EDUCATIONAL**

**43—*Department of Education***

Acct. No. 299

- |   |                                      |              |
|---|--------------------------------------|--------------|
| 1 | To fund minimum salaries for Support |              |
| 2 | Personnel—Total                      | \$ 9,373,008 |

The purpose of this supplementary appropriation is to provide salary increases in the amount of \$100 per month for service and auxiliary (support) school personnel. Such amount shall be available for expenditure in the current fiscal year of 1976-77 and upon the effective date of this bill.

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**CHAPTER 5**

(Com. Sub. for H. B. 138—By Mr. Seibert)

[Passed November 10, 1976; 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 seventy-seven, to the State Health Department, Account No. 400, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill.

WHEREAS, The Governor, on July 26, 1976 and at the Second Extraordinary Session of the Legislature, 1976, submitted a financial statement of the General Revenue Fund in amendment and revision of his Executive Budget Document, wherein is set forth the total cash balance and investments on hand as of July 1, 1976, and the estimated revenue for fiscal year 1976-77, totaling \$866,555,217, as reduced by prior year appropriation balances forwarded of \$64,919,210 and as further reduced by regular appropriations for fiscal year 1976-77, heretofore appropriated by the Legislature, thereby leaving an unappropriated balance available for further

appropriation of \$101,424,818; a portion 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. 400, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line item:

1                                   **TITLE II—APPROPRIATIONS.**

2   **Section 1. Appropriations from General Revenue.**

3                                   **HEALTH AND WELFARE**

4                                   **59—State Health Department**

5                                   **Acct. No. 400**

6       21   Early Childhood Development Program — \$400,000

7       The purpose of this supplementary appropriation bill is to  
8       fund the above item as therein provided, with such funds being  
9       available for expenditure in the current fiscal year of 1976-77  
10      and upon the effective date of this bill.

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## CHAPTER 6

(Com. Sub. for H. B. 151—By Mr. Seibert)

[Passed November 10, 1976; in effect from passage. Approved by the Governor.]

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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 seventy-seven, to the State Health Department, Account No. 9715, supplementing Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a

section relating to available revenues in the Revenue Sharing Trust Fund, which section of the Executive Budget Document was revised and amended pursuant to the communication of the Governor, dated February 28, 1976, in all of which is set forth the statement of revenues available for appropriation in the Revenue Sharing Trust Fund, including the fiscal year 1976-77; and

WHEREAS, The Legislature has heretofore enacted the Budget Bill and certain supplementary appropriation bills during its regular session, 1976, and first extraordinary session, 1976, appropriating moneys from the Revenue Sharing Trust Fund and all well within the available revenues in such fund, thereby leaving Revenue Sharing Trust Funds available for further appropriation; a portion of said further appropriation balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

*Be it enacted by the Legislature of West Virginia:*

That Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following new designated account, items and language of appropriation:

- 1                                   **TITLE II—APPROPRIATIONS.**
- 2    **Section 7. Appropriations from Revenue Sharing Trust Fund.**
- 3                                   **HEALTH AND WELFARE**
- 4                                    *State Health Department*
- 5                                    Acct. No. 9715
- 6                                    **TO BE PAID FROM REVENUE SHARING TRUST FUND**
- 7    1    Swine Influenza Inoculation Program — \$       50,000
- 8        The purpose of this supplementary appropriation bill is to
- 9    provide funds for the program of inoculation against Swine
- 10   Flu. Such funds shall be available for expenditure in the
- 11   current fiscal year of 1976-77 and upon the effective date
- 12   of the bill.



**CHAPTER 7**

(Com. Sub. for S. B. 49—By Mr. Rogerson)

[Passed November 10, 1976; 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 seventy-seven, to the State Health Department, Account No. 9715, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

**WHEREAS**, The acquisition and maintenance of proper supplies of blood which are quickly available to the citizens of this State are deemed by the Legislature to be a vital public need and important public purpose, as well as the meeting of a state responsibility in providing for the health, safety and welfare of the people of this State; and

**WHEREAS**, Property purchased with public funds and to be used in the acquisition and maintenance of supplies of blood should have title thereto vested in the State and an agency thereof; and

**WHEREAS**, The Governor had heretofore submitted to the Legislature his Executive Budget Document, dated January 14, 1976, which included a section relating to revenues available in the Revenue Sharing Trust Fund, which section was revised and amended by the Governor pursuant to his communication of February 28, 1976, and in all of which is set forth the statement of revenue determined available for appropriation in the Revenue Sharing Trust Fund, including the fiscal year 1976-77; and

**WHEREAS**, The Legislature has heretofore enacted the Budget Bill and certain supplementary appropriation bills which appropriate moneys from the Revenue Sharing Trust Fund and well within the revenues available in such fund, thereby leaving Revenue Sharing Trust Funds available for further appropriation; a portion of said further appropriation balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

*Be it enacted by the Legislature of West Virginia:*

That chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following new designated account, item and language of appropriation:

## TITLE II—APPROPRIATIONS.

### Section 7. Appropriations from Revenue Sharing Trust Fund.

#### HEALTH AND WELFARE

##### *State Health Department*

Acct. No. 9715

#### TO BE PAID FROM REVENUE SHARING TRUST FUND

- 1 1 Equipment and other personal property to be  
 2 used in Tri-State Red Cross Blood Center \$ 500,000  
 3 The purpose of this supplementary appropriation bill is to  
 4 provide funds for the purchase and acquisition of equipment  
 5 and other personal property by the State Health Department,  
 6 which department shall retain title thereto, with the same to  
 7 be furnished to the Tri-State Red Cross Blood Center for use  
 8 in the acquisition and maintenance of blood supplies by such  
 9 center. Such funds shall be available for expenditure in the  
 10 current fiscal year of 1976-77 and upon the effective date of  
 11 this bill.

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## CHAPTER 8

(Com. Sub. for H. B. 111—By Mr. Seibert)

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[Passed November 10, 1976; 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 seventy-seven, to the West Virginia Board of Regents (Control), Account No. 279, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill.

WHEREAS, The Governor, on July 26, 1976 and at the Second Extraordinary Session of the Legislature, 1976, submitted a financial statement of the General Revenue Fund in amendment and revision of his Executive Budget Document, wherein is set forth the total cash balance and investments on hand as of July 1, 1976, and the estimated revenue for fiscal year 1976-77, totaling \$866,555,217, as reduced by prior year appropriation balances forwarded of \$64,919,210 and as further reduced by regular appropriations for fiscal year 1976-77, heretofore appropriated by the Legislature, thereby leaving an unappropriated balance available for further appropriation of \$101,424,818; a portion 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. 279, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line item:

1	TITLE II—APPROPRIATIONS.	
2	Section 1. Appropriations from General Revenue.	
3	EDUCATIONAL	
4	27— <i>West Virginia Board of Regents (Control)</i>	
5	Acct. No. 279	
6	17 Scholarship Program _____	\$353,000

7 The purpose of this supplementary appropriation bill is to  
 8 fund the above item as therein provided, with such funds  
 9 being available for expenditure in the current fiscal year of  
 10 1976-77 and upon the effective date of this bill.

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## CHAPTER 9

(Com. Sub. for H. B. 147—By Mr. Seibert)

[Passed July 30, 1976; 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 seventy-seven, to West Virginia University—Medical School, Account No. 9747, supplementing Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a section relating to available revenues in the Revenue Sharing Trust Fund, which section of the Executive Budget Document was revised and amended pursuant to the communication of the Governor, dated February 28, 1976, in all of which is set forth the statement of revenues available for appropriation in the Revenue Sharing Trust Fund, including the fiscal year 1976-77; and

WHEREAS, The Legislature has heretofore enacted the Budget Bill and certain supplementary appropriation bills during its regular session, 1976, and first extraordinary session, 1976, appropriating moneys from the Revenue Sharing Trust Fund and all well within the available revenues in such fund, thereby leaving Revenue Sharing Trust Funds available for further appropriation; a portion of said further appropriation balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

*Be it enacted by the Legislature of West Virginia:*

That Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following new designated account, items and language of appropriation:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 7. Appropriations from Revenue Sharing Trust Fund.**
- 3 EDUCATIONAL
- 4 Acct. No. 9747
- 5 *West Virginia University—Medical School*
- 6 TO BE PAID FROM REVENUE SHARING TRUST FUND
- 7 1 Purchase of Whole Body Scanner ..... \$600,000
- 8 The purpose of this supplementary appropriation bill is to
- 9 provide moneys for the purchase of a whole body scanner;

10 such moneys to be available for expenditure in the current  
 11 fiscal year of 1976-77 and upon the effective date of this bill.

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## CHAPTER 10

(Com. Sub. for S. B. 1—By Mr. Rogerson)

[Passed July 30, 1976; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state minimum salaries; salaries not to be diminished.

*Be it enacted by the Legislature of West Virginia:*

That section two, 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-4-2. State minimum salaries.

#### STATE MINIMUM SALARY SCHEDULE

Years Exp.	4th	3rd	2nd	A.B.		M.A.		M.A.		Ph.D.
	Class	Class	Class	A.B.	+15	M.A.	+15	+30		
0	5,453	6,060	6,303	7,455	7,759	8,063	8,365	8,669	8,972	
1	5,599	6,206	6,449	7,601	7,905	8,209	8,511	8,815	9,118	
2	5,745	6,352	6,595	7,747	8,051	8,355	8,657	8,961	9,264	
3	5,891	6,498	6,741	7,893	8,197	8,501	8,803	9,107	9,410	
4	6,037	6,644	6,887	8,039	8,343	8,647	8,949	9,253	9,556	
5	6,183	6,790	7,033	8,185	8,489	8,793	9,095	9,399	9,702	
6	6,329	6,936	7,179	8,331	8,635	8,939	9,241	9,545	9,848	
7		7,082	7,325	8,477	8,781	9,085	9,387	9,691	9,994	
8		7,228	7,471	8,623	8,927	9,231	9,533	9,837	10,140	
9			7,617	8,769	9,073	9,377	9,679	9,983	10,286	
10			7,763	8,915	9,219	9,523	9,825	10,129	10,432	
11				9,061	9,365	9,669	9,971	10,275	10,578	
12				9,207	9,511	9,815	10,117	10,421	10,724	
13				9,353	9,657	9,961	10,263	10,567	10,870	
14						10,107	10,409	10,713	11,016	
15						10,253	10,555	10,859	11,162	
16						10,399	10,701	11,005	11,308	
17								11,151	11,454	
18								11,297	11,600	
19								11,443	11,746	

1 On and after the first day of July, one thousand nine  
 2 hundred seventy-six, each teacher shall receive the amount  
 3 prescribed in the "State Minimum Salary Schedule" as set  
 4 forth in this section, specific additional amounts prescribed  
 5 in this article, and any county supplement in effect in a county  
 6 during the contract year.

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## CHAPTER 11

(Com. Sub. for S. B. 3—By Mr. Rogerson)

[Passed July 30, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum pay scales and employment terms for school auxiliary and service personnel; defining terms in this connection; relating to other rights, privileges and benefits of such personnel; authorizing county boards of education to establish higher salary schedules; relating to the authority of the state board of education in connection with the foregoing; relating to enforcement; providing an effective date; salaries not to be diminished; relating to re-classification; and award of attorney's fees and court costs to party prevailing against the board.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.**

**§18A-4-8. Minimum monthly pay for service and auxiliary personnel.**

1 The purpose of this section is to establish a state minimum  
 2 monthly pay scale and employment term for auxiliary and  
 3 service personnel. The employment term for auxiliary and  
 4 service personnel shall be no less than ten months, a month  
 5 being defined as twenty employment days: *Provided*, That the  
 6 county board of education may contract with all or part of

7 such personnel for a longer term. The beginning and closing  
8 dates of the ten-month term shall not exceed forty-three  
9 weeks. Auxiliary and service personnel employed on a yearly  
10 or twelve-month basis may be employed by calendar months.  
11 Whenever there is a change in job assignment during the  
12 school year, the minimum pay scale and any county supple-  
13 ment shall be applicable.

14 Upon the change in classification or upon meeting the  
15 requirements of an advanced classification of or by any  
16 employee, his salary shall be made to comply with the re-  
17 quirements of this article, and to any county salary schedule  
18 in excess of the minimum requirements of this article, based  
19 upon his advanced classification and allowable years of em-  
20 ployment.

21 An employee's contract as provided in sections four and  
22 five, article two of this chapter shall state the appropriate  
23 monthly salary the employee is to be paid based on the class  
24 title as provided in this article and any county salary schedule in  
25 excess of the minimum requirements of this article.

26 The column heads of the state minimum pay scale and  
27 class titles, set forth below are defined as follows:

28 "Pay grade" means the monthly salary applicable to class  
29 titles of auxiliary and service personnel.

30 "Years of employment" means the number of years which  
31 an employee classified as auxiliary or service personnel has  
32 been employed by a board of education in any position prior  
33 to or subsequent to the effective date of this section and  
34 including service in the armed forces of the United States  
35 if the employee were employed at the time of his induction.  
36 For the purpose of this section, years of employment shall be  
37 limited to the number of years shown and allowed under the  
38 state minimum pay scale set forth hereinafter.

39 "Class title" means the name of the position or job held by  
40 auxiliary and service personnel.

41 "Aide I" means auxiliary personnel as defined in section  
42 one, article one of this chapter.

43 "Aide II" means auxiliary personnel as defined in section  
44 one, article one of this chapter who have completed a training

45 program approved by the state board of education.

46 "Custodian I" means personnel employed to keep buildings  
47 clean and free of refuse.

48 "Custodian II" means personnel employed as a watchman  
49 or groundsman.

50 "Custodian III" means personnel employed to keep buildings  
51 clean and free of refuse, to operate the heating or cooling  
52 systems and to make minor repairs.

53 "Custodian IV" means personnel employed as head custo-  
54 dians. In addition to providing services as defined in "Custo-  
55 dian III," their duties may include supervising other custodian  
56 personnel.

57 "Carpenter I" means personnel classified as a carpenter's  
58 helper.

59 "Carpenter II" means personnel classified as a journeyman  
60 carpenter.

61 "Electrician I" means personnel employed as an apprentice  
62 electrician and helper or holds an electrician helper license  
63 issued by the state fire marshal.

64 "Electrician II" means personnel employed as an electrician  
65 journeyman or holds a journeyman electrician license issued  
66 by the state fire marshal.

67 "Foreman" means skilled persons employed for supervision  
68 of personnel who work in the areas of repair and maintenance  
69 of school property and equipment.

70 "General maintenance" means personnel employed as help-  
71 ers to skilled maintenance employees and to perform minor re-  
72 pairs to equipment and buildings of a county school system.

73 "Groundsmen" means personnel employed to perform  
74 duties that relate to the appearance, repair and general care  
75 of school grounds in a county school system. Additional  
76 assignments may include the operation of a small heating plant  
77 and routine cleaning duties in buildings.

78 "Handyman" means personnel employed to perform routine  
79 manual tasks in any operation of the county school system.



80 "Lubrication man" means personnel employed to lubricate  
81 and service gasoline or diesel-powered equipment of a county  
82 school system.

83 "Machinist" means personnel employed to perform machinist  
84 tasks which include the ability to operate lathes, planer, shaper,  
85 threading machine and wheel press. Such personnel should  
86 also have ability to work from blueprints and drawings.

87 "Mechanic" means personnel employed who can inde-  
88 pendently perform skilled duties in the maintenance and repair  
89 of automobiles, school buses and other mechanical and mobile  
90 equipment to use in a county school system.

91 "Mechanic assistant" means personnel employed as a me-  
92 chanic apprentice and helper.

93 "Office equipment repairman I" means personnel employed  
94 as an office equipment repairman apprentice or helper.

95 "Office equipment repairman II" means personnel respon-  
96 sible for servicing and repairing all office machines and equip-  
97 ment. Such personnel shall be responsible for parts being  
98 purchased necessary for the proper operation of a program of  
99 continuous maintenance and repair.

100 "Painter" means personnel employed to perform duties of  
101 painting, finishing and decorating of wood, metal and concrete  
102 surfaces of buildings, other structures, equipment, machinery  
103 and furnishings of a county school system.

104 "Plumber I" means personnel employed as an apprentice  
105 plumber and helper.

106 "Plumber II" means personnel employed as journeyman  
107 plumber.

108 "Supervisor of maintenance" means skilled personnel not  
109 defined as professional personnel or professional educators as  
110 in section one, article one of this chapter. His responsibilities  
111 would include directing the upkeep of buildings and shops,  
112 issuing instructions to subordinates relating to cleaning, repairs  
113 and maintenance of all structures, mechanical and electrical  
114 equipment of a board of education.

115 "Truck driver" means personnel employed to operate light  
116 or heavy duty gasoline and diesel-powered vehicles.

117 "Watchman" means personnel employed to protect school  
118 property against damage or theft. Additional assignments may  
119 include operation of a small heating plant and routine cleaning  
120 duties.

121 "Clerk I" means personnel employed to perform clerical  
122 tasks.

123 "Clerk II" means personnel employed to perform general  
124 clerical tasks, prepare reports and tabulations and operate of-  
125 fice machines.

126 "Secretary I" means personnel employed to transcribe from  
127 notes or mechanical equipment, receive callers, perform clerical  
128 tasks, prepare reports and operate office machines.

129 "Secretary II" means personnel employed as school, office or  
130 program secretaries to perform general clerical tasks, tran-  
131 scribe, prepare reports, receive callers and refer them to proper  
132 persons, operate office machines, keep records and handle  
133 routine correspondence.

134 "Secretary III" means personnel assigned to the county  
135 board of education office administrators in charge of various  
136 departments or with particular responsibilities of purchasing  
137 and financial control.

138 "Cafeteria manager" means personnel employed to direct the  
139 operation of a food services program in a school, including  
140 assigning duties to employees, approving requisitions for sup-  
141 plies and repairs, keeping inventories, inspecting areas to main-  
142 tain high standards of sanitation, preparing financial reports  
143 and keeping records pertinent to food services of a school.

144 "Cook I" means personnel employed as a cook's helper.

145 "Cook II" means personnel employed to interpret menus, to  
146 prepare and serve meals in a lunch program of a school system.

147 "Cook III" means personnel employed to prepare and serve  
148 means, make reports, prepare requisitions for supplies, order  
149 equipment and repairs for a lunch program of a school system.

150 "Food services supervisor" means qualified personnel not  
151 defined as professional personnel or professional educa-  
152 tors as in section one, article one of this chapter, employed  
153 to manage and supervise a county school system's food  
154 service or school lunch program. The duties would include  
155 preparing inservice training programs for cooks and food  
156 service employees, instructing personnel in the areas of  
157 quantity cooking with economy and efficiency, keeping aggre-  
158 gate records and reports.

159 "Bus operator" means personnel employed to operate school  
160 buses and other school transportation vehicles as provided by  
161 the state board of education.

162 "School bus supervisor" means qualified personnel employed  
163 to assist in selecting school bus operators and routing and  
164 scheduling of school buses, operate a bus when needed, relay  
165 instructions to bus operators, plan emergency routing of  
166 buses and promote good relationships with parents, pupils,  
167 bus operators and other employees.

168 On and after the first day of July, one thousand nine hundred  
169 seventy-six, the minimum monthly pay for each auxiliary or  
170 service employee whose employment is for a period of more  
171 than three and one-half hours a day shall be at least the  
172 amounts indicated in the following "State Minimum Pay  
173 Scale," and the minimum monthly pay for each auxiliary or  
174 service employee whose employment is for a period of less  
175 than three and one-half hours a day shall be at least one-  
176 half the amount indicated in the following "State Minimum  
177 Pay Scale":

**STATE MINIMUM PAY SCALE**

**YEARS OF EMPLOYMENT**

<b>PAY GRADE</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>
A. Monthly	450	460	470	480	490	500	510	520	530	540	550
B. Monthly	470	480	490	500	510	520	530	540	550	560	570
C. Monthly	510	520	530	540	550	560	570	580	590	600	610
D. Monthly	560	570	580	590	600	610	620	630	640	650	660
E. Monthly	610	620	630	640	650	660	670	680	690	700	710
F. Monthly	670	680	690	700	710	720	730	740	750	760	770
G. Monthly	700	710	720	730	740	750	760	770	780	790	800
H. Monthly	770	780	790	800	810	820	830	840	850	860	870

<b>CLASS TITLE</b>	<b>PAY GRADE</b>	<b>CLASS TITLE</b>	<b>PAY GRADE</b>
Aide I	A	Office Equipment Repairman II	G
Aide II	B	Painter	E
Custodian I	A	Plumber I	E
Custodian II	B	Plumber II	G
Custodian III	C	Supervisor of Maintenance	H
Custodian IV	D	Truck Driver	D
Carpenter I	E	Watchman	B
Carpenter II	F	Clerk I	B
Electrician I	F	Clerk II	C
Electrician II	G	Secretary I	D
Foreman	G	Secretary II	E
General Maintenance	C	Secretary III	F
Groundsman	B	Cafeteria Manager	D
Handyman	B	Cook I	A
Lubrication Man	C	Cook II	B
Machinist	F	Cook III	C
Mechanic	F	Food Services Supervisor	E
Mechanic Assistant	E	Bus Operator	D
Office Equipment Repairman I	F	School Bus Supervisor	E

178 In addition to the compensation herein provided for  
179 auxiliary and service personnel, each auxiliary or service em-  
180 ployee shall, notwithstanding any provision in this code to the  
181 contrary, be entitled to all auxiliary and service personnel  
182 employee rights, privileges and benefits provided under this  
183 or any other chapter of this code without regard to such  
184 employee's hours of employment or the methods or sources of  
185 compensation.

186 Auxiliary and service personnel whose years of employment  
187 exceed the number of years shown and provided for under  
188 the state minimum pay scale heretofore set forth shall not be  
189 paid less than the amount shown for the maximum years of  
190 employment shown and provided for in the classification in  
191 which he is employed.

192 The county board of education may establish salary  
193 schedules which shall be in excess of the state minimum fixed  
194 by this article, such county schedules to be uniform throughout  
195 the county with regard to any training classifications, experi-  
196 ence, years of employment, responsibility, duties, pupil partici-  
197 pation, pupil enrollment, size of buildings, operation of equip-  
198 ment or other requirements. Uniformity shall apply to any  
199 additional salary increments or compensation for all persons  
200 performing like assignments and duties within the county. In  
201 establishing such local salary schedules, no county, from the  
202 effective date of this article, shall reduce local funds allocated  
203 for auxiliary and service personnel salaries used for supple-  
204 menting federal and state funds provided for such salaries.

205 The state board of education is hereby authorized to estab-  
206 lish other class titles of auxiliary and service personnel posi-  
207 tions and jobs not listed in this section. The state board of edu-  
208 cation is further authorized to provide appropriate pay grades  
209 for such positions and jobs but pay shall be established within  
210 the minimum salary scale of this section.

211 No person employed as an auxiliary or service employee by  
212 a county board during the school year ending the thirtieth day  
213 of June, one thousand nine hundred seventy-six, shall have his  
214 annual salary for the school year 1976-77 reduced as a result  
215 of the enactment of this section.

216 Any board failing to comply with the provisions of this  
217 article may be compelled to do so by mandamus, and shall be  
218 liable to any party prevailing against the board for court costs  
219 and his reasonable attorney fees, as determined and established  
220 by the court.

221 The provisions of this section shall become effective July  
222 one, one thousand nine hundred seventy-six.

# LEGISLATURE OF WEST VIRGINIA

## ACTS

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### FIRST EXTRAORDINARY SESSION, 1977

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#### CHAPTER 1

(H. B. 107—By Mr. Tompkins)

[Passed May 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compromise of actions and suits in behalf of infants and insane persons and distribution of funds arising therefrom; and increasing to ten thousand dollars the maximum amount of such compromises which may be excepted from reference to a commissioner of accounts.

*Be it enacted by the Legislature of West Virginia:*

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

**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  
2 a party, the court in which the same is pending, or the judge  
3 thereof in vacation, shall have the power to approve and con-  
4 firm a compromise of the matters in controversy on behalf of  
5 such infant or insane person, if such compromise shall be  
6 deemed to be to the best interest of the infant or insane per-  
7 son. Such approval or confirmation shall never be granted

8 except upon written application therefor by the guardian, com-  
9 mittee, curator, or next friend of the infant or insane person,  
10 setting forth under oath all the facts of the case and the  
11 reasons why such compromise is deemed to be for the best  
12 interest of the infant or insane person. And the court or judge,  
13 before approving such compromise, shall, in order to determine  
14 whether to approve or disapprove the compromise, hear the  
15 testimony of witnesses relating to the subject matter of the  
16 compromise and cause said testimony to be reduced to writing  
17 and filed with the papers in the case. The court or judge, upon  
18 approving and confirming such compromise, shall enter judg-  
19 ment or decree accordingly. Such judgment or decree shall  
20 bind the respective parties thereto, including such infant or  
21 insane person, with like force and effect, and shall be subject  
22 to review, modification or reversal to the same extent only, as  
23 if it were a consent judgment or decree, entered under similar  
24 circumstances, in a case in which all the parties were adults  
25 and sane. In any such compromise wherein the amount paid to  
26 the guardian or committee does not exceed the sum of ten  
27 thousand dollars, the court or judge approving and confirm-  
28 ing the compromise and entering judgment or decree thereon  
29 may, in its or his discretion, dispense with or withdraw a  
30 reference to a commissioner of accounts as to said compromise,  
31 authorize the disbursement of the fund so created by the com-  
32 promise and may discharge the guardian or committee and the  
33 surety on his bond as to the proceeding then pending in the  
34 circuit court, and in all such cases a certified copy of the order  
35 of the court or judge, as the case may be, shall be recorded  
36 in the office of the clerk of the county commission wherein the  
37 guardian or committee was appointed.

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## CHAPTER 2

(H. B. 100—By Mr. Speaker, Mr. Kopp)

[Passed June 22, 1977; in effect from passage. Approved by the Governor.]

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



*Be it enacted by the Legislature of West Virginia:*

**Title**

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

**TITLE 1. GENERAL PROVISIONS.**

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

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 hun-  
5 dred seventy-eight.

1     **Sec. 2. Definitions.**—For the purpose of this act: "Gov-  
2 ernor" shall mean the Governor of the State of West  
3 Virginia.

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 seventy-eight  
7 shall mean the period from July first, one thousand nine  
8 hundred seventy-seven through June thirtieth, one thousand  
9 nine hundred seventy-eight.

10    "From collections" shall mean that part of the total ap-  
11 propriation 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  
14 the spending unit shall be reduced automatically by the  
15 amount of the deficiency in the collection. If the amount  
16 collected exceeds the amount designated "from collections"  
17 the excess shall be set aside in a special surplus fund and  
18 may be expended for the purpose of the spending unit as  
19 provided by Chapter 5-A, Article 2 of the Code of West  
20 Virginia.

1     **Sec. 3. Classification of appropriations.**—An appropria-  
2 tion for:

3     "Personal Services" shall be expended only for the pay-

4 ment of salaries, wages, fees and other compensation for  
5 skill, work or employment, except from the appropriations  
6 made to the spending units of state government, there may be  
7 transferred upon approval of the Governor, to a special  
8 account an amount sufficient to match Federal Funds under  
9 any Federal Act.

10 Unless otherwise specified, appropriations for personal  
11 services shall include salaries of heads of spending units;

12 "Current expenses" shall be expended only for operating  
13 cost other than personal services or capital outlay;

14 "Repairs and alterations" shall include all expenditures  
15 for materials, supplies and labor used in repairing and  
16 altering buildings, grounds and equipment, other than per-  
17 sonal service;

18 "Equipment" shall be expended only for things which  
19 have an appreciable and calculable period of usefulness in  
20 excess of one year;

21 "Buildings" shall include construction and alteration of  
22 structures and the improvements of lands, sewer and water  
23 improvements, and shall include shelter, support, storage,  
24 protection, or the improvement of a natural condition;

25 "Lands" shall be expended only for the purchase of lands  
26 or interest in lands.

27 Appropriations otherwise classified shall be expended only  
28 where the distribution of expenditures for different purposes  
29 cannot well be determined in advance or it is necessary or  
30 desirable to permit the spending unit freedom to spend an  
31 appropriation for more than one of the above purposes.

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

**TITLE 2. APPROPRIATIONS.****§1. Appropriations from general revenue.****AGRICULTURE**

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## PAYABLE FROM MEDICAL SCHOOL FUND

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§4. Reappropriations.

§5. Appropriations from revenue sharing trust fund.

Fairmont emergency hospital—Acct. No. 9733 .....	1020
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§6. Appropriation from countercyclical fiscal assistance trust fund.

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§7. Reappropriations—"Revenue Sharing Trust Fund."

- \$8. Special revenue appropriations.
- \$9. State improvement fund appropriation.
- \$10. Specific funds and collection accounts.
- \$11. Appropriation for refunding erroneous payments.
- \$12. Sinking fund deficiencies.
- \$13. Appropriations from taxes and license fees.
- \$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  
 2 the state fund, general revenue, there is hereby appropri-  
 3 ated conditionally upon the fulfillment of the provisions set  
 4 forth in Chapter 5-A, Article 2 of the Code of West Vir-  
 5 ginia, the following amounts, as itemized, for expenditure  
 6 during the fiscal year one thousand nine hundred seventy-  
 7 eight.

LEGISLATIVE

1—*Senate*

Acct. No. 101

	<i>Fiscal Year</i> 1977-78
1 Compensation of Members _____ \$	235,000
2 Compensation and per diem of officers and	
3 employees _____	650,000
4 Expenses of Members _____	130,000
5 Current Expenses and Contingent Fund _____	255,000
6 Printing Blue Book _____	107,000
7 Total _____ \$	1,377,000

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

13 The appropriations for the Senate for the fiscal year 1976-  
14 77 are to remain in full force and effect, and are hereby  
15 reappropriated to June 30, 1978.

16 Any balances so reappropriated may be transferred and  
17 credited to the 1977-78 accounts.

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

22 The Clerk of the Senate with approval of the President is  
23 authorized to draw his requisitions upon the Auditor, payable  
24 out of the Current Expenses and Contingent Fund of the  
25 Senate, for any bills for supplies and services that may have  
26 been incurred by the Senate and not included in the appropria-  
27 tion bill, for supplies and services incurred in preparation for  
28 the opening, the conduct of the business and after adjournment  
29 of any regular or extraordinary session, and for the necessary  
30 operation of the Senate offices, the requisition for same to be  
31 accompanied by the bills to be filed with the Auditor.

32 The Clerk of the Senate with approval of the President  
33 shall have authority to employ such staff personnel during any  
34 session of the Legislature as shall be needed in addition to  
35 staff personnel authorized by the Senate resolution adopted  
36 during any such session. The Clerk of the Senate with approval  
37 of the President shall have authority to employ such staff per-  
38 sonnel between sessions of the Legislature as shall be needed,  
39 the compensation of all staff personnel during and between ses-  
40 sions of the Legislature, notwithstanding any such Senate  
41 resolution, to be fixed by the President of the Senate. The  
42 Clerk is hereby authorized to draw his requisitions for the pay-  
43 ments of all such staff personnel upon the State Auditor, pay-  
44 able out of the appropriation for Compensation and per diem  
45 of officers and employees or Current Expenses and Contingent  
46 Fund of the Senate for such services.

47 For duties imposed by law and the Senate, the Clerk of  
48 the Senate shall be paid an annual salary of thirty-five  
49 thousand dollars, payable out of the amount appropriated for  
50 Compensation and per diem of officers and employees.



*2—House of Delegates*

## Acct. No. 102

1	Compensation of Members _____	\$	545,000
2	Compensation and per diem of officers and		
3	employees _____		410,000
4	Expenses of Members _____		330,000
5	Current Expenses and Contingent Fund _____		290,000
6	Total _____	\$	1,575,000

7 The appropriations for the House of Delegates for the fiscal  
8 year 1976-77 are to remain in full force and effect, and are  
9 hereby reappropriated to June 30, 1978.

10 Any balances so reappropriated may be transferred and  
11 credited to the 1977-78 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 increase  
15 the efficiency of the service.

16 The Clerk of the House of Delegates, with approval of the  
17 Speaker, is authorized to draw his requisitions upon the Audi-  
18 tor, payable out of the Contingent Fund of the House of Dele-  
19 gates, for any bills for supplies and services that may have  
20 been incurred by the House of Delegates, and not included in  
21 the appropriation bill, for bills for services and supplies in-  
22 curred in preparation for the opening of the session and after  
23 adjournment, and for the necessary operation of the House of  
24 Delegates' offices, the requisition for the same to be accom-  
25 panied by bills to be filed with the Auditor.

26 For duties imposed by law and by the House of Delegates,  
27 including salary allowed by law as keeper of the rolls, the  
28 Clerk of the House of Delegates shall be paid a monthly sal-  
29 ary as provided in House Resolution adopted February 15,  
30 1977, payable from the Per Diem of Officers and Employees  
31 Fund or the Contingent Fund of the House of Delegates, and  
32 the full-time employees of the House of Delegates shall be  
33 paid at the salaries provided in said resolution.

34 The Speaker of the House of Delegates, upon approval of

35 the House Committee on Rules, shall have authority to  
 36 employ such staff personnel during and between sessions of  
 37 the Legislature as shall be needed, and the Clerk of the House  
 38 is hereby authorized to draw requisitions upon the State Audi-  
 39 tor, payable from the Per Diem of Officers and Employees  
 40 Fund or the Contingent Fund of the House of Delegates, for  
 41 such services.

### 3—*Joint Expenses*

#### Acct. No. 103

1	To Pay the Cost of Legislative Printing .....	\$	550,000
2	Total .....	\$	550,000

3 The appropriations for Joint Expenses for the fiscal year  
 4 1976-77 are to remain in full force and effect and are hereby  
 5 reappropriated to June 30, 1978. Any balances so reappro-  
 6 priated may be transferred and credited to the 1977-78  
 7 accounts.

8 Upon written request of the Clerk of the Senate and the  
 9 Clerk of the House of Delegates, the State Auditor shall  
 10 transfer amounts between items of the total appropriation in  
 11 order to protect or increase the efficiency of the service.

## JUDICIAL

### 4—*Supreme Court—General Judicial*

#### Acct. No. 111

1	Personal Services .....	\$	8,217,537
2	Other Expenses .....		802,000
3	Judges' Retirement System .....		600,000
4	Other Court Costs .....		1,677,000
5	Total .....	\$	11,296,537

6 This appropriation shall be administered by the Administra-  
 7 tive Director of the State Supreme Court of Appeals who shall  
 8 draw his requisitions for warrants in payment in the form  
 9 of payrolls, making deductions therefrom, as required by law,

10 for taxes and other items. The appropriation for Judges'  
 11 Retirement System is to be transferred to the Judges' Retirement  
 12 Fund, in accordance with the law relating thereto upon  
 13 requisition of the Administrative Director of the State Supreme  
 14 Court of Appeals.

15 Any unexpended balance remaining in this appropriation  
 16 at the close of fiscal year 1976-77 is hereby reappropriated  
 17 for expenditures during fiscal year 1977-78.

### EXECUTIVE

#### 5—*Governor's Office*

Acct. No. 120

1	Salary of Governor .....	\$	50,000
2	Other Personal Services .....		658,170
3	Current Expenses .....		176,200
4	Equipment .....		23,000
5	Total .....	\$	907,370

6 Any unexpended balance remaining at the close of the  
 7 fiscal year 1976-77 for "Publication of Governor's Papers  
 8 and Inaugural Expense" is hereby reappropriated for expenditure  
 9 during the fiscal year 1977-78.

#### 6—*Office of Economic and Community Development*

Acct. No. 121

1	Personal Services .....	\$	671,734
2	Current Expenses .....		1,667,770
3	Equipment .....		40,200
4	Industrial Development Revolving Fund .....		4,000,000
5	Federal-State Coordination .....		3,056,830
6	Governor's Committee on Crime, Delinquency 7 and Correction .....		400,000
8	Regional Council—To Match Federal Funds .....		200,000
9	Total .....	\$	10,036,534

10 Any unexpended balance remaining in accounts "Federal-  
 11 State Coordination," "Governor's Committee on Crime, Delin-

12 quency and Correction,” and “Regional Council—To Match  
 13 Federal Funds” at the close of the fiscal year 1976-77 is here-  
 14 by reappropriated for expenditure during the fiscal year 1977-  
 15 78.

*7—Governor's Office—Custodial Fund*

Acct. No. 123

1     Unclassified—Total \_\_\_\_\_ \$     175,000

2     To be used for current general expenses, including com-  
 3     pensation of employees, household maintenance, cost of of-  
 4     ficial functions, and any additional household expenses occa-  
 5     sioned by such official functions.

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

Acct. No. 124

1     Unclassified—Total \_\_\_\_\_ \$     750,000

2     Of the appropriation there may be expended, at the dis-  
 3     cretion of the governor, an amount not to exceed \$1,000.00  
 4     as West Virginia's contribution to the Interstate Oil Compact  
 5     Commission.

6     Any unexpended balance remaining in this appropriation  
 7     at the close of the fiscal year 1976-77 is hereby reappropriated  
 8     for expenditure during the fiscal year 1977-78.

*9—Governor's Office—Disaster Relief-Matching*

Acct. No. 126

1     Unclassified—Total \_\_\_\_\_ \$     50,000

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

*10—Governor's Office—McMechen and Stonewood Relief*

Acct. No. 127

1     Any unexpended balance remaining in the appropriation  
 2     for “Governor's office—McMechen and Stonewood Relief”

3 at the close of the fiscal year 1976-77, is hereby reappro-  
4 priated for expenditure during the fiscal year 1977-78.

11—*Governor's Office—Emergency Relief*

Acct. No. 128

1 Any unexpended balance remaining in the appropriation  
2 for "Emergency Relief for Water Systems of Municipalities,  
3 Towns, Villages and Public Service Districts" at the close of  
4 the fiscal year 1976-77, is hereby reappropriated for expendi-  
5 ture during the fiscal year 1977-78.

12—*Housing Development Loan—Guarantee Fund*

Acct. No. 129

1 Total \_\_\_\_\_ \$ 1,000,000

2 The above appropriation is to be used in conjunction with  
3 the development of housing needed in the State. Funds may be  
4 transferred by the Governor to the West Virginia Housing  
5 Development Fund.

13—*Office of Emergency Services*

Acct. No. 130

1	Personal Services .....	\$	167,275
2	Current Expenses .....		49,920
3	Equipment .....		11,400
4	Communications Center .....		250,000
5	Total	\$	478,595

FISCAL

14—*Auditor's Office—General Administration*

Acct. No. 150

1	Salary of State Auditor .....	\$	32,500
2	Other Personal Services .....		911,443
3	Current Expenses .....		375,025
4	Equipment .....		39,700

5	Mental Hygiene Fund .....	150,000
6	Microfilm .....	20,000
7	Representation of Needy Persons Fund .....	1,275,000
8	Total	\$ 2,803,668

**15—Auditor's Office—Social Security**

**Acct. No. 151**

1	To match contributions of state employees	
2	for social security—Total .....	\$ 12,000,000
3	The above appropriation is intended to cover the state's	
4	share of social security costs for those spending units operating	
5	from General Revenue Fund. The State Department of	
6	Highways, Department of Motor Vehicles, Workmen's Com-	
7	pensation Commission, Public Service Commission, and other	
8	departments operating from Special Revenue Fund and/or	
9	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 1976-77, is hereby reappropriated for expenditure	
14	during the fiscal year 1977-78.	

**16—Treasurer's Office**

**Acct. No. 160**

1	Salary of State Treasurer .....	\$ 35,000
2	Other Personal Services .....	337,850
3	Current Expenses .....	302,031
4	Equipment	27,500
5	Microfilm Program .....	7,700
6	Total .....	\$ 710,081

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

**Acct. No. 165**

1	Total .....	\$ 12,454,696
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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 1976-77, is hereby reappropriated  
 5 for expenditure during the fiscal year 1977-78.

18—*Sinking Fund Commission*

Acct. No. 170

1	Personal Services _____	\$	54,683
2	Current Expenses _____		10,350
			<hr/>
3	Total _____	\$	65,033

4 Any unexpended balance remaining in the "Equipment"  
 5 appropriation at the close of the fiscal year 1976-77 is hereby  
 6 reappropriated for expenditure during the fiscal year 1977-78.

19—*State Tax Department*

Acct. No. 180

1	Personal Services _____	\$	3,286,920
2	Current Expenses _____		2,329,200
3	Equipment _____		72,000
4	Circuit Breaker Reimbursement _____		150,000
			<hr/>
5	Total _____	\$	5,838,120

6 The above appropriation "Circuit Breaker Reimbursement"  
 7 is to be used in accordance with Engrossed House Bill No.  
 8 751, 1972 Regular Session of the Legislature.

20—*State Tax Department*

*Property Appraisal*

Acct. No. 185

1	Personal Services _____	\$	1,618,936
2	Other Expenses _____		1,107,350
3	Reimbursement to Counties for Computer-		
4	ization _____		80,000
			<hr/>
5	Total _____	\$	2,806,286

6 Any unexpended balance remaining in the "Property Ap-  
7 praisal Account" at the close of the fiscal year 1976-77 is  
8 hereby reappropriated for expenditure during the fiscal year  
9 1977-78.

21—*State Commissioner of Public Institutions*

Acct. No. 190

1 Any unexpended balance remaining in the appropriation  
2 "Prison Industries" as provided for in Enrolled Senate Bill  
3 No. 594, 1977 Regular Session of the Legislature, is hereby re-  
4 appropriated for expenditure during the fiscal year 1977-78.

22—*Department of Finance and Administration*

Acct. No. 210

1	Personal Services .....	\$ 2,357,000
2	Current Expenses .....	654,596
3	Repairs and Alterations .....	142,800
4	Equipment .....	13,200
5	Postage .....	650,000
6	Records Management .....	57,273
7	State Agency Surplus Property .....	82,384
8	Utilities .....	550,000
9	Fire Service Fee .....	73,965
10	Building Equipment and Supplies .....	25,000
11	Major Building Repairs .....	300,000
12	Total .....	\$ 4,906,218

13 The Workmen's Compensation Commission, Department of  
14 Welfare, Public Service Commission, Department of Natural  
15 Resources, Department of Motor Vehicles, State Department  
16 of Highways, State Health Department and State Tax De-  
17 partment — Income Tax Division shall reimburse the Postage  
18 appropriation of the Department of Finance and Administra-  
19 tion monthly for all meter service. Any spending unit operating  
20 from Special Revenue or receiving reimbursement for postage  
21 costs from the Federal Government shall refund to the Postage  
22 account of the Department of Finance and Administration  
23 such amounts. Should this appropriation for Postage be insuf-



24 ficient to meet the mailing requirements of the State spending  
 25 units as set out above, any excess postage meter service re-  
 26 quirements shall be a proper charge against the units, and each  
 27 spending unit shall refund to the Postage appropriation of  
 28 the Department of Finance and Administration any amounts  
 29 required for the Department for postage in excess of this  
 30 appropriation.

31 Any unexpended balance remaining in the "Postage Ac-  
 32 count" at the close of the fiscal year 1976-77 is hereby re-  
 33 appropriated for expenditure during the fiscal year 1977-78.

34 Any unexpended balances remaining at the close of the fiscal  
 35 year 1976-77 for "Major Building Repairs" is hereby reap-  
 36 propriated for expenditure during the fiscal year 1977-78,  
 37 (Major Building Repairs to include maintenance and repairs to  
 38 Governor's Mansion).

39 State Department of Highways shall reimburse the appro-  
 40 priation of the Department of Finance and Administration  
 41 monthly for all actual expenses incurred pursuant to the pro-  
 42 visions of Chapter 17, Article 2-A, Section 13 of the Code of  
 43 West Virginia.

### 23—*State Board of Insurance*

#### Acct. No. 225

1	Personal Services ----	\$	49,962
2	Current Expenses -----		15,525
3	Equipment -----		500
4	Insurance Fund -----		3,465,000
5	Total	\$	3,530,987

6 The above appropriation on line 4, is for the purpose  
 7 of paying premiums, self-insurance losses, loss adjustment  
 8 expenses 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 re-  
 11 quirements of the State spending units, any excess costs  
 12 shall be a proper charge against the units and each spending  
 13 unit shall reimburse to the Board of Insurance any amounts

14 required for that department for costs in excess of this ap-  
15 propriation.

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

20 Any unexpended balance remaining in the appropriation for  
21 "Self-Insurance Fund" at the close of the fiscal year 1976-77  
22 is hereby reappropriated for expenditure during the fiscal year  
23 1977-78.

24 Any or all of the funds appropriated for "Insurance Fund"  
25 may be transferred to a special account for disbursement for  
26 payment of premiums and insurance losses.

## LEGAL

### 24—Attorney General

#### Acct. No. 240

1	Salary of Attorney General .....	\$	35,000
2	Other Personal Services .....		1,006,582
3	Current Expenses .....		120,000
4	Equipment .....		19,000
5	To protect the resources or tax structure of the		
6	State in controversies or legal proceedings af-		
7	fecting same .....		3,250
8	Consumer Protection .....		148,136
9	Buffalo Creek Legal Expenses .....		5,000
10	Total .....	\$	1,336,968

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 prop-  
15 er authority of said spending unit.

16 The above appropriation for "Consumer Protection" is to  
17 be used in accordance with Enrolled Senate Bill No. 240,  
18 1974 Regular Session of the Legislature.

25—*Commission on Uniform State Laws*

## Acct. No. 245

1	Unclassified—Total _____	\$	8,000
2	To pay expenses of members of the Commission on Uniform		
3	State Laws.		

## INCORPORATING AND RECORDING

26—*Secretary of State*

## Acct. No. 250

1	Salary of Secretary of State _____	\$	30,000
2	Other Personal Services _____		224,265
3	Current Expenses _____		79,120
4	Equipment _____		10,000
5	Regulation of Charitable Fund Raising _____		42,500
6	Certification of Primary and General Elections _____		3,000
7	Total _____	\$	388,885
8	Any unexpended balance remaining in the appropriation		
9	"Publication of State Register" at the close of the fiscal year		
10	1976-77 is hereby reappropriated for expenditure during fiscal		
11	year 1977-78.		

## EDUCATIONAL

27—*State Department of Education*

## Acct. No. 277

1	Teacher Education Program—Total _____	\$	131,250
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28—*West Virginia Board of Regents (Control)*

## Acct. No. 279

1	Personal Services _____	\$	74,550,000
2	Current Expenses _____		15,392,322
3	Repairs and Alterations _____		1,442,500
4	Equipment _____		3,560,000
5	Oak Wilt Research _____		14,200

6	Veterinary, Optometry, Podiatry, and	
7	Architectural Tuition .....	583,000
8	Educational T. V. ....	754,474
9	Moving of WWVU-TV .....	273,169
10	Bureau for Coal Research .....	1,000,000
11	Forestry Products .....	154,788
12	Regional Research Institute .....	104,155
13	Intensive Agricultural Demonstration Trial ...	45,604
14	Community and Development Research	
15	(Glenville) .....	32,742
16	Center for Economic Action (Concord) .....	58,370
17	New Programs .....	380,000
18	Unclassified .....	295,000
19	Title I—Matching Funds .....	133,000
20	Scholarship Program .....	2,300,000
21	Awareness Program .....	54,808
22	Facilities and Scholarship Program .....	85,418
23	Agricultural Experiment Station—Intensive	
24	Horticultural Demonstration .....	34,665
25	Total .....	\$101,248,215

*29—West Virginia Board of Regents*

Acct. No. 280

1	Personal Services .....	\$	462,000
2	Current Expenses .....		126,500
3	Equipment .....		1,500
4	Total .....	\$	590,000

*30—West Virginia College of Osteopathic Medicine*

Acct. No. 281

1	Unclassified—Total .....	\$	2,231,760
2	Any unexpended balance remaining in this appropriation		
3	at the close of the fiscal year 1976-77 is hereby reappropriated		
4	for expenditure during the fiscal year 1977-78.		

31—*Marshall University—Medical School*

## Acct. No. 284

- 1    Unclassified—Total \_\_\_\_\_ \$ 1,668,559
- 2    Any unexpended balance remaining in this appropriation at
- 3    the close of the fiscal year 1976-77 is hereby reappropriated
- 4    for expenditure during the fiscal year 1977-78.

32—*West Virginia University—Medical School*

## Acct. No. 285

- |    |   |               |
|----|---|---------------|
| 1  | Personal Services _____                                     | \$ 8,594,304  |
| 2  | Current Expenses _____                                      | 4,598,385     |
| 3  | Repairs and Alterations _____                               | 400,000       |
| 4  | Equipment _____   | 256,900       |
| 5  | Family Practice Residency Support Program ____              | 377,283       |
| 6  | Intern and Residency Support Programs for                   |               |
| 7  | Community Hospitals _____                                   | 775,000       |
| 8  | Total _____   | \$ 15,001,872 |
| 9  | To be transferred to the West Virginia University — Medical |               |
| 10 | School Fund upon the requisition of the Governor.           |               |

33—*Department of Education*

## Acct. No. 286

- |    |  |            |
|----|--|------------|
| 1  | Personal Services _____                        | \$ 898,630 |
| 2  | Current Expenses _____                         | 586,137    |
| 3  | Equipment _____                                | 11,000     |
| 4  | National Defense Education Act ____            | 489,810    |
| 5  | Statewide Testing Program _____                | 142,112    |
| 6  | Safety Education—Aid to Counties _____         | 210,000    |
| 7  | State Aid to Children's Home _____             | 80,000     |
| 8  | Regional Education Service Agency _____        | 479,800    |
| 9  | Project 0629-061, Identification & Remediation |            |
| 10 | of Learning Disabilities _____                 | 50,000     |
| 11 | Project 0629-062, Diagnosis and Remediation    |            |
| 12 | of Learning Disabilities _____                 | 50,000     |
| 13 | Project 0629-067, Early Learning and Child     |            |
| 14 | Care _____                                     | 50,000     |

15	Project 0629-077, Early Learning and Child	
16	Care .....	50,000
17	Project 0629-078, Early Learning and Child	
18	Care .....	50,000
19	Total .....	\$ 3,147,489

20 The above appropriation includes the State Board of Edu-  
21 cation and their executive offices.

22 Any part or all of the appropriation for "National Defense  
23 Education Act" may be transferred to a Special Revenue  
24 Fund for the purpose of matching Federal Funds for this  
25 program.

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

Acct. No. 287

1	Personal Services .....	\$ 129,150
2	Current Expenses .....	34,350
3	Aid to Counties—Includes hot lunches and	
4	canning for hot lunches .....	1,895,400
5	Total .....	\$ 2,058,900

35—*State Board of Education—Vocational Division*

Acct. No. 289

1	Personal Services .....	\$ 227,118
2	Current Expenses .....	63,650
3	Equipment .....	7,000
4	Vocational Aid .....	8,362,753
5	Adult Basic Education .....	700,000
6	Replacement of Equipment .....	750,000
7	Completion of Vocational Building .....	130,000
8	Total .....	\$ 10,240,521

9 Any unexpended balance remaining in the appropriation for  
10 "Building Construction" at the close of the fiscal year 1976-77  
11 is hereby reappropriated for expenditure during the fiscal year  
12 1977-78.

36—*State Department of Education—Professional Educators*

## Acct. No. 290

1 Total ..... \$ 28,384,834

37—*Educational Broadcasting Authority*

## Acct. No. 291

1 Personal Services ..... \$ 59,523  
 2 Current Expenses ..... 29,255  
 3 Equipment ..... 2,500  
 4 Regional ETV ..... 1,509,026  
 5 Total ..... \$ 1,600,304

6 "Regional ETV" is for participation in the construction and  
 7 operation of Regional ETV stations by Marshall University,  
 8 Concord College, Bluefield State College, West Virginia Insti-  
 9 tute of Technology, and West Virginia State College, and the  
 10 acquisition of a new FM radio station to serve the northern  
 11 panhandle; and such funds may be transferred to special  
 12 revenue accounts for matching County and/or Federal Funds.

38—*State Board of Education—Vocational Division*

## Acct. No. 294

1 Total ..... \$ 550,000

2 Any unexpended balance remaining in this appropriation  
 3 at the close of the fiscal year 1976-77 is hereby reappropriated  
 4 for expenditure during the fiscal year 1977-78.

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

## Acct. No. 295

1 Professional Educators ..... \$207,724,900  
 2 Other Personnel ..... 41,544,980  
 3 Fixed Charges ..... 19,567,686  
 4 Transportation Charges ..... 9,753,278  
 5 Administration ..... 2,077,240  
 6 Other Current Expenses ..... 24,926,988  
 7 National Average Attainment ..... 16,228,262

## APPROPRIATIONS

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8	Program Improvement .....	1,911,336
9	Increased Enrollment .....	1,500,000
10	Sub Total .....	\$325,234,670
11	Less Local Share .....	51,009,659
12	Total .....	\$274,225,011

40—*Department of Education—Aid for Exceptional Children*

## Acct. No. 296

1	Personal Services .....	\$ 192,250
2	Current Expenses .....	79,700
3	Out-of-State Instruction .....	360,000
4	Aid to Counties .....	6,000,000
5	Total .....	\$ 6,631,950

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

41—*State Board of Education—Early Childhood Aides*

## Acct. No. 297

1	Early Childhood Aides—Total .....	\$ 2,882,880
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42—*Teachers' Retirement Board*

## Acct. No. 298

1	Teachers Retirement Fund .....	\$ 40,965,000
2	Expense Fund .....	35,000
3	Total .....	\$ 41,000,000

43—*Department of Education*

## Acct. No. 299

1	To fund minimum salaries for Support Per-	
2	sonnel—Total .....	\$ 21,916,658



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

## Acct. No. 333

1	Personal Services .....	\$ 2,009,394
2	Current Expenses .....	498,952
3	Repairs and Alterations .....	154,180
4	Equipment .....	95,000
5	Total .....	\$ 2,757,526

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

## Acct. No. 336

1	Personal Services .....	\$ 94,500
2	Current Expenses .....	21,450
3	Repairs and Alterations .....	25,000
4	Equipment .....	23,000
5	Total .....	\$ 163,950

46—*West Virginia Library Commission*

## Acct. No. 350

1	Personal Services .....	\$ 675,548
2	Current Expenses .....	142,650
3	Repairs and Alterations .....	3,500
4	Equipment .....	5,000
5	Grants-in-Aid .....	2,200,000
6	Library Matching Fund (Construction) .....	1,000,000
7	Books and Periodicals .....	60,000
8	Total .....	\$ 4,086,698
9	Any unexpended balance remaining in the appropriation for	
10	"Library Matching Fund" at the close of the fiscal year 1976-	
11	77 is hereby reappropriated for expenditure during the fiscal	
12	year 1977-78.	

47—*Department of Culture and History*

## Acct. No. 351

1	Personal Services .....	\$ 749,477
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2	Current Expenses .....	478,205
3	Repairs and Alterations .....	4,000
4	Equipment .....	77,150
5	Mt. State Forest Festival .....	25,000
6	Theatre Arts of West Virginia .....	230,000
7	Alpine Festival .....	7,500
8	Arts and Humanities Fund .....	400,000
9	West Virginia Water Festival .....	8,000
10	Tri-County Fair .....	5,000
11	Oil and Gas Festival .....	3,000
12	White Water Weekend .....	3,000
13	Calhoun County Wood Festival .....	2,500
14	New Martinsville Regatta .....	2,500
15	Braxton County Regatta .....	4,000
16	National Youth Science Camp .....	243,668
17	Cherry River Festival .....	2,000
18	Mother's Day Founders Festival .....	15,000
19	Mt. Heritage Arts and Crafts Fair .....	5,000
20	Wellsburg July 4th Celebration .....	2,500
21	Sternwheel Regatta .....	10,000
22	Sistersville Outboard Regatta .....	2,000
23	Ohio River Festival .....	2,500
24	Ripley 4th of July Festival .....	2,500
25	King Coal Festival .....	1,000
26	Independence Hall, Wheeling, West Virginia ..	100,000
27	Gen. Adam Stephen Memorial .....	24,500
28	<b>Total .....</b>	<b>\$ 2,410,000</b>

29 The above appropriations, Mt. State Forest Festival, Theatre  
30 Arts of West Virginia, West Virginia Water Festival, Tri-  
31 County Fair, Oil and Gas Festival, White Water Weekend,  
32 Calhoun County Wood Festival, New Martinsville Regatta,  
33 Braxton County Regatta, Cherry River Festival, Mothers  
34 Day Founders Festival, Mt. Heritage Arts and Crafts Fair,  
35 Wellsburg July 4th Celebration, Sternwheel Regatta, Sisters-  
36 ville Outboard Regatta, Ohio River Festival, Ripley 4th  
37 of July Festival, King Coal Festival, and Gen. Adam Stephen  
38 Memorial shall be expended only upon authorization of the  
39 Director of the Department of Culture and History and in

40 accordance with the provisions of Chapter 5A and Chapter  
41 12, Article 3 of the Code of West Virginia.

42 All Federal moneys received as reimbursement to the Sci-  
43 ence and Cultural Center, for moneys expended from the  
44 General Revenue Fund for Arts and Humanities are hereby  
45 reappropriated for the purposes as originally made, including  
46 Personal Services, Current Expenses and Equipment.

47 Any unexpended balance remaining in the appropriation  
48 for "Independence Hall, Wheeling, West Virginia" at the close  
49 of the fiscal year 1976-77 is hereby reappropriated for ex-  
50 penditure during the fiscal year 1977-78.

51 Any unexpended balance remaining in the appropriation for  
52 "National Youth Science Camp" at the close of the fiscal  
53 year 1976-77 is hereby reappropriated for expenditure during  
54 the fiscal year 1977-78.

## CORRECTION

48—*Department of Correction*

## Acct. No. 368

1	Salary of Commissioner	\$	30,000
2	Salaries of Board Members—		
3	Board of Probation and Parole _____		48,000
4	Other Personal Services _____		909,337
5	Current Expenses _____		275,354
6	Repairs and Alterations _____		4,200
7	Equipment _____		7,999
8	Work Study Release Program _____		183,834
			<hr/>
9	Total	\$	1,458,724

49—*Anthony Center*

## Acct. No. 369

1	Personal Services _____	\$	404,849
2	Current Expenses _____		158,385
3	Repairs and Alterations _____		19,000

4	Equipment .....	9,600
5	Total .....	\$ 591,834

*50—West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services .....	\$ 870,022
2	Current Expenses .....	287,300
3	Repairs and Alterations .....	95,000
4	Equipment .....	63,000
5	Total .....	\$ 1,315,322

*51—Davis Center*

Acct. No. 371

1	Personal Services .....	\$ 324,800
2	Current Expenses .....	184,745
3	Repairs and Alterations .....	19,500
4	Equipment .....	43,000
5	Total .....	\$ 572,045

*52—West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services .....	\$ 522,000
2	Current Expenses .....	184,695
3	Repairs and Alterations .....	35,000
4	Equipment .....	42,000
5	Vocational Training .....	5,000
6	Total .....	\$ 788,695

*53—Leckie Center*

Acct. No. 373

1	Personal Services .....	\$ 309,565
2	Current Expenses .....	185,660
3	Repairs and Alterations .....	41,100

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4	Equipment	28,000
5	Total .....	\$ 564,325

*54—West Virginia State Prison for Women*

**Acct. No. 374**

1	Personal Services .....	\$ 201,150
2	Current Expenses .....	115,080
3	Repairs and Alterations .....	23,600
4	Equipment	15,900
5	Total .....	\$ 355,730

*55—West Virginia Penitentiary*

**Acct. No. 375**

1	Personal Services .....	\$ 2,252,775
2	Current Expenses .....	1,195,565
3	Repairs and Alterations .....	116,500
4	Equipment	187,800
5	Total .....	\$ 3,752,640

6 Any unexpended balance remaining in the account "Replace-  
7 ment of Sanitary System (Sewers) and Construction of Boiler  
8 Plant"; and "Purchase of Building and Land" at the close of  
9 the fiscal year 1976-77 is hereby reappropriated for expendi-  
10 ture during the fiscal year 1977-78.

11 Any or all of the accounts "Replacement of Sanitary System  
12 (Sewer) and Construction of Boiler Plant" may be used to  
13 match and aid Federal Funds.

*56—Huttonsville Correctional Center*

**Acct. No. 376**

1	Personal Services .....	\$ 1,367,782
2	Current Expenses .....	957,982
3	Repairs and Alterations .....	73,900

4	Equipment	27,447
5	Total	<u>\$ 2,427,111</u>

## HEALTH AND WELFARE

## 57—State Health Department

Acct. No. 400

1	Personal Services	\$ 2,538,574
2	Current Expenses	560,960
3	Equipment	51,037
4	Local Health Services	2,100,000
5	Maternal and Child Health Programs	730,960
6	Home Health Services	505,580
7	Commission on Postmortem Examinations	400,000
8	Cancer Control and Treatment; Heart Disease	
9	Control; Dental Clinics; Diagnostic Services	
10	for Tuberculosis Controls; Special Pro-	
11	ject for Eradication of Tuberculosis; Envir-	
12	onmental Health Services; Nursing Home In-	
13	spection Unit; Biologicals for Immunization	
14	and Venereal Disease Drugs; Early Child-	
15	hood Development Program; Regional Health	
16	Services	2,774,043
17	Emergency Medical Services	2,052,503
18	Mental Health Research and Training	10,000
19	Mental Health Education	22,050
20	Community Mental Retardation Program	1,750,000
21	Alcohol and Drug Abuse Program	395,000
22	Community Mental Health Programs and	
23	Functional Relocation of Patients	5,250,000
24	Foster Grandparents Program	131,000
25	Mental Retardation—Developmental	
26	Disabilities and Legal Advocacy Program	150,000
27	Total	<u>\$ 19,421,707</u>
28	Any unexpended balance remaining in the appropriation	
29	for “Mental Health Center—Princeton” and “Logan-Mingo	
30	Area Mental Health Center” at the close of the fiscal year	

31 1976-77; is hereby reappropriated for expenditure during the  
32 fiscal year 1977-78.

33 Any unexpended balance remaining in the appropriation  
34 "Commission on Postmortem Examination" at the close of  
35 the fiscal year 1976-77 is hereby reappropriated for expendi-  
36 ture during the fiscal year 1977-78.

58—*Solid Waste Disposal*

Acct. No. 402

1 Unclassified—Total \$ 25,000

59—*Department of Veterans Affairs*

Acct. No. 403

1 In aid of Veterans Day Patriotic Exercises — \$ 5,000

2 To be expended subject to the approval of the Department of  
3 Veterans Affairs upon presentation of satisfactory plans by  
4 the Grafton G. A. R. Post, American Legion, Veterans of  
5 Foreign Wars and Sons of Veterans.

60—*Department of Veterans Affairs*

Acct. No. 404

1	Personal Services .....	\$	453,882
2	Current Expenses .....		95,400
3	Equipment .....		5,500
4	Educational opportunities for children of War		
5	Veterans .....		20,000
6	Total .....	\$	574,782

61—*Department of Welfare*

Acct. No. 405

1	Personal Services .....	\$	8,925,000
2	Current Expenses .....		2,650,000
3	Equipment .....		46,865
4	Public Assistance Grants .....		15,184,994
5	Social Security Matching Fund .....		522,112

## APPROPRIATIONS

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6	Services to Children, Aged, Blind and Disabled	13,848,474 ✓
7	Emergency Assistance Program .....	1,550,000
8	Total .....	\$ 42,727,445

62—*State Commission on Aging*

## Acct. No. 406

1	Personal Services .....	\$ 74,550
2	Current Expenses .....	49,020
3	Equipment .....	735
4	Programs for Elderly .....	650,000
5	Total .....	\$ 774,305

63—*Department of Welfare—Food Stamp and  
Government Donated Food*

## Acct. No. 407

1	Current Expenses .....	\$ 511,432
2	Equipment .....	12,500
3	Total .....	\$ 523,932

64—*Department of Welfare—Medical Program*

## Acct. No. 408

1	Current Expenses .....	\$ 1,100,000
2	Equipment .....	8,750
3	Direct Services .....	24,000,000
4	Total .....	\$ 25,108,750

65—*Department of Welfare—West Virginia Children's Home*

## Acct. No. 412

1	Personal Services .....	\$ 160,500
2	Current Expenses .....	85,620
3	Repairs and Alterations .....	16,000



4	Equipment		22,600
5	Total	\$	284,720

66—*Greenbrier School for Mentally Retarded Children*

## Acct. No. 414

1	Personal Services	\$	773,850
2	Current Expenses		211,984
3	Repairs and Alterations		100,000
4	Equipment		60,000
5	Total	\$	1,145,834

67—*State Health Department—Mental Hospitals*

## Acct. No. 416

1	Personal Services	\$	13,929,766
2	Current Expenses		4,671,734
3	Repairs and Alterations		519,425
4	Equipment		271,186
5	Student Nurse Affiliation Program (Huntington)		45,000
6	Psychiatric Training Center—Student Nurses		
7	(Weston)		157,500
8	Total	\$	19,594,611

9 The director of health, prior to the beginning of the fiscal  
 10 year, shall file with the legislative auditor an expenditure  
 11 schedule for each formerly separate spending unit which  
 12 has been consolidated into the above account and which  
 13 receives a portion of the above appropriation. He shall also,  
 14 within fifteen days after the close of each six-month period  
 15 of said fiscal year, file with the legislative auditor an itemized  
 16 report of expenditures made during the preceding six-month  
 17 period. Such report shall include the total of expenditures  
 18 made under each of line items 1, 2, 3, and 4 above.

68—*Colin Anderson Center*

## Acct. No. 419

1	Personal Services	\$	5,302,577
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2	Current Expenses	873,360
3	Repairs and Alterations .....	99,300
4	Equipment	338,314
5	Total .....	\$ 6,613,551

69—*Lakin State Hospital*

Acct. No. 423

1 Any unexpended balance remaining in the appropriation "To  
2 complete Heating System" at the close of the fiscal year 1976-  
3 77 is hereby reappropriated for expenditure during the fiscal  
4 year 1977-78.

70—*Fairmont Emergency Hospital*

Acct. No. 425

1	Personal Services .....	\$ 536,650
2	Current Expenses .....	356,540
3	Repairs and Alterations .....	9,000
4	Equipment .....	32,500
5	Total	\$ 934,690

71—*Welch Emergency Hospital*

Acct. No. 426

1	Personal Services .....	\$ 955,500
2	Current Expenses .....	351,400
3	Repairs and Alterations .....	95,000
4	Equipment .....	70,000
5	Total	\$ 1,471,900

72—*Andrew S. Rowan Memorial Home*

Acct. No. 427

1	Personal Services .....	\$ 718,250
2	Current Expenses .....	362,760
3	Repairs and Alterations .....	73,700

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4	Equipment _____	39,000
5	Total	\$ 1,193,710

73—Hopemont State Hospital

Acct. No. 430

1	Personal Services _____	\$ 3,073,875
2	Current Expenses _____	585,726
3	Repairs and Alterations _____	57,200
4	Equipment _____	70,000
5	Total	\$ 3,786,801

74—Pinecrest State Hospital

Acct. No. 431

1	Personal Services _____	\$ 2,840,946
2	Current Expenses _____	857,000
3	Repairs and Alterations _____	105,400
4	Equipment _____	94,300
5	Total	\$ 3,897,646

75—Denmar State Hospital

Acct. No. 432

1	Personal Services _____	\$ 1,878,620
2	Current Expenses _____	646,890
3	Repairs and Alterations _____	84,000
4	Equipment _____	129,300
5	Total	\$ 2,738,810

76—State Board of Education—Rehabilitation Division

Acct. No. 440

1	Personal Services _____	\$ 1,762,253
2	Current Expenses _____	505,500
3	Rehabilitation Center _____	1,817,430
4	Case Services _____	2,233,113

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5	Supervisory Services for Vending Stand Pro-	
6	gram for Blind .....	181,708
7	Training and Special Projects .....	515,148
8	Social Security Matching Fund .....	178,708
9	Total .....	\$ 7,193,860
10	Any unexpended balance remaining in the appropriation	
11	for "Rehabilitation Center Construction" at the close of the	
12	fiscal year 1976-77, is hereby reappropriated for expenditure	
13	during the fiscal year 1977-78.	

## BUSINESS AND INDUSTRIAL RELATIONS

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

Acct. No. 450

1	Personal Services .....	\$ 938,800
2	Current Expenses .....	317,045
3	Equipment .....	22,000
4	Total .....	\$ 1,277,845

*78—Interstate Mining Compact Commission*

Acct. No. 451

1	Total .....	\$ 10,000
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*79—Department of Mines*

Acct. No. 460

1	Personal Services .....	\$ 2,647,604
2	Current Expenses .....	525,000
3	Equipment .....	101,700
4	Special Mine Drainage Program .....	50,000
5	Miner Training, Education and Certification .....	172,331
6	Board of Coal Mine Health and Safety .....	10,000
7	Total .....	\$ 3,506,635

8 Any unexpended balance remaining in the appropriation for  
 9 "Subsidence-Federal Matching" at the close of the fiscal year  
 10 1976-77, is hereby reappropriated for expenditure during the  
 11 fiscal year 1977-78.

80—*Ohio River Basin Commission*

Acct. No. 469

1 Total \_\_\_\_\_ \$ 21,600

81—*Council of State Governments*

Acct. No. 472

1 Total \_\_\_\_\_ \$ 21,900

82—*Interstate Commission on Potomac River Basin*

Acct. No. 473

1 West Virginia's contribution to Potomac River  
 2 Basin Interstate Commission \_\_\_\_\_ \$ 12,450

83—*Ohio River Valley Water Sanitation Commission*

Acct. No. 474

1 West Virginia's contribution to the Ohio River  
 2 Valley Water Sanitation Commission \_\_\_\_\_ \$ 40,575

84—*Southern Regional Education Board*

Acct. No. 475

1 West Virginia's contribution to Southern Re-  
 2 gional Education Board \_\_\_\_\_ \$ 64,000  
 3 To be expended upon requisition of the Governor.

85—*West Virginia Air Pollution Commission*

Acct. No. 476

1 Personal Services \_\_\_\_\_ \$ 450,000  
 2 Current Expenses \_\_\_\_\_ 125,360



89—*West Virginia Nonintoxicating Beer Commission*

## Acct. No. 490

1	Personal Services .....	\$	257,050
2	Current Expenses .....		74,350
3	Equipment .....		3,000
			<hr/>
4	Total .....	\$	334,400

90—*West Virginia Racing Commission*

## Acct. No. 495

1	Personal Services .....	\$	396,566
2	Current Expenses .....		57,725
3	Equipment .....		2,000
			<hr/>
4	Total .....	\$	456,291

## AGRICULTURE

91—*Department of Agriculture*

## Acct. No. 510

1	Salary of Commissioner .....	\$	32,500
2	Other Personal Services .....		1,312,500
3	Current Expenses .....		705,267
4	Equipment .....		16,000
5	Marijuana and Multiflora Rose Eradication		
6	Program .....		50,159
			<hr/>
7	Total .....	\$	2,116,426

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

10 Any unexpended balance remaining in the appropriation for  
11 "Marijuana and Multiflora Rose Eradication Program" at the  
12 close of the fiscal year 1976-77, is hereby reappropriated for  
13 expenditure during the fiscal year 1977-78.

92—*Farm Management Commission*

## Acct. No. 511

1	Personal Services .....	\$	759,822
2	Current Expenses .....		623,400
3	Repairs and Alterations .....		254,500
4	Equipment .....		338,430
5	Unclassified .....		500,000
6	Total .....	\$	2,476,152

93—*Department of Agriculture—  
Soil Conservation Committee*

## Acct. No. 512

1	Personal Services .....	\$	233,100
2	Current Expenses .....		79,525
3	Watershed Program .....		200,000
4	Total .....	\$	512,625
5	Any unexpended balance remaining in the appropriation		
6	for "Watershed Program," "Mud River Flood Control Project"		
7	and "Channelization of Kelley's Creek" hereinafter known as		
8	"Stream Channelization" at the close of the fiscal year 1976-77		
9	is hereby reappropriated for expenditure during the fiscal year		
10	1977-78.		

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

## Acct. No. 513

1	Personal Services .....	\$	531,809
2	Current Expenses .....		105,182
3	Total .....	\$	636,991

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.



95—*Department of Agriculture—Meat Inspection*

## Acct. No. 514

1      Unclassified—Total \_\_\_\_\_ \$    402,150

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

5      Any unexpended balance remaining in the appropriation  
6 for "Meat Inspection" at the close of the fiscal year 1976-77  
7 is hereby reappropriated for expenditure during the fiscal  
8 year 1977-78.

96—*Department of Agriculture—Agricultural Awards*

## Acct. No. 515

1	Agricultural Awards _____	\$	66,000
2	West Virginia State Fair _____		35,000
3	Black Walnut Festival _____		4,000
4	Apple Festival _____		2,000
5	Strawberry Festival _____		5,450
6	Buckwheat Festival _____		4,500
7	Marshall Fair _____		3,000
8	Town and Country Days _____		3,000
9	Potato Festival _____		2,000
10	Webster Logging Festival _____		2,500
11	Paden City Labor Day Festival _____		2,500
12	Jackson County Junior Fair _____		2,000
13	Mason County Fair _____		4,000
14	Tyler County Fair _____		3,000
15	Wyoming County Labor Day Festival (4-H		
16	awards) _____		3,000
17	Lincoln County Tobacco Fair _____		1,500
18	Clay County Golden Delicious Festival _____		2,000
19	West Virginia Sports Festival _____		2,000
20	Wood County Fair _____		3,500
21	Braxton Fair Association _____		2,500
22	Virginia Point Days (Wayne County) _____		2,000
23	Monroe County Farmer's Day (Union) _____		2,000
24	Huntington River Day Fair _____		1,500

## APPROPRIATIONS

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25	Pocahontas County Pioneer Days .....	1,500
26	Mannington District Fair .....	1,500
27	Paw Paw District Fair .....	1,500
28	Winfield District Fair .....	1,500
29	Putnam County Midway Fair .....	1,500
30	Berkeley County Youth Fair .....	1,500
31	Raleigh County 4-H Awards .....	1,000
32	Wayside Fair .....	1,000
33	West Virginia Poultry Festival (Hardy County) .....	1,000
		<hr/>
34	Total .....	\$ 170,950

## CONSERVATION AND DEVELOPMENT

97—*Geological and Economic Survey*

## Acct. No. 520

1	Personal Services .....	\$ 540,000
2	Current Expenses .....	208,670
3	Repairs and Alterations .....	11,750
4	Equipment .....	60,875
5	Cooperative Mapping Program .....	244,310
6	Coal Quality and Reserve Study .....	307,654
7	Archaeological Investigations .....	31,000
8	Investigations of Geological Hazards .....	12,000
9	Total .....	\$ 1,416,259

98—*Department of Natural Resources*

## Acct. No. 565

1	Personal Services .....	\$ 5,637,587
2	Current Expenses .....	1,584,678
3	Repairs and Alterations .....	373,040
4	Equipment .....	474,664
5	Clarke-McNary Fire Prevention .....	600,000
6	Water Resources Board and Reclamation Board .....	
7	of Review .....	30,000
8	Cass Scenic Railroad .....	80,000
9	Parks Improvement Program .....	425,000

10	Mine Coal Refuse Pile Removal and Recla-	
11	mation	300,000
12	Debt Service	975,000
13	Special Works Program _____	350,000
14	Construction, Development and Improvement	
15	of sewage systems and water systems on State	
16	forests, parks and recreation areas _____	800,000
17	Total _____	\$ 11,629,969

18 Any unexpended balance remaining in the appropriations  
 19 for "Panther State Forest," "Piney Creek Watershed," "Pur-  
 20 chase of Land—Pipestem State Park," "Land Purchase and  
 21 Upgrading Facilities—Laurel Creek," "Bluestone State Park,"  
 22 "Tomlinson Run State Park," "French Creek Game Farm"  
 23 and "Berwind Lake Public Hunting and Fishing Area," at the  
 24 close of the fiscal year 1976-77, is hereby reappropriated for  
 25 expenditure during the fiscal year 1977-78.

26 The balance remaining in the above-mentional appro-  
 27 priation for "Purchase of Land—Pipestem State Park," is  
 28 redesignated for "Park Improvements—Pipestem State Park,"  
 29 and the balance remaining in the above-mentioned appropria-  
 30 tion for "Berwind Lake Public Hunting and Fishing Area" is  
 31 redesignated for "Area Improvements—Berwind Lake Public  
 32 Hunting and Fishing Area."

33 Any or all funds appropriated for "Clark-McNary Fire Pre-  
 34 vention" may be transferred to Special Revenue fund to  
 35 match and aid Federal Funds.

#### 99—Public Land Corporation

##### Acct. No. 566

1 Any unexpended balance remaining in the appropriations for  
 2 "Public Land Corporation," "Blennerhassett Island," and  
 3 "National Track and Field Hall of Fame" at the close of the  
 4 fiscal year 1976-77, is hereby reappropriated for expenditure  
 5 during the fiscal year 1977-78.

6 The appropriation for "National Track and Field Hall of  
 7 Fame," as designated in Chapter 8, Acts of the Legislature,  
 8 First Extraordinary Session, 1975, is hereby redesignated as fol-

9 lows: "The purpose of this bill is to provide state general  
10 revenue moneys to match federal funds, county funds, mu-  
11 nicipal funds, board of education funds, or any combination  
12 thereof, for the establishment of the "National Track and  
13 Field Hall of Fame". Such moneys may be transferred to  
14 a special fund to match and aid federal funds or other of the  
15 aforesaid funds and for disbursement therefrom.

100—*Water Development Authority*

Acct. No. 567

1	Personal Services .....	\$	111,500
2	Operating Expenses .....		73,290
3	Capital Outlay .....		7,750,000
4	Total .....	\$	7,934,790

5 Any unexpended balance remaining in the appropriation for  
6 "Capital Outlay" at the close of the fiscal year 1976-77, is  
7 hereby reappropriated for expenditure during the fiscal year  
8 1977-78.

101—*West Virginia Railroad Maintenance Authority*

Acct. No. 569

1	Unclassified .....	\$	119,543
2	South Branch Line Preservation .....		50,000
3	Total .....	\$	169,543

PROTECTION

102—*Department of Public Safety*

Acct. No. 570

1	Personal Services .....	\$	8,745,980
2	Current Expenses .....		3,477,836
3	Repairs and Alterations .....		242,000
4	Equipment .....		1,850,701

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5	Emergency Fund _____	5,000
6	Total _____	\$ 14,321,517

103—*Adjutant General—State Militia*

Acct. No. 580

1	Personal Services _____	\$ 171,425
2	Current Expenses _____	355,390
3	Repairs and Alterations _____	36,000
4	Equipment _____	11,000
5	Compensation of Commanding Officers, Cleri-	
6	cal Allowances and Uniform Allowances ____	95,360
7	Property Maintenance _____	451,503
8	State Armory Board _____	1,572,000
9	Total _____	\$ 2,692,678

MISCELLANEOUS BOARDS AND COMMISSIONS

104—*West Virginia Civil Service System*

Acct. No. 584

1	Personal Services _____	\$ 551,556
2	Current Expenses _____	270,000
3	Total _____	\$ 821,556

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

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

105—*West Virginia State Board of Land Surveyors*

Acct. No. 585

1	To pay the per diem of members and other		
2	general expenses .....	\$	10,000
3	From Collections .....		10,000

106—*State Board of Professional Foresters*

Acct. No. 586

1	To pay the per diem of members and other		
2	general expenses .....	\$	800
3	From Collections .....		800

107—*West Virginia Board of Examiners for Practical Nurses*

Acct. No. 587

1	To pay the per diem of members and other		
2	general expenses .....		64,000
3	From Collections .....		64,000

108—*State Board of Chiropractic Examiners*

Acct. No. 588

1	To pay the per diem of members and other gen-		
2	eral expenses .....	\$	2,000
3	From Collections .....	\$	2,000

109—*State Board of Pharmacy*

Acct. No. 590

1	To pay the per diem of members and other gen-		
2	eral expenses .....	\$	62,000
3	From Collections .....		62,000

110—*State Board of Osteopathy*

## Acct. No. 591

1	To pay the per diem of members and other gen-		
2	eral expenses .....	\$	6,000
3	From Collections .....		6,000

111—*State Board of Embalmers and Funeral Directors*

## Acct. No. 593

1	To pay the per diem of members and other gen-		
2	eral expenses .....	\$	30,000
3	From Collections .....		30,000

112—*State Board of Registration for Professional Engineers*

## Acct. No. 594

1	To pay the per diem of members and other gen-		
2	eral expenses .....	\$	68,000
3	From Collections .....		68,000

113—*State Board of Architects*

## Acct. No. 595

1	To pay the per diem of members and other gen-		
2	eral expenses .....	\$	14,000
3	From Collections .....		14,000

114—*State Veterinary Board*

## Acct. No. 596

1	To pay the per diem of members and other gen-		
2	eral expenses .....	\$	2,000
3	From Collections .....		2,000

115—*Human Rights Commission*

## Acct. No. 598

1	Personal Services .....	\$	233,100
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2	Current Expenses _____	129,350
3	Equipment _____	10,000
		—
4	Total _____	\$ 372,450

116—*West Virginia State Board of Sanitarians*

Acct. No. 599

1	To pay the per diem of members and other gen-	
2	eral expenses _____	\$ 800
3	From Collections _____	800

117—*West Virginia Public Employees Retirement Board*

Acct. No. 614

1	Employers Accumulation Fund _____	\$ 6,500,000
2	Expenses Fund _____	100,000
3	Total _____	\$ 6,600,000

4 The above appropriation is intended to cover the state's share  
5 of West Virginia Public Employee's Retirement coverage for  
6 those departments operating from General Revenue Fund. The  
7 State Department of Highways, Department of Motor Ve-  
8 hicles, Workmen's Compensation Commission, Public Service  
9 Commission, and other departments operating from Special  
10 Revenue Funds and/or Federal Funds shall pay their pro-  
11 portionate share of the retirement costs for their respective  
12 divisions. When specific appropriations are not made, such  
13 payments may be made from the balance in the various  
14 Special Revenue Funds in excess of specific appropriations.

118—*West Virginia Public Employees Insurance Board*

Acct. No. 615

1	Expense Fund _____	\$ 113,000
2	Public Employees Health Insurance—State	
3	Contribution _____	22,000,000
4	Total _____	\$ 22,113,000



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 Ve-  
 9 hicles, Workmen's Compensation Commission, Public Service  
 10 Commission, and other departments operating from Special  
 11 Revenue fund and/or Federal Funds shall pay their propor-  
 12 tionate 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 in the  
 15 various Special Revenue Funds in excess of specific appro-  
 16 priations.

119—*Insurance Commissioner*

## Acct. No. 616

1	Personal Services .....	\$	357,335
2	Current Expenses .....		100,800
3	Equipment .....		5,100
4	Total .....	\$	463,235

120—*State Fire Commission*

## Acct. No. 617

1	Personal Services .....	\$	272,350
2	Current Expenses .....		101,010
3	Repairs and Alterations .....		4,000
4	Equipment .....		25,000
5	Total .....	\$	402,360

121—*State Department of Highways*

## Acct. No. 641

1	Maintenance State Local Services .....	\$	10,500,000
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2 Any or all of the above appropriation may be transferred  
 3 to the State Road Fund for distribution.

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

122—*State Department of Highways*

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1	Maintenance Expressway, Trunkline and	
2	Feeder .....	\$ 53,023,000
3	Maintenance State Local Services .....	12,924,000
4	Inventory Revolving .....	1,000,000
5	Equipment Revolving .....	4,500,000
6	General Operations .....	18,931,000
7	Debt Service .....	77,200,000
8	Interstate Construction .....	125,320,000
9	Other Federal Aid Programs .....	79,234,000
10	Appalachian Program .....	58,033,000
11	Non-Federal Aid Construction .....	84,545,000
12	Total .....	\$514,710,000

13     It is the intent to appropriate and make available for  
 14 expenditure, the balances and all revenues and income of the  
 15 state road fund, including the proceeds from the sale of bonds,  
 16 for the maintenance, construction and reconstruction of state  
 17 roads and for other purposes in accordance with the provisions  
 18 of Chapter 17, Code of West Virginia, one thousand nine  
 19 hundred thirty-one, as amended.

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

26     There is hereby appropriated, within the above items suf-

27 sufficient money for the payment of claims, accrued or arising  
 28 during this budgetary period, to be paid in accordance with  
 29 Chapter 14, Article 2, Sections 17 and 18, Code of West Vir-  
 30 ginia, one thousand nine hundred thirty-one, as amended.

123—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services .....	\$ 1,352,333
2	Current Expenses .....	1,522,958
3	Equipment .....	160,000
4	Purchase of License Plates .....	375,000
5	Social Security Matching .....	82,262
6	Public Employees Retirement Matching .....	127,887
7	Public Employees Health Insurance .....	66,700
8	Total .....	\$ 3,687,140

124—*State Tax Department—Gasoline Tax Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1	Personal Services .....	\$ 378,000
2	Current Expenses .....	160,100
3	Equipment .....	4,800
4	Social Security Matching .....	25,000
5	Public Employees Retirement Matching .....	35,910
6	Public Employees Health Insurance .....	26,300
7	Total .....	\$ 630,110

125—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services .....	\$ 140,136
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2 Other Expenses ..... 49,026

3 Total ..... \$ 189,162

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 appropriated  
7 may be made available by budget amendment upon request of  
8 the State Superintendent of Schools and approval of the Gov-  
9 ernor for any emergency which might arise in the operation of  
10 this Division during the fiscal year.

126—*Treasurer's Office*

Acct. No. 800

TO BE PAID FROM SPECIAL REVENUE FUND

1 Abandoned and Unclaimed Property—Trust  
2 and Expense Fund ..... \$ 36,015

127—*Real Estate Commission*

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ..... \$ 85,887

2 Current Expenses ..... 28,500

3 Equipment ..... 1,500

4 Social Security Matching ..... 5,500

5 Public Employees Retirement Matching ..... 7,000

6 Public Employees Health Insurance ..... 3,000

7 Total ..... \$ 131,387

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

128—*West Virginia Racing Commission*

Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses ..... \$ 5,000

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 for  
 6 hospitalization, medical care, and/or funeral expenses for per-  
 7 sons contributing to this fund.

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

Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

1 Total \_\_\_\_\_ \$ 12,000

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.

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

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services _____	\$	605,997
2	Current Expenses _____		107,660
3	Equipment _____		7,500
4	Social Security Matching _____		35,450
5	Public Employees Retirement Matching _____		57,570
6	Public Employees Health Insurance _____		35,000
7	Total _____	\$	849,177

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

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

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 3,357,105
2	Current Expenses .....	5,356,696
3	Equipment .....	130,600
4	Social Security Matching .....	196,390
5	Public Employees Retirement Matching .....	318,924
6	Public Employees Health Insurance .....	167,500

7 Total ..... \$ 9,527,215

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

132—*Department of Agriculture*

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 304,500
2	Current Expenses .....	39,675
3	Equipment .....	12,000
4	Social Security Matching .....	17,813
5	Public Employees Retirement Matching .....	27,455
6	Public Employees Health Insurance .....	12,000

7 Total ..... \$ 413,443

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 Agriculture as provided by law.

133—*State Committee of Barbers and Beauticians*

Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 102,900
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2	Current Expenses _____	47,470
3	Equipment _____	1,200
4	Social Security Matching _____	6,020
5	Public Employees Retirement Matching _____	9,775
6	Public Employees Health Insurance _____	5,562
		<hr/>
7	Total _____	\$ 172,927

8 The total amount of this appropriation shall be paid from  
9 Special Revenue Fund out of collections made by the State  
10 Committee of Barbers and Beautificians as provided by law.

134—Public Service Commission

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners _____	\$ 60,000
2	Other Personal Services _____	1,392,436
3	Current Expenses _____	526,300
4	Equipment _____	32,905
5	Social Security Matching _____	78,092
6	Public Employees Retirement Matching _____	126,816
7	Public Employees Health Insurance _____	61,500
		<hr/>
8	Total _____	\$ 2,278,049

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

12 Out of the above appropriation \$5,000 may be transferred  
13 to the State Water Resources Commission of the Department  
14 of Natural Resources for use in cooperation with the U. S.  
15 Geological Survey in a program of stream gauging.

135—Public Service Commission—Gas Pipeline Division

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services _____	\$ 121,200
2	Current Expenses _____	48,630

3	Equipment	3,500
4	Social Security Matching .....	5,955
5	Public Employees Retirement Matching .....	9,671
6	Public Employees Health Insurance .....	4,200
7	Total .....	\$ 193,156

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 pipeline companies.

136—*Public Service Commission—Motor Carrier Division*

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 663,944
2	Current Expenses .....	250,500
3	Equipment	5,060
4	Social Security Matching .....	34,710
5	Public Employees Retirement Matching .....	56,367
6	Public Employees Health Insurance .....	37,200
7	Total .....	\$ 1,047,781

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 by  
 12 law.

137—*Department of Natural Resources*

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 2,730,222
2	Current Expenses .....	813,465
3	Repairs and Alterations .....	152,800
4	Equipment .....	260,000
5	Social Security Matching .....	159,183



6	Public Employees Retirement Matching .....	258,775
7	Public Employees Health Insurance .....	160,000
8	Land Purchase and Buildings .....	410,000
9	Total .....	\$ 4,944,445

10 The total amount of this appropriation shall be paid from  
 11 Special Revenue Fund out of fees collected by the Depart-  
 12 ment of Natural Resources. Expenditures shall be limited to  
 13 the amounts appropriated except for Federal Funds received  
 14 and Special Funds collected at state parks. Any unexpended  
 15 balances remaining in the prior appropriation item "Land  
 16 Purchase and Buildings" are hereby reappropriated for ex-  
 17 penditure, and all moneys accumulated in the fund at the  
 18 close of fiscal year 1976-77 and available for capital im-  
 19 provements and land purchase purposes are hereby appro-  
 20 priated for expenditure in fiscal year 1977-78; all in accord-  
 21 ance with Chapter 20, Article 2, Section 34, Code of West  
 22 Virginia.

138—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 261,463
2	Current Expenses .....	137,824
3	Repairs and Alterations .....	8,700
4	Equipment .....	24,500
5	Social Security Matching .....	2,000
6	Public Employees Health Insurance .....	13,800
7	Total .....	\$ 448,287

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

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

Acct. No. 883

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service .....	\$ 541,942
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2 The total amount of this appropriation shall be paid from  
3 the non-revolving Capital Improvement Fund created by the  
4 1959 Legislature, as amended.

5 Any unexpended balances remaining in the appropriations  
6 for "Miscellaneous Small Projects, Creative Arts, Utilities,  
7 Roads and Parking, and Medical Center—Repairs and Altera-  
8 tions" at the close of the fiscal year 1976-77 are hereby re-  
9 appropriated for expenditure during fiscal year 1977-78.

140—*Board of Regents—State System*  
*Special Capital Improvements Fund*

*(Capital Improvement and Bond Retirement Fund)*

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service and Debt Service Reserve .....	\$ 2,340,992
2	W. Va. Northern Community College,	
3	Campus Development .....	3,272,000
4	(Acquisition of Educational Facilities—	
5	Wheeling)	
6	W. Va. State College, Campus Development....	765,000
7	(Renovation of Administration Building—	
8	Supplement)	
9	West Liberty State College, Campus Development	360,000
10	(Complete Renovation of Main Hall—	
11	Supplement; Renovation of Tennis	
12	Courts; All Weather Running Track)	
13	Potomac State College, Campus Development .	290,000
14	(Addition to Maintenance Building;	
15	Property Acquisition)	
16	Potomac State College, General Purpose Lab	
17	for Forestry and Science .....	50,000
18	Glennville State College, Campus Development .	405,000
19	(Implement Recommendations of Space	
20	Utilization Study; Upgrade Existing	
21	Facilities)	
22	Southern West Virginia Community College,	
23	Campus Development .....	345,000

24	(Construction of Educational Facility at	
25	Logan-Supplement)	
26	West Virginia University, Campus Development	2,750,000
27	(Renovation of Existing Facilities—	
28	Supplement)	
29	Miscellaneous Projects .....	950,000
30	Bluefield State College .....	365,000
31	Exterior Repair, Replace Windows and	
32	Replace Roof of Dickason Hall	
33	Shepherd College .....	175,000
34	Replace Windows and Install Sprinkler	
35	System in the Basement of Knutti Hall	
36	West Liberty State College .....	110,000
37	New Heating and Air Conditioning and	
38	Replace Windows in Shotwell Hall	
39	Fairmont State College .....	350,000
40	Window and Door Replacement, Fire Pro-	
41	tection System, Wiring and Ceiling	
42	Repair in Old Science Building	
43	West Virginia Institute of Technology .....	275,000
44	Replace Retaining Wall in Front of	
45	Campus	
46	West Virginia State College .....	100,000
47	Clean and Tuck Point Walls and	
48	Renovate Exterior of Buildings	
49	Total .....	\$ 12,902,992

50 The above projects are listed in a stated order of priority.  
 51 Projects are to be paid on a cash basis and made available  
 52 from date of passage. It is intended that only complete and  
 53 usable projects be constructed and then only in the listed order  
 54 of priority: *Provided, however,* That whenever the amount in  
 55 the special capital improvement fund shall be sufficient to  
 56 cover all capital expenditures authorized above, then the  
 57 listed projects shall be considered of equal priority and all of  
 58 them, or any one or more, may be undertaken as soon as  
 59 plans can be prepared and contracts let therefor.

60 The total amount of this appropriation shall be paid from  
 61 the Special Capital Improvement Fund created by the 1971  
 62 Legislature.

63 Any unexpended balances remaining in prior years and in  
64 the 1976-77 appropriation are hereby reappropriated for  
65 expenditure during fiscal year 1977-78.

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

Acct. No. 884

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service ..... \$ 1,677,677

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

5 Any unexpended balances remaining in prior years and  
6 1976-77 appropriations are hereby reappropriated for expen-  
7 diture during fiscal year 1977-78.

142—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1 Personal Services ..... \$ 2,432,394

2 Current Expenses ..... 2,005,830

3 Equipment ..... 50,000

4 Social Security Matching ..... 142,482

5 Public Employees Retirement Matching ..... 231,202

6 Public Employees Health Insurance ..... 115,940

7 Total ..... \$ 4,977,848

8 There is hereby authorized to be paid out of the above ap-  
9 propriation for Current Expenses the amount necessary for the  
10 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.

143—*West Virginia Alcohol Beverage Control*

Acct. No. 927

TO BE PAID FROM SPECIAL REVENUE FUND

1 Salary of Commissioner ..... \$ 30,000

2	Other Personal Services	6,840,600
3	Current Expenses .....	3,209,100
4	Repairs and Alterations .....	55,000
5	Equipment	112,500
6	Social Security Matching .....	402,691
7	Agency Operating Expense .....	31,200
8	Public Employees Retirement Matching .....	653,942
9	Public Employees Health Insurance .....	384,000
10	Total .....	\$ 11,719,033

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

13 The above appropriation includes the salaries of store  
14 personnel, 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  
19 purchase of liquor, as provided by law.

144—*West Virginia University—Medical School*

Acct. No. 928

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Personal Services .....	\$ 27,529,715
2	Current Expenses .....	16,087,864
3	Repairs and Alterations .....	1,300,000
4	Equipment .....	1,900,000
5	Intern and Residency Support Program for	
6	Community Hospitals .....	775,000
7	Family Practice Residency Support Program ..	377,283
8	Total .....	\$ 47,969,862

9 Special funds in excess of the amounts hereby appropriated  
10 may be made available by budget amendment upon request  
11 of the Board of Regents and approval of the Governor.

1 **Sec. 3. Awards for claims against the state.**—From the  
2 funds designated there are hereby appropriated for the re-

3 remainder of the fiscal year 1976-77 and to remain in effect  
 4 until June 30, 1978, for payment of claims against the state,  
 5 the following amounts itemized:

6 (a) Claims against the Department of Public  
 7 Institutions:

8 (To be paid from General Revenue Fund)

9	(1) Randy R. Adams .....	\$ 73.15
10	(2) Louis E. Gilbert .....	375.63
11	(3) John Gough .....	982.70
12	(4) Lacy Gwinn .....	477.27
13	(5) Beecher D. Hamons .....	135.85
14	(6) William E. Hefner .....	252.06
15	(7) Edward L. Hill .....	125.40
16	(8) Robert L. Hill .....	39.54
17	(9) Robert Miller .....	296.55
18	(10) Carl Mitchell .....	828.72
19	(11) Clyde Moats .....	227.35
20	(12) William Mullins .....	621.36
21	(13) North-Central Dairy Herd Improvement 22 Association, Inc. ....	82.04
23	(14) Ralston Purina Company .....	620.96
24	(15) Charles Reynolds .....	212.52
25	(16) Homer Reynolds .....	291.60
26	(17) Ronald Robinson .....	271.70
27	(18) Southern States Morgantown Cooperative, 28 Inc. ....	7,425.98
29	(19) Melvin Stemple .....	683.36
30	(20) Harold Sypolt .....	33.00
31	(21) Tri-State Builders Hardware, Inc. ....	131.40
32	(22) Charles Wilson .....	222.41
33	(23) Exxon Company, U.S.A. ....	514.75
34	(24) Reynolds Memorial Hospital .....	8,742.00
35	(25) Standard Exterminating .....	476.00
36	(26) Ohio Valley Drug Company .....	656.58
37	(27) Wheeling Electric Company .....	4,281.21

38 (b) Claims against the Board of Regents:

39 (To be paid from General Revenue Fund)

40	(1) Marvin E. DeBoer .....	1,605.00
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41	(2) Elizabeth Ann Hedges, Executrix of the	
42	Estate of A. Bruce Hedges, deceased _____	8,756.00
43	(3) Deborah Ann Landes _____	3,144.65
44	(c) Claims against the Dept. of Public Safety:	
45	(To be paid from General Revenue Fund)	
46	(1) Montgomery General Hospital _____	2,898.59
47	(d) Claims against the Adjutant General:	
48	(To be paid from General Revenue Fund)	
49	(1) Stonewall Casualty Company, subrogee of	
50	Lloyd Fox _____	894.00
51	(2) Louis Tabit, father and next friend of	
52	Mary Janet Tabit _____	12,150.00
53	(3) Louis Tabit _____	2,204.89
54	(e) Claims against the Dept. of Mental Health:	
55	(To be paid from General Revenue Fund)	
56	(1) Janice M. Neal _____	52.48
57	(2) St. Joseph's Hospital _____	7,946.02
58	(f) Claims against the Department of Highways:	
59	(To be paid from State Road Fund)	
60	(1) Chester Murphy _____	350.00
61	(2) The Potomac Edison Company _____	93.41
62	(3) Harold L. Pitsenbarger _____	149.35
63	(4) Florence I. Stephy _____	1,281.53
64	(5) Lois Mullins _____	300.00
65	(6) James P. Foster, d/b/a	
66	Western Virginia Demolition Company _____	499.00
67	(7) Grover A. Harmon _____	12,039.52
68	(8) Ralph Wilson _____	3,000.00
69	(9) National Engineering & Contracting Co. ...	5,059.01
70	(10) Ernest L. White and Florence White _____	2,500.00
71	(11) Betty H. Dunlap _____	750.00
72	(12) Black Rock Contracting, Inc. _____	30,759.09
73	(13) State Farm Mutual Automobile Insurance	
74	Co., subrogee of Monroe Hamon _____	289.69
75	(14) Verla R. Anderson _____	15.45
76	(15) The Chesapeake and Potomac	
77	Telephone Co. of W. Va. _____	11,039.69
78	(16) James D. Linville _____	306.00
79	(17) Larry McConaha _____	31.93

80 (18)	State Farm Fire & Casualty Company,	
81	subrogee of Edgar & Bessie Damewood ---	1,200.00
82 (19)	Robert B. Dorsey -----	89.55
83 (20)	Chloe Thompson	174.10
84 (21)	Spencer Toppings -----	710.00
85 (22)	Raymond Peak -----	9,000.00
86 (23)	Liberty Mutual Insurance Company,	
87	subrogee of Charles C. Simpson -----	1,775.00
88 (24)	Aetna Casualty & Surety Co.,	
89	subrogee for Jimmy L. McKinney -----	989.55
90 (25)	Charles C. Simpson -----	125.00
91 (26)	The American Road Insurance Company,	
92	subrogee of Shellie Morgan, Jr. -----	199.26
93 (27)	Lane S. Bohrer and Barbara S. Bohrer -----	9,750.00
94 (28)	Richard L. Mason and Jeanne Mason -----	9,750.00
95 (29)	W. E. Durig and Minnie Durig -----	28,000.00
96 (30)	Kenneth L. Block and Patricia A. Block ---	2,500.00
97 (31)	Virginia F. Asbury -----	89.26
98 (32)	Nelson Gilbert Casto and Patricia Joyce	
99	Casto -----	15,000.00
100 (33)	Robert England -----	1,000.00
101 (34)	Twila Jean Giles -----	107.84
102 (35)	Ina M. Hamrick -----	1,800.00
103 (36)	Helen M. Kelly -----	6,000.00
104 (37)	Lang Brothers, Inc. -----	27,458.16
105 (38)	Romeo G. Perkins and Shelva Jean	
106	Perkins -----	3,500.00
107 (39)	Alan MacKenzie Roberts -----	80.70
108 (40)	Mike Romeo -----	190.00
109 (41)	Fred E. Sloane, Jr. and Minnie Arlene	
110	Sloane -----	194.22
111 (42)	Christine Ambrosone Smith -----	16,000.00
112 (43)	Wilmer W. Teets and Sharon J. Teets -----	9,216.51
113 (44)	William N. Williams -----	1,128.66
114 (45)	Robert Woodley -----	55.00
115 (46)	Jesse Wray -----	542.00
116 (47)	Marie Yanasy -----	79.25
117 (48)	Paul W. Sowards -----	11,000.00
118 (49)	Gail Sowards -----	250.00
119 (50)	Paul W. Sowards, as father and next	
120	friend of Christina Gail Sowards -----	500.00



121	(51) Paul Sowards, as father and next friend	
122	of Christopher Sowards .....	250.00
123	(52) Larry G. Conley and Bonita E. Conley .....	278.52
124	(g) Claims against the Workmen's Compensa-	
125	tion Fund:	
126	(To be paid from Workmen's Compensation	
127	Fund)	
128	(1) Peck Brogan Building & Remodeling .....	14,695.00
129	(h) Claims against the Department of Mines:	
130	(To be paid from General Revenue Fund)	
131	(1) Ralph Underwood, Jr. ....	1,754.35
132	(i) Claims against the Board of Vocational	
133	Education, Division of Vocational Reha-	
134	bilitation:	
135	(To be paid from General Revenue Fund)	
136	(1) Gambro, Inc. ....	536.40
137	(j) Claims against the Dept. of Commerce:	
138	(To be paid from General Revenue Fund)	
139	(1) Warner P. Simpson Co. ...	406.18

1     **Sec. 4. Reappropriations.**—Any unexpended balances of  
2 Items I, V, VI, VII, VIII, IX, X, XII and XIII in the  
3 appropriations made by and under the authority of Section 4  
4 of the 1972 Budget Act, are hereby reappropriated for expendi-  
5 ture during the fiscal year 1977-78; and the unexpended bal-  
6 ances in appropriations in said Section 4 of such 1972 Budget  
7 Act for the Department of Natural Resources, Item IX, are  
8 redesignated as to purpose as follows:

9     Line Item 6, lines 1-3, Cedar Creek State Park, is redesign-  
10  ated for "Park Improvements—Cedar Creek State Park".

11     Line Item 7, lines 1-4, Camp Creek State Forest, is redesign-  
12  ated for "Dam Design and Construction, Picnic Area Expans-  
13  ion, and Other Improvements—Camp Creek State Forest".

14     Line Item 9, lines 1-5 Big Ditch (Webster County), is re-  
15  designated for "Area Improvements—Big Ditch (Webster  
16  County)".

17 Line Item 13, lines 1-6, Mill Creek-Staats Mill (Jackson  
18 County) is redesignated for "Mill Creek Watershed—Jackson  
19 County" and the name of the project is changed in accordance  
20 therewith.

21 Line Item 27, lines 1-2, Tygart Lake State Park, is redesign-  
22 nated for "Park Improvements and Land Acquisition—Tygart  
23 Lake State Park".

24 Any unexpended balances of Items I, ■, III, IV, V, VI,  
25 VII, IX, X, XI, XII, XIII, XIV, XV, XVI, and XVII in the  
26 appropriations made by and under the authority of Section 4 of  
27 the 1973 Budget Act, are hereby reappropriated for expendi-  
28 ture during the fiscal year 1977-78.

29 Any unexpended balances of items I, II, III, and IV in the  
30 appropriations made by and under the authority of Section 4  
31 of the 1976 Budget Act, are hereby reappropriated for expendi-  
32 ture during the fiscal year 1977-78; and the unexpended bal-  
33 ances in appropriations in said Section 4 of such 1973 Budget  
34 Act for the Department of Natural Resources, Item XV, are  
35 redesignated as to purpose as follows:

36 Line Item A., lines 1-5, Cass Scenic Railroad, is consolidat-  
37 ed into one line item and redesignated for "Area Improve-  
38 ments—Cass Scenic Railroad".

39 Line Item C., lines 1-6, Grandview State Park, is consoli-  
40 dated into one line item and redesignated for "Park Improve-  
41 ments—Grandview State Park".

42 Line Item D., lines 1-2, North Bend State Park, is con-  
43 solidated into one line item and redesignated for "Park Im-  
44 provements—North Bend State Park".

45 Line Item E., lines 1-6, Cedar Creek State Park, is con-  
46 solidated into one line item and redesignated for "Park Im-  
47 provements—Cedar Creek State Park".

48 Line Item F., lines 1-5, Camp Creek State Forest, is redesign-  
49 nated for "Dam Design and Construction, Picnic Area Ex-  
50 pansion, and Other Improvements—Camp Creek State Forest".

51 Line Item G., lines 1-9, Blackwater Falls State Park, is

52 consolidated into one line item and redesignated for "Park  
53 Improvements—Blackwater Falls State Park".

54 Line Item H., line 1, Hawks Nest State Park, is redesignated  
55 for "Park Improvements—Hawks Nest State Park".

56 Line Item I., lines 1-5, Pricketts Fort State Park, is con-  
57 solidated into one line item and redesignated for "Park Im-  
58 provements—Pricketts Fort State Park".

59 Line Item J., lines 1-8, Babcock State Park, is consolidated  
60 into one line item and redesignated for "Park Improvements  
61 —Babcock State Park".

62 Line Item K., lines 1-15, Tygart Lake State Park, is con-  
63 solidated into one line item and redesignated for "Park Im-  
64 provements and Land Acquisition—Tygart Lake State Park".

65 Line Item N., line 1, Chief Logan State Park, is redesign-  
66 ated for "Park Improvements—Chief Logan State Park".

67 Line Item U., line 1, Big Ditch Recreation Area, is redesign-  
68 ated for "Area Improvements—Big Ditch Public Hunting  
69 and Fishing Area".

1 **Sec. 5. Appropriations from revenue sharing trust fund.**

2 —The following items are hereby appropriated from the  
3 Revenue Sharing Trust Fund to be available for expenditure  
4 during the fiscal year 1977-78.

145—*Revenue Sharing Trust Fund—Governor's Office*

Acct. No. 9721

1	Gas/Coal Conversion Project .....	\$	500,000
2	Community and Economic Development .....		5,000,000
3	Total .....	\$	5,500,000

146—*Revenue Sharing Trust Fund—  
State Department of Highways*

Acct. No. 9705

1	Maintenance State Local Services .....	\$	42,500,000
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147—*Revenue Sharing Trust Fund—  
Fairmont Emergency Hospital*

Acct. No. 9733

1 Construction and Equipment ..... \$ 1,500,000

148—*Revenue Sharing Trust Fund—  
State Health Department*

Acct. No. 9715

1 Logan-Mingo Area Mental Health Center ..... \$ 168,000

2 Valley Comprehensive Community Mental

3 Health Center ..... 211,000

4 Total ..... \$ 379,000

149—*Revenue Sharing Trust Fund—  
West Virginia Penitentiary*

Acct. No. 9734

1 New Locking System ..... \$ 228,000

2 **Sec. 6. Appropriations from countercyclical fiscal as-**  
 3 **sistance trust fund.**—Moneys received by the State of West  
 4 Virginia pursuant to the provisions of the “Public Works  
 5 Employment Act of 1976; Title II of Public Law 94-369”;  
 6 enacted by the Congress of the United States, shall be  
 7 deposited in the state treasury and kept in a separate account  
 8 in the state treasury to be entitled “Countercyclical Fiscal  
 9 Assistance Trust Fund”. The moneys heretofore received in  
 10 fiscal year 1976-77 and deposited in the state treasury in  
 11 Account No. 8024-21 for “Public Works Antirecession Pro-  
 12 gram”, including any investment thereof and interest thereon,  
 13 shall be transferred at the close of fiscal year 1976-77 and  
 14 deposited in the said “Countercyclical Fiscal Assistance Trust  
 15 Fund”. The following item is hereby appropriated from the  
 16 Countercyclical Fiscal Assistance Trust Fund to be available  
 17 for expenditure during the fiscal year 1977-78.

150—*Countercyclical Fiscal Assistance Trust Fund—  
Governor's Office*

Acct. No. 8012

1	Transportation Remuneration Incentive		
2	Program (TRIP) _____	\$	434,000
3	Health Planning, Licensure and Development _		1,000,000
4	Unclassified		116,934
5	Total _____	\$	1,550,934

6 Funds in excess of amounts herein appropriated, after  
7 actual receipt and deposit, are hereby appropriated and made  
8 available for expenditure upon budget amendment and ap-  
9 proval of the Governor.

10 Any part of this appropriation or amounts in excess thereof  
11 may be transferred to any other account in the Governor's  
12 Office or to any other department of State government for  
13 disbursement or expenditure.

1 **Sec. 7. Reappropriations—"Revenue Sharing Trust Fund."**  
2 Any unexpended balances to the appropriations made by  
3 and under Section 8, of the 1973 Budget Act and Supple-  
4 mentary Acts to Chapter 10, acts of the Legislature, Regular  
5 Session 1973, under Section 5 of the 1974 Budget Act, and  
6 Supplementary Acts to Chapter Two, acts of the Legislature,  
7 Regular Session 1975, under Section 7, acts of the Legislature,  
8 Regular Session 1976 and supplementary acts to Chapter 7,  
9 acts of the Legislature, Regular Session 1976, at the close  
10 of the fiscal year 1976-77 are hereby reappropriated for  
11 expenditure during the fiscal year 1977-78.

12 And the unexpended balances in appropriations in said  
13 Section 5 of such 1974 Budget Act for the Department of  
14 Natural Resources, Item IV, are redesignated as to purpose  
15 as follows:

16 Line Items 3-7, Bluestone State Park (Summers), are con-  
17 solidated into one line item and redesignated for "Park  
18 Improvements—Bluestone State Park (Summers)".

19 Line Items 9-13, Little Beaver State Park (Raleigh), are

20 consolidated into one line item and redesignated for "Park  
21 Improvements and Land Purchase—Little Beaver State Park  
22 (Raleigh)".

23 Line Items 14-15, Tygart Lake State Park (Taylor), are  
24 redesignated for "Park Improvements—Tygart Lake State Park  
25 (Taylor)".

26 Line Items 31-32, Valley Falls, are redesignated for "Park  
27 Improvements and Land Purchase—Valley Falls State Park".

28 The unexpended balance in the appropriations for the  
29 Department of Natural Resources, for Pipestem State Park—  
30 Capital Improvements, Chapter 37, acts of the Legislature,  
31 Regular Session, 1975, is consolidated into one line item and  
32 redesignated for "Park Improvements—Pipestem State Park".

1 **Sec. 8. Special revenue appropriations.**—There is here-  
2 by appropriated for expenditure during the fiscal year one  
3 thousand nine hundred seventy-eight appropriations made  
4 by general law from special revenue which are not paid into  
5 the state fund as general revenue under the provisions of  
6 Chapter 12, Article 2, Section 2 of the Code of West Vir-  
7 ginia, one thousand nine hundred thirty-one: *Provided, how-*  
8 *ever,* That none of the moneys so appropriated by this section  
9 shall be available for expenditure except in compliance with  
10 and in conformity to the provisions of Chapter 12, Articles 2  
11 and 3, and Chapter 5-A, Article 2, of the Code of West  
12 Virginia, unless the spending unit has filed with the state  
13 director of the budget, the state auditor and the legislative  
14 auditor prior to the beginning of each fiscal year:

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

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

1 **Sec. 9. State improvement fund appropriation.**—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 seventy-eight, for the purpose of making studies  
5 and recommendations relating to improvements of the adminis-  
6 tration and management of spending units in the executive  
7 branch of state government, shall be deposited in the state

8 treasury in a separate account therein designated "State Im-  
9 provement Fund."

10 There is hereby appropriated all moneys so deposited dur-  
11 ing the fiscal year one thousand nine hundred seventy-eight,  
12 to 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 better-  
16 ment of the economic, social, educational, health and general  
17 welfare of the State or its citizens.

1 **Sec. 10. Specific funds and collection accounts.**—A fund  
2 or collection account, which by law is dedicated to a specific  
3 use is hereby appropriated in sufficient amount to meet all  
4 lawful demands upon the fund or collection account, and shall  
5 be expended according to the provisions of Chapter 12, Article  
6 3 of the Code of West Virginia.

1 **Sec. 11. Appropriation for refunding erroneous pay-**  
2 **ments.**—Money that has been erroneously paid into the  
3 state treasury is hereby appropriated out of the fund into  
4 which was paid 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. 12. Sinking fund deficiencies**—There is hereby  
2 appropriated to the governor a sufficient amount to meet  
3 any 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 18,  
7 Section 20b of the West Virginia Code, 1931, as amended, or  
8 in the funds of the state sinking fund commission because of  
9 the failure of any state agency for either general obligation or  
10 revenue bonds or any local taxing district for general obliga-  
11 tions bonds to remit funds necessary for the payment of interest  
12 and sinking fund requirements. The governor is authorized to

13 transfer from time to time such amounts to the state sinking  
14 fund commission as may be necessary for these purposes.

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

1 **Sec. 13. Appropriations from taxes and license fees.**

2 —There is hereby appropriated from the soft drink tax  
3 revenues for administration and enforcement of the law re-  
4 lating to said tax, a sum not to exceed two and one-half percent  
5 of the total revenues collected. All such salaries and expenses,  
6 authorized by law as aforesaid, shall be paid by the tax  
7 commissioner through the state treasury out of gross col-  
8 lections.

9 There is hereby appropriated from the cigarette tax revenues  
10 for administration and enforcement of the law relating to said  
11 tax, a sum not to exceed one and one-half percent of the total  
12 revenues collected. All such salaries and expenses, authorized  
13 by law as aforesaid, shall be paid by the tax commissioner  
14 through the state treasury out of the gross collections.

1 **Sec. 14. Appropriations to pay costs of publication**

2 **of delinquent corporations.**—There is hereby appropriated  
3 out of the state fund, general revenue, out of funds not  
4 otherwise appropriated to be paid upon requisitions of the  
5 auditor and/or the governor, as the case may be, a sum  
6 sufficient to pay the cost of publication of delinquent cor-  
7 porations as provided by Chapter 11, Article 12, Sections 84  
8 and 86 of the 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 necessary  
4 to pay taxes due county, district, and municipal corporations  
5 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 outlay,  
4 except as otherwise provided in Title 1, Section 3.

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

### TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Sec. 1. Appropriations conditional.**—The expenditure of  
2 the appropriations made by this act, except those appropria-  
3 tions made to the legislative and judicial branches of the state  
4 government, are conditioned upon the compliance by the  
5 spending unit with the requirements of Chapter 5-A, 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 Legisla-  
9 ture, it is the intent of this act that reappropriation shall be to  
10 the succeeding or later spending unit created unless otherwise  
11 indicated.

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

## CHAPTER 3

§. B. 10—By Mr. Brotherton, Mr. President, Mr. Fanning and Mr. Ward)

[Passed May 13, 1977; 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 seventy-seven, to the Governor's Office— Emergency Flood Disaster Relief, Account No. 131, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Legislature hereby finds and declares that an emergency flood disaster has occurred in southern West Virginia, affecting the counties of Cabell, Greenbrier, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming, to the great detriment of such area and of the state of West Virginia, as a whole; and with it being the primary responsibility of the state to respond to such emergency with prompt aid, relief and assistance to its citizens; and

WHEREAS, Such flood disaster has, among other things, destroyed or rendered uninhabitable large numbers of residential housing units, thus depriving and dispossessing persons and families of needed shelter and decent and safe residential housing in such areas and posing a present and continuing danger to such persons' and families' health, safety and welfare; that other governmental programs and aid and that of private enterprise, without prompt and immediate expenditure of public moneys by the state, will be unable to provide the financing and other assistance required for prompt replacement of such residential housing in the affected areas within the time and in the manner which the interest of the state and of its citizens require, and that a direct consequence thereof will be that the citizens of this state and inhabitants of such areas have been and will continue to be forced to relocate to other areas, within or without this state, resulting in (a) loss of employment to our citizens in such areas, (b) a severe, prolonged

disruption and decline in the economy of such areas, (c) a substantial and prolonged impairment of the ability of business, industry and governmental units in such areas to recover from the effects of such disaster because of the loss of key employees and their families, customers and taxpayers forced to relocate elsewhere because of their inability to obtain sanitary, decent and safe replacement residential housing in such areas, and (d) a prolonged erosion of the property tax base and the excise tax base of such areas, all to the great detriment of the direct safety, health and welfare of the citizens of such areas and of this state; thus necessitating expenditure of public moneys in aid thereof and for such public purpose. Relief and assistance to be provided by an appropriation of public moneys of the state will clearly and markedly contribute to the prompt and timely replacement of such residential housing and to the correction and alleviation of the other undesirable human and community conditions, as described, with such appropriation of public moneys to be, in all respects for the benefit of the people and citizens of the state of West Virginia, for a public purpose of promoting their health, welfare and safety, and for a meeting of the public policy and a public necessity of this state; and

WHEREAS, The Governor heretofore submitted to the Legislature his Executive Budget Document, dated February 16, 1977, 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 state fund, general revenue, available for further appropriation during the fiscal year 1976-77, 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:*

Title II, section one, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, is hereby supplemented by adding thereto the following new account, line item and language of appropriation:

## EXECUTIVE

*Governor's Office—Emergency Flood Disaster Relief*

## Account No. 131

1 Emergency Flood Disaster Assistance for Re-  
 2 placement Residential Housing, Site Acquisi-  
 3 tion, or both, in the Counties of Cabell,  
 4 Greenbrier, Lincoln, Logan, McDowell, Mer-  
 5 cer, Mingo, Raleigh, Summers, Wayne and  
 6 Wyoming, State of West Virginia.....\$ 10,000,000

7 This supplementary appropriation is to be expended  
 8 through monetary grants or other means, in amounts  
 9 determined by the Governor, to or for the benefit of  
 10 persons or families actually deprived or dispossessed  
 11 from residential housing in their capacity as owner  
 12 or occupant thereof, which residential housing was des-  
 13 troyed or rendered uninhabitable by the flood disaster  
 14 in the aforesaid counties of this state in the spring of  
 15 1977, for the purpose of aiding in the acquisition and con-  
 16 struction in such areas of replacement residential hous-  
 17 ing, including mobile homes, site acquisition, or both,  
 18 relating to prior residential housing destroyed or damaged  
 19 to the point of uninhabitability, with such funds to be  
 20 further usable for improvements incidental or appur-  
 21 tenant thereto.

22 All or any part of this appropriation may be expended  
 23 in conjunction with federal funds, to match or maximize  
 24 grants-in-aid from the federal government or moneys  
 25 from any source. Any part of this appropriation may be  
 26 transferred to any account in the governor's office or  
 27 to any other department of state government for such  
 28 purposes and for disbursement therefrom.

29 This appropriation shall be available for expenditure  
 30 immediately upon the effective date of this bill, with  
 31 any unexpended balance remaining in the appropriation  
 32 at the close of fiscal year 1976-77 being hereby reappro-  
 33 priated for expenditure during the subsequent fiscal year  
 34 of 1977-78.

35 Following the effective date of this bill, a monthly

36 report shall be submitted by the Governor to the Legisla-  
37 tive Auditor, detailed and itemized, in nature, of all  
38 transfers and expenditures made hereunder and for such  
39 purposes during the preceding month.

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## CHAPTER 4

(S. B. 9—By Mr. Brotherton, Mr. President, Mr. Fanning and Mr. Ward)

[Passed May 6, 1977; 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 seventy-seven, to the Governor's Office—Civil Contingent Fund, Account No. 124, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill".

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, 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 appropriation during the fiscal year 1976-77, 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. 124, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following items and sums:

## TITLE II—APPROPRIATIONS.

**Section 1. Appropriations from General Revenue.****EXECUTIVE****7—Governor's Office—Civil Contingent Fund**

Acct. No. 124

1	2	Southern West Virginia flood disaster re-	
2		covery program .....	\$ 1,000,000
3	3	Southern West Virginia flood disaster—	
4		housing site acquisition in support of	
5		federal programs .....	1,000,000
6	4	Southern West Virginia flood disaster—	
7		individual and family assistance grants ..	2,500,000
		Total .....	\$ 4,500,000

8 This appropriation shall be available for expenditure  
9 immediately upon the effective date of this bill.

10 All or any part of this appropriation may be used to  
11 match or aid Federal Funds, and may be transferred to any  
12 department, agency, board or commission for such pur-  
13 pose, upon requisition of the Governor.

14 Any unexpended balance remaining in this account at  
15 the close of the fiscal year 1976-77 is hereby appropriated  
16 for expenditure during the fiscal year 1977-78.

17 Following the effective date of this bill, a monthly  
18 report shall be submitted by the Governor to the Legisla-  
19 tive Auditor, detailed and itemized, in nature, of all  
20 transfers and expenditures made hereunder and for such  
21 purposes during the preceding month.

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## CHAPTER 5

(S. B. 6—By Mr. Brotherton, Mr. President)

[Passed May 6, 1977; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirty-four, article two, chapter five-a  
of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, and to amend and reenact article six, chapter twenty-nine of said code, all relating to the civil service system and classification of employees; providing a general purpose; definition of terms; establishing a classified service and classified-exempt service and providing exceptions; prohibiting additions to the classified service during certain specified periods of time; exempting policymaking positions from the classified service, including those presently so classified; providing a procedure to bring additional positions under classified service; state personnel department generally; retention of certain personnel, funds and equipment; selection and appointment of director of personnel; duties, qualifications and removal of director; continuing that state agency known as the civil service commission; establishing professional and other qualifications of members of civil service commission; providing the governor with the discretion to retain present members of the commission or to appoint new members with professional qualifications; appointment, terms, removal and compensation of members; selection of chairman and meetings of commission; advisory board; duties of commission; additional duties of director and assistants; establishment of a roster of employees; preparation and rating of tests; rules and regulations of commission; position classification plans for classified and classified-exempt service; pay plan for classified service; facilities and equipment for department; compliance of officers and employees; status of present employees; certification of payrolls; failure of appointing authority to comply with order of commission; wrongfully withholding certification of payroll; appeals to commission and hearings; judicial review; records of department; services to political subdivisions and cooperation with other agencies; oaths, testimony and production of records; immunity from suit; refusal to testify; prohibition of favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited; certain other acts prohibited; providing penalties; appropriations to department to cover cost of administration; and acceptance of grants or contributions.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 6. CIVIL SERVICE SYSTEM.**

- §29-6-1. General purpose.
- §29-6-2. Definition of terms.
- §29-6-3. Classified service.
- §29-6-4. Classified-exempt service; additions to classified service; exceptions.
- §29-6-5. State personnel department generally; personnel, funds, equipment, etc.
- §29-6-6. Selection and appointment of director of personnel; duties; qualifications; removal.
- §29-6-7. Civil service commission; qualifications of members; vacancies; appointment and terms of members; removal; compensation; chairman; meetings; advisory board.
- §29-6-8. Duties of commission generally.
- §29-6-9. Duties of director generally; designating employee to act in absence of director; assistants in preparation and rating of tests.
- §29-6-10. Rules of commission.
- §29-6-11. Duty to furnish facilities for department's use.
- §29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.
- §29-6-13. Status of present employees.
- §29-6-14. Certification of payrolls; failure of appointing authority to comply with order of commission; wrongfully withholding certification of payroll.
- §29-6-15. Appeals by employees to commission; hearings; review by court of appeals.
- §29-6-16. Records of state personnel department.
- §29-6-17. Services to political subdivisions; cooperation with agencies for other jurisdictions.
- §29-6-18. Oaths, testimony and production of records; immunity from suit.
- §29-6-19. Refusal to testify.
- §29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.
- §29-6-21. Acts prohibited.
- §29-6-22. Penalties.
- §29-6-23. Appropriations; cost of administering article; acceptance of grants or contribution.

**§29-6-1. General purpose.**

- 1 The general purpose of this article is to attract to
- 2 the service of this state personnel of the highest ability
- 3 and integrity by the establishment of a system of per-
- 4 sonnel administration based on merit principles and scien-



5 tific methods governing the appointment, promotion,  
6 transfer, layoff, removal, discipline, classification, com-  
7 pensation and welfare of its civil employees, and other  
8 incidents of state employment. All appointments and  
9 promotions to positions in the classified service shall be  
10 made solely on the basis of merit and fitness, except as  
11 hereinafter specified. All employment positions not in the  
12 classified service, with the exception of the board of re-  
13 gents, are included in a classification plan known as classi-  
14 fied-exempt service.

**§29-6-2. Definition of terms.**

1 As used in this article unless the context clearly indi-  
2 cates otherwise:

3 (1) "Agency" means any administrative unit of state  
4 government, including any authority, board, bureau, com-  
5 mission, committee, council, department or office.

6 (2) "Appointing authority" means a person or group of  
7 persons authorized by an agency to make appointments to  
8 positions in the classified or classified-exempt service.

9 (3) "Class" or "class of positions" means a group of  
10 positions sufficiently similar in duties, training, experience  
11 and responsibilities, as determined by specification, that  
12 the same qualifications, the same title, and the same  
13 schedule of compensation and benefits may be equitably  
14 applied to each position in the group.

15 (4) "Classification plan" means the plan by which posi-  
16 tions in the classified service and classified-exempt ser-  
17 vice have been allocated by class.

18 (5) "Classified-exempt service" means an employee  
19 whose position satisfies the definitions for "class" and  
20 "classify" but who is not covered under the civil service  
21 system or employed by the board of regents.

22 (6) "Classified service" means an employee whose job  
23 satisfies the definitions for "class" and "classify" and who  
24 is covered under the civil service system.

25 (7) "Classify" means to group all positions in classes  
26 and to allocate every position to the appropriate class in  
27 the classification plan.

28 (8) "Policymaking position" means a position in which  
29 the person occupying it (a) acts as an adviser to, or  
30 formulates plans for the implementation of broad goals  
31 for, the executive or administrative head of the agency,  
32 (b) is in charge of a major administrative component of  
33 the agency and (c) reports directly and is directly ac-  
34 countable to the administrative or executive head of the  
35 agency.

36 (9) "Position" means a particular job which has been  
37 classified based on specifications.

38 (10) "Specification" means a description of a class of  
39 position which defines the class, provides examples of  
40 work performed and the minimum qualifications required  
41 for employment.

42 (11) "Veteran" means any person who has served in  
43 the armed forces of the United States of America during  
44 World War I (April 6, 1917—November 11, 1918), World  
45 War II (December 7, 1941—December 31, 1946), the Korean  
46 Conflict (June 27, 1950—January 31, 1955), or the Vietnam  
47 Conflict (August 5, 1964—March 28, 1973), and who has  
48 received a discharge under honorable conditions from  
49 such service.

#### **§29-6-3. Classified service.**

1 The classified service includes all positions covered  
2 by the present civil service system as of the thirtieth day  
3 of June, one thousand nine hundred seventy-six, except  
4 as otherwise provided in this article. Positions may be  
5 added to the classified service as provided in section four  
6 of this article.

#### **§29-6-4. Classified-exempt service; additions to classified service; exceptions.**

1 The classified-exempt service comprises all positions  
2 not included in the classified service and those positions  
3 specifically excepted from the classified service as pro-  
4 vided in this section.

5 In no event shall persons employed by the board of  
6 regents be considered as included in either the classified  
7 or classified-exempt service.

8 Except for the period commencing on the first day of  
9 July, one thousand nine hundred seventy-six, and ending  
10 on the first Monday after the second Wednesday of the  
11 following January and except for the same periods com-  
12 mencing in the year one thousand nine hundred eighty  
13 and in each fourth year thereafter, the governor may, by  
14 executive order, with the written consent of the civil  
15 service commission and the appointing authority con-  
16 cerned, add to the list of positions in the classified service,  
17 but such additions shall not include the following:

18 (1) The state Legislature and other officers elected by  
19 popular vote and persons appointed to fill vacancies in  
20 elective offices.

21 (2) Members of boards and commissions and heads of  
22 departments appointed by the governor or such heads of  
23 departments selected by commissions or boards when ex-  
24 pressly exempt by law or board order.

25 (3) Excluding the policymaking positions in an agency,  
26 one principal assistant or deputy and one private secre-  
27 tary for each board or commission or head of a department  
28 elected or appointed by the governor or Legislature.

29 (4) All policymaking positions.

30 (5) Not more than fifteen employees in the office of the  
31 governor.

32 (6) Judges, referees, receivers, jurors and notaries  
33 public.

34 (7) The secretaries and clerks of each judge of a court  
35 of record.

36 (8) Patients or inmates employed in state institutions.

37 (9) Persons employed in a professional or scientific  
38 capacity to make or conduct a temporary and special in-  
39 quiry, investigation or examination on behalf of the  
40 Legislature or a committee thereof, an executive depart-  
41 ment or by authority of the governor.

42 (10) All employees assigned to the executive mansion.

43 (11) Laborers employed by any agency.

44 (12) Managers and clerks of liquor stores.

45 (13) Superintendent, county maintenance of roads, and  
46 all personnel under his supervision.

47 (14) Part-time professional personnel engaged in pro-  
48 fessional services without administrative duties and per-  
49 sonnel employed for less than ninety working days a year.

50 (15) All clerical employees who are not under the  
51 present classified system and whose jobs do not require  
52 special knowledge or skill and training in the operation  
53 of business machines.

54 All executive orders of the governor adding to the list  
55 of positions in the classified service which were dated or  
56 issued during the period commencing on the first day of  
57 July, one thousand nine hundred seventy-six, and ending  
58 on the first Monday after the second Wednesday of the  
59 following January or which are dated or issued within  
60 the same period commencing in the year one thousand  
61 nine hundred eighty or in each fourth year thereafter,  
62 shall be null and void, and no person occupying a position  
63 added by such executive order to the list of positions in  
64 the classified service shall be entitled on account of such  
65 order to any right bestowed upon any position or person  
66 within the classified service by the provisions of this  
67 article or by any rule or regulation promulgated there-  
68 under.

69 Nothing herein shall be construed as precluding the  
70 appointing authorities from filling any classified-exempt  
71 position in the manner in which positions in the classified  
72 service are filled.

**§29-6-5. State personnel department generally; personnel,  
funds, equipment, etc.**

1 The present department of personnel of the civil ser-  
2 vice system as of the effective date of this article is con-  
3 tinued. The services of the employees of the present office  
4 of the director of personnel shall be considered continu-  
5 ous. In addition, all funds, equipment, supplies, personnel  
6 and property records, or anything of value now in the  
7 possession of the state personnel department shall re-  
8 main therein.

**§29-6-6. Selection and appointment of director of personnel; duties; qualifications; removal.**

1 After selection through open competitive examination,  
2 then upon recommendation of the civil service commis-  
3 sion, the governor shall appoint a director of personnel,  
4 who shall be experienced in the field of personnel admin-  
5 istration, and who shall be knowledgeable concerning  
6 scientific methods governing the appointment, promotion,  
7 transfer, layoff, removal, discipline, classification, com-  
8 pensation and welfare of employees, and who is in known  
9 sympathy with the application of merit principles in  
10 public employment. The selection and appointment must  
11 be in conformity with civil service rules. The present  
12 director of personnel may be the appointee. It shall be  
13 his duty to administer this article so as to effectuate the  
14 general purpose of such article as set forth in section one  
15 hereof. The director of personnel may be removed by the  
16 civil service commission for cause only after he has been  
17 presented in writing with the reasons for his removal. He  
18 shall be given an opportunity, not less than fifteen days,  
19 to answer any charges either in writing or upon his re-  
20 quest to be heard by the commission. The statement of  
21 reasons and answer or transcript of hearing shall be filed  
22 with the secretary of state as a public record. The deci-  
23 sion of the commission, after a hearing, shall be final and  
24 not subject to appeal.

25 None of the provisions of section two-a, article seven,  
26 chapter six of this code, except the annual salary pro-  
27 vision, shall be applicable to the director of personnel of  
28 the civil service system.

**§29-6-7. Civil service commission; qualifications of members; vacancies; appointment and terms of members; removal; compensation; chairman; meetings; advisory board.**

1 (a) That agency of state government heretofore estab-  
2 lished and known as the civil service commission shall  
3 continue to exist. The commission shall consist of three  
4 members with the following qualifications: One shall be a  
5 person with professional experience in the personnel

6 matters of business and industry; one with such experience  
7 in the field of government personnel administration; and  
8 one with such experience in the field of labor.

9 Of the three members of the commission: One shall  
10 serve for a term ending on the thirtieth day of June, one  
11 thousand nine hundred eighty; one for a term ending on  
12 the thirtieth day of June, one thousand nine hundred  
13 eighty-one; and one for a term ending on the thirtieth day  
14 of June, one thousand nine hundred eighty-two. There-  
15 after, each member of the commission shall be appointed  
16 for a term ending six years from the date of expiration of  
17 the term for which his predecessor was appointed, ex-  
18 cept that a person appointed to fill a vacancy occurring  
19 prior to the expiration of such term shall be appointed  
20 for the remainder of the term. Each member of the  
21 commission shall hold office until his successor is ap-  
22 pointed and qualified.

23 The members of the civil service commission shall be  
24 persons in sympathy with the application of merit prin-  
25 ciples to public employment. No member of the com-  
26 mission shall be a member of any local, state, or national  
27 committee of a political party or an officer or member  
28 of a committee in any partisan political club or organiza-  
29 tion or shall hold, or be a candidate for, any paid public  
30 office. Not more than two members of the same political  
31 party shall serve on the commission at the same time.

32 (b) The governor shall nominate, and by and with the  
33 advice and consent of the Senate, appoint the members of  
34 the commission. On or after the effective date of this  
35 article, the governor may continue in office any member  
36 of the commission previously appointed for the term to  
37 which such member was appointed, notwithstanding the  
38 qualifications established in subsection (a) of this section;  
39 or the governor may appoint to complete such term a  
40 new member who shall meet such professional qualifica-  
41 tions.

42 (c) Except as permitted by subsection (b) of this  
43 section, a member of the commission may not be re-  
44 moved from office except for official misconduct, incom-  
45 petence, neglect of duty, gross immorality or malfeas-

46 ance, and then only in the manner prescribed in article  
47 six, chapter six of this code for the removal by the  
48 governor of state elected officers.

49 (d) Members of the commission shall each be paid  
50 seventy-five dollars for each day devoted to the work  
51 of the commission, but not more than one thousand eight  
52 hundred dollars in any one fiscal year. Each member  
53 shall be reimbursed for all reasonable and necessary ex-  
54 penses actually incurred in the performance of his duties,  
55 except that in the event the expenses are paid, or are  
56 to be paid, by a third party, the members shall not be  
57 reimbursed by the state.

58 (e) The commission shall elect one of its members  
59 chairman. It shall meet at such time and place as shall  
60 be specified by call of the chairman or the director of  
61 personnel. At least one meeting shall be held in each  
62 month. All meetings shall be open to the public. Notice  
63 of each meeting shall be given in writing to each member  
64 by the director at least three days in advance of the  
65 meeting. Two members shall constitute a quorum for  
66 the transaction of business.

67 (f) There is hereby created an advisory board to advise  
68 the commission and the director in the administration of  
69 this article. The advisory board shall consist of the ap-  
70 pointing authorities from all agencies having employees  
71 in the classified service.

#### **§29-6-8. Duties of commission generally.**

1 In addition to the duties expressly set forth elsewhere  
2 in this article, the commission shall:

3 (1) Represent the public interest in the improvement  
4 of personnel administration in the classified service.

5 (2) Advise the governor and the director on problems  
6 concerning personnel administration.

7 (3) Foster the interest of institutions of learning and  
8 of industrial, civic, professional and employee organiza-  
9 tions in the improvement of personnel standards in the  
10 classified service.

11 (4) Make any investigation which it may consider  
12 desirable concerning the administration of personnel in  
13 the classified service and make recommendations to the  
14 director with respect thereto.

15 (5) Make an annual report and special reports and  
16 recommendations to the governor and to the Legislature.

17 (6) Approve the budget as prepared by the director  
18 for administration of this article before submission to the  
19 department of finance and administration.

**§29-6-9. Duties of director generally; designating employee  
to act in absence of director; assistants in prepara-  
tion and rating of tests.**

1 (a) The director, as executive head of the department,  
2 shall direct and supervise all its administrative and tech-  
3 nical activities. In addition to the duties imposed upon  
4 him elsewhere in this article, it shall be his duty:

5 (1) To apply and carry out this article and the rules  
6 adopted thereunder.

7 (2) To attend meetings of the commission and to act  
8 as its secretary and keep minutes of its proceedings.

9 (3) To establish and maintain a roster of all employees  
10 in the classified and classified-exempt service, in which  
11 there shall be set forth, as to each employee, the class  
12 title, pay or status, and other pertinent data.

13 (4) To appoint such employees of the department and  
14 such experts and special assistants as may be necessary  
15 to carry out effectively the provisions of this article.

16 (5) To foster and develop, in cooperation with appoint-  
17 ing authorities and others, programs for the improvement  
18 of employee effectiveness, including training, safety,  
19 health, counseling and welfare.

20 (6) To make available to the public information about  
21 vacancies in the classified and classified-exempt service  
22 and to strive constantly to attract to the career service  
23 of this state people of the highest ability.

24 (7) To investigate from time to time the operation and  
25 effect of this law and of the rules made thereunder and



26 to report his findings and recommendations to the com-  
27 mission and to the governor.

28 (8) To make to the commission an annual report re-  
29 garding the work of the department and such special re-  
30 ports as he may consider desirable.

31 (9) To prepare the annual budget for the department  
32 of personnel and, when approved by the commission, sub-  
33 mit it to the director of the budget.

34 (10) To perform any other lawful acts which he may  
35 consider necessary or desirable to carry out the purposes  
36 and provisions of this article.

37 (b) In the event of the absence of the director or his  
38 inability for any cause to discharge the powers and  
39 duties of his office, the commission may from time to  
40 time designate in writing an employee of the department  
41 to act for him. In such case, the powers and duties of the  
42 director shall devolve upon such employee designated by  
43 the commission.

44 (c) The director may designate appropriate persons,  
45 including officers and employees in the state service, to  
46 assist in the preparation and rating of tests. An appoint-  
47 ing authority shall excuse any employee in his division  
48 from his regular duties for the time required for his work  
49 as an examiner. No officer or employee shall be entitled  
50 to extra compensation for further services as an examiner  
51 but shall be reimbursed for all reasonable and necessary  
52 expenses actually incurred in the performance of his  
53 duties as an examiner; except that in the event the ex-  
54 penses are paid, or are to be paid, by a third party, re-  
55 imbursement will not be made by the state.

#### **§29-6-10. Rules of commission.**

1 The commission shall have the authority to promulgate,  
2 amend or repeal rules, in accordance with chapter  
3 twenty-nine-a of this code, to implement the provisions  
4 of this article.

5 (1) For the preparation, maintenance and revision of  
6 a position classification plan for all positions in the classi-  
7 fied service and a position classification plan for all posi-

8 tions in the classified-exempt service, based upon simi-  
9 larity of duties performed and responsibilities assumed,  
10 so that the same qualifications may reasonably be required  
11 for and the same schedule of pay may be equitably ap-  
12 plied to all positions in the same class. The position  
13 classification plan for classified-exempt service shall be-  
14 come effective not later than the first day of July, one  
15 thousand nine hundred seventy-nine. Except for persons  
16 employed by the board of regents, all persons receiving  
17 compensation in the form of a wage or salary, funded  
18 either in part or in whole by the state, shall be included  
19 in either the position classification plan for classified  
20 service or classified-exempt service. After each such  
21 classification plan has been approved by the commission,  
22 the director shall allocate the position of every employee  
23 in the classified service to one of the classes in the  
24 classified plan and the position of every employee in the  
25 classified-exempt service to one of the positions in the  
26 classified-exempt plan. Any employee affected by the  
27 allocation of a position to a class shall, after filing with  
28 the director of personnel a written request for reconsider-  
29 ation thereof in such manner and form as the director  
30 may prescribe, be given a reasonable opportunity to be  
31 heard thereon by the director. The interested appointing  
32 authority shall be given like opportunity to be heard.

33 (2) For a pay plan for all employees in the classified  
34 service, after consultation with appointing authorities and  
35 the state fiscal officers, and after a public hearing held  
36 by the commission. Such pay plan shall become effective  
37 only after it has been approved by the governor after  
38 submission to him by the commission. Amendments to  
39 the pay plan may be made in the same manner. Each  
40 employee shall be paid at one of the rates set forth in the  
41 pay plan for the class of position in which he is employed.  
42 The principle of equal pay for equal work in the several  
43 agencies of the state government shall be followed in the  
44 pay plan as established hereby.

45 (3) For open competitive examinations to test the  
46 relative fitness of applicants for the respective positions  
47 in the classified service. Such examinations need not be  
48 held until after the rules have been adopted, the service

49 classified and a pay plan established, but shall be held not  
50 later than one year after this article takes effect. Such  
51 examinations shall be announced publicly at least fifteen  
52 days in advance of the date fixed for the filing of applica-  
53 tions therefor, and may be advertised through the press,  
54 radio and other media. The director may, however, in  
55 his discretion, continue to receive applications and  
56 examine candidates long enough to assure a sufficient  
57 number of eligibles to meet the needs of the service; and  
58 may add the names of successful candidates to existing  
59 eligible lists in accordance with their respective ratings.

60 An additional five points shall be awarded to the score  
61 of any examination successfully completed by a veteran.  
62 A disabled veteran shall be entitled to an additional ten  
63 points, rather than five points as aforesaid, upon success-  
64 ful completion of any examination.

65 (4) For promotions within the classified service which  
66 shall give appropriate consideration to the applicant's  
67 qualifications, record of performance and his score on  
68 written examination, when such examination is practi-  
69 cable. In filling vacancies an effort should be made to  
70 achieve a balance between promotion from within the  
71 service and the introduction into the service of qualified  
72 new employees. An advancement in rank or grade or an  
73 increase in salary beyond the maximum fixed for the  
74 class shall constitute a promotion.

75 (5) For the establishment of eligible lists for ap-  
76 pointment and promotion within the classified service,  
77 upon which lists shall be placed the names of successful  
78 candidates in the order of their relative excellence in the  
79 respective examinations. Eligibility for appointment from  
80 any such list shall continue not longer than three years.  
81 An appointing authority shall make his selection from the  
82 top five names on the appropriate lists of eligibles.

83 (6) For the rejection of candidates or eligibles within  
84 the classified service who fail to comply with reasonable  
85 requirements in regard to such factors as age, physical  
86 condition, character, training and experience, who are  
87 addicted to alcohol or narcotics, or who have attempted  
88 any deception or fraud in connection with an examination,

89 or where in the judgment of the commission there is  
90 reasonable doubt of the loyalty of the candidate or al-  
91 legiance to the nation.

92 (7) For a period of probation not to exceed one year  
93 before appointment or promotion may be made complete  
94 within the classified service.

95 (8) For provisional employment without competitive  
96 examination within the classified service when there is no  
97 appropriate eligible list available. No such provisional  
98 employment shall continue longer than six months, nor  
99 shall successive provisional appointments be allowed,  
100 except during the first year after the effective date of this  
101 article, in order to avoid stoppage of orderly conduct of  
102 the business of the state.

103 (9) For keeping records of performance of all em-  
104 ployees in the classified service, which service records  
105 may be considered in determining salary increases and  
106 decreases provided in the pay plan; as a factor in pro-  
107 motion tests; as a factor in determining the order of lay-  
108 offs because of lack of funds or work and in reinstate-  
109 ment; and as a factor in demotions, discharges and trans-  
110 fers.

111 (10) For layoffs by reason of lack of funds or work, or  
112 abolition of a position, or material change in duties or  
113 organization, and for reemployment of employees so laid  
114 off, giving consideration in both layoffs and reemploy-  
115 ment to performance record and seniority within the  
116 classified service.

117 (11) For discharge or reduction in rank or grade only  
118 for cause of employees in the classified service. Discharge  
119 or reduction of these employees shall take place only after  
120 the person to be discharged or reduced has been presented  
121 with the reasons for such discharge or reduction stated in  
122 writing, and has been allowed a reasonable time to reply  
123 thereto in writing, or upon request to appear personally  
124 and reply to the appointing authority or his deputy. The  
125 statement of reasons and the reply shall be filed as a  
126 public record with the director. Notwithstanding the  
127 foregoing provisions of this subdivision, no permanent

128 employee shall be discharged from the classified service  
129 for absenteeism upon using all entitlement to annual  
130 leave and sick leave when such use has been due to illness  
131 or injury as verified by a physician's certification or for  
132 other extenuating circumstances beyond the employee's  
133 control unless his disability is of such a nature as to  
134 permanently incapacitate him from the performance of  
135 the duties of his position. Upon exhaustion of annual  
136 leave and sick leave credits for the reasons specified  
137 herein and with certification by a physician that the  
138 employee is unable to perform his duties, a permanent  
139 employee shall be granted a leave of absence without pay  
140 for a period not to exceed six months if such employee  
141 is not permanently unable to satisfactorily perform the  
142 duties of his position.

143 (12) For such other rules and administrative regula-  
144 tions, not inconsistent with this article, as may be proper  
145 and necessary for its enforcement.

146 (13) The commission shall review and approve by  
147 rules and regulations the establishment of all classified-  
148 exempt positions to assure consistent interpretation of  
149 the provisions of this article.

150 The commission and the director may include in the  
151 rules provided for in this article such provisions as are  
152 necessary to conform to regulations and standards of any  
153 federal agency governing the receipt and use of federal  
154 grants-in-aid by any state agency, anything in this article  
155 to the contrary notwithstanding. The commission and the  
156 director shall see that rules and practices meeting such  
157 standards are in effect continuously after the effective  
158 date of this article.

**§29-6-11. Duty to furnish facilities for department's use.**

1 All officers and employees of the state and of municipi-  
2 palities and political subdivisions of the state shall allow  
3 the department the reasonable use of public buildings  
4 under their control, and furnish heat, light and furniture,  
5 for any examination, hearing or investigation authorized  
6 by this article. The department shall pay to a municipality

7 or political subdivision the reasonable cost of any such  
8 facilities furnished by it.

**§29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.**

1 All officers and employees of the state shall comply  
2 with and aid in all proper ways in carrying out the pro-  
3 visions of this article and the rules, regulations and orders  
4 thereunder. All officers and employees shall furnish any  
5 records or information which the director or the com-  
6 mission may request for any purpose of this article. The  
7 director may institute and maintain any action or pro-  
8 ceeding at law or in equity that he considers necessary  
9 or appropriate to secure compliance with this article and  
10 the rules and orders thereunder.

**§29-6-13. Status of present employees.**

1 (a) Except in the case of the removal of an employee  
2 for cause and except for persons in policymaking posi-  
3 tions, employees who have gained permanent status under  
4 the present system of classified service as of the effective  
5 date of this article will not be subject to further examina-  
6 tion, except when they wish to qualify for promotion, and  
7 will continue in the position they hold. Their rights as  
8 permanent employees shall be continuous. Employees  
9 holding provisional appointments under the present sys-  
10 tem of classified service must qualify for permanent ap-  
11 pointments under competitive examination.

12 (b) No person occupying a policymaking position, in-  
13 cluding persons included in and qualified for the classified  
14 service on the effective date of this article, shall be entitled  
15 to any right bestowed upon any position or person within  
16 the classified service by the provisions of this article or  
17 by any rule or regulation promulgated thereunder:  
18 *Provided*, That any person who, on the effective date of  
19 this article, is serving in a policymaking position and is  
20 included in and qualified for the classified service in any  
21 agency to which the federal merit systems standards apply  
22 on account of a state program financed in whole or in

23 part by federal funds shall lose no rights because of the  
24 enactment of this section.

25 (c) Employees holding positions included under classi-  
26 fied service by this article or placed under the same by  
27 future action shall be required to take qualifying tests  
28 prescribed by the director.

29 Nothing in this article shall preclude the reclassification  
30 or reallocation as provided by this article of any position.

**§29-6-14. Certification of payrolls; failure of appointing au-  
thority to comply with order of commission;  
wrongfully withholding certification of payroll.**

1 (a) No state disbursing or auditing officer shall make  
2 or approve or take any part in making or approving any  
3 payment for personal service to any person holding a  
4 position in the classified service unless the payroll  
5 voucher or account of such pay bears the certification of  
6 the director, or of his authorized agent, that the persons  
7 named therein have been appointed and employed in ac-  
8 cordance with the provisions of this article and the rules,  
9 regulations and orders thereunder. The director may for  
10 proper cause withhold certification from an entire payroll  
11 or from any specific item or items thereon. The director  
12 may, however, provide that certification of payrolls may  
13 be made once every six months, and such certification  
14 shall remain in effect except in the case of any officer  
15 or employee whose status has changed after the last  
16 certification of his payroll. In the latter case no voucher  
17 for payment of salary to such employee shall be issued  
18 or payment of salary made without further certification  
19 by the director.

20 (b) If an appointing authority fails to comply with  
21 an order of the commission within thirty days after a  
22 hearing, he shall be personally liable to the appealing  
23 employee for any salary due from the time of the final  
24 order of reinstatement by the commission.

25 (c) If the director wrongfully withholds certification  
26 of the payroll voucher or account of any employee, such  
27 employee may maintain a proceeding in the courts to

28 compel the director to certify such payroll voucher or  
29 account.

**§29-6-15. Appeals by employees to commission; hearings;  
review by court of appeals.**

1 Any employee in the classified service who is dismissed  
2 or demoted after completing his probationary period of  
3 service or who is suspended for more than thirty days  
4 in any one year, may, within thirty days after such dis-  
5 missal, demotion or suspension, appeal to the commission  
6 for review thereof. Upon such review, both the appealing  
7 employee and the appointing authority whose action is  
8 reviewed shall have the right to be heard publicly and  
9 to present evidentiary facts. At the hearing of such ap-  
10 peals, technical rules of evidence shall not apply. At  
11 any such hearing, the burden of proof will be upon the  
12 appointing authority to establish that the dismissal, demo-  
13 tion or suspension was proper in all respects and that such  
14 dismissal, demotion or suspension was not arbitrary or  
15 capricious. Such burden shall remain with the appointing  
16 authority throughout every stage of such hearing. If the  
17 commission finds that the action complained of was taken  
18 by the appointing authority without good cause, the em-  
19 ployee shall be reinstated to his former position or a posi-  
20 tion of like status and pay, without loss of pay for the period  
21 of his suspension, and awarded his reasonable and neces-  
22 sary attorneys' fees expended therein, such fees to be  
23 paid by the appointing authority. If the commission  
24 finds that the action complained of and taken by the  
25 appointing authority was too severe but was with good  
26 cause, the commission may provide for such other remedy  
27 or remedies, as may be deemed appropriate and in the  
28 best interest of the parties. The commission shall ex-  
29 pressly have the authority by order to provide for such  
30 remedies as it may deem to be appropriate after it has  
31 made a complete review of the circumstances of each  
32 individual case and such remedies shall include, but not  
33 be limited to, the restoration of all or part of an individ-  
34 ual's back pay or wages for the period of the suspension  
35 or reinstatement of an individual to his former position  
36 or a position of like status and pay or reemployment to



37 any other position which in the judgment of the commis-  
38 sion is in the best interest of the parties or any combina-  
39 tion of such remedies. When any employee is dismissed  
40 and not reinstated after such appeal, the commission in  
41 its discretion may direct that his name be placed on an  
42 appropriate reemployment list, for employment in any  
43 similar position other than the one from which he has  
44 been removed. Any final action or decision taken or made  
45 hereunder shall be subject to review by the supreme  
46 court of appeals, if appeal is made within sixty days of  
47 the action or decision complained of.

**§29-6-16. Records of state personnel department.**

1 The records of the department, except such records  
2 as the rules may properly require to be held confidential  
3 for reasons of public policy, shall be public records and  
4 shall be open to public inspection, subject to reasonable  
5 regulations as to the time and manner of inspection which  
6 may be prescribed by the director.

**§29-6-17. Services to political subdivisions; cooperation with agencies for other jurisdictions.**

1 (a) Subject to the approval of the commission the  
2 director may enter into agreements with any municipi-  
3 pality or other political subdivision of the state to furnish  
4 services and facilities of the department to such municipi-  
5 pality or political subdivision in the administration of  
6 its personnel on merit principles. Any such agreements  
7 shall provide for the reimbursement to the state of the  
8 reasonable cost of the services and facilities furnished,  
9 as determined by the director. All municipalities and  
10 political subdivisions of the state are hereby authorized  
11 to enter into such agreements. Subject to the approval  
12 of the commission, the director may enter into an agree-  
13 ment with the state department of health for the inclu-  
14 sion of personnel of local health departments under the  
15 classified service system established by this article.

16 (b) The director may cooperate with governmental  
17 agencies for other jurisdictions charged with personnel  
18 administration in conducting joint tests and establishing  
19 joint lists from which eligibles shall be certified for ap-

20 pointment in accordance with the provisions of this  
21 article.

**§29-6-18. Oaths, testimony and production of records; immunity from suit.**

1 The commission, each member of the commission and  
2 the director shall have power to administer oaths, sub-  
3 poena witnesses and compel the production of books and  
4 papers pertinent to any investigation or hearing autho-  
5 rized by this article. Any person who shall fail to appear  
6 in response to a subpoena or to answer any question or  
7 produce any books or papers pertinent to any such investi-  
8 gation or hearing or who shall knowingly give false testi-  
9 mony therein shall be subject to the penalty provisions  
10 provided for in this article. Immunity from civil suit is  
11 hereby granted for all relevant evidence offered at com-  
12 mission hearings.

**§29-6-19. Refusal to testify.**

1 If any employee in the classified or classified-exempt  
2 service shall willfully refuse or fail to appear before any  
3 court or judge, any legislative committee, or any officer,  
4 board or body authorized to conduct any hearing or in-  
5 quiry, or having appeared shall refuse to testify or an-  
6 swer any question relating to the affairs or government  
7 of the state or the conduct of any state officer or employee  
8 on the ground that his testimony or answers would tend  
9 to incriminate him, or shall refuse to accept a grant of  
10 immunity from prosecution on account of any matter  
11 about which he may be asked to testify at any such hear-  
12 ing or inquiry, he shall forfeit his office or position and  
13 shall not be eligible thereafter for appointment to any  
14 position in the classified or classified-exempt service.

**§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.**

1 (a) No person shall be appointed or promoted to, or  
2 demoted or dismissed from any position in the classified  
3 service or in any way favored or discriminated against  
4 with respect to such employment because of his political

5 or religious opinions or affiliations or race; but nothing  
6 herein shall be construed as precluding the dismissal of  
7 any employee who may be engaged in subversive activi-  
8 ties or found disloyal to the nation.

9 (b) No person shall seek or attempt to use any po-  
10 litical endorsement in connection with any appointment  
11 in the classified service.

12 (c) No person shall use or promise to use, directly  
13 or indirectly, any official authority or influence, whether  
14 possessed or anticipated, to secure or attempt to secure  
15 for any person an appointment or advantage in appoint-  
16 ment to a position in the classified service, or an increase  
17 in pay or other advantage in employment in any such  
18 position, for the purpose of influencing the vote or po-  
19 litical action of any person, or for any consideration.

20 (d) No employee in the classified service or member  
21 of the commission or the director shall, directly or in-  
22 directly, solicit or receive any assessment, subscription  
23 or contribution, or perform any service for any political  
24 party, or in any manner take part in soliciting any such  
25 assessment, subscription, contribution or service of any  
26 employee in the classified service.

27 (e) No employee in the classified service shall be a  
28 member of any national, state or local committee of a  
29 political party, or an officer or member of a committee  
30 of a partisan political club, or a candidate for nomination  
31 or election to any paid public office, or hold any paid  
32 elective public office, or shall take any part in the man-  
33 agement or affairs of any political party or in any po-  
34 litical campaign, except to exercise his right as a citizen  
35 privately to express his opinion and to cast his vote.

36 (f) Political participation pertaining to constitutional  
37 amendments, referendums, approval of municipal ordi-  
38 nances, nonpartisan activities or issues, and other similar  
39 questions or activities shall not be deemed to be pro-  
40 hibited by the foregoing provisions of this section.

#### §29-6-21. Acts prohibited.

1 (a) No person shall make any false statement, certifi-  
2 cate, mark, rating or report with regard to any test,

3 certification or appointment made under any provisions  
4 of this article or in any manner commit or attempt to  
5 commit any fraud preventing the impartial execution of  
6 this article and the rules.

7 (b) No person shall, directly or indirectly, give, render,  
8 pay, offer, solicit or accept any money, or other valuable  
9 consideration for or on account of any certification,  
10 appointment, proposed appointment, promotion or pro-  
11 posed promotion to, or any advantage in, a position in  
12 the classified service.

13 (c) No employee of the department, examiner, or other  
14 person shall defeat, deceive or obstruct any person in his  
15 right to examination, eligibility, certification or appoint-  
16 ment under this article, or furnish to any person any  
17 special or secret information for the purpose of affecting  
18 the rights or prospects of any person with respect to  
19 employment in the classified service.

#### **§29-6-22. Penalties.**

1 (a) Any person who willfully violates any provision of  
2 this article or of the rules 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, or imprisoned in the county jail for a period not  
6 to exceed one year, or both fined and imprisoned. Juris-  
7 diction under this section shall be in a court of record  
8 exercising criminal jurisdiction within the county where-  
9 in the offense is committed.

10 (b) Any person who is convicted of a misdemeanor  
11 under this article shall, for a period of five years, be  
12 ineligible for appointment to or employment in a position  
13 in the classified or classified-exempt service, and if he is  
14 an officer or employee of the state, shall forfeit his pres-  
15 ent office or position.

#### **§29-6-23. Appropriations; cost of administering article; accep- tance of grants or contribution.**

1 (a) Appropriations shall be made from the general  
2 fund to the department of personnel to meet the cost of  
3 administering the provisions of this article.

4 (b) The director shall maintain accurate records re-  
5 flecting the cost of administering the provisions of this  
6 article.

7 (c) The department is authorized and directed to  
8 accept on behalf of the state any grant or contribution,  
9 federal or otherwise, made to assist in meeting the cost of  
10 carrying out the purposes of this article.

## CHAPTER 6

(H. B. 114—Originating in the House Committee on the Judiciary)

[Passed May 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and ten, article five, chapter forty-nine; and section five, article eleven, chapter fifty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to child welfare and juvenile proceedings generally; the filing of juvenile petitions and the grounds for taking juveniles into custody; detention hearings with respect to such juveniles and the procedures relating thereto; providing for representation for such juveniles by counsel and the appointment of such counsel when appropriate; providing for the fees and expenses for such appointed counsel and the payment thereof; providing for procedures for the transfer of juvenile proceedings to criminal proceedings in certain cases and requiring a hearing with respect to any such transfer; and the burden of proof with respect to such hearing; providing procedure for appointment of counsel; providing for appointment of counsel in neglect cases; requiring affidavit of indigency; and duty of circuit court to determine whether person is entitled to appointed counsel.

*Be it enacted by the Legislature of West Virginia:*

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

**Chapter****49. Child Welfare.****51. Courts and Their Officers.****CHAPTER 49. CHILD WELFARE.****ARTICLE 5. JUVENILE PROCEEDINGS.**

§49-5-8. Taking a child into custody; detention hearing; counsel.

§49-5-10. Transfer of jurisdiction.

**§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 the petition shows that  
4 grounds exist for the arrest of an adult in identical circum-  
5 stances or that the health, safety and welfare of the child  
6 demand such custody. A detention hearing shall be held  
7 without delay, but in no event shall the delay exceed the  
8 next succeeding judicial day, excluding Saturday, and such  
9 child shall be released on recognizance to his parent or  
10 custodian unless findings are made as specified in subsection  
11 (c) of this section.

12 (b) Absent a court order, a child may be taken into custody  
13 by a law-enforcement official only if grounds exist for the  
14 arrest of an adult in identical circumstances. Upon taking a  
15 child into custody, the arresting officer shall: (1) Immediately  
16 notify the child's parent, custodian or, if the parent or  
17 custodian cannot be located, a close relative; (2) release the  
18 child into the custody of his parent or custodian unless the  
19 circumstances warrant otherwise; and (3) refer the matter  
20 to the prosecuting attorney, state department or probation  
21 officer for proceedings under this article. If the circumstances  
22 do not warrant the immediate release of the child, the arrest-  
23 ing officer shall without undue delay notify the court or  
24 referee.

25 (c) In the event that a child is delivered into the custody  
26 of a sheriff or director of a detention facility, such sheriff or  
27 director shall immediately notify the court or referee. Said  
28 sheriff or director shall immediately provide to every child who  
29 is delivered into his custody, a written statement explaining

30 the child's right to a prompt detention hearing, his right to  
31 counsel including appointed counsel if he cannot afford  
32 counsel and his privilege against self-incrimination. In all  
33 cases when a child is delivered into custody, the child shall  
34 be released to his parent or custodian by the end of the next  
35 succeeding judicial day, excluding Saturday, after being de-  
36 livered into such custody, unless the child has been placed  
37 in detention pursuant to subsection (d) of this section.

38 (d) A child in custody must immediately be taken before  
39 a referee or judge of the circuit court and in no event shall  
40 a delay exceed the next succeeding judicial day, excluding  
41 Saturday. The judge or referee shall inform the child of his  
42 right to remain silent, that any statement may be used  
43 against him and of his right to counsel, and no interrogation  
44 shall be made without the presence of a parent or counsel.  
45 If the child or his parent or custodian has not retained counsel,  
46 counsel shall be appointed forthwith. The referee or judge  
47 shall hear testimony concerning the circumstances for taking  
48 the child into custody, probable cause and the possible need  
49 for detention in accordance with section two, article five-a  
50 of this chapter.

51 If there are shown to be sufficient grounds for the arrest,  
52 including probable cause for the offense, the child shall be  
53 released on recognizance to his parent, or custodian, except  
54 that bail may be required when: (1) There is reasonable cause  
55 to believe that the child will be unavailable for court pro-  
56 ceedings if the child is not detained; or (2) there is reasonable  
57 cause to believe that the child will, if not detained, commit  
58 an offense involving serious injury to any person. The findings  
59 and order shall be made in accordance with section three,  
60 article five-a of this chapter. If sufficient grounds for the  
61 arrest and probable cause are not shown, the child shall be  
62 released.

63 (e) Upon the presentation to the referee or to the court  
64 or judge thereof of a written request for the appointment of  
65 counsel and an affidavit by the child, or by his parents, the  
66 guardian of his person, his custodian, or any other person  
67 standing in loco parentis to him, or by the person named in  
68 the petition, showing that neither the child nor any other of

69 the aforementioned persons can pay for the services of counsel,  
70 the court or judge, upon being satisfied as to the truth of the  
71 information set forth in the affidavit, shall, by order entered  
72 of record, appoint an attorney-at-law to represent the child  
73 in any proceedings under the provisions of this article. The  
74 attorney so appointed shall be paid for his services and ex-  
75 penses in accordance with the provisions of article eleven,  
76 chapter fifty-one of this code.

**§49-5-10. Transfer of jurisdiction.**

1 (a) Upon motion of the prosecuting attorney, or upon the  
2 recommendation of the referee or upon its own motion, the  
3 court may at the time specified in section nine of this article  
4 transfer to a criminal proceeding the case of a child who is  
5 alleged to have committed, on or after his sixteenth birthday,  
6 an offense which, if committed by an adult, would be a felony  
7 if there is clear and convincing proof that: (1) The offense  
8 allegedly committed by the child is one of violence or evi-  
9 dences conduct which constitutes a substantial danger to the  
10 public; and (2) there are no reasonable prospects for re-  
11 habilitating the child through resources available to the court  
12 under this article. With reference to such rehabilitation pros-  
13 pects the court shall consider the child's mental and physical  
14 condition, maturity, emotional attitude, home or family en-  
15 vironment, school experience and such other matters as the  
16 court may deem appropriate. The burden of proof in any  
17 transfer hearing shall rest with the petitioner.

18 Such motion shall state the grounds for seeking the transfer  
19 from a juvenile proceeding to a criminal proceeding and the  
20 consequences of such transfer and shall be served upon the  
21 child, his parents or custodians and the child's counsel not  
22 less than seventy-two hours before the preliminary hearing.  
23 If the child's counsel is appointed at the preliminary hearing,  
24 the court or referee shall continue the hearing for not less  
25 than five days to allow counsel to prepare for the transfer  
26 hearing unless counsel indicates that he is prepared to proceed.  
27 Testimony of a child at a transfer hearing shall not be ad-  
28 missible in a criminal proceeding or at the adjudicatory  
29 hearing under this article.



30 (b) The hearing on transfer may not be waived and the  
31 failure to object to the transfer shall not constitute a waiver.

32 (c) If the court transfers the case to a criminal proceed-  
33 ing, the court's findings of fact and conclusions of law shall  
34 be incorporated within the order. The child shall have the  
35 right to appeal to the supreme court of appeals from this  
36 order.

## CHAPTER 51. COURTS AND THEIR OFFICERS.

### ARTICLE 11. DEFENSE OF NEEDY PERSONS.

#### §51-11-5. Appointment of counsel; procedure for determining eligibility; revocation of order of appointment of counsel.

1 (a) A circuit court at any time upon request, and upon  
2 the filing of an affidavit of indigency as hereinafter provided  
3 shall appoint one or more counsel, at least one of whom shall be  
4 reasonably competent in the practice of criminal law:

5 (1) to represent one accused of a felony, or of a misde-  
6 meanor punishable by imprisonment;

7 (2) to represent a juvenile under the provisions of article  
8 five, chapter forty-nine of this code;

9 (3) to represent a party under the provisions of article six,  
10 chapter forty-nine of this code;

11 (4) to represent a person in custody in seeking a writ of  
12 habeas corpus;

13 (5) to represent a person entitled to counsel under the  
14 provisions, chapter twenty-seven of this code;

15 (6) to represent a person whose order of probation or  
16 parole has been revoked under the provisions of article twelve,  
17 chapter sixty-two of this code.

18 (b) The affidavit of indigency and the attorney voucher  
19 and affidavit shall be upon such form as shall be prescribed  
20 by the supreme court of appeals, and shall be signed by  
21 the accused or other needy person or the attorney, or, in  
22 the event of his disability, by another person in his behalf.

23 (c) It shall be the duty of the circuit court, upon the  
24 basis of the affidavit of a person requesting appointment of

25 counsel and of such evidence as may be adduced in open  
26 court, to determine whether such person is a needy person  
27 so as to be entitled to appointed counsel. If the court  
28 should determine that such person is not entitled to ap-  
29 pointed counsel, the appointment previously made shall  
30 be revoked, and the attorney previously appointed shall  
31 be entitled to compensation under the provisions of this  
32 article, for services already rendered.

## CHAPTER 7

(S. B. 8—By Mr. Brotherton, Mr. President)

[Passed May 6, 1977; in effect July 1, 1977. Approved by the Governor.]

**AN ACT** to repeal article twelve, chapter five; to repeal article one, chapter twenty-nine and to enact in lieu thereof a new article one; to repeal article seventeen, chapter twenty-nine; to amend and reenact section one, article eight, chapter four; to amend and reenact sections six and seventeen, article eight, chapter five; to amend and reenact section one, article four-a, chapter five-a; to amend and reenact section six, article twenty-six-a, chapter eight; and to amend and reenact section fifteen, article one, chapter twenty, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to creating a department of culture and history; providing for the qualifications, appointment and powers of a commissioner of culture and history; relating to the receipt and expenditure of funds; relating to the science and culture center; relating to the transfer of powers, duties, contracts and obligations of existing agencies to the department of culture and history; relating to abolishing the West Virginia antiquities commission and the department of archives and history; relating to establishing a division of archives and history and qualifications, appointment and powers of director thereof; designating the director of archives and history as the state historian and archivist; relating to establishing an archives and history commis-

sion, and providing for its appointment and powers; providing for the protection of archaeological findings and providing penalties; relating to abolishing the arts and humanities council; relating to establishing an arts and humanities division and qualifications, appointment and powers of a director thereof; relating to establishing an arts and humanities commission, and providing for its appointment and powers; relating to publication of materials by divisions of the department of culture and history; relating to land of the department, its control and disposal; relating to membership on the governor's mansion advisory committee; relating to municipal and county historic landmarks commission; relating to membership on the public land corporation; relating to membership on the public records management and preservation committee; relating to disposal of public records with approval of state historian and archivist; relating to civil service coverage; and retaining present members of all commissions, boards and councils.

*Be it enacted by the Legislature of West Virginia:*

That article twelve, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article one, chapter twenty-nine be repealed and that there be enacted in lieu thereof a new article one; that article seventeen, chapter twenty-nine be repealed; that section one, article eight, chapter four be amended and reenacted; that sections six and seventeen, article eight, chapter five be amended and reenacted; that section one, article four-a, chapter five-a be amended and reenacted; that section six, article twenty-six-a, chapter eight be amended and reenacted; and that section fifteen, article one, chapter twenty, all of said code be amended and reenacted, all to read as follows:

**Chapter**

**29. Miscellaneous Boards and Officers.**

**4. The Legislature.**

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

**5A. Department of Finance and Administration.**

- 8. **Municipal Law, Municipalities and Counties; Inter-governmental Relations.**
- 20. **Natural Resources.**

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 1. DEPARTMENT OF CULTURE AND HISTORY.**

- §29-1-1. Creation of department of culture and history; divisions and commissions; purposes; definitions; effective date.
- §29-1-2. General powers of commissioner.
- §29-1-3. Power to accept and receive funds; power to apply for grants; disbursal of funds; restrictions on expenditure; disposition of funds heretofore received or appropriated.
- §29-1-4. Transfer of powers and duties; existing contracts and obligations.
- §29-1-5. Archives and history division; director.
- §29-1-5a. Archives and history commission.
- §29-1-5b. Protection of archaeological sites; penalties.
- §29-1-6. Arts and humanities division; director.
- §29-1-6a. Arts and humanities commission.
- §29-1-7. Publication of materials; agreements.
- §29-1-8. Land; control and disposal; rules and regulations.
- §29-1-9. Department employees classified by civil service; exceptions.

**§29-1-1. Creation of department of culture and history; divisions and commissions; purposes; definitions; effective date.**

1     Effective the first day of July, one thousand nine  
 2     hundred seventy-seven, there is hereby created a depart-  
 3     ment of culture and history and the office of commissioner  
 4     of culture and history. The governor shall nominate,  
 5     and by and with the advice and consent of the Senate,  
 6     appoint the commissioner, who shall be the chief execu-  
 7     tive officer of the department and shall be paid an an-  
 8     nual salary and be governed by the provisions of section  
 9     two-a, article seven, chapter six of this code. The commis-  
 10    sioner so appointed shall have: (1) a bachelor's degree  
 11    in one of the fine arts, social sciences, library science or a  
 12    related field; or (2) four years' experience in the adminis-  
 13    tration of museum management, public administration,  
 14    history or a related field.

15    The department shall consist of two divisions and two  
 16    corresponding citizens commissions:

17 (1) An archives and history division, and an archives  
18 and history commission; and

19 (2) An arts and humanities division, and an arts  
20 and humanities commission.

21 The commissioner shall exercise control and super-  
22 vision of the department and shall be responsible for  
23 the projects, programs, and actions of each of its divi-  
24 sions. The purpose and duty of the department is to  
25 advance, foster and promote the creative and performing  
26 arts and crafts, including both indoor and outdoor ex-  
27 hibits and performances; to identify, acquire, mark and  
28 care for historical, prehistorical, archaeological and unique  
29 architectural sites, structures and objects in the state;  
30 to coordinate all cultural and artistic activities in the  
31 state government and at the state-owned facilities; to  
32 acquire, preserve and classify books, documents and  
33 memorabilia of historical interest or importance; and, in  
34 general, to do all things necessary or convenient to pre-  
35 serve and advance the culture of the state.

36 The department shall have jurisdiction and control of  
37 all space in the building presently known as the West  
38 Virginia science and culture center, including the deck  
39 and court yards forming an integral part thereof.

40 For the purposes of this article "commissioner" means  
41 the commissioner of culture and history, and "depart-  
42 ment" means the department of culture and history.

#### **§29-1-2. General powers of commissioner.**

1 The commissioner shall assign and allocate space in  
2 all facilities assigned to the department and all space  
3 in the building presently known as the West Virginia  
4 science and culture center, and may prescribe rules and  
5 regulations for the use and occupancy of said facilities,  
6 including tours of the science and culture center.

7 The commissioner shall coordinate the operations and  
8 affairs of the divisions and commissions of the department  
9 and assign each division or commission responsibilities  
10 according to criteria he deems most efficient, productive  
11 and best calculated to carry out the purposes of this  
12 article. He shall provide to the fullest extent possible

13 for centralization and coordination of the bookkeeping,  
14 personnel, purchasing, printing, duplicating, binding and  
15 other services which can be efficiently combined. If the  
16 commissioner finds it necessary, he may establish an ad-  
17 ministrative division and other divisions for such purposes  
18 as he deems necessary, and may appoint directors thereof.  
19 The commissioner may appoint a director of the West  
20 Virginia science and culture center.

21 After consultation with the directors of the divisions  
22 of the department and the commissions, the commissioner  
23 shall prepare a proposed departmental budget for sub-  
24 mission to the governor for each fiscal year.

25 No contract, agreement or undertaking may be entered  
26 into by any division of the department which involves the  
27 expenditure of funds without the express written ap-  
28 proval of the commissioner as to fiscal responsibility.

29 The commissioner shall prepare and submit to the  
30 governor an annual report in accordance with the provi-  
31 sions of section twenty, article one, chapter five of this  
32 code, which report shall include a detailed account of the  
33 activities of each division and commission of the de-  
34 partment.

35 The commissioner shall employ all personnel for the  
36 divisions, except for persons in the professional positions  
37 established within the divisions as provided in this article;  
38 and shall supply support services to the commissions and  
39 to the governor's mansion advisory committee.

**§29-1-3. Power to accept and receive funds; power to apply  
for grants; disbursal of funds; restrictions on ex-  
penditure; disposition of funds heretofore received  
or appropriated.**

1 The department may, in the name of the state of West  
2 Virginia, accept and receive grants, appropriations, gifts,  
3 bequests and funds from any public or private source for  
4 the purpose of carrying out the duties and purposes of this  
5 article. The department may apply for grants from the  
6 federal government, the national endowment for the arts,  
7 private foundations and any other source for the pur-  
8 poses of this article. All funds received from any source

9 shall be paid into the treasury of the state and disbursed  
10 upon warrant by the state auditor following requisition  
11 by the department. Such requisitions shall be signed by  
12 the commissioner or by such other person as he may  
13 authorize by written document deposited with the auditor  
14 or, in the event of emergency, by the governor or his  
15 designee. No funds or gifts received from any source  
16 shall be expended or used for any purpose other than  
17 that intended as evidenced by a positive and affirmative  
18 declaration or by a negative restriction or limitation.  
19 The unexpended balance on the effective date of this  
20 article of any funds heretofore appropriated to or received  
21 from any source by the West Virginia antiquities com-  
22 mission, the West Virginia arts and humanities council,  
23 the department of archives and history, the arts and  
24 crafts division of the department of commerce, or the  
25 present science and culture center, is hereby transferred  
26 and appropriated to the department of culture and his-  
27 tory for the purpose of carrying out its powers and  
28 duties and payment of any bills and encumbrances in-  
29 curred by the aforesaid agencies, and their successor  
30 divisions within the department, except to the extent  
31 such funds are required to be retained and expended by  
32 an agency having citizen representation in which event  
33 they shall succeed to the appropriate commission estab-  
34 lished by this article. All books, papers, maps, charts,  
35 plans, literature and other records, and all equipment in  
36 the possession of the aforesaid agencies upon the effec-  
37 tive date of this article, or of any member, officer or  
38 employee thereof, shall be delivered and turned over to  
39 the department of culture and history.

40 All federal or state funds received to provide grants-  
41 in-aid or awards to further the purposes of this article  
42 shall be approved and distributed by the appropriate  
43 commission established by this article.

**§29-1-4. Transfer of powers and duties; existing contracts and obligations.**

1 Except as otherwise provided in this article, the powers  
2 and duties of the West Virginia antiquities commission,  
3 the West Virginia arts and humanities council and the

4 department of archives and history are hereby trans-  
5 ferred to the department of culture and history. All  
6 existing contracts and obligations of the West Virginia  
7 antiquities commission, the West Virginia arts and  
8 humanities council and the department of archives and  
9 history, or relating to the present science and culture  
10 center, shall remain in full force and effect and shall be  
11 performed by the department of culture and history.

**§29-1-5. Archives and history division; director.**

1 The purposes and duties of the archives and history  
2 division are to locate, survey, investigate, register, iden-  
3 tify, excavate, preserve, protect, restore and recommend  
4 to the commissioner for acquisition historic, architec-  
5 tural, archaeological and cultural sites, structures, docu-  
6 ments and objects worthy of preservation, relating to  
7 the state of West Virginia and the territory included  
8 therein from the earliest times to the present, upon its  
9 own initiative or in cooperation with any private or  
10 public society, organization or agency; to conduct a con-  
11 tinuing survey and study throughout the state to deter-  
12 mine the needs and priorities for the preservation, restor-  
13 ation and development of such sites, structures, docu-  
14 ments and objects; to direct, protect, excavate, preserve,  
15 study, and develop such sites, structures, documents, and  
16 to operate and maintain a state library for the preserva-  
17 tion of all public records, state papers, documents and  
18 reports of all three branches of state government in-  
19 cluding all boards, commissions, departments and agen-  
20 cies as well as any other private or public papers, books  
21 or documents of peculiar or historic interest or signifi-  
22 cance; to preserve and protect all battle or regimental  
23 flags borne by West Virginians and other memorabilia  
24 of historic interest; to designate appropriate monuments,  
25 tablets or markers, historic, architectural and scenic sites  
26 within the state and to arrange for the purchase,  
27 replacement, care of and maintenance of such monu-  
28 ments, tablets and markers and to formulate and prepare  
29 suitable copy for them; to operate and maintain a state  
30 museum; to cooperate with the state geological and eco-  
31 nomic surveys in the survey's archaeological work; to



32 edit and publish a quarterly historical magazine devoted  
33 to the history, biography, bibliography and genealogy  
34 of West Virginia; and to perform such other duties  
35 as may be assigned to the division by the commis-  
36 sioner.

37 With the advice and consent of the archives and his-  
38 tory commission, the commissioner shall appoint a direc-  
39 tor of the archives and history division, who shall have:  
40 (1) a bachelor's degree in one of the social sciences, or  
41 equivalent training and experience in the fields of West  
42 Virginia history, history, historic preservation, archaeol-  
43 ogy, or in records, library or archives management; or (2)  
44 three years' experience in administration in the fields of  
45 West Virginia history, history, historic preservation, arch-  
46 aeology, or in records, library or archives management.  
47 Notwithstanding these qualifications, the person serving  
48 as the state historian and archivist on the date of enact-  
49 ment of this article shall be eligible for appointment as the  
50 director of the archives and history division. The director  
51 of the archives and history division shall serve as the state  
52 historian and archivist.

53 With the approval of the commissioner, the director  
54 shall establish professional positions within the division.  
55 The director shall employ the personnel within these  
56 professional positions for the division.

57 The director may promulgate rules and regulations  
58 concerning the professional policies and functions of the  
59 archives and history division, subject to the approval of  
60 the archives and history commission.

**§29-1-5a. Archives and history commission.**

1 The West Virginia antiquities commission established  
2 by article twelve, chapter five of this code shall continue  
3 in existence until the first day of July, one thousand nine  
4 hundred seventy-seven at which time it shall be abolished,  
5 and replaced by an archives and history commission which  
6 is hereby created and which shall be composed of nine  
7 appointed members.

8 The governor shall nominate, and by and with the  
9 advice and consent of the Senate, appoint the members

10 of the commission for staggered terms of three years. A  
11 person appointed to fill a vacancy shall be appointed  
12 only for the remainder of that term. Of the members of  
13 the archives and history commission first appointed, three  
14 shall be appointed for a term ending the thirtieth day of  
15 June, one thousand nine hundred seventy-eight, and three  
16 each for terms ending one and two years thereafter:  
17 *Provided*, That each person serving as a member of the  
18 West Virginia antiquities commission, for a term which  
19 has not expired on the effective date of this article, shall  
20 be appointed by the governor without Senate confirma-  
21 tion to the archives and history commission, as one of  
22 the nine appointed members, for the term ending the  
23 thirtieth day of June in the year in which his term  
24 would expire as a member of the West Virginia anti-  
25 quities commission.

26 No more than five of the appointed members may be  
27 of the same political party. Members of the commission  
28 shall be appointed so as to fairly represent both sexes,  
29 the ethnic and cultural diversity of the state and the  
30 geographic regions of the state. At least one of the  
31 appointed members shall be an archaeologist, one an archi-  
32 tect and one an historian.

33 The commission shall elect one of its members chairman.  
34 It shall meet at such time as shall be specified by the  
35 chairman. Notice of each meeting shall be given to each  
36 member by the chairman at least five days in advance  
37 of the meeting. A majority of the members shall constitute  
38 a quorum for the transaction of business. The director  
39 of the archives and history division shall be an ex  
40 officio nonvoting member of the commission and shall  
41 serve as secretary. The director, or a majority of the  
42 members, may also call a meeting upon such notice as  
43 provided in this section.

44 Each member or ex officio member of the commission  
45 shall serve without compensation, but shall be reim-  
46 bursed for all reasonable and necessary expenses actually  
47 incurred in the performance of his duties; except that  
48 in the event the expenses are paid, or are to be paid, by a

49 third party, the member or ex officio member, as the  
50 case may be, shall not be reimbursed by the state.

51 In addition to the nine appointed members, the presi-  
52 dent of the state historical society and the president of  
53 the state historical association of college and university  
54 teachers shall serve as ex officio voting members of the  
55 archives and history commission. The director of the  
56 state geological and economic survey and the state his-  
57 toric preservation officer shall serve as ex officio non-  
58 voting members of the archives and history division.

59 The commission shall have the following powers:

60 (1) To advise the commissioner and the director of  
61 the archives and history division concerning the ac-  
62 complishment of the purposes of that division and to  
63 establish a state plan with respect thereto;

64 (2) To approve and distribute grants-in-aid and awards  
65 from federal and state funds relating to the purposes of  
66 the archives and history division;

67 (3) To request, accept or expend federal funds to  
68 accomplish the purposes of the archives and history  
69 division when federal law or regulations would prohibit  
70 the same by the commissioner or division director, but  
71 would permit the same to be done by the archives and  
72 history commission;

73 (4) To otherwise encourage and promote the purposes  
74 of the archives and history division;

75 (5) To approve rules and regulations concerning the  
76 professional policies and functions of the division as  
77 promulgated by the director of the archives and history  
78 division; and

79 (6) To advise and consent to the appointment of the  
80 director by the commissioner.

**§29-1-5b. Protection of archaeological sites; penalties.**

1 Archaeological sites and districts, identified as such  
2 by the archives and history division, on lands owned or  
3 leased by the state, or on private lands where investiga-  
4 tion and development rights have been acquired by the  
5 state by lease or contract, shall not be disturbed, de-

6 veloped or destroyed except with permission of the com-  
7 missioner.

8 Any person violating the provisions of this section  
9 shall be guilty of a misdemeanor, and, upon conviction  
10 thereof, shall be fined not more than five hundred dol-  
11 lars, or imprisoned in the county jail not more than six  
12 months, or both fined and imprisoned.

**§29-1-6. Arts and humanities division; director.**

1 The purposes and duties of the arts and humanities  
2 division are to stimulate, encourage, assist, promote,  
3 foster and develop the performing and creative arts and  
4 crafts in the state; and in furtherance thereof to make  
5 awards, prizes and grants to individual performers,  
6 artists or craftsmen and to public or private corporations  
7 or associations in the field of either the performing or crea-  
8 tive arts and crafts that would tend to encourage and  
9 foster the advancement of such arts and crafts; to present  
10 cultural, artistic or craft exhibits or performances at the  
11 department's facilities or on tour; and to perform such  
12 other duties as may be assigned to said division by the  
13 commissioner.

14 With the advice and consent of the arts and human-  
15 ities commission, the commissioner shall appoint a direc-  
16 tor of the arts and humanities division, who shall have:  
17 (1) a bachelor's degree in the fine arts or related field or  
18 equivalent training and experience; or (2) three years' ex-  
19 perience in administration of the fine arts or a related  
20 field. Notwithstanding these qualifications, the person  
21 serving as the executive director of the arts and humani-  
22 ties council on the date of the enactment of this article  
23 shall be eligible for appointment as the director of the arts  
24 and humanities division.

25 With the approval of the commissioner, the director  
26 shall establish professional positions within the division.  
27 The director shall employ the personnel within these  
28 professional positions for the division.

29 The director may promulgate rules and regulations  
30 concerning the professional policies and functions of

31 the arts and humanities division, subject to the approval  
32 of the arts and humanities commission.

**§29-1-6a. Arts and humanities commission.**

1 The West Virginia arts and humanities council es-  
2 tablished by article seventeen, chapter twenty-nine of  
3 this code shall continue in existence until the first day  
4 of July, one thousand nine hundred seventy-seven, at  
5 which time it shall be abolished, and replaced by an  
6 arts and humanities commission which is hereby cre-  
7 ated and which shall be composed of fifteen appointed  
8 members.

9 The governor shall nominate, and by and with the  
10 advice and consent of the Senate, appoint the members  
11 of the commission for staggered terms of three years.  
12 A person appointed to fill a vacancy shall be appointed  
13 only for the remainder of that term. Of the members of  
14 the arts and humanities commission first appointed, five  
15 shall be appointed for a term ending the thirtieth day  
16 of June, one thousand nine hundred seventy-eight, and  
17 five each for terms ending one and two years thereafter:  
18 *Provided*, That each person serving as a member of the  
19 West Virginia arts and humanities council, for a term  
20 which has not expired on the effective date of this article,  
21 shall be appointed by the governor without Senate con-  
22 firmation to the arts and humanities commission as one  
23 of the fifteen appointed members, for the term ending  
24 the thirtieth day of June in the year in which his term  
25 would expire as a member of the West Virginia arts  
26 and humanities council.

27 Effective the first day of July, one thousand nine hun-  
28 dred seventy-eight, no more than eight members may  
29 be of the same political party. Members of the com-  
30 mission shall be appointed so as to fairly represent both  
31 sexes, the ethnic and cultural diversity of the state and  
32 the geographic regions of the state.

33 The commission shall elect one of its members chair-  
34 man. It shall meet at such time as shall be specified by  
35 the chairman. Notice of each meeting shall be given  
36 to each member by the chairman at least five days in

37 advance of the meeting. A majority of the members  
38 shall constitute a quorum for the transaction of business.  
39 The director of the arts and humanities division shall be  
40 an ex officio nonvoting member of the commission and  
41 shall serve as secretary. The director or a majority of  
42 the members may also call a meeting upon such notice  
43 as provided in this section.

44 Each member or ex officio member of the commission  
45 shall serve without compensation, but shall be reim-  
46 bursed for all reasonable and necessary expenses ac-  
47 tually incurred in the performance of his duties; except  
48 that in the event the expenses are paid, or are to be paid,  
49 by a third party, the member or ex officio member, as  
50 the case may be, shall not be reimbursed by the state.

51 Upon recommendation of the commissioner, the gov-  
52 ernor may also appoint such officers of the state as may  
53 be appropriate to serve on the commission as ex officio  
54 nonvoting members.

55 The commission shall have the following powers:

56 (1) To advise the commissioner and the director of  
57 the arts and humanities division concerning the accom-  
58 plishment of the purposes of that division and to es-  
59 tablish a state plan with respect thereto;

60 (2) To approve and distribute grants-in-aid and  
61 awards from federal and state funds relating to the  
62 purposes of the arts and humanities division;

63 (3) To request, accept or expend federal funds to  
64 accomplish the purposes of the arts and humanities divi-  
65 sion when federal law or regulations would prohibit the  
66 same by the commissioner or division director, but  
67 would permit the same to be done by the arts and  
68 humanities commission;

69 (4) To otherwise encourage and promote the purposes  
70 of the arts and humanities division;

71 (5) To approve rules and regulations concerning the  
72 professional policies and functions of the division as  
73 promulgated by the director of the arts and humanities  
74 division; and

75 (6) To advise and consent to the appointment of the  
76 director by the commissioner.

**§29-1-7. Publication of materials; agreements.**

1 The department of culture and history shall have the  
2 power, responsibility and duty to publish or republish  
3 material of prehistorical, historical, archaeological, archi-  
4 tectural or cultural interest. The department of culture  
5 and history may sell such publications as well as postcards  
6 and other items of such interest at the state museum or  
7 any other site or property administered by the state or at  
8 any special event sponsored by the state; and any revenue  
9 derived therefrom shall be paid into the treasury of the  
10 state and disbursed upon warrant by the state auditor  
11 following requisition by the department, as provided in  
12 section three of this article. The department shall have  
13 the right to enter into agreements with responsible  
14 private historical, archaeological, architectural or cultural  
15 associations, foundations or similar organizations or the  
16 national park service, the national endowment for the arts  
17 or any agency of the federal or state government for the  
18 purpose of carrying out its purposes or for raising money  
19 to fund the functions of the department.

**§29-1-8. Land; control and disposal; rules and regulations.**

1 All land owned or leased by the department shall be  
2 titled in the name of the public land corporation of West  
3 Virginia but shall be controlled, administered and super-  
4 vised by the department. The department, in the discre-  
5 tion of its commissioner, may sell or dispose of any real  
6 or personal property which, in his or her opinion, does  
7 not have sufficient prehistorical, historical, archaeological,  
8 architectural or cultural value to justify its retention.

9 The commissioner shall have the power to make and  
10 promulgate rules and regulations relating to the general  
11 management and administration of the department.

**§29-1-9. Department employees classified by civil service;  
exceptions.**

1 Effective the first day of July, one thousand nine  
2 hundred seventy-seven, any person employed in any of

3 the agencies consolidated by this article who is a classified  
 4 civil service employee shall, within the limits provided in  
 5 article six of this chapter, remain in the civil service  
 6 system as a covered employee; and all persons employed  
 7 by the department of culture and history shall be em-  
 8 ployed under the classified service of the civil service  
 9 system within the limits provided in article six of this  
 10 chapter.

#### CHAPTER 4. THE LEGISLATURE.

##### ARTICLE 8. CAPITOL BUILDING COMMISSION.

###### §4-8-1. Creation; composition; qualifications.

1 There is continued a capitol building commission,  
 2 hereinafter referred to as the commission, which shall be  
 3 composed of five members who shall be appointed by the  
 4 governor with the advice and consent of the Senate on the  
 5 first day of July, one thousand nine hundred seventy-six,  
 6 plus the commissioner of the department of finance and  
 7 administration who shall be a nonvoting member. No  
 8 more than three members shall be of the same political  
 9 party. One member shall be an architect selected from  
 10 three persons recommended by the board of architects,  
 11 one member shall be a registered professional engineer  
 12 selected from three persons recommended by the board of  
 13 engineers, one member shall be selected from three per-  
 14 sons who are interested in the historical beauty, value and  
 15 preservation of the capitol building recommended by the  
 16 commissioner of culture and history and two members  
 17 shall be selected from the public at large.

#### CHAPTER 5. GENERAL POWERS AND AUTHOR- ITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMIS- SIONS, OFFICES, PROGRAMS, ETC.

##### ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESER- VATION ACT.

§5-8-6. Records management and preservation advisory committee.

§5-8-17. Disposal of records.

###### §5-8-6. Records management and preservation advisory com- mittee.

1 A records management and preservation advisory



2 committee is continued, to advise the administrator and to  
3 perform such other duties as this article requires. The  
4 records management and preservation advisory committee  
5 shall be composed of the following members: The  
6 governor, auditor, attorney general, president of the  
7 Senate, speaker of the House of Delegates, the chief  
8 justice of the supreme court of appeals, a judge of a  
9 circuit court to be appointed by the governor, the director  
10 of the office of emergency services, and the director of the  
11 division of archives and history of the department of  
12 culture and history, or their respective designated repre-  
13 sentatives. The advisory committee shall designate one of  
14 its members to be chairman, and it shall adopt rules for  
15 the conduct of its business. The advisory committee shall  
16 meet whenever called by its chairman or the adminis-  
17 trator. The members of the advisory committee shall  
18 serve without compensation but shall be reimbursed for  
19 all reasonable and necessary expenses actually incurred  
20 in the performance of their duties as members of the  
21 advisory committee; except that in the event the expenses  
22 are paid, or are to be paid, by a third party, the member  
23 shall not be reimbursed by the state.

**§5-8-17. Disposal of records.**

1 No record shall be destroyed or otherwise disposed of  
2 by any agency of the state, unless it is determined by the  
3 administrator and the director of the division of archives  
4 and history of the department of culture and history  
5 that the record has no further administrative, legal, fiscal,  
6 research or historical value.

**CHAPTER 5A. DEPARTMENT OF FINANCE AND  
ADMINISTRATION.**

**ARTICLE 4A. GOVERNOR'S MANSION ADVISORY COMMITTEE.**

**§5A-4A-1. Committee created; appointment, terms, etc., of  
members; meetings and responsibilities; annual  
report.**

1 There is hereby created the governor's mansion ad-  
2 visory committee. The commissioner of finance and ad-  
3 ministration, the commissioner of culture and history

4 and the spouse of any governor during the term of office  
5 of that governor, or the designated representative of  
6 such governor, shall be ex officio members of the com-  
7 mittee. In addition, the governor shall appoint three  
8 additional members of the committee, one to be a  
9 curator in the field of fine arts, one to be an interior  
10 decorator who is a member of the American institute  
11 of decorators, and one to be a building contractor. The  
12 appointive members of the committee shall serve for a  
13 term of four years. The members of the committee shall  
14 serve without compensation but shall be reimbursed for  
15 reasonable and necessary expenses actually incurred  
16 in the performance of their duties; except that in the  
17 event the expenses are paid, or are to be paid, by a third  
18 party, the member shall not be reimbursed by the state.  
19 The governor shall designate from the committee a chair-  
20 man to serve for a term of one year. The commissioner  
21 of finance and administration shall serve as secretary.  
22 The committee shall meet upon the call of the chairman  
23 annually and may meet at such other times as may be  
24 necessary for the performance of its functions.

25 The committee shall be charged with the following  
26 responsibilities:

27 (1) To make recommendations to the governor for the  
28 maintaining, preserving and replenishing of all articles of  
29 furniture, fixtures, decorative objects, linens, silver,  
30 china, crystal and objects of art used or displayed in the  
31 state rooms of the governor's mansion, which state rooms  
32 shall consist of the front hall, the reception room, the  
33 ballroom and its sitting room, the state dining room, the  
34 front upstairs hall and the music room;

35 (2) To make recommendations to the governor as to  
36 the decor and arrangements best suited to enhance the  
37 historic and artistic values of the mansion in keeping  
38 with the architecture thereof and of such articles of  
39 furniture, fixtures, decorative objects, linens, silver,  
40 china, crystal and objects of art, which recommendations  
41 shall be considered by the governor in decorating said  
42 mansion; and

43 (3) To invite interested persons to attend its meetings  
44 or otherwise to assist in carrying out its functions.

45 All departments, boards, agencies, commissions, officials  
46 and employees of the state are hereby authorized to  
47 cooperate with and assist the committee in the perform-  
48 ance of its functions and duties whenever possible. As  
49 soon after the close of each fiscal year as possible, the  
50 committee shall make an annual report to the governor  
51 and the Legislature with respect to its activities and  
52 responsibilities.

## **CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.**

### **ARTICLE 26A. MUNICIPAL AND COUNTY HISTORIC LAND- MARKS COMMISSIONS.**

#### **§8-26A-6. Assistance of state agencies; coordination.**

1 Upon the request of any such commission, all agen-  
2 cies of the state shall assist such commission in the dis-  
3 charge of its duties and functions.

4 Every such commission shall cooperate and coordinate  
5 its activities with the West Virginia historical society  
6 and the West Virginia department of culture and his-  
7 tory, with the view of developing a unified program for  
8 the identification, study, preservation and protection of  
9 all historic buildings, structures and sites in this state.

## **CHAPTER 20. NATURAL RESOURCES.**

### **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

#### **§20-1-15. Public land corporation.**

1 The public land corporation of West Virginia, here-  
2 tofore created and established, shall be continued as an  
3 activity of the department of natural resources. The  
4 corporation may sue and be sued, contract and be con-  
5 tracted with, plead and be impleaded, and have and use  
6 a common seal. It shall be a public benefit corporation  
7 composed of the governor as chairman, the director of  
8 the department of natural resources as secretary, the  
9 commissioner of agriculture, the attorney general, the  
10 director of the engineering experiment station at West  
11 Virginia University and the commissioner of culture and

12 history, none of whom shall receive additional compen-  
13 sation as members of the corporation.

14 The corporation shall be vested with the title of the  
15 state in public land, the title to which now is or may  
16 hereafter become absolutely vested in the state of West  
17 Virginia by reason of any law governing the title of  
18 lands within the state, except such public lands of the  
19 state as may be by law specifically allocated to and  
20 used by other state agencies, institutions and depart-  
21 ments.

22 The corporation is hereby authorized and empowered  
23 to:

24 (1) Acquire from any persons or the state commis-  
25 sioner of forfeited lands, by purchase, lease or other  
26 agreement, any lands necessary and required for public  
27 use;

28 (2) Acquire by purchase, condemnation, lease, or  
29 agreement, receive by gifts and devises, or exchange,  
30 rights-of-way, easements, waters and minerals suitable  
31 for public use;

32 (3) Sell, purchase or exchange lands or stumpage for  
33 the purpose of consolidating lands under state or federal  
34 government administration;

35 (4) Negotiate and effect loans or grants from the gov-  
36 ernment of the United States or any agency thereof for  
37 acquisition and development of such lands as may be  
38 authorized by law to be acquired for public use;

39 (5) Expend the income from the use and develop-  
40 ment of public lands for the purpose of liquidating ob-  
41 ligations incurred in the acquisition, development and  
42 administration of such lands, until all such obligations  
43 have been fully discharged, and thereafter pay such in-  
44 come into the state fund for general revenue purposes  
45 and uses;

46 (6) Expend the income from the use and development  
47 of public lands for the purchase, development, restora-  
48 tion and preservation for public use, of sites, structures,  
49 objects and documents of prehistoric, historical, archae-

50 ological, architectural and cultural significance to the  
51 state of West Virginia; and

52 (7) Expend the income from the use and develop-  
53 ment of public lands for the purpose of obtaining grants  
54 or matching moneys available from the government of  
55 the United States or any of its instrumentalities for pre-  
56 historic, historic, archaeological, architectural and cul-  
57 tural purposes.

58 The corporation shall have the authority to designate  
59 lands to which it has title for development and adminis-  
60 tration for the public use including forestation, recrea-  
61 tion, wildlife, stock grazing, agricultural rehabilitation  
62 and homesteading or other conservation activities and  
63 may contract or lease for the proper development of oil,  
64 gas or minerals, except that no contract or lease may be  
65 entered into for the extraction and removal by stripping  
66 or auger mining of coal, and water rights within or upon  
67 the lands or property under its control. It shall convey,  
68 assign, or allot lands to the title or custody of proper  
69 departments or other agencies of state government for  
70 administration and control within the functions of such  
71 departments or other agencies as provided by law. The  
72 corporation shall make proper lands available for the  
73 purpose of cooperating with the government of the United  
74 States in the relief of unemployment and hardship or  
75 for any other public purpose. The corporation shall re-  
76 port annually to the Legislature on its public land hold-  
77 ings, its financial condition and its operations and shall  
78 make such recommendations to the Legislature as deemed  
79 proper concerning the acquisition, development, dispo-  
80 sition and use of public lands.

81 During the continuance of the Blennerhassett historical  
82 park commission, the public land corporation and its  
83 members shall consult with and keep the said Blenner-  
84 hassett historical park commission fully informed as to  
85 any official action to be taken or proposed to be taken  
86 pursuant to this act regarding or affecting Blennerhassett  
87 Island and its prehistoric, historic, archaeological, archi-  
88 tectural, cultural and recreational significance or devel-  
89 opment or any of the powers and duties of the Blenner-  
90 hassett historical park commission.

## CHAPTER 8

(Com. Sub. for H. B. 115—By Mr. Albright)

[Passed June 21, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of public school teachers; redefining the salary classification of “doctorate”; and increasing the “state minimum salary schedule”.

*Be it enacted by the Legislature of West Virginia:*

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

### **ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.**

§18A-4-1. Definitions.

§18-A-4-2. State minimum salaries.

#### **§18A-4-1. Definitions.**

1 For the purpose of this section, salaries shall be defined as:  
2 (a) “basic salaries” which shall mean the salaries paid to  
3 teachers with zero years of experience and in accordance with  
4 the classification of certification and of training of said  
5 teachers; and (b) “advanced salaries” which shall mean the  
6 basic salary plus an experience increment based on the allow-  
7 able years of experience of the respective teachers in accord-  
8 ance with the schedule established herein for the applicable  
9 classification of certification and of training of said teachers.

10 “Classification of certification” means the class or type of  
11 certificate issued by the state superintendent of schools under  
12 the statutory provisions of this chapter. “Classification of  
13 training” means the number of collegiate or graduate hours  
14 necessary to meet the requirements stipulated in the defini-  
15 tions set forth in the next paragraph in items (2) to (10)  
16 inclusive.

17 The column heads of the state minimum salary schedule  
18 set forth in section two are defined as follows:

19 (1) "Years of experience" means the number of years the  
20 teacher has been employed in the teaching profession, includ-  
21 ing active work in educational positions other than the public  
22 schools, and service in the armed forces of the United States  
23 if the teacher were under contract to teach at the time of his  
24 induction. For the purpose of section two of this article, the  
25 teacher's experience shall be limited to that allowed under his  
26 training classification as found in the minimum salary schedule.

27 (2) "Fourth class" means all certificates previously identi-  
28 fied as (a) "certificates secured by examination," (b) "other  
29 first grade certificates."

30 (3) "Third class" means all certificates previously identi-  
31 fied as (a) "standard normal certificates" and (b) "third class  
32 temporary (sixty-four semester hours) certificates."

33 (4) "Second class" means all certificates previously identi-  
34 fied as "second class temporary certificates based upon the  
35 required ninety-six hours of college work."

36 (5) "A.B." means a bachelor's degree, from an accredited  
37 institution of higher education, which has been issued to, or  
38 for which the requirements for such have been met by,  
39 a person who qualifies for or holds a professional certificate  
40 or its equivalent.

41 (6) "A.B. + 15" means a bachelor's degree as defined  
42 above plus fifteen hours of graduate work, from an accredited  
43 institution of higher education certified to do graduate work,  
44 in an approved planned program at the graduate level which  
45 requirements have been met by a person who qualifies for or  
46 holds a professional certificate or its equivalent.

47 (7) "M. A." means a master's degree, earned in an in-  
48 stitution of higher education approved to do graduate work,  
49 which has been issued to, or the requirements for such have  
50 been met by, a person who qualifies for or holds a pro-  
51 fessional certificate or its equivalent.

52 (8) "M. A. + 15" means the above-defined master's de-  
53 gree plus fifteen hours of graduate work, earned in an  
54 institution of higher education approved to do graduate work,  
55 if the person is qualified for or holds a professional certificate  
56 or its equivalent.

57 (9) "M. A. + 30" means the above-defined master's de-  
58 gree plus thirty graduate hours, earned in an institution  
59 approved to do graduate work, if the person is qualified for  
60 or holds a professional certificate or its equivalent.

61 (10) "Doctorate" means a doctor's degree, earned from  
62 a university qualified and approved to confer such a degree,  
63 which has been issued to or the requirements for such have  
64 been met by a person who qualifies for or holds a profes-  
65 sional certificate or its equivalent.

**§18A-4-2. State minimum salaries.**

1 **STATE MINIMUM SALARY SCHEDULE**

2 (1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
3 Years	4th	3rd	2nd	A.B.	A.B.	M.A.	M.A.	M.A.	Doc-
4 Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	torate
5 0	5,453	6,060	6,303	7,455	7,845	8,235	8,625	9,015	9,405
6 1	5,599	6,206	6,449	7,660	8,050	8,440	8,830	9,220	9,610
7 2	5,745	6,352	6,595	7,865	8,255	8,645	9,035	9,425	9,815
8 3	5,891	6,498	6,741	8,070	8,460	8,850	9,240	9,630	10,020
9 4	6,037	6,644	6,887	8,275	8,665	9,055	9,445	9,835	10,225
10 5	6,183	6,790	7,033	8,480	8,870	9,260	9,650	10,040	10,430
11 6	6,329	6,936	7,179	8,685	9,075	9,465	9,855	10,245	10,635
12 7		7,082	7,325	8,890	9,280	9,670	10,060	10,450	10,840
13 8		7,228	7,471	9,095	9,485	9,875	10,265	10,655	11,045
14 9			7,617	9,300	9,690	10,080	10,470	10,860	11,250
15 10			7,763	9,505	9,895	10,285	10,675	11,065	11,455
16 11				9,710	10,100	10,490	10,880	11,270	11,660
17 12				9,915	10,305	10,695	11,085	11,475	11,865
18 13				10,120	10,510	10,900	11,290	11,680	12,070
19 14						11,105	11,495	11,885	12,275
20 15						11,310	11,700	12,090	12,480
21 16						11,515	11,905	12,295	12,685
22 17								12,500	12,890
23 18								12,705	13,095
24 19								12,910	13,300

25 On and after the first day of July, one thousand nine hundred  
26 seventy-seven, each teacher shall receive the amount prescribed  
27 in the "state minimum salary schedule" as set forth in this  
28 section, specific additional amounts prescribed in this article,  
29 and any county supplement in effect in a county during the  
30 contract year.



## CHAPTER 9

(S. B. 7—By Mr. Brotherton, Mr. President)

(Passed May 7, 1977; in effect July 1, 1977. Approved by the Governor.)

AN ACT to amend and reenact section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing, continuing or increasing the salaries of certain appointive state officers.

*Be it enacted by the Legislature of West Virginia:*

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

### ARTICLE 7. COMPENSATION AND ALLOWANCES.

#### §6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

1 Notwithstanding any other provision of this code to the  
2 contrary, each of the appointive state officers named in this  
3 section shall be appointed by the governor, by and with the  
4 advice and consent of the Senate. Each of such appointive  
5 state officers shall serve at the will and pleasure of the  
6 governor for the term for which the governor was elected  
7 and until the respective state officers' successors have been  
8 appointed and qualified. Each of such appointive state of-  
9 ficers shall hereafter be subject to the existing qualifications  
10 for holding each such respective office and each shall have  
11 and is hereby granted all of the powers and authority and  
12 shall perform all of the functions and services heretofore  
13 vested in and performed by virtue of existing law respecting  
14 each such office.

15 (a) Each of the following named state appointive officers  
16 shall continue to receive an annual salary as follows: members  
17 of the board of review of employment security and members  
18 of workmen's compensation appeal board, fourteen thousand  
19 dollars; and members of the board of probation and parole,  
20 sixteen thousand dollars.

21 (b) Effective the first day of July, one thousand nine  
22 hundred seventy-seven, the annual salary of each of the  
23 following named state appointive officers shall be as follows:  
24 The commissioner of highways, thirty-nine thousand dollars;  
25 commissioner of finance and administration, thirty-seven  
26 thousand five hundred dollars; tax commissioner, thirty-nine  
27 thousand dollars; director of the department of natural re-  
28 sources, thirty-seven thousand five hundred dollars; com-  
29 missioner of the department of welfare, thirty-seven thousand  
30 five hundred dollars; superintendent of department of public  
31 safety, thirty-five thousand dollars; alcohol beverage control  
32 commissioner, thirty thousand dollars; commissioner of bank-  
33 ing, thirty thousand dollars; director of the department of  
34 mines, thirty-five thousand dollars; state workmen's com-  
35 pensation commissioner, thirty thousand dollars; director of  
36 personnel, civil service commission, thirty thousand dollars;  
37 commissioner of corrections, thirty thousand dollars; com-  
38 missioner of culture and history, thirty thousand dollars; labor  
39 commissioner, twenty-eight thousand dollars; commissioner of  
40 employment security, twenty-eight thousand dollars; insurance  
41 commissioner, twenty-eight thousand dollars; commissioner of  
42 motor vehicles, thirty thousand dollars; adjutant general,  
43 twenty-six thousand dollars; director of emergency services,  
44 twenty-five thousand dollars; nonintoxicating beer commis-  
45 sioner, twenty-five thousand dollars; and the director of  
46 veterans affairs, twenty-five thousand dollars.

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## CHAPTER 10

(H. B. 103—By Mr. Speaker, Mr. Kopp, and Mr. Tompkins)

[Passed May 5, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section one, article four-a, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing benefits under the disabled workmen's relief fund.

*Be it enacted by the Legislature of West Virginia:*

That section one, article four-a, 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 4A. DISABLED WORKMEN'S RELIEF FUND.**

**§23-4A-1. Disabled workmen's relief fund created.**

1 For the relief of persons who are receiving benefits pur-  
2 suant to a permanent total disability award in amounts less  
3 than two hundred seventy-four dollars per month, and for  
4 the relief of widows who are receiving benefits on account of  
5 the death of an employee in amounts less than two hundred  
6 sixty dollars per month, and for the relief of other persons  
7 who are receiving dependents' benefits on account of the death  
8 of an employee in amounts less than the specific monetary  
9 amounts set forth in section ten, article four of this chapter  
10 and in effect as of July one, one thousand nine hundred  
11 seventy-three, there is hereby created a separate fund to be  
12 known as the "Disabled Workmen's Relief Fund," which fund  
13 shall consist of such sums as are from time to time made  
14 available to carry out the objects and purposes of this  
15 article. Said fund shall be in the custody of the state treasurer  
16 and disbursements therefrom shall be made upon requisition  
17 signed by the commissioner to those persons entitled to  
18 participate therein and in such amounts to each participant as  
19 is provided in section three of this article.

# RESOLUTIONS

## CONCURRENT RESOLUTIONS

(Only resolutions of general interest are included herein)

### **Authorizing and continuing legislative interim studies:**

(Since these resolutions take the same general form, they are listed herein by number showing the subject of studies authorized thereby. They may be found in the House and Senate Journals of the session, and are indexed in the Journals under tabular indices of House Concurrent Resolutions.)

### **House Concurrent**

2. Civil Procedure; Coal Mining; Criminal Laws; Employee Classification, Salary and Benefits; Health and Social Services and Nursing Homes; State Park System and Recreational Facilities; Public Safety Administration; State Tax Structure; and the Study of Funding Public Education by the Education Finance Study Commission.
3. Construction and Furnishing State Buildings and Facilities; Coal Mine Subsidence Insurance Fund; Funeral Services, Sale of Cemetery Lots, Operation of Cemeteries, etc.; Higher Education Programs; State and Political Subdivisions Retirement Systems; Customer Bank Communication Terminals; and Education of Handicapped Children.

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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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