

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1981
First and Second Extraordinary Sessions, 1981

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C 641

FOREWORD

This volume contains the Acts of the First Regular and First and Second Extraordinary Sessions of the 65th Legislature.

First Regular Session, 1981

The first regular session of the 65th Legislature convened on January 14, 1981, 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 4th day of November, 1980, 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 11, 1981, as provided by the aforesaid section of the Constitution. Reconvening on February 11, 1981, pursuant to the adjournment, the constitutional 60-day limit on the duration of the session being at midnight April 11, 1981, sine die adjournment came on April 14, 1981.

Bills totaling 1820 were introduced in the two houses during the session (1101 House and 719 Senate). The Legislature passed 228 bills, 111 House and 117 Senate. The Governor approved 223 bills and vetoed 5. However, two bills were repassed by the Legislature, notwithstanding the Governor's objections, leaving a net total of 3 bills lost through veto.

There were 74 concurrent resolutions during the session, 39 House and 35 Senate, of which 6 House and 5 Senate were adopted. Twenty-seven House Joint and 12 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted one Senate Joint Resolution—SJR 12, proposing an amendment to the Constitution of the State designated the "Roads for Jobs and Progress Amendment." The House had 33 House Resolutions and the Senate had 22 Senate Resolutions, of which 23 House and 22 Senate were adopted.

The Senate failed to pass 76 House bills passed by the House and 77 Senate bills failed passage by the House. Four House bills and one Senate bill died in conference.

First Extraordinary Session
1981

The First Extraordinary Session of the 65th Legislature convened on May 4, 1981, and concluded on May 14, 1981.

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

During the session, there were 17 House bills and 17 Senate bills introduced. The Legislature passed ten bills, three House and seven Senate.

There were five concurrent resolutions offered during the session, two House and three Senate. One was adopted. There were five Senate resolutions and one House resolution of which four Senate and the one House resolution were adopted. One House bill failed passage by the Senate and three Senate bills failed passage by the House. One House bill, H. B. 117, state supplemental assistance to aged, blind and disabled residents, was passed by the House and communicated to the Senate. However, the Senate refused to accept the message on the bill.

Second Extraordinary Session
1981

The Second Extraordinary Session convened on May 27, 1981, the Legislature met at 2:00 P.M. and adjourned *sine die* at 6:52 P.M. on the same day.

The Proclamation of the Governor calling the Legislature together was issued subsequent to applications in writing of three fifths of the members elected to each house of the Legislature, in accordance with Section 19, Article VI of the Constitution, to act upon any matter not interdicted by the Constitution itself.

There were 11 bills introduced, nine House and two Senate. Two Senate bills were passed by the Legislature. Two House bills passed the House but were never acted upon by the Senate.

Two House resolutions and five Senate resolutions were offered in the respective houses of which all were adopted.

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

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

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1981

OFFICERS

Speaker—Clyde M. See., Jr., Moorefield

Speaker Pro Tem—Donald L. Kopp, Clarksburg

Clerk—C. A. Blankenship, Pineville

Sergeant at Arms—Oce W. Smith, Jr., Fairmont

Doorkeeper—Dannie Wingo, Yukon

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

* Appointed a member of the House of Delegates December 15, 1981, to fill the vacancy created by the resignation of Delegate-elect George W. Dober.

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

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

MEMBERS OF THE SENATE

REGULAR SESSION, 1981

OFFICERS

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

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

x Appointed a member of the Senate on December 5, 1980, to fill the vacancy created by the death of the Honorable Judith A. Herndon.

* Elected in 1978. All others elected in 1980.

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

**STANDING COMMITTEES OF THE
HOUSE OF DELEGATES
1981**

Agriculture and Natural Resources

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

Banking and Insurance

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

Constitutional Revision

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

Education

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

Finance

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

Government Organization

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

Health and Welfare

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

Industry and Labor

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

Interstate Cooperation

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

Judiciary

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

Political Subdivisions

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

Roads and Transportation

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

Rules

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

JOINT COMMITTEES

Enrolled Bills

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

Government and Finance

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

Joint Rules

See (Chairman ex officio), Tompkins and Teets.

**Legislative Rule-Making
Review Committee**

Shingleton (Chairman), Shiflet, Wiedebusch, Shaffer and Teets.

SELECT COMMITTEE**Redistricting**

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

COMMISSION ON SPECIAL INVESTIGATIONS

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

STANDING COMMITTEES OF THE SENATE

1981

Agriculture

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

Banking and Insurance

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

Confirmations

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

Education

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

Elections

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

Energy, Industry and Mining

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

Finance

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

Health

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

Interstate Cooperation

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

Judiciary

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

Labor

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

Local Government

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

Military

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

Natural Resources

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

Public Institutions

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

Rules

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

Transportation

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

JOINT COMMITTEES

Enrolled Bills

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

Government and Finance

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

Joint Rules

McGraw (Chairman ex officio), Moreland and Deem.

Legislative Rule-Making Review

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

COMMISSION ON SPECIAL INVESTIGATIONS

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

LEGISLATURE OF WEST VIRGINIA

ACTS

REGULAR SESSION, 1981

CHAPTER 1

(H. B. 846—By Mr. Tucker)

[Passed April 6, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to tolling of statutes of limitation on claims assertible by counterclaim, cross-claim, and third party complaint.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-21. Statutes of limitation tolled on claims assertible in civil actions when actions commence.

1 After a civil action is commenced, the running of any
2 statute of limitation shall be tolled for, and only for, the pen-
3 dency of that civil action as to any claim which has been or
4 may be asserted therein by counterclaim, whether compulsory
5 or permissive, cross-claim or third-party complaint: *Provided,*
6 That if any such permissive counterclaim would be barred
7 but for the provisions of this section, such permissive counter-
8 claim may be asserted only in the action tolling the statute

9 of limitations under this section. This section shall be deemed
 10 to toll the running of any statute of limitation with respect to
 11 any claim for which the statute of limitation has not expired
 12 on the effective date of this section, but only for so long as the
 13 action tolling the statute of limitations is pending.

CHAPTER 2

(Com. Sub. for S. B. 601—By Mr. Boettner)

[Passed April 11, 1981: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article six, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for a prejudgment hearing in detinue actions to ascertain sufficient facts relating to the claim to possession; finding of fact by court or magistrate; bond; order for seizure.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. RECOVERY OF PERSONAL PROPERTY.

§55-6-1. Immediate recovery of possession of personal property; notice and prejudgment hearing.

§55-6-2. Finding of fact by court or magistrate; bond; order for seizure.

§55-6-1. Immediate recovery of possession of personal property; notice and prejudgment hearing.

1 If the plaintiff in a civil action, whether in a circuit court or
 2 magistrate court, for the recovery of specific goods, chattels,
 3 or intangible personal property, shall demand immediate
 4 possession thereof, a prejudgment hearing shall be held in
 5 not less than five nor more than ten days after service upon
 6 the defendant of the summons, a verified complaint
 7 describing said personal property, and a notice of the time,
 8 place, and purpose of the prejudgment hearing. At the
 9 prejudgment hearing an inquiry shall be held to determine:

- 10 (a) the nature of the right or contract under which the plaintiff
11 claims a right to immediate possession; and (b) the nature of
12 the defendant's right to retain possession thereof.

§55-6-2. Finding of fact by court or magistrate; bond; order for seizure.

1 If the court or magistrate shall conclude, upon the basis of
2 the evidence adduced at said prejudgment hearing, that there
3 is a substantial probability that the plaintiff will prevail upon
4 trial of the action upon the merits, the court or magistrate
5 may order that, upon the plaintiff's execution of a bond, with
6 good security to be approved by the clerk of the circuit court
7 or the magistrate and delivered to said clerk or magistrate in a
8 penalty at least double the value of the property claimed,
9 payable to the defendant and with condition to pay all costs
10 and damages which may be awarded against the plaintiff, or
11 sustained by any person by reason of said civil action and to
12 have the property so claimed forthcoming to answer any
13 judgment or order of the court or magistrate in said civil
14 action, the property claimed, or any part thereof described or
15 designated by the court or magistrate, be seized by and taken
16 into the possession of a designated officer.

CHAPTER 3

(Com. Sub. for H. B. 817—By Mr. Steptoe and Mr. Martin, 35th Dist.)

[Passed March 16, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article seven-a, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the liability of parents for malicious and willful personal injury or destruction of property or setting fire to a forest or wooded area, and willful taking, stealing and carrying away of property by minor children; defining the term, "custodial parent or parents"; legislative findings; legislative intent; limitation on damages recoverable; describing persons or entities entitled to recovery; restricting actual damages to out-of-pocket loss; providing that remedy under article is not exclusive; and providing for applicability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. LIABILITY OF PARENTS.

§55-7A-1. Legislative findings; declaration of legislative intent.

§55-7A-2. Parental liability for willful, malicious or criminal acts of children.

§55-7A-1. Legislative findings; declaration of legislative intent.

1 The Legislature hereby finds and declares that there are
2 now and have been repeated and widespread acts of vandalism,
3 willful and malicious destruction of property and other injury
4 to persons and property occasioned by the willful, malicious
5 and sometimes criminal acts of children under the age of
6 eighteen years; that the great majority of such children are
7 living with a parent or parents; that there arises or should
8 arise out of such relationship, a responsibility to recompense
9 persons injured by such acts of vandalism and willful and
10 malicious injury to persons and property. Therefore, it is the
11 intent of the Legislature to make parents responsible for the
12 torts of their minor children by reason of the parent-child
13 relationship, and to impose on said parent or parents for such
14 acts of their children, who live with them and who commit
15 acts of vandalism or willful and malicious injury to persons
16 and property, liability in accordance with the provisions here-
17 inafter set forth.

§55-7A-2. Parental liability for willful, malicious or criminal acts of children.

1 The custodial parent or parents of any minor shall be per-
2 sonally liable in an amount not to exceed twenty-five hundred
3 dollars for damages which are the proximate result of any one
4 or a combination of the following acts of such minor:

5 (a) The malicious and willful injury to the person of an-
6 other; or

7 (b) The malicious and willful injury or damage to the
8 property of another, whether such property be real, personal
9 or mixed; or

10 (c) The malicious and willful setting fire to a forest or
11 wooded area belonging to another; or

12 (d) The willful taking, stealing and carrying away of the
13 property of another, with the intent to permanently deprive
14 the owner of possession.

15 For purposes of this section, "custodial parent or parents"
16 shall mean the parent or parents with whom the minor is
17 living, or a divorced or separated parent who does not have
18 legal custody but who is exercising supervisory control over
19 the minor at the time of the minor's act.

20 Persons entitled to recover damages under this article shall
21 include, but not be limited to, the state of West Virginia,
22 any municipal corporation, county commission and board of
23 education, or other political subdivision of this state, or any
24 person or organization of any kind or character. The action
25 may be brought in magistrate or other court of competent
26 jurisdiction. Recovery hereunder shall be limited to the actual
27 damages based upon direct out-of-pocket loss, taxable court
28 costs, and interest from date of judgment. The right of action
29 and remedy granted herein shall be in addition to and not
30 exclusive of any rights of action and remedies therefor against
31 a parent or parents for the tortious acts of his or their
32 children heretofore existing under the provisions of any law,
33 statutory or otherwise, or now so existing independently of
34 the provisions of this article.

35 The provisions of this article shall be applicable to causes
36 of action arising on and after the effective date of this article.
37 Causes of actions arising before the effective date of this
38 article and proceedings thereon shall be governed by the

39 previously enacted provisions of this article in force at the
40 time such cause arose.

CHAPTER 4

(Com. Sub. for H. B. 1259—By Mr. Speaker, Mr. See, and Mr. Teets)

[Passed March 24, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of a public market; exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PUBLIC MARKETS.

§19-2A-1. Public market defined.

1 A public market is (1) any place of business where live-
2 stock, poultry, and other agricultural or horticultural products
3 are received and sold at public auction or, (2) any place
4 where livestock is received from producers, assembled and
5 sold, or offered for sale, by any method including, but not
6 limited to, public auction. The term public market shall
7 include all such places where such activities are conducted,
8 whether or not such activities are performed according to a
9 scheduled routine or a historically established pattern of days
10 and times: *Provided*, That sales totally sponsored, organized
11 and financed by the state of West Virginia or by any state,
12 regional or county agricultural fair or festival, or by any
13 4-H, FFA or other educational activity, shall not be included
14 in this definition. Annual sales held by nonprofit associa-
15 tions or nonprofit corporations devoted to improving the quality
16 of beef cattle raised in this state where the net proceeds from
17 such sales are used exclusively for the association or corpora-

18 tion conducting such sale, or purebred livestock sales conducted
19 by generally recognized breed associations, shall not be sub-
20 ject to the provisions of sections eight and sixteen-a of this
21 article: *Provided, however,* That only members in good stand-
22 ing in such nonprofit association or nonprofit corporation or
23 such breed association shall offer cattle for sale at such annual
24 sale and the bylaws of such association or corporation or such
25 breed association shall provide either for a surety bond to be
26 given as provided in this article or that each member offering
27 stock at such sale shall bear any loss in proportion to the value
28 of each member's stock to the total value of all such stock
29 being sold at such sale.

CHAPTER 5

(S. B. 195—By Mrs. Spears)

[Passed March 17, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article two-d, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition, labeling and sale of imitation honey.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article two-d, 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 2D. IMITATION HONEY PRODUCT LAW.

§19-2D-1. Definitions.

§19-2D-2. Labeling.

§19-2D-1. Definitions.

1 "Honey" means the nectar and saccharine exudation of
2 plants as gathered, modified and stored in comb by honey
3 bees.

4 "Imitation honey" means any mixture of sugars with or
5 without honey as one of the constituent ingredients, which
6 has been manufactured to represent honey.

7 "Label" means all written, printed or graphic information
8 upon, attached to or accompanying product containers or
9 wrappers.

10 "Package" means any container or wrappings in which a
11 product is enclosed for use in the delivery or display of that
12 product to retail purchasers.

13 "Person" means any individual, firm, corporation,
14 association or any other group of people or business unit
15 whether or not they are incorporated.

§19-2D-2. Labeling.

1 (a) No person shall manufacture, package, label, sell, keep
2 for sale, expose or offer for sale, any article or product
3 represented to be honey or to contain honey unless the
4 product ingredient is honey, as defined in this article.

5 (b) No person shall sell, expose or offer for sale any
6 product, compound or mixture of sugars labeled as or for
7 honey, with or without honey as a constituent ingredient,
8 unless the product, compound or mixture of sugars is labeled
9 "imitation honey" with the word "imitation" appearing in
10 letters equal in size to the letters used to spell "honey."

CHAPTER 6

(Com. Sub. for H. B. 825—By Mr. Ballouz)

[Passed April 3, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve-d, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating to making it unlawful to import, bring or move into the state or sell or offer or expose for sale or possess with intent to sell or offer or expose for sale in the state the noxious weed known as multiflora rose; providing criminal and civil penalties for violations; giving the state

commissioner of agriculture certain authority with respect thereto; and providing a rule of construction.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12D. WEST VIRGINIA NOXIOUS WEED ACT.

§19-12D-12. Importation or sale of multiflora rose unlawful.

1 Notwithstanding any other provisions of this code to the
2 contrary, it is unlawful for any person, firm or corporation
3 to import or otherwise bring or move into this state or sell
4 or offer or expose for sale or have in possession with intent
5 to sell or offer or expose for sale in this state the noxious
6 weed known as multiflora rose, *rosa multiflora*. Any person,
7 firm or corporation violating the provisions of this section is
8 guilty of a misdemeanor, and, upon conviction thereof, shall
9 be fined not less than one thousand dollars, or confined in
10 jail not more than one year, or both fined and imprisoned.
11 In addition, the commissioner may obtain injunctive relief,
12 along with a civil penalty of one thousand dollars, for any
13 violation of this section in the circuit court of any county
14 wherein such violation occurs. The commissioner shall not
15 under any circumstances grant any permit for the sale in this
16 state of or importation or other movement into this state of
17 multiflora rose, *rosa multiflora*. The provisions of this section
18 are in addition to the powers, duties and authority given to
19 the commissioner elsewhere in this article and do not limit
20 or abrogate in any way the powers and authority given the
21 commissioner elsewhere in this article, except that the criminal
22 penalties of this section apply to violations of this section and
23 the penalty provisions of section eleven of this article do not
24 apply thereto.

CHAPTER 7

(S. B. 420—By Mr. Ash)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and twelve, article thirteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to redefining "bee diseases," "apiary," and abandoned apiary"; changing period for inspection of bees being shipped into state from thirty to sixty days; and changing time period for notice to commissioner from ten days after the arrival of bees into the state to prior to the movement into the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. INSPECTION AND PROTECTION OF APICULTURE.

§19-13-2. Definitions.

§19-13-12. Bees brought into state to carry inspection certificate; commissioner to be notified.

§19-13-2. Definitions.

1 The following definitions shall apply in the interpreta-
2 tion and enforcement of this article. All words shall be
3 construed to impart either the plural or the singular,
4 as the case demands:

5 (a) "Department" means the department of agri-
6 culture of the state of West Virginia.

7 (b) "Commissioner" means the commissioner of agri-
8 culture of the state of West Virginia or his duly autho-
9 rized agent.

10 (c) "Person" shall include all corporations, partner-
11 ships, associations, societies, individuals or group of

12 individuals or any employee, servant or agent acting for
13 or employed by any person as above defined.

14 (d) "Bees" shall be construed to mean any stage of the
15 common hive or honeybee, (*Apis mellifera*) or other
16 species of the genus *Apis*.

17 (e) "Bee diseases" shall be construed to mean Ameri-
18 can foulbrood (*Bacillus larvae*), European foulbrood
19 (*Bacillus pluton*), or any other infection or parasitic
20 infestation determined by the commissioner to be trans-
21 missible to other bee colonies and that represents a
22 threat to beekeeping in West Virginia.

23 (f) "Colony" means the hive and includes bees, comb,
24 honey and equipment.

25 (g) "Apiary" means any place where one or more
26 colonies or nuclei of bees are kept or where bee equip-
27 ment is stored.

28 (h) "Queen apiary" means any apiary or premises in
29 which queen bees are reared or kept for sale or gift.

30 (i) "Hive" shall be construed to mean frame hive,
31 box hive, box, barrel, log, gum, skep or any other re-
32 ceptacle or container, natural or artificial, or any part
33 thereof, which may be used or employed as a domicile
34 for bees.

35 (j) "Appliances" means any apparatus, tools, machine
36 or other device, used in the handling and manipulating
37 of bees, honey, wax and hives. It also means any con-
38 tainer of honey and wax that may be used in any apiary
39 or in transporting bees and their products and apiary
40 supplies.

41 (k) "Bee equipment" means hives, supers, frames,
42 veils, gloves or any other appliances.

43 (l) "Abandoned apiary" means any apiary in which
44 twenty-five percent or more of the colonies are dead or
45 diseased, or death or disarray of the colonies exposes
46 them to robbing which may jeopardize the welfare of

47 neighboring colonies and the hives or apiary are not
48 identified as specified in section nine of this article.

49 (m) "Packaged bees" means bees shipped in combless
50 packages in which no honey has been used for food in
51 transit or that bears an affidavit that any honey used as
52 food in the package was boiled at a temperature of two
53 hundred twelve degrees fahrenheit for thirty minutes.

54 (n) "Honey house" means a building in which honey
55 is extracted and handled.

§19-13-12. Bees brought into state to carry inspection certificate; commissioner to be notified.

1 (a) It shall be unlawful for any person to transport
2 bees, used hives or used appliances into West Virginia,
3 unless the same be accompanied by a certificate of in-
4 spection signed by an authorized inspection official of
5 the state from which such bees are being transported.
6 Such certificate shall certify the actual inspection of
7 the bees made within sixty days preceding the date of
8 shipment, and that the bees, hives and appliances con-
9 tained in the shipment are apparently free from bee
10 diseases.

11 (b) Prior to the movement of any bees, used hives,
12 combs, bee appliances or equipment into the state of
13 West Virginia, the commissioner shall be furnished by
14 the owner, transporter or lessee the following:

15 1. Exact location of bees or equipment.

16 2. Name and address of the owner of the property on
17 which the bees are located.

18 3. The exact number of colonies or amounts of bee
19 equipment.

20 4. A copy of the inspection certificate issued by the
21 inspector of the state of origin.

22 Packaged bees bearing a certificate of inspection will
23 be exempt from the provisions of subsection (b) of this
24 section.

CHAPTER 8

(H. B. 1302—By Mr. Ballouz)

[Passed March 30, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, eight, nine, eleven, fourteen, fifteen, seventeen and twenty-two, article sixteen-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions of licensed pesticide application business and certified public applicators; administration and enforcement; certification requirements; cooperative agreements; unlawful acts or grounds for denial, suspension or revocation of license; imposition of civil penalties; penalties as lien.

Be it enacted by the Legislature of West Virginia:

That sections three, four, eight, nine, eleven, fourteen, fifteen, seventeen and twenty-two, article sixteen-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16B. WEST VIRGINIA PESTICIDE USE AND APPLICATION ACT.

- §19-16B-3. Definitions.
- §19-16B-4. Administration and enforcement of article.
- §19-16B-8. Licensed pesticide application business license.
- §19-16B-9. Application of this article to governmental entities; public applicator's certification required; liability.
- §19-16B-11. Cooperative agreements.
- §19-16B-14. Denial, suspension or revocation of license, permit or certification; civil penalty.
- §19-16B-15. Financial security required of licensed pesticide application business.
- §19-16B-17. Licensee or certified commercial applicators to keep records; duration; submission to commissioner.
- §19-16B-22. Penalties.

§19-16B-3. Definitions.

- 1 As used in this article:
- 2 "Agricultural commodity" means any plant, or part thereof,

3 or animal, or animal product, produced by a person (including
4 farmers, ranchers, vineyardists, plant propagators, Christmas
5 tree growers, aquaculturists, floriculturists, orchardists, forest-
6 ers, or other comparable persons) primarily for sale, con-
7 sumption, propagation, or other use by man or animals.

8 "Animal" means all vertebrate and invertebrate species,
9 including, but not limited to, man and other mammals, birds,
10 fish and shellfish.

11 "Certified applicator" means any person who is certified
12 under this article to use or supervise the use of any restricted
13 use pesticides.

14 "Commercial applicator" means a certified applicator
15 (whether or not he is a private applicator with respect to
16 some uses) who uses or supervises the use of any pesticide
17 which is classified for restricted use for any purpose or on
18 any property other than as defined under the definition of
19 "private applicator."

20 "Commissioner" means the commissioner of agriculture of
21 the state of West Virginia and his duly authorized representa-
22 tives.

23 "Defoliant" means any substance or mixture of substances
24 intended for causing the leaves of foliage to drop from a
25 plant, with or without causing abscission.

26 "Desiccant" means any substance or mixture of substances
27 intended for artificially accelerating the drying of plant tissue.

28 "Device" means any instrument or contrivance (other than
29 a firearm) which is intended for trapping, destroying, repelling
30 or mitigating any pest or any other form of plant or animal
31 life (other than man and other than bacteria, viruses or
32 other microorganisms on or in living man or other living
33 animals); but not including equipment used for the application
34 of pesticides when sold separately therefrom.

35 "Direct supervision" means that unless otherwise prescribed
36 by its labeling, a pesticide shall be considered to be applied
37 under the direct supervision of a certified applicator if it is
38 applied by a competent person acting under the instructions

39 and control of a certified applicator who is available if and
40 when needed, even though such certified applicator is not
41 physically present at the time and place the pesticide is applied.

42 "Environment" includes water, air, land and all plants
43 and man and other animals living therein, and the interrela-
44 tionships which exist among these.

45 "Fungus" means any nonchlorophyll-bearing thallophytes
46 (that is, any nonchlorophyll-bearing plant of a lower order
47 than mosses and liverworts), as for example, rust, smut,
48 mildew, mold, yeast and bacteria, except those on or in
49 living man or other animals and except those on or in
50 processed food, beverages or pharmaceuticals.

51 "Insect" means any of the numerous small invertebrate
52 animals generally having the body more or less obviously
53 segmented, for the most part belonging to the class insecta,
54 comprising six-legged, usually winged forms, as for example,
55 beetles, bugs, bees, flies and to other allied classes of arthro-
56 pods whose members are wingless and usually have more than
57 six legs, as for example, spiders, mites, ticks, centipedes and
58 wood lice.

59 "Land" means all land and water areas, including airspace
60 and all plants, animals, structures, buildings, contrivances and
61 machinery, appurtenant thereto or situated thereon, fixed or
62 mobile, including any used for transportation.

63 "Licensed pesticide application business" means any person
64 who owns or manages a pesticide application business which
65 is engaged in the business of applying pesticides upon the
66 lands of another (whether or not such person applies restricted
67 use pesticides) and means each place for which the business
68 of applying pesticides for hire is carried on, including a
69 branch office, franchise location or sub-office of a larger
70 business entity.

71 "Certified public applicator" means a licensed applicator
72 who applies "restricted use pesticides" as an employee of a
73 state agency, municipal corporation or other governmental
74 agency. This term does not include employees who work

75 only under the direct supervision of a certified public appli-
76 cator.

77 "Nematode" means invertebrate animals of the phylum
78 nemathelminthes and class nematoda, that is, unsegmented
79 roundworms with elongated, fusiform or sac-like bodies
80 covered with cuticle and inhabiting soil, water, plants or
81 plant parts; may also be called nemas or eelworms.

82 "Permit" means a written certificate, issued by the com-
83 missioner authorizing the use of certain restricted use pesti-
84 cides or state restricted use pesticides.

85 "Person" means any individual, partnership, association,
86 fiduciary, corporation or any organized group of persons
87 whether incorporated or not.

88 "Pest" means any insect, rodent, nematode, fungus, weed;
89 or any other form of terrestrial or aquatic plant or animal
90 life or virus, bacteria, or other microorganism (except viruses,
91 bacteria or other microorganisms on or in living man or
92 other living animals) which is declared to be a pest by the
93 commissioner.

94 "Pesticide" means any substance or mixture of substances
95 intended for preventing, destroying, repelling or mitigating
96 any pest; any substance or mixture of substances intended
97 for use as a plant regulator, defoliant or desiccant.

98 "Pesticide dealer" means any person who sells, wholesales,
99 distributes, offers or exposes for sale, exchanges, barter or
100 gives away within or into this state any restricted use pesticide.

101 "Plant regulator" means any substance or mixture of sub-
102 stances, intended, through physiological action, for accelerating
103 or retarding the rate of growth or rate of maturation, or for
104 otherwise altering the behavior of ornamental or crop plants
105 or the produce thereof, but shall not include substances to
106 the extent that they are intended as plant nutrients, trace
107 elements, nutritional chemicals, plant inoculants or soil amend-
108 ments.

109 "Private applicator" means a certified applicator who uses
110 or supervises the use of any pesticide which is classified for

111 restricted use for purposes of producing any agricultural com-
112 modity on property owned or rented by him or his employer
113 or (if applied without compensation other than trading of
114 personal services between producers of agricultural commodi-
115 ties) on property of another person.

116 "Restricted use pesticide" means any pesticide classified
117 for restricted use by the administrator, United States environ-
118 mental protection agency.

119 "State restricted pesticide use" means any pesticide use
120 which, when used as directed or in accordance with a wide-
121 spread and commonly recognized practice, the commissioner
122 determines, subsequent to a hearing, requires additional re-
123 strictions for that use to prevent unreasonable adverse effects
124 on the environment including man, land, beneficial insects,
125 animals, crops and wildlife, other than pests.

126 "Unreasonable adverse effects on the environment" means
127 any unreasonable risk to man or the environment, taking into
128 account the economic, social and environmental costs and
129 benefits of the use of any pesticide.

130 "Weed" means any plant which grows where not wanted.

131 "Wildlife" means all living things that are neither human,
132 domesticated nor, as defined in this article, pests, including,
133 but not limited to, mammals, birds and aquatic life.

§19-16B-4. Administration and enforcement of article.

1 (a) The commissioner shall administer and enforce the
2 provisions of this article and shall have authority to issue
3 regulations after a public hearing following due notice to
4 all interested persons in conformance with the provisions of
5 the state administrative procedures set forth in chapter twenty-
6 nine-a of this code to carry out the provisions of this article.
7 Such regulations may prescribe methods to be used in ap-
8 plication of pesticides.

9 (b) In issuing such regulations, the commissioner shall
10 give consideration to pertinent research findings and recom-

11 mendations of other agencies of the state, the federal govern-
12 ment, or other reliable sources.

13 (c) For the purpose of uniformity and in order to enter
14 into cooperative agreements, the commissioner shall adopt
15 "restricted use pesticide" classifications as determined by the
16 administrator, United States environmental protection agency.
17 The commissioner may also, by regulations, after a public
18 hearing following due notice, determine "state restricted pesti-
19 cides uses" for the state or for designated areas within the
20 state. If the commissioner determines that the pesticide (when
21 applied in accordance with its directions for use, warnings
22 and cautions, and for uses for which it is registered) may
23 cause, without additional regulatory restrictions, unreasonable
24 adverse effects on the environment, including injury to the
25 applicator or other persons because of acute dermal or in-
26 halation toxicity of the pesticide, the pesticide shall be applied
27 only by or under the direct supervision of a certified appli-
28 cator, or be subject to such other restrictions as the com-
29 missioner may determine.

30 (d) Regulations adopted under this article shall not permit
31 any pesticide use which is prohibited by the Federal Insecti-
32 cide, Fungicide and Rodenticide Act, as amended, and guide-
33 lines or rules issued thereunder.

34 (e) Regulations adopted under this article as to certified
35 applicators of "restricted use pesticides" as designated under
36 the Federal Insecticide, Fungicide and Rodenticide Act, as
37 amended, and regulations adopted as to experimental use
38 permits as authorized by such act shall not be inconsistent
39 with the requirements of the Federal Insecticide, Fungicide
40 and Rodenticide Act, as amended and regulations issued there-
41 under.

42 (f) The commissioner, after notice and opportunity for
43 hearing, is authorized to declare a pest, a form of plant or
44 animal life (other than man and other than bacteria, viruses
45 and other microorganisms on or in living man or other living
46 animals) which is injurious to health or the environment.

47 (g) In order to comply with section four of the Federal

48 Insecticide, Fungicide and Rodenticide Act, the commissioner
49 is authorized to make such reports to the United States environ-
50 mental protection agency in such form and containing such
51 information as that agency may from time to time require.

52 (h) There is hereby created a pesticide advisory board
53 consisting of seven persons including the commissioner of
54 agriculture who shall be chairman, and one of whom shall be
55 from structural pest control, one of whom shall be a
56 qualified environmental health specialist, one of whom shall
57 be employed in the agricultural chemical industry, one of
58 whom shall be knowledgeable in the area of wildlife resources,
59 one of whom shall be a producer of agricultural crops on
60 which pesticides are applied, and one of whom shall be a
61 citizen member who shall be knowledgeable in the field of
62 pesticides. The six members not representing government
63 departments shall be appointed by the commissioner for terms
64 of four years and may serve successive terms: *Provided,*
65 That at the inception two shall be appointed for one year,
66 two for two years, one for three years, and one for four
67 years. The board shall advise the commissioner on problems
68 relating to the use and application of pesticides. The board
69 shall meet at such time and place as called by the chairman
70 or by a majority of the board. Members shall serve without
71 compensation and members not from governmental depart-
72 ments shall be paid expenses at the same rate as paid to em-
73 ployees of the state according to the rules and regulations as
74 promulgated pursuant to the West Virginia code.

75 (i) Except as may be otherwise specifically authorized
76 in this article, the requirements of the commissioner and
77 all regulatory and other exercises of his powers herein
78 shall conform to but be no more stringent than those of the
79 federal environmental protection agency.

§19-16B-8. Licensed pesticide application business license.

1 (a) No person shall engage in the business of applying
2 pesticides to the lands of another at any time without a
3 licensed pesticide application business license issued by the
4 commissioner. The commissioner shall require an annual fee
5 of fifty dollars for each licensed pesticide application business
6 license issued.

7 (b) Application for a licensed pesticide application busi-
8 ness license shall be made in writing to the commissioner on
9 forms approved or supplied by the commissioner. Each
10 application for a license shall contain information regarding
11 the applicant's qualifications and proposed operations, license
12 classification or classifications the applicant is applying for
13 and shall include the following:

14 (1) The full name of the person applying for the license;

15 (2) If different than (1) the full name of the individual
16 qualifying under subsection (c) of this section;

17 (3) If the applicant is a person other than an individual,
18 the full name of each member of the firm or partnership,
19 or the names of the officers of the association, corporation
20 or group;

21 (4) The principal business address of the applicant in the
22 state and elsewhere;

23 (5) The address of each branch office or sub-office from
24 which the business of applying pesticides is carried on. Each
25 sub-office shall be licensed;

26 (6) Nonresidents applying for a licensed pesticide applica-
27 tion business license in any separate classification under this
28 article to operate in this state shall file a written power of
29 attorney designating the state auditor as the agent of such
30 nonresident upon whom service of process may be had in
31 the event of any suit against said nonresident person, and
32 such power of attorney shall be so prepared and in such
33 form as to render effective the jurisdiction of the courts of
34 this state over such nonresident applicant, except that any
35 such nonresident who has a duly appointed resident agent
36 upon whom process may be served as provided by law shall
37 not be required to designate the state auditor as such agent.
38 The commissioner shall be furnished with a copy of such
39 designation of the state auditor or of a resident agent, such
40 copy to be duly certified by the state auditor;

41 (7) The name and address of each certified commercial
42 applicator applying pesticides or supervising the application

43 of pesticides for the licensed pesticide application business;
44 and

45 (8) Any other necessary information prescribed by the
46 commissioner.

47 (c) The commissioner shall not issue a licensed pesticide
48 application business license until the owner, manager, partner
49 or corporate officer is qualified by passing an examination to
50 demonstrate to the commissioner his knowledge of the state
51 and federal pesticide laws, safe use and storage of pesticides
52 and the bases of the work to be done under the classification
53 or classifications for which application for license is being
54 made.

55 (d) If the commissioner finds the applicant qualified to
56 apply pesticides in the classifications the applicant has applied
57 for and if the applicant files the financial security required
58 under section fifteen of this article, and if the applicant
59 applying for a license to engage in aerial application of
60 pesticides has met all of the requirements of the federal avia-
61 tion agency, the aeronautics commission of this state, and
62 any other applicable federal or state laws or regulations to
63 operate the equipment described in the application, the com-
64 missioner shall issue a licensed pesticide application business
65 license. The license so issued shall expire at the end of the
66 calendar year of issue, unless it has been revoked or suspended
67 prior thereto by the commissioner for cause, except when
68 the financial security required under section fifteen of this
69 article is dated to expire at an earlier date, in which case
70 said license shall be dated to expire upon expiration date
71 of said financial security. The commissioner may limit the
72 license of the applicant to certain classifications of pest control
73 work, or to certain areas, or to certain types of equipment,
74 or to certain specific pesticides, if the applicant is only so
75 qualified. If a license is not issued as applied for, the com-
76 missioner shall inform the applicant in writing of the reasons
77 therefor.

78 (c) All persons applying pesticides as a licensed pesticide
79 application business, whether or not they are applying restricted
80 use pesticides, must be certified as a commercial applicator

81 in the appropriate category or subcategory, or must be under
82 the direct supervision of a certified commercial applicator.

**§19-16B-9. Application of this article to governmental entities;
public applicator's certification required; liability.**

1 (a) All state agencies, municipal corporations, or any
2 other governmental agency shall be subject to the provisions
3 of this article and rules adopted thereunder concerning the
4 application of pesticides.

5 (b) Public operators for agencies listed in subsection
6 (a) shall be subject to examinations as provided for in
7 section eight of this article. However, the commissioner shall
8 issue a limited license without a fee to such public applicator
9 who has qualified for such certification. The public ap-
10 plicator's certification shall be valid only when such applicator
11 is acting as a certified applicator applying or supervising
12 application of pesticides used by such entities. Individuals
13 certified pursuant to this section shall be certified commercial
14 applicators for the use of restricted use pesticides covered by
15 the applicant's classification.

16 (c) Such governmental agencies and municipal corpora-
17 tions shall be subject to legal recourse by any person damaged
18 by such application of any pesticide, and such action may be
19 brought in the county where the damage or some part thereof
20 occurred.

§19-16B-11. Cooperative agreements.

1 (a) The commissioner may cooperate, receive grants-in-
2 aid, and enter into agreements with any agency of the federal
3 government, of this state or its subdivisions, or with any
4 agency of another state, to obtain assistance in the implementa-
5 tion of this article in order to:

6 (1) Secure uniformity of regulations;

7 (2) Cooperate in the enforcement of federal pesticide
8 control laws through the use of state and/or federal en-
9 forcement personnel and facilities and to implement coopera-
10 tive enforcement programs;

11 (3) Develop and administer state plans for training and

12 for certification of licensed applicators consistent with federal
13 standards;

14 (4) Contract for training with educational institutions or
15 with other agencies for the purpose of training certified ap-
16 plicators;

17 (5) Contract for monitoring pesticides for the national
18 plan;

19 (6) Prepare and submit state plans to meet federal certi-
20 fication standards, as provided for in section four of the
21 Federal Insecticide, Fungicide and Rodenticide Act, as
22 amended; and

23 (7) Regulate certified applicators.

**§19-16B-14. Denial, suspension or revocation of license, permit
or certification; civil penalty.**

1 The commissioner shall notify any licensee of violations
2 of this article by the licensee, and after inquiry, including
3 opportunity for a hearing, may deny, suspend, revoke or
4 modify any provision of any license, permit or certification
5 issued under this article or he may impose a civil penalty as
6 provided in section twenty-two of this article, if he finds that
7 the applicant or the holder of a license, permit or certification
8 has committed any of the following acts, each of which is
9 declared to be a violation of this article:

10 (1) Made false or fraudulent claims through any media
11 misrepresenting the effect of pesticides or methods to be
12 utilized;

13 (2) Made a pesticide use recommendation or application
14 inconsistent with the labeling as registered by the United
15 States environmental protection agency or commissioners'
16 state registration for that pesticide, or in violation of the
17 United States environmental protection agency or commis-
18 sioners' state restrictions for the use of that pesticide;

19 (3) Applied unknown ineffective or improper pesticides;

20 (4) Operated faulty or unsafe equipment;

- 21 (5) Operated in a faulty, careless or negligent manner;
- 22 (6) Neglected or, after notice, refused to comply with
23 the provisions of this article, the rules adopted hereunder,
24 or of any lawful order of the commissioner;
- 25 (7) Refused or neglected to keep and maintain the
26 records required by this article, or to make reports when
27 and as required;
- 28 (8) Made false or fraudulent records, invoices or re-
29 ports;
- 30 (9) Engaged in the business of applying a pesticide on
31 the lands of another without having a licensed pesticide appli-
32 cation business license;
- 33 (10) Engaged in the business of applying a restricted
34 use pesticide on the lands of another without having a
35 licensed certified applicator in direct supervision;
- 36 (11) Used fraud or misrepresentation in making an ap-
37 plication for, or renewal of, a license, permit or certification;
- 38 (12) Refused or neglected to comply with any limitations
39 or restrictions on or in a duly issued license, permit or certifi-
40 cation;
- 41 (13) Aided or abetted a licensed or an unlicensed person
42 to evade the provisions of this article or allowed one's
43 license, permit or certification to be used by another per-
44 son;
- 45 (14) Made false or misleading statements during or after
46 an inspection concerning any infestation or infection of pests
47 found on land;
- 48 (15) Impersonated any federal, state, county or city
49 inspector or official; or
- 50 (16) Failed to comply with any provision of this article
51 or any regulation issued thereunder.

**§19-16B-15. Financial security required of licensed pesticide ap-
plication business.**

- 1 (a) The commissioner shall not issue a licensed pesticide

2 application business license as required in section eight of
3 this article until the applicant has filed evidence of financial
4 security with the commissioner which may consist of a surety
5 bond or liability insurance policy or certification thereof in
6 an amount no less than twenty-five thousand dollars protect-
7 ing persons who may suffer legal damages as a result of the
8 operations of the applicant or applicant's employees. Such
9 financial security need not apply to damages or injury to
10 agricultural crops, plants or land being worked upon by the
11 applicant.

12 (b) The commissioner, taking into consideration the dif-
13 ferent classifications or categories of licensed pesticide appli-
14 cation business licenses, shall establish the amount and kind
15 of financial security for property damage and public liability,
16 each separately, and including loss of damage arising out of
17 the actual use of any pesticide which each classification of
18 licensed licensee requires. Such financial security shall be
19 maintained at not less than that sum at all times during the
20 licensed period. The commissioner shall be notified forty-five
21 days prior to any reduction at the request of the applicant or
22 cancellation of such surety bond or liability insurance by
23 the surety or insurer. The total and aggregate of the surety
24 or insurer for all claims shall be limited to the face of the
25 bond or liability insurance policy. The commissioner may
26 accept a liability insurance policy or surety bond in the
27 proper sum which has a deductible clause in the amount not
28 exceeding that which the commissioner shall establish sepa-
29 rately for aerial applicators and for other commercial appli-
30 cators for the total amount of financial security required herein.
31 If the applicant has not satisfied the requirement of the
32 deductible amount in any prior legal claim such deductible
33 clause shall not be accepted by the commissioner unless such
34 applicant furnishes the commissioner with a surety bond or
35 liability insurance which shall satisfy the amount of the deduc-
36 tible as to all claims that may arise in his application of pesti-
37 cides.

38 Should the surety furnished become unsatisfactory, said
39 applicant shall upon notice immediately establish new evidence
40 of financial security and should he fail to do so, it shall be

41 unlawful thereafter for such person to engage in said business
 42 of applying pesticides until the financial security is brought
 43 into compliance with the requirements as established by the
 44 commissioner and the person's license is reinstated.

45 (c) Nothing in this article shall be construed to relieve
 46 any person from liability for any damage to the person or
 47 lands of another caused by the use of pesticides even though
 48 such use conforms to the rules and regulations of the com-
 49 missioner.

§19-16B-17. Licensee or certified commercial applicators to keep records; duration; submission to commissioner.

1 The commissioner shall require licensed pesticide applica-
 2 tion businesses to maintain records with respect to applications
 3 of any pesticide. Certified commercial applicators shall main-
 4 tain records with respect to applications of restricted use
 5 pesticides. Such relevant information as the commissioner
 6 may deem necessary may be specified by regulation. Such
 7 records shall be kept for a period of three years from the date
 8 of the application of the pesticide to which such records refer,
 9 and the commissioner shall, upon request in writing, be fur-
 10 nished with a copy of such records forthwith by the licensee
 11 or certified commercial applicator. No regulation issued by
 12 the commissioner for carrying out provisions of this article
 13 shall require any private applicator to maintain any records
 14 or file any reports or other documents.

§19-16B-22. Penalties.

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

11 (b) No state court shall allow the recovery of damages

12 for administrative action taken if the court finds that there was
13 probable cause for such action.

14 (c) In addition to proceeding under any other remedy
15 available at law or in equity for a violation of a provision
16 of this act or a rule or regulation adopted thereunder, or
17 any order issued pursuant to, the commissioner may, after
18 hearing, assess a civil penalty not to exceed two hundred
19 dollars upon a person other than a private applicator for
20 such violation. The civil penalty shall be payable to the
21 state of West Virginia and shall be collectible in any manner
22 now or hereafter provided for collection of debt. If any
23 person liable to pay such civil penalty neglects or refuses to
24 pay the same, the amount of the civil penalty, together with
25 interest at ten percent, shall be a lien in favor of the state of
26 West Virginia upon the property, both real, and personal,
27 of such a person after the same has been entered and docketed
28 to record in the county where such property is situated. The
29 county clerk of the county, upon receipt of the certified copy
30 of such, shall enter same to record without requiring the pay-
31 ment of costs as a condition precedent to such recording.

CHAPTER 9

(H. B. 795—By Mr. Holmes and Mr. Otte)

[Passed February 23, 1981; in effect from passage. Approved by the Governor.]

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

WHEREAS, The Governor submitted to the Legislature, at its regular session, one thousand nine hundred eighty-one, the executive budget document wherein is set forth cash balances and estimated expirations of the state fund, general revenue, the state road fund and the special revenue fund of the alcohol beverage control commissioner available for appropriation in the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-one; and

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

Be it enacted by the Legislature of West Virginia:

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

TITLE 2. APPROPRIATIONS.

Sec. 3a. Awards for claims against the state.

1	(a) <i>Claims against the Supreme Court—Mental Hygiene</i>	
2	<i>Fund:</i>	
3	TO BE PAID FROM GENERAL REVENUE FUND	
4	(1) Richard K. Swartling	\$ 1,725.00
5	(2) Michael D. Sturm	402.50
6	(3) Helen Joyce Davis	94.47
7	(4) Boyd L. Warner	2,055.00
8	(5) Jack H. Walters	240.00
9	(6) Paul A. Viers	400.00
10	(7) James A. Varner	225.00
11	(8) Kennad L. Skeen	633.20
12	(9) James E. Seibert	2,864.00
13	(10) Royce B. Saville	487.50
14	(11) Michael B. Keller	718.75
15	(12) Jerald E. Jones	1,120.00
16	(13) John S. Holy	2,675.00

17	(14) R. R. Fredeking, II	11,780.00
18	(15) John S. Folio	592.50
19	(16) John J. Droppleman	454.25
20	(17) F. William Brogan, Jr.	3,957.50
21	(18) Ward D. Stone, Jr.	4,025.00
22	(19) Clyde A. Smith, Jr.	1,311.00
23	(20) Carroll T. Lay	270.00
24	(21) J. Burton Hunter, III	1,232.70
25	(22) John C. Higinbotham	4,300.00
26	(23) Grover C. Goode	1,225.00
27	(24) Dennis V. Dibenedetto	600.00
28	(25) Stephen Jon Ahlgren	347.50
29	(26) J. P. McMullen, Jr.	2,771.33
30	(27) Charles J. Hyer	1,900.00
31	(28) Lisa A. Stewart	30.00
32	(29) James A. Stewart	267.00
33	(30) Mary Jo Goettler	61.56
34	(31) Deborah K. Hunt	175.00
35	(32) Irene W. Ross	500.00
36	(33) Dorothy Springer	59.00
37	(34) Lorena B. Hoover	60.00
38	(35) Ginny L. McCoy	285.00
39	(36) Christine L. Bitner	275.00
40	(37) Elizabeth H. Field	496.50
41	(38) Teresa L. Anderson	50.00
42	(39) Teresa A. Meinke	75.00
43	(40) John L. Campbell	150.00
44	(41) Merleen B. Campbell	415.30
45	(42) Jacqui Sites	300.00
46	(43) Lawrence S. Miller, Jr.	1,263.69
47	(44) David B. Cross	1,032.50
48	(45) Larry N. Sullivan	4,580.00
49	(46) Gilbert Gray Coonts	2,300.00
50	(47) G. F. Hedges, Jr.	690.00
51	(48) J. K. Chase, Jr.	2,150.00
52	(49) John M. Thompson, Jr.	2,485.00
53	(50) Ralph D. Keightly, Jr.	1,412.50
54	(51) Lawrence B. Lowry	775.00
55	(52) Thomas M. Hayes	4,610.00
56	(53) W. Del Roy Harner	3,650.00

57	(54) John S. Hrko	80.00
58	(55) Ribel & Julian	327.50
59	(56) J. M. Tully	62.50
60	(57) James C. Recht	122.00
61	(58) Harold S. Yost	135.00
62	(59) Roy D. Law	459.00
63	(60) Harold B. Eagle	115.00
64	(61) Glenn O. Schumacher	303.33
65	(62) James M. Casey	538.00
66	(63) Simmons & Martin	440.00
67	(64) Joseph C. Hash, Jr.	160.00
68	(65) James M. Cook, Jr.	111.69
69	(66) Martin V. Saffer	324.25
70	(67) Roger D. Curry	884.60
71	(68) T. Owen Wilkins	295.00
72	(69) Dennis H. Curry	100.00
73	(70) Loudoun L. Thompson	112.50
74	(71) Charles E. Parsons	177.50
75	(72) James T. McClure	329.00
76	(73) Charles V. Wehner	35.00
77	(74) Bradley H. Thompson	7,426.47
78	(75) Robert E. Vital	10,370.00
79	(76) Ann E. Snyder	393.75
80	(77) Cynthia L. Dettman	180.00
81	(78) Edgar E. Bibb, III	70.00
82	(79) Peter A. Niceler	123.52
83	(80) George W. Hill, Jr.	600.50
84	(81) David G. Palmer	511.00
85	(82) James A. Matish	285.00
86	(83) Philip T. Lilly, Jr.	163.50
87	(84) James R. Sheatsley	50.00
88	(85) Michael E. Caryl	450.56
89	(86) Stephen L. Thompson	202.30
90	(87) Norman T. Farley	201.12
91	(88) H. F. Salsbery, Jr.	76.00
92	(89) Sam E. Schafer	595.00
93	(90) William E. Simonton, III	116.90
94	(91) Damon B. Morgan, Jr.	321.00
95	(92) William A. O'Brien	80.00
96	(93) John L. DePolo	347.50

97	(94) Rudolph J. Murensky, II	307.50
98	(95) Robert DePue	45.00
99	(96) C. Dallas Kayser	497.03
100	(97) Richard Thompson	200.00
101	(98) David R. Rexroad	290.50
102	(99) Laverne Sweeney	207.50
103	(100) Susan K. McLaughlin	180.00
104	(101) Michael I. Spiker	262.25
105	(102) George Zivkovich	228.79
106	(103) David Lycan	215.00
107	(104) Randy R. Goodrich	64.57
108	(105) Michael H. Lilly	382.35
109	(106) Robin C. Capehart	460.00
110	(107) Paul T. Camilletti	749.50
111	(108) Jeffrey Corbin Dyer	233.00
112	(109) Core, Atkinson & Core	143.75
113	(110) James D. Terry	34.00
114	(111) David Cavender	37.50
115	(112) Linda Nelson Garrett	2,216.14
116	(113) John B. Breckinridge	200.00
117	(114) Stephen A. Davis	2,018.50
118	(115) Robert C. Melody	2,350.00
119	(116) Thomas L. Butcher	1,542.50
120	(117) Frank Ribel, Jr.	87.50
121	(118) James C. Blankenship, III	522.50
122	(119) David P. Born	145.84
123	(120) David Michael Fewell	624.55
124	(121) James Bradley, Jr.	793.50
125	(122) David G. Underwood	292.50
126	(123) Ronald F. Stein	1,842.50
127	(124) John Yeager, Jr.	873.40
128	(125) John L. Bremer	1,848.00
129	(126) Wayne D. Inge	407.50
130	(127) Mary H. Davis	205.50
131	(128) William W. Merow, Jr.	185.00
132	(129) John W. Bennett	176.10
133	(130) Samuel Spencer Stone	55.00
134	(131) John G. Ours	382.58
135	(132) Stobbs & Stobbs	2,368.75
136	(133) Michael Buchanan	47.50

137	(134) Karen L. Garrett	230.00
138	(135) Robert D. Fisher	50.00
139	(136) Edwin B. Wiley	1,233.55
140	(137) C. Blaine Myers	235.50
141	(138) Thomas C. Evans, III	222.10
142	(139) Raymond H. Yackel	45.00
143	(140) Janet Frye (Steele)	525.00
144	(141) H. H. Rose, III	115.00
145	(142) Michael T. Clifford	631.25
146	(143) William M. Miller	655.45
147	(144) Robert Edward Blair	100.00
148	(145) David M. Finnerin	228.75
149	(146) Frank B. Everhart	68.75
150	(147) Melvin C. Snyder, Jr.	45.00
151	(148) Frederick M. Dean Rohrig	138.33
152	(149) Robert E. Wise, Jr.	699.52
153	(150) C. William Harmison	172.50
154	(151) David L. Ziegler	342.50
155	(152) F. Christian Gall, Jr.	1,088.00
156	(153) Mark A. Taylor	205.50
157	(154) John J. Cowan	703.75
158	(155) Bernard R. Mauser	500.00
159	(156) Jeniver J. Jones	432.25
160	(157) Steven C. Hanley	1,067.50
161	(158) Harry A. Smith, III	852.50
162	(159) Jay Montgomery Brown	185.00
163	(160) Randall K. Dunn	909.84
164	(161) Timothy R. Ruckman	126.25
165	(162) Dan O. Callaghan	170.00
166	(163) F. Malcolm Vaughan	541.52
167	(164) James Wilson Douglas	437.50
168	(165) Paul S. Perfater	764.50
169	(166) Wayne R. Mielke	2,357.29
170	(167) Jeanne S. Hall	805.00
171	(168) Glen K. Matthews	310.00
172	(169) Colin Miller	370.00
173	(170) Stenomask Reporting Service	3,184.39
174	(171) Jennifer E. Vial	53.60
175	(172) Mary L. Yost	1,000.00
176	(173) Leslie D. Lucas, Jr.	112.50

177	(174) William W. Pepper	857.50
178	(175) David L. Parmer	517.50
179	(176) Marvin L. Downing	423.00
180	(177) Nancy Sue Miller	351.00
181	(178) Robert A. Burnside, Jr.	412.00
182	(179) Virginia Y. Smith	408.00
183	(180) David L. Hill	70.00

184 (b) *Claims against the Office of the State Auditor—Needy*
 185 *Persons Fund:*

186 TO BE PAID FROM GENERAL REVENUE FUND

187	(1) John S. Hrko	500.00
188	(2) Thomas L. Butcher	1,133.83
189	(3) Ribel & Julian	1,590.00
190	(4) J. M. Tully	645.00
191	(5) James C. Recht	946.50
192	(6) T. Owen Wilkins	800.50
193	(7) Frank Ribel, Jr.	115.00
194	(8) John C. Higinbotham	176.25
195	(9) John R. Glenn	45.00
196	(10) William H. Ansel, Jr.	1,028.40
197	(11) Cynthia L. Turco	1,107.52
198	(12) Paul R. Goode, Jr.	395.00
199	(13) Loudoun L. Thompson	3,551.75
200	(14) Michael D. Sturm	850.00
201	(15) Eugene D. Pecora	414.75
202	(16) Charles E. Parsons	852.50
203	(17) Raymond G. Musgrave	2,997.37
204	(18) John S. Holy	1,500.00
205	(19) Sprague Hazard	388.75
206	(20) Lucien Lewin	50.00
207	(21) Michael Scales	161.75
208	(22) J. Wendell Reed	341.30
209	(23) Stephen L. Thompson	227.00
210	(24) David S. Alter, II	272.85
211	(25) Charles F. Printz, Jr.	1,276.34
212	(26) V. Alan Riley	1,482.00
213	(27) Russell M. Clawges, Jr.	1,432.02
214	(28) Royce B. Saville	643.75
215	(29) John S. Kaul	1,148.80

216	(30) William O'Brien	410.00
217	(31) Stephen Jon Ahlgren	20.00
218	(32) Robert Poyourow	2,042.88
219	(33) George A. Markusic	1,169.96
220	(34) Core and Core	825.35
221	(35) James D. Terry	852.50
222	(36) C. Elton Byron, Jr.	815.00
223	(37) Carroll T. Lay	1,404.20
224	(38) Joseph C. Hash, Jr.	50.00
225	(39) Nancy S. Miller	135.00
226	(40) P. C. Duff	1,026.25
227	(41) Ray L. Hampton, II	295.00
228	(42) Peter A. Niceler	317.45
229	(43) Charles M. Kincaid	1,647.10
230	(44) Robert E. Vital	175.00
231	(45) Ronald E. Anderson	1,147.50
232	(46) Robert C. Chambers	1,062.50
233	(47) Paul A. Ryker	100.00
234	(48) Marsha Dalton	340.00
235	(49) George W. Hill, Jr.	2,146.50
236	(50) Richard Starkey	168.00
237	(51) John P. Anderson	964.75
238	(52) Thomas S. Lilly	250.00
239	(53) Simmons & Martin	65.00
240	(54) Bert Michael Whorton	968.25
241	(55) Sanders & Blue	1,142.97
242	(56) Paul Nagy	85.88
243	(57) Paul H. Woodford, II	302.50
244	(58) Philip A. Reale	444.40
245	(59) R. Terry Butcher	102.50
246	(60) David G. Palmer	3,767.02
247	(61) James A. Matish	522.50
248	(62) James R. Sheatsley	107.50
249	(63) William B. Kilduff	683.85
250	(64) Lane O. Austin	213.15
251	(65) Derek Craig Swope	161.50
252	(66) Philip T. Lilly, Jr.	170.00
253	(67) James L. Satterfield	157.09
254	(68) J. Burton Hunter, III	506.31
255	(69) Ernest M. Douglass	182.50

256	(70) Johnston, Holroyd & Gibson	7,561.55
257	(71) H. F. Salsbery, Jr.	167.00
258	(72) Louis H. Khourey	284.00
259	(73) David R. Gold	691.85
260	(74) Patrick N. Radcliff	234.50
261	(75) Charles W. Davis	322.79
262	(76) Edwin B. Wiley	6,126.08
263	(77) A. E. Cooper	142.50
264	(78) Roy David Arrington	501.75
265	(79) Ward D. Stone, Jr.	138.25
266	(80) Robert B. Stone	323.75
267	(81) Nicolette Hahon Granack	326.94
268	(82) Robert F. Gallagher	216.50
269	(83) Jeffrey Corbin Dyer	117.50
270	(84) David L. Solomon	280.00
271	(85) William W. Merow, Jr.	438.83
272	(86) Alan H. Larrick	87.50
273	(87) Jacob W. Ray	1,461.78
274	(88) Brown H. Payne	350.00
275	(89) Bradley J. Pyles	1,007.50
276	(90) Laverne Sweeney	1,882.25
277	(91) Richard W. Crews	1,240.00
278	(92) R. Thomas Czarnik	1,475.95
279	(93) George Zivkovich	320.78
280	(94) Larry N. Sullivan	1,903.78
281	(95) J. Robert Rogers	2,090.40
282	(96) Richard Thompson	1,229.10
283	(97) Boyce Griffith	1,872.50
284	(98) Robin C. Capehart	571.50
285	(99) Ronnie Z. McCann	1,147.50
286	(100) John W. Bennett	193.60
287	(101) Robert M. Vukas	766.77
288	(102) Robert W. Friend	670.00
289	(103) Bogarad & Robertson	340.30
290	(104) W. Dean Delamater	246.63
291	(105) George P. Bohach	667.75
292	(106) Fred Risovich, II	437.70
293	(107) Thomas C. Evans, III	851.25
294	(108) Orton A. Jones	484.25
295	(109) George D. Beter	805.95

296	(110) Howard M. Persinger, Jr.	1,792.50
297	(111) Kevin B. Burgess	534.38
298	(112) T. R. Harrington, Jr.	196.75
299	(113) Wayne D. Inge	306.25
300	(114) Frederick A. Jesser, III	606.50
301	(115) Phil J. Tissue	235.00
302	(116) Steve Vickers	241.60
303	(117) Janet Frye (Steele)	1,560.35
304	(118) John M. Thompson, Jr.	1,922.50
305	(119) Michael R. Cline	25.00
306	(120) Paul S. Perfater	125.00
307	(121) Thomas Ralph Mullins	366.25
308	(122) W. Ronald Denson	660.00
309	(123) David F. Greene	380.00
310	(124) Charles M. Walker	1,012.00
311	(125) Thomas M. Hayes	541.40
312	(126) Michael T. Chaney	150.00
313	(127) Phillip D. Gaujot	270.00
314	(128) Thomas R. Tinder	287.70
315	(129) Robert L. Twitty	712.50
316	(130) David L. Shuman	1,908.02
317	(131) Grant Crandall	1,000.75
318	(132) Penelope Crandall	21.60
319	(133) Robert M. Worrell	210.00
320	(134) Larry D. Taylor	115.00
321	(135) Mark A. Taylor	383.00
322	(136) Stephanie J. Racin	130.00
323	(137) Ralph C. Dusic, Jr.	265.00
324	(138) Harry M. Hatfield	950.00
325	(139) William C. Field	402.50
326	(140) Robert E. Douglas	437.50
327	(141) Stephen P. Swisher	458.50
328	(142) David M. Finnerin	2,248.45
329	(143) F. Alfred Sines, Jr.	871.25
330	(144) James G. Anderson, III	1,369.69
331	(145) Martin J. Glasser	853.97
332	(146) Charles H. Brown	12.50
333	(147) Lawrence L. Manypenny	243.74
334	(148) Billy E. Burkett	327.50
335	(149) F. Christian Gall, Jr.	1,417.95

336	(150) J. E. Wilkinson	740.00
337	(151) J. Franklin Long	9,887.95
338	(152) Robert L. Schumacher	3,722.82
339	(153) Hudgins, Coulling, Brewster & Morhous	856.50
340	(154) Michael H. Lilly	4,128.30
341	(155) Robert N. Bland	1,460.00
342	(156) Bernard R. Mauser	500.00
343	(157) Jeniver J. Jones	682.50
344	(158) Steven C. Hanley	1,410.00
345	(159) William Mitchell	235.00
346	(160) Jack L. Hickok	97.80
347	(161) John C. Krivonyak	346.25
348	(162) James E. Ansel	645.00
349	(163) W. Del Roy Harner	110.00
350	(164) G. David Brumfield	1,114.15
351	(165) McGinnis E. Hatfield, Jr.	616.25
352	(166) Richard A. Bush	2,447.19
353	(167) John R. Frazier	3,594.15
354	(168) David M. Flannery	119.90
355	(169) Henry C. Bowen	503.05
356	(170) Daniel A. Oliver	1,323.75
357	(171) Harry A. Smith, III	133.75
358	(172) C. Michael Bee	549.53
359	(173) Cletus B. Hanley	205.00
360	(174) James J. MacCallum	440.00
361	(175) Karen L. Garrett	932.50
362	(176) Jerry D. Moore	79.60
363	(177) Raymond G. Musgrave	1,500.00
364	(178) Dan O. Callaghan	426.74
365	(179) Thomas N. Chambers	230.00
366	(180) Thomas G. Freeman, II	690.00
367	(181) W. Henry Jernigan	50.00
368	(182) John R. Lukens	485.14
369	(183) Taunja Willis Miller	65.45
270	(184) Forrest H. Roles	93.65
371	(185) W. Warren Upton	100.15
372	(186) John S. Sibray	4,106.58
373	(187) Rudolph J. Murensky, II	115.00
374	(188) Donald E. Santee	255.00
375	(189) Alexander J. Ross	117.50

376	(190) Garrett, Whittier & Garrett	495.00
377	(191) James Wilson Douglas	712.50
378	(192) Michael T. Clifford	1,990.00
379	(193) William W. Pepper	473.70
380	(194) C. Blaine Myers	993.00
381	(195) Donald G. Underwood	640.00
382	(c) <i>Claim against the Board of Chiropractic Examiners:</i>	
383	TO BE PAID FROM GENERAL REVENUE FUND	
384	(1) Kanawha Office Equipment, Inc.	608.00
385	(d) <i>Claims against the Board of Regents:</i>	
386	TO BE PAID FROM GENERAL REVENUE FUND	
387	(1) Sue H. Ellis	948.00
388	(2) Jamison Electrical Construction Co.	21,662.27
389	(3) Kanawha Office Equipment, Inc.	2,028.00
390	(4) Ernest J. Sandy	1,459.00
391	(5) Spatial Data Systems, Inc.	650.00
392	(e) <i>Claims against the Department of Corrections:</i>	
393	TO BE PAID FROM GENERAL REVENUE FUND	
394	(1) Appalachian Regional Hospital	1,243.25
395	(2) Law Enforcement Ordnance Co.	5,065.30
396	(3) Southern West Virginia Clinic	185.00
397	(4) Tony J. Veltri, d/b/a/ Farmers Delight Co.	5,172.78
399	(5) Weirton General Hospital	4,323.05
400	(6) Appalachian Regional Hospital	10,355.15
401	(7) Morris E. Brown, D.D.S.	24.00
402	(8) Climate Makers of Charleston, Inc.	2,568.00
403	(9) Dacar Chemical Co.	110.00
404	(10) Davis Memorial Hospital	1,096.62
405	(11) Exxon Company, U.S.A.	246.53
406	(12) Gulf Oil Co., U.S.	54.63
407	(13) George L. Hill, Jr.	600.00
408	(14) Huntington Steel & Supply Co.	1,028.99
409	(15) IBM Corporation	836.64
410	(16) Industrial Rubber Products Co.	301.47
411	(17) Kellogg Company	4,174.35

412	(18) The Kroger Co.	13.80
413	(19) Memorial General Hospital	46,156.75
414	(20) Ohio Valley Medical Center, Inc.	11,656.57
415	(21) Raleigh General Hospital	2,432.60
416	(22) Randolph County Board of Education .	392.00
417	(23) Southern West Virginia Clinic	310.00
418	(24) Taylor County Commission	280.00
419	(25) Town & Country Dairy	2,096.08
420	(26) Union Oil Company of California	3,248.22
421	(27) Wheeling Hospital	585.95
422	(28) Xerox Corporation	1,050.66
423	(f) <i>Claim against the Department of Culture and History:</i>	
424	TO BE PAID FROM GENERAL REVENUE FUND	
425	(1) IBM Corporation	658.00
426	(g) <i>Claims against the Department of Finance and Admini-</i>	
427	<i>stration:</i>	
428	TO BE PAID FROM GENERAL REVENUE FUND	
429	(1) Capital Business Interiors, Div. of	
430	Capitol Business Equipment, Inc.	141.00
431	(2) Uarco, Inc.	2,744.95
432	(h) <i>Claims against the Department of Health:</i>	
433	TO BE PAID FROM GENERAL REVENUE FUND	
434	(1) American Hospital Supply	424.32
435	(2) Appalachian Engineers, Inc.	1,325.00
436	(3) Dill's Mountaineer Associates, Inc.	2,406.00
437	(4) Barbara Gruber	3,556.66
438	(5) Huntington Water Corporation	543.52
439	(6) Lourdes Lezada	6,000.00
440	(7) Shaeffer and Associates	576.00
441	(8) Three Printers, Inc.	2,347.27
442	(9) Louis B. Varney, d/b/a Tri-State	
443	Inspection Service	4,250.00
444	(10) Harold L. Weber, Jr.	9,791.91
445	(11) William Paul Hall, Sr., Admin. of	
446	the Estate of William Paul Hall,	
447	Jr.	11,783.19

448	(i) <i>Claim against the Department of Public Safety:</i>	
449	TO BE PAID FROM GENERAL REVENUE FUND	
450	(1) Mary Louise Szelong	1,100.00
451	(j) <i>Claims against the Division of Vocational Rehabilitation:</i>	
452	TO BE PAID FROM GENERAL REVENUE FUND	
453	(1) Clinic Private Division, University	
454	of Virginia	842.00
455	(2) Heck's, Inc.	245.56
456	(k) <i>Claim against the Nonintoxicating Beer Commission:</i>	
457	TO BE PAID FROM GENERAL REVENUE FUND	
458	(1) Falls City Industries, Inc., formerly	
459	Falls City Brewing Co.	156.75
460	(l) <i>Claim against the Office of the Governor:</i>	
461	TO BE PAID FROM GENERAL REVENUE FUND	
462	(1) Empire Foods, Inc.	3,165.50
463	(m) <i>Claim against the State Tax Department:</i>	
464	TO BE PAID FROM GENERAL REVENUE FUND	
465	(1) Consolidated Contractors	1,600.00
466	(n) <i>Claims against the Department of Highways:</i>	
467	TO BE PAID FROM STATE ROAD FUND	
468	(1) A. J. Baltes, Inc.	588,271.73
469	(2) Maria Caterina Anania	9,000.00
470	(3) Robert S. Atkinson and Evelyn	
471	Atkinson	4,948.90
472	(4) Russell Lee Barkley	1,080.00
473	(5) Harry H. Barrett	68.30
474	(6) Black Rock Contracting, Inc.	8,067.79
475	(7) Eli Blankenship, Jr., Admin. of the	
476	Estate of Johnny Blankenship,	
477	deceased	14,213.86
478	(8) The Board of Education of the County	
479	of Kanawha	1,694.81

480	(9) Virginia Burton	199.14
481	(10) Homer Bush	415.00
482	(11) George Carper	135.94
483	(12) John F. Clark	71.93
484	(13) Coleman Oil Company, Inc.	1,111.82
485	(14) Bertie K. Cox	180.25
486	(15) Melvin Dingess and Corenia Dingess ..	2,500.00
487	(16) Duling Brokerage, Inc.	115.59
488	(17) Joe B. Eller	120.62
489	(18) Edward Engel	48.34
490	(19) Daniel C. Farley, Jr.	1,500.00
491	(20) Robert L. Ferguson, Executor of the	
492	Estate of Elizabeth L. Ferguson,	
493	deceased	5,000.00
494	(21) Martin V. Gaston, Sr.	942.00
495	(22) Elizabeth Smith Grafton	9,000.00
496	(23) Drema D. Greenlee and Stephen E.	
497	Greenlee	54.00
498	(24) Walter A. Henriksen	458.35
499	(25) Deborah J. Hodges	43.21
500	(26) Kim Hope	47.27
501	(27) Theresa Kurucz	337.98
502	(28) Jean C. Littlepage	145.17
503	(29) Carroll Lynch	1,763.83
504	(30) Jonathan E. McDonald	2,000.00
505	(31) Jonathan E. McDonald, Admin. of the	
506	Estate of James Edgar McDonald,	
507	deceased	10,630.50
508	(32) Jonathan E. McDonald, Admin. of the	
509	Estate of Penny Jo McDonald,	
510	deceased	10,647.70
511	(33) S. A. Meadows	87.00
512	(34) Cleo Lively Moore	5,000.00
513	(35) Franklin L. Dalton	100.00
514	(36) Catherine Nestor	11,196.50
515	(37) Jack H. Parsons, Jr.	37.88
516	(38) Garnet L. Pelfrey	307.93
517	(39) Gerald L. Perry and Deloris Perry ..	146.86
518	(40) Joyce Porter	306.05

519	(41) Roy C. Rayburn, Jr.	171.67
520	(42) Dencil Reynolds and Judith Reynolds .	44.12
521	(43) Roscoe Rhodes and Maxine V. Rhodes	2,000.00
522	(44) Ronnie Gene Roach	90.25
523	(45) Danny Lee Rockett and Kathy	
524	Newell Rockett	199.34
525	(46) Franklin D. Rowe	188.74
526	(47) Guy N. Sayre	285.72
527	(48) Jessie Sayre and Densil O. Sayre	41.01
528	(49) A. O. Secret	96.76
529	(50) Shel Products, Inc.	5,900.00
530	(51) Kevin E. Smith	128.40
531	(52) Larry Keith Smith	296.30
532	(53) Joe Snodgrass	189.49
533	(54) Charles H. Spradling, Jr.	117.62
534	(55) Gary Cline Spurgeon	185.00
535	(56) Harold Ray Stafford	917.50
536	(57) Posey L. Stevenson	72.10
537	(58) Stone Company, Inc.	4,500.00
538	(59) Frank Terango and Duel Terango ...	720.11
539	(60) Nancy J. Thabet	666.52
540	(61) Debra A. Vinson	44.29
541	(62) Alva Katherine White	1,000.00
542	(63) Paul White and Wanda White	4,000.00
543	(64) Rose M. Allen	15,900.00
544	(65) Ronald L. Bailey	280.09
545	(66) Carmet Company	946.57
546	(67) Frances Jeanette Casey	217.06
547	(68) Cochran Electric Company	7,800.00
548	(69) Chester Jones	3,760.60
549	(70) Barton Mcaige	19.66
550	(71) Charles E. Williams	12,000.00

551 (o) *Claims against the Department of Motor Vehicles:*

552 TO BE PAID FROM STATE ROAD FUND

553	(1) Bank of Gassaway	3,061.16
554	(2) Randy Lee Shamblin	240.00
555	(3) 3M Company	3,000.00

556 (p) *Claims against the Alcohol Beverage Control Com-*
557 *missioner:*

558 TO BE PAID FROM SPECIAL REVENUE FUND

559	(1) Nita Kay Colliton	5,833.49
560	(2) Handling, Inc.	1,031.00
561	(3) Nellis Motor Sales	260.97

562 The purpose of this supplementary appropriation bill is to
563 supplement the budget bill, enacted at the regular session of
564 the Legislature, 1980, by adding thereto a new section funding
565 payment of claims against the state and its designated agencies,
566 such appropriation being available for expenditure upon the
567 effective date of the bill and in the current fiscal year of 1980-
568 81 and to remain in effect through the fiscal year ending June
569 30, 1982.

CHAPTER 10

(S. B. 290—By Mr. McGraw, Mr. President)

[Passed March 30, 1981; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the Auditor's Office—General Administration, Account No. 1500, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 1981, 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 1980-81, 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. 1500, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

- 1 **TITLE 2. APPROPRIATIONS.**
- 2 **Section 1. Appropriations from general revenue.**
- 3 12—*Auditor's Office—General Administration*
- 4 Acct. No. 1500
- 5 6 Representation of Needy Persons Fund \$1,000,000
- 6 The purpose of this supplementary appropriation bill is to
- 7 supplement the aforesaid account and item therein for
- 8 expenditure in the current fiscal year of 1980-81. Such
- 9 amount shall be available for expenditure immediately upon
- 10 the effective date of this bill.

CHAPTER 11

(H. B. 1161—By Mr. Speaker, Mr. See)

[Passed March 13, 1981; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the Teachers Retirement Board, Account No. 2980, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 1981, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriations during the fiscal year 1980-81, 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. 2980, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	39— <i>Teachers Retirement Board</i>	
4	Acct. No. 2980	
5	2 Supplemental Benefits for Annuitants	\$524,300

6 The purpose of this supplementary appropriation bill is to
7 supplement the aforesaid account and item therein for expendi-
8 ture in the current fiscal year of 1980-81. Such amount shall
9 be available for expenditure immediately upon the effective
10 date of this bill.

CHAPTER 12

(H. B. 1160—By Mr. Speaker, Mr. See)

[Passed March 13, 1981; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the Department of Corrections, Account No. 3680, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 1981, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriations during the fiscal year 1980-81, 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. 3680, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item.

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	48— <i>Department of Corrections</i>	
4	Acct. No. 3680	
5	4A Psychological Testing and Juvenile	
6	Diagnostic Center Program	\$55,000
7	The purpose of this supplementary appropriation bill is to	
8	supplement the aforesaid account by adding the above item	
9	for expenditure in the current fiscal year of 1980-81. Such	
10	amount shall be available for expenditure immediately upon	
11	the effective date of this bill.	

CHAPTER 13

(S. B. 288—By Mr. McGraw, Mr. President)

[Passed April 2, 1981; in effect from passage. Approved by the Governor.]

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

WHEREAS, The Governor submitted to the Legislature the

Executive Budget Document, dated February 11, 1981, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriations during the fiscal year 1980-81, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 4050, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sums to the designated line items:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	<i>62—Department of Welfare</i>	
4	Acct. No. 4050	
5	4 Assistance Payments	\$1,000,000
6	9 Medical Services	\$3,000,000

7 The purpose of this supplementary appropriation bill is to
8 supplement the aforesaid account and items therein for
9 expenditure in the current fiscal year of 1980-81. Such
10 amounts shall be available for expenditure immediately upon
11 the effective date of this bill.

12 Notwithstanding any statement in the budget bill, chapter
13 three, acts of the Legislature, 1980, to the contrary, funds in
14 item 9 above, and funds heretofore appropriated by such
15 budget bill and in item 9 thereof, may be used in funding the
16 program known as the "Medicaid for the Medically Needy"
17 program, and all required transfers of funds may be made in
18 respect thereto.

CHAPTER 14

(S. B. 289—By Mr. McGraw, Mr. President)

[Passed March 23, 1981; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue

remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the Greenbrier School for Mentally Retarded Children, Account No. 4140, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 1981, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriations during the fiscal year 1980-81, 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. 4140, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	64— <i>Greenbrier School for Mentally Retarded Children</i>	
4	Acct. No. 4140	
5	1 Personal Services	\$44,000

6 The purpose of this supplementary appropriation bill is to
7 supplement the aforesaid account and item therein for
8 expenditure in the current fiscal year of 1980-81. Such
9 amount shall be available for expenditure immediately upon
10 the effective date of this bill.

CHAPTER 15

(S. B. 303—By Mr. McGraw, Mr. President)

[Passed March 25, 1981; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue

remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the Department of Mines, Account No. 4600, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 1981, 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 fiscal year 1980-81, 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. 4600, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	76— <i>Department of Mines</i>	
4	Acct. No. 4600	
5	2 Current Expenses	\$70,000

6 The purpose of this supplementary appropriation bill is to
7 supplement the aforesaid account and item therein for
8 expenditure in the current fiscal year of 1980-81. Such
9 amount shall be available for expenditure immediately upon
10 the effective date of this bill.

CHAPTER 16

(H. B. 1144—By Mr. Speaker, Mr. See)

[Passed March 13, 1981; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June

thirtieth, one thousand nine hundred eighty-one, to the Department of Banking, Account No. 4800, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 1981, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriations during the fiscal year 1980-81, 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. 4800, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	86—Department of Banking	
4	Acct. No. 4800	
5	2 Current Expenses	\$34,251

6 The purpose of this supplementary appropriation bill is to
7 supplement the aforesaid account and item therein for ex-
8 penditure in the current fiscal year of 1980-81. Such amount
9 shall be available for expenditure immediately upon the
10 effective date of this bill.

CHAPTER 17

(S. B. 716-S—Originating in the Senate Committee on Finance)

[Passed April 8, 1981; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June

thirtieth, one thousand nine hundred eighty-one, to the Department of Natural Resources, Account No. 5650, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 1981, 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 1980-81, 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. 5650, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	97—Department of Natural Resources	
4	Acct. No. 5650	
5	5 Fire Prevention Control	\$136,000
6	The purpose of this supplementary appropriation bill is to	
7	supplement the aforesaid account and item therein for	
8	expenditure in the current fiscal year of 1980-81. Such	
9	amount shall be available for expenditure immediately upon	
10	the effective date of this bill.	

CHAPTER 18

(H. B. 1148—By Mr. Speaker, Mr. See)

[Passed April 10, 1981; 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 remain-

ing unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the West Virginia public employees insurance board, Account No. 6150, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the executive budget document, dated February 11, 1981, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriations during the fiscal year 1980-81, 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. 6150, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	118— <i>West Virginia Public Employees Insurance Board</i>	
4	Acct. No. 6150	
5	2	Public Employees Health Insurance—
6	3	State Contribution \$2,500,000

7 The purpose of this supplementary appropriation bill is to
 8 supplement the aforesaid account and items therein for ex-
 9 penditure in the current fiscal year of 1980-81. Such amount
 10 shall be available for expenditure immediately upon the
 11 effective date of this bill.

CHAPTER 19

(S. B. 263—(Originating in the Senate Committee on Finance)

[Passed March 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the State Department of Highways, Account No. 6410, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 1981, 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 1980-81, 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. 6410, chapter three, acts of the Legislature, regular session, known as the budget bill, be supplemented by adding the following sum:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	MISCELLANEOUS BOARDS AND COMMISSIONS	
4	121—State Department of Highways	
5	Acct. No. 6410	
6	6	Unclassified—Total\$26,500,000

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

9 The purpose of this supplementary appropriation bill is to
10 supplement the aforesaid account for expenditure in the
11 current fiscal year of 1980-81. Such amounts shall be available
12 for expenditure immediately upon the effective date of the
13 bill.

CHAPTER 20

(S. B. 264—Originating in the Senate Committee on Finance)

[Passed March 11, 1981; 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 eighty-one, to the State Department of Highways, Account No. 6700, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 1981, wherein on page VIII thereof is set forth the revenues and expenditures of the state road fund, including fiscal year 1980-81; and

WHEREAS, The Legislature has heretofore and during the regular session, 1981, provided for a supplementary appropriation of moneys from the balance of all general revenue to the State Department of Highways, Account No. 6410, and authorized transfer of such amount to the State Road Fund and disbursement therefrom; and

WHEREAS, It appears from such budget and the prior legislative action aforesaid in respect to Account No. 6410 and the transfer therefrom of general revenue to the State Road Fund that there now remains unappropriated a balance in the State Road Fund available for further appropriation during fiscal year 1980-81; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriations made from the state road fund to the State Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 2. Appropriations from other funds.	
3	122— <i>State Department of Highways</i>	
4	Acct. No. 6700	
5	TO BE PAID FROM THE STATE ROAD FUND	
6	Maintenance Expressway, Trunkline and Feeder	\$ 48,892,000
7	Maintenance State Local Services	63,588,000
8	Inventory Revolving	1,000,000
9	Equipment Revolving	4,000,000
10	General Operations	16,100,000
11	Debt Service	84,400,000
12	Interstate Construction	222,309,000
13	Other Federal Aid Programs	83,500,000
14	Appalachian Program	140,000,000
15	Nonfederal Aid Construction	37,700,000
16	Total	\$701,489,000

17 The purpose of this bill is to supplement existing items in
 18 the aforesaid account for expenditure in the current fiscal
 19 year of 1980-81, and to reflect the new total spending
 20 authority of the spending unit for such fiscal year. Such
 21 amount shall be available for expenditure immediately upon
 22 the effective date of this bill.

CHAPTER 21

(Com. Sub. for H. B. 1647—By Mr. Speaker, Mr. See)

[Passed April 11, 1981; 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 Department of Natural Resources remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the Department of Natural Resources, Account No. 8300, supplementing chapter three,

acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature, by letter dated March 2, 1981, certified financial statements for Special Revenue accounts for the fiscal year 1980-81; and

WHEREAS, It appears from such financial statements that there now remains unappropriated balances in the Special Revenue account of the Department of Natural Resources available for further appropriation during fiscal year 1980-81, a part of which balances is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation made to the department of natural resources, Account No. 8300, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding thereto the following sums to the designated line items:

1	TITLE 2. APPROPRIATIONS.	
2	Section 2. Appropriations from other funds.	
3	137— <i>Department of Natural Resources</i>	
4	Acct. No. 8300	
5	TO BE PAID FROM SPECIAL REVENUE FUND	
6	2 Current Expenses	\$ 90,000
7	3 Repairs and Alterations	22,000
8	4 Equipment	248,000
9	5 Land Purchase and Buildings	40,000

10 The purpose of this supplementary appropriation bill is to
 11 supplement the aforesaid account and items therein for ex-
 12 penditure in the current fiscal year 1980-81. Such amounts
 13 shall be available for expenditure upon the effective date of
 14 this bill.

CHAPTER 22

(Com. Sub. for H. B. 1447—By Mr. Yanni)

[Passed March 30, 1981; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections, Account No. 3660, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 3660, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 CORRECTIONS

4 46—*Department of Corrections*
5 *Community Service*
6 *Northern Region*

7 Acct. No. 3660

8	1	Personal Services	\$ 406,924
9	2	Current Expenses	100,245

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

CHAPTER 23

(Com. Sub. for H. B. 1450—By Mr. Yanni)

[Passed March 30, 1981; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections, Account No. 3670, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 3670, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, be supplemented, amended and transferred to read as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	CORRECTIONS	
4	47— <i>Department of Corrections</i>	
5	<i>Community Service</i>	
6	<i>Southern Region</i>	
7	Acct. No. 3670	
8	1 Personal Services	\$ 538,527
9	2 Current Expenses	141,031

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

CHAPTER 24

(Com. Sub. for H. B. 1446—By Mr. Yanni)

 (Passed March 30, 1981; in effect from passage. Approved by the Governor.)

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections, Account No. 3680, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	CORRECTIONS	
4	48—Department of Corrections	
5	Acct. No. 3680	
6	2 Other Personal Services	\$ 412,996
7	3 Current Expenses	159,515

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

CHAPTER 25

(Com. Sub. for H. B. 1455—By Mr. Yanni)

[Passed March 30, 1981; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections, Account No. 3700, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 3700, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 CORRECTIONS

4 50—*West Virginia Industrial School for Boys*

5 Acct. No. 3700

6	1	Personal Services	\$ 958,507
7	2	Current Expenses	\$ 342,955

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

CHAPTER 26

(Com. Sub. for H. B. 1448—By Mr. Yanni)

[Passed March 30, 1981; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections, Account No. 3720, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 3720, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, be supplemented, amended and transferred to read as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	CORRECTIONS	
4	<i>52—West Virginia Industrial Home for Girls</i>	
5	Acct. No. 3720	
6	1 Personal Services	\$ 416,203
7	4 Equipment	14,500

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

CHAPTER 27

(Com. Sub. for H. B. 1280—By Mr. Yanni)

[Passed April 3, 1981; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections, Account No. 3740, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 3740, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 CORRECTIONS

4 54—*West Virginia State Prison for Women*

5 Acct. No. 3740

6	1	Personal Services	\$375,534
7	3	Repairs and Alterations	11,000

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

CHAPTER 28

(S. B. 410—Originating in the Senate Committee on Finance)

[Passed March 17, 1981; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 65—State Health Department—Mental Hospitals

4 Acct. No. 4160

5 1	Personal Services	\$17,654,941
6 2	Current Expenses	5,584,940

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

CHAPTER 29

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

[Passed March 17, 1981; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Colin Anderson

Center, Account No. 4190, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4190, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 66—Colin Anderson Center

4 Acct. No. 4190

5	1	Personal Services	\$6,382,158
6	2	Current Expenses	1,008,100

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

CHAPTER 30

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

[Passed March 17, 1981: in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Fairmont Emergency Hospital, Account No. 4250, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4250, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented, amended and transferred to read as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	67—Fairmont Emergency Hospital	
4	Acct. No. 4250	
5	2 Current Expenses	\$316,646
6	3 Repairs and Alterations	20,100

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

CHAPTER 31

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

[Passed April 8, 1981; in effect from passage . Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Hopemont Hospital, Account No. 4300, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4300, as appropriated by chapter three, acts of the Legislature, regular

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

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	<i>70—Hopemont Hospital</i>	
4	Acct. No. 4300	
5	1 Personal Services	\$3,474,827
6	3 Repairs and Alterations	91,700

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

CHAPTER 32

(S. B. 546—Originating in the Senate Committee on Finance)

[Passed March 25, 1981; 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 Mines, Account No. 4600, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4600, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, be supplemented, amended and transferred to read as follows:

1	BUSINESS AND INDUSTRIAL RELATIONS	
2	76— <i>Department of Mines</i>	
3	Acct. No. 4600	
4	1 Personal Services	\$2,829,559
5	2 Current Expenses	1,041,904
6	5 Board of Coal Mine Health and Safety	65,000
7	The purpose of this supplementary appropriation bill is to	
8	supplement, amend and transfer certain moneys from one	
9	item of the existing appropriation to another item of such	
10	appropriation for the designated spending unit. The amounts	
11	as itemized for expenditure during the fiscal year one	
12	thousand nine hundred eighty-one, shall be made available	
13	for expenditure upon the effective date of this bill.	

CHAPTER 33

(S. B. 545—Originating in the Senate Committee on Finance)

[Passed March 25, 1981; 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 Nonintoxicating Beer Commissioner, Account No. 4900, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4900, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 88—West Virginia Nonintoxicating
4 Beer Commissioner

5 Acct. No. 4900

6	2 Current Expenses	\$79,404
7	3 Equipment	300

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

CHAPTER 34

(S. B. 262—Originating in the Senate Committee on Finance)

[Passed February 27, 1981; 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 Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriations made from the state road fund to the State Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented, amended and transferred to read as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 2. Appropriations from other funds.	
3	<i>122—State Department of Highways</i>	
4	Acct. No. 6700	
5	TO BE PAID FROM THE STATE ROAD FUND	
6	Maintenance Expressway, Trunkline and Feeder	\$ 48,151,000
7	Maintenance State Local Services	52,843,000
8	Inventory Revolving	1,000,000
9	Equipment Revolving	4,000,000
10	General Operations	16,100,000
11	Debt Service	84,400,000
12	Interstate Construction	216,000,000
13	Other Federal Aid Programs	83,500,000
14	Appalachian Program	140,000,000
15	Nonfederal Aid Construction	28,995,000
16	Total	\$674,989,000

17 The purpose of this bill is to supplement, amend and
 18 transfer certain moneys from items of the existing
 19 appropriations to other items of such appropriations for the
 20 designated spending unit, and to reflect the total spending
 21 authority of the spending unit for the 1980-81 fiscal year, with
 22 no new moneys being appropriated hereby. The amounts as
 23 newly itemized for expenditure in such fiscal year shall be
 24 available for expenditure upon the effective date of this bill.

CHAPTER 35

(S. B. 719-S—Originating in the Senate Committee on Finance)

[Passed April 10, 1981; 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 Motor Vehicles, Account No. 6710, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts

of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 6710, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Sec. 2. Appropriations from other funds.

3 123—*Department of Motor Vehicles*

4 Acct. No. 6710

5 TO BE PAID FROM STATE ROAD FUND

6	2 Current Expenses	\$ 2,546,091
7	4 Purchase of License Plates	444,100
8	7 Public Employees Health Insurance	124,498

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

CHAPTER 36

(Com. Sub. for H. B. 849—By Mr. Tucker)

[Passed March 24, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to the property that may be exempted under the

"Bankruptcy Reform Act of 1978" (Public Law 95-598) in a bankruptcy proceeding.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.

§38-10-4. Exemptions of property in bankruptcy proceedings.

1 Pursuant to the "Bankruptcy Reform Act of 1978", 92 Stat.
2 2549, 11 U.S.C. 522 (b) (1), this state specifically does not
3 authorize debtors who are domiciled in this state to exempt the
4 property specified in the "Bankruptcy Reform Act of 1978",
5 92 Stat. 2549, 11 U.S.C. 522 (d).

6 Any person who files a petition under the "Bankruptcy
7 Reform Act of 1978" (Public Law 95-598) may exempt from
8 property of the estate in a bankruptcy proceeding the following
9 property:

10 (a) The debtor's interest, not to exceed seven thousand five
11 hundred dollars in value, in real property or personal property
12 that the debtor or a dependent of the debtor uses as a resi-
13 dence, in a cooperative that owns property that the debtor or
14 a dependent of the debtor uses as a residence, or in a burial
15 plat for the debtor or a dependent of the debtor.

16 (b) The debtor's interest, not to exceed one thousand two
17 hundred dollars in value, in one motor vehicle.

18 (c) The debtor's interest, not to exceed two hundred dollars
19 in value in any particular item, in household furnishings, house-
20 hold goods, wearing apparel, appliances, books, animals, crops
21 or musical instruments, that are held primarily for the personal,
22 family or household use of the debtor or a dependent of the
23 debtor: *Provided*, That the total amount of personal property
24 exempted under this subsection shall not exceed one thousand
25 dollars.

26 (d) The debtor's interest, not to exceed five hundred dol-

27 lars in value, in jewelry held primarily for the personal, family
28 or household use of the debtor or a dependent of the debtor.

29 (e) The debtor's interest, not to exceed in value four hun-
30 dred dollars plus any unused amount of the exemption provid-
31 ed under subsection (a) in any property.

32 (f) The debtor's interest, not to exceed seven hundred
33 fifty dollars in value, in any implements, professional books
34 or tools of the trade of the debtor or the trade of a dependent
35 of the debtor.

36 (g) Any unmatured life insurance contract owned by the
37 debtor, other than a credit life insurance contract.

38 (h) The debtor's interest, not to exceed in value four thou-
39 sand dollars less any amount of property of the estate trans-
40 ferred in the manner specified in section 542 (d) of the "Bank-
41 ruptcy Reform Act of 1978" (Public Law 95-598), in any ac-
42 crued dividend or interest under, or loan value of, any un-
43 maturated life insurance contract owned by the debtor under
44 which the insured is the debtor or an individual of whom the
45 debtor is a dependent.

46 (i) Professionally prescribed health aids for the debtor or
47 a dependent of the debtor.

48 (j) The debtor's right to receive:

49 (1) A social security benefit, unemployment compensation,
50 or a local public assistance benefit;

51 (2) A veterans' benefit;

52 (3) A disability, illness or unemployment benefit;

53 (4) Alimony, support or separate maintenance, to the ex-
54 tent reasonably necessary for the support of the debtor and
55 any dependent of the debtor;

56 (5) A payment under a stock bonus, pension, profitsharing,
57 annuity, or similar plan or contract on account of illness, dis-
58 ability, death, age or length of service, to the extent reason-
59 ably necessary for the support of the debtor and any dependent
60 of the debtor, unless:

61 (A) Such plan or contract was established by or under the
62 auspices of an insider that employed the debtor at the time
63 the debtor's rights under such plan or contract arose;

64 (B) Such payment is on account of age or length of ser-
65 vice; and

66 (C) Such plan or contract does not qualify under section
67 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue
68 Code of 1954.

69 (k) The debtor's right to receive, or property that is trace-
70 able to:

71 (1) An award under a crime victim's reparation law;

72 (2) A payment on account of the wrongful death of an
73 individual of whom the debtor was a dependent, to the extent
74 reasonably necessary for the support of the debtor and any
75 dependent of the debtor;

76 (3) A payment under a life insurance contract that insured
77 the life of an individual of whom the debtor was a dependent
78 on the date of such individual's death, to the extent reason-
79 ably necessary for the support of the debtor and any dependent
80 of the debtor;

81 (4) A payment, not to exceed seven thousand five hundred
82 dollars on account of personal bodily injury, not including
83 pain and suffering or compensation for actual pecuniary
84 loss, of the debtor or an individual of whom the debtor is a
85 dependent; or

86 (5) A payment in compensation of loss of future earnings
87 of the debtor or an individual of whom the debtor is or
88 was a dependent, to the extent reasonably necessary for the
89 support of the debtor and any dependent of the debtor.

90 This section shall not be construed to affect the applicability
91 of any provision of the "Bankruptcy Reform Act of 1978"
92 (Public Law 95-598) other than section 552(d).

CHAPTER 37

(H. B. 1565—By Mr. Wiedebusch and Mr. Karras)

[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter

thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one hundred two, one hundred nine and one hundred ten, article four, chapter forty-six-a of said code, all relating to banks and banking; certificates of authority and licenses of financial institutions; presumption of convenience and advantage granted supervised lender in certain instances when applying for certificate of authority to operate as an industrial loan company; West Virginia consumer credit protection act; dual business authority to operate as a supervised lender given banking institutions and licensees under the West Virginia industrial bank and industrial loan company act and the West Virginia secondary mortgage act; presumption of convenience and advantage granted industrial loan company in certain instances when applying for certificate of authority to operate as a supervised lender.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31A. Banks and Banking.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-5. Certificate or license to engage in business; filing of amendments to charter, bylaws and foreign statutes.

- 1 (a) No person shall engage or continue in the business of
- 2 a financial institution in this state without a license or cer-
- 3 tificate to do so issued in accordance with this section, or

4 other applicable law, which license or certificate remains
5 unsuspended, unexpired and unrevoked except that a corpora-
6 tion which proposes to apply for such license or certificate
7 may secure its charter, adopt bylaws, elect its directors and
8 officers and perfect its organization.

9 (b) Application for such license or certificate shall be upon
10 such forms and contain such information as the commissioner
11 may prescribe. In connection with such applications every
12 corporate financial institution shall file a certified copy of
13 its charter and bylaws, a statement as to the amount of capital
14 that has been subscribed and paid in and a statement of its
15 financial condition duly verified under oath by its president
16 or vice president and its cashier or secretary as the case may
17 be and every financial institution other than a corporation
18 shall file a verified statement of its financial condition.

19 (c) If the application be that of a banking institution, the
20 commissioner of banking shall examine the information, docu-
21 ments and statements submitted and, if he finds that such
22 banking institution has adopted bylaws which provide prac-
23 tical, safe, just and equitable rules and methods for the
24 management of its business and it has complied in all respects
25 with the provisions of this chapter and other applicable laws,
26 he shall issue to it a certificate or license permitting it to
27 engage in business. If the application be that of a financial
28 institution other than a banking institution, the commissioner
29 of banking shall examine the information, documents and
30 statements submitted, and, if he finds that such financial
31 institution has adequate resources for the proposed business
32 and has provided practical, safe, just and equitable rules
33 and methods for the management of its business, and it has
34 complied in all respects with the provisions of this chapter
35 and other applicable laws, and that the public convenience
36 and advantage will be promoted by the issuance of a cer-
37 tificate or license thereto, he shall issue to it a certificate or
38 license permitting it to engage in business: *Provided*, That
39 any supervised lender which is operating in good standing in
40 accordance with the provisions of article four, chapter forty-
41 six-a shall be presumed to have established that the public
42 convenience and advantage will be promoted in regard to

43 its application for a certificate of authority to operate as
44 an industrial loan company as defined in article seven, chapter
45 thirty-one of this code in the same location for which it is
46 licensed as a supervised lender. Such certificate or license
47 shall be preserved and displayed in the place of business of
48 such banking or other financial institution.

49 (d) In addition to the requirements of subsection (b) of this
50 section, every foreign corporation applying for a license or
51 certificate to engage in the business of a financial institution
52 in this state shall file with the commissioner of banking a
53 copy of the laws of the jurisdiction under which it is organized
54 which pertain to its organization and powers and the conduct
55 of its business. The commissioner shall examine the informa-
56 tion, documents and statements submitted by such foreign
57 corporation and if he finds that they provide practical, safe,
58 just and equitable rules and methods for the management of
59 the business of the corporation, that it has adequate resources
60 for the proposed business and it has complied in all respects
61 with the provisions of this chapter and other applicable laws,
62 and that the public convenience and advantage will be pro-
63 moted by the issuance of a license or certificate thereto, he
64 shall issue to such corporation a certificate or license per-
65 mitting it to engage in business in this state, which certificate
66 or license shall authorize such corporation to engage in the
67 business of the type of financial institution specified therein,
68 until the thirtieth day of the following June. Thereafter a
69 new certificate or license shall be secured annually by any
70 such foreign corporation. The fee for the original and each
71 additional license or certificate issued to a foreign corporation
72 shall be one hundred dollars, unless otherwise provided by
73 statute. A verified statement of the financial condition of
74 every such foreign corporation shall be filed with the com-
75 missioner before the issuance of each annual certificate or
76 license. Such certificate or license shall be preserved and
77 displayed in the place of business of such corporation.

78 (e) No amendment of the charter or bylaws of any domestic
79 or foreign corporation engaging in business in this state as
80 a financial institution shall become effective until the pro-
81 posed change shall have been submitted to and approved by

82 the commissioner of banking; but, if the commissioner does
83 not disapprove such proposed change within twenty days
84 after it is received by him, it shall be deemed to have been
85 approved. A certified copy of the amendment of any statute
86 of another state governing such a foreign corporation shall be
87 filed with the commissioner of banking by such foreign cor-
88 poration within thirty days after such amendment becomes
89 effective in such other state.

90 (f) Nothing contained in this code shall authorize any per-
91 son to engage in the banking business in this state except
92 corporations chartered to conduct a banking business under
93 the laws of West Virginia and which hold a license or certifi-
94 cate to do so issued under this section or associations autho-
95 rized to conduct a banking business in West Virginia under
96 the laws of the United States and having their principal place
97 of business in this state.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 4. SUPERVISED LENDERS.

§46A-4-102. License to make supervised loans.

§46A-4-109. Restrictions on interest in land as security; assignment of earnings to supervised lender prohibited; when security interest on household furniture not valid; prohibitions as to renegotiation of loan discharged in bankruptcy.

§46A-4-110. Conduct of business other than making loans.

§46A-4-102. License to make supervised loans.

1 (1) The commissioner shall receive and act on all applica-
2 tions for licenses to make supervised loans under this chapter.
3 Applications shall be under oath, be filed in the manner
4 prescribed by the commissioner, and contain the informa-
5 tion the commissioner requires by rule to make an evaluation
6 of the financial responsibility, experience, character and fitness
7 of the applicant, and the findings required of him before he
8 may issue a license. At the time of the filing of the applica-
9 tion, the sum of two hundred fifty dollars shall be paid to the
10 commissioner as an investigation fee.

11 (2) No license shall be issued to a supervised financial
12 organization other than to one licensed under the provisions
13 of the "West Virginia Industrial Bank and Industrial Loan
14 Company Act" as contained in article seven, chapter thirty-
15 one of this code, or to one licensed under the provisions of the
16 West Virginia secondary mortgage loan act as contained in
17 article seventeen, chapter thirty-one of this code, or to any
18 banking institution as defined by the provisions of section two,
19 article one, chapter thirty-one-a of this code: *Provided*, That
20 the limitation of licensing contained in this subsection shall not
21 prevent any supervised financial organization from making
22 supervised loans when the applicable state or federal statute,
23 law, rule or regulation permits. No license shall be issued
24 to any person unless the commissioner upon investigation,
25 finds that the financial responsibility, experience, charac-
26 ter and fitness of the applicant, and of the members there-
27 of (if the applicant is a copartnership or association)
28 and of the officers and directors thereof (if the applicant
29 is a corporation), are such as to command the confidence of
30 the community and to warrant belief that the business will be
31 operated honestly, fairly and efficiently, within the purposes
32 of this chapter, and the applicant has available for the opera-
33 tion of the business at the specified location assets of at least
34 two thousand dollars, and that allowing the applicant to
35 engage in business will promote the convenience and advantage
36 of the community in which the business of the applicant is to
37 be conducted: *Provided*, That any industrial loan company
38 which is operating in good standing in accordance with the
39 provisions of article four, chapter forty-six-a of this code
40 shall be presumed to have established that the public con-
41 venience and advantage will be promoted in regard to its
42 application for a license to make supervised loans in the
43 same location for which it is licensed as an industrial loan
44 company.

45 (3) Upon written request, the applicant is entitled to a
46 hearing on the question of his qualifications for a license
47 if (a) the commissioner has notified the applicant in writing
48 that his application has been denied, or (b) the commissioner
49 has not issued a license within sixty days after the application
50 for the license was filed. A request for a hearing may not be

51 made more than fifteen days after the commissioner has mailed
52 a writing to the applicant notifying him that the application
53 has been denied and stating in substance the commissioner's
54 findings supporting denial of the application.

55 (4) Not more than one place of business shall be main-
56 tained under the same license, but the commissioner may
57 issue more than one license to the same licensee upon
58 compliance with all the provisions of this article governing
59 an original issuance of a license, for each such new license.
60 Each license shall remain in full force and effect until sur-
61 rendered, suspended or revoked.

62 (5) Upon giving the commissioner at least fifteen day's prior
63 written notice, a licensee may (a) change the location of any
64 place of business located within a municipality to any other
65 location within that same municipality, or (b) change the
66 location of any place of business located outside of a munici-
67 pality to a location no more than five miles from the originally
68 licensed location, but in no case may a licensee move any
69 place of business located outside a municipality to a location
70 within a municipality. A licensee may not move the location
71 of any place of business located within a municipality to any
72 other location outside of that municipality.

73 (6) A licensee may conduct the business of making super-
74 vised loans only at or from a place of business for which he
75 holds a license and not under any other name than that stated
76 in the license. A sale or lease in which credit is granted pur-
77 suant to a lender credit card does not violate this subsection.

78 (7) A license issued under the provisions of this section
79 shall not be transferable or assignable.

**§46A-4-109. Restrictions on interest in land as security; assign-
ment of earnings to supervised lender prohibited;
when security interest on household furniture not
valid; prohibitions as to renegotiation of loan dis-
charged in bankruptcy.**

1 (1) A supervised lender may not contract for an interest
2 in land as security. A security interest taken in violation of
3 this subsection is void: *Provided*, That this subsection shall

4 not be construed as prohibiting one licensed to make loans
5 under the provisions of the "West Virginia Industrial Bank
6 and Industrial Loan Company Act" as set forth in the pro-
7 visions of article seven, chapter thirty-one of this code, or
8 the West Virginia secondary mortgage loan act as set forth
9 in the provisions of article seventeen, chapter thirty-one, from
10 taking an interest in land as security for loans made pursuant
11 to either of those acts.

12 (2) Notwithstanding the provisions of section one hundred
13 sixteen, article two of this chapter, no supervised lender shall
14 take any assignment of or order for payment of any earnings
15 to secure any loan made by any supervised lender under this
16 article. An assignment or order taken in violation of this sub-
17 section is void.

18 (3) No supervised lender may take a security interest in
19 household furniture then in the possession and use of the
20 borrower, unless the security agreement creating such security
21 interest be in writing, signed in person by the borrower, and
22 if the borrower is married, signed in person by both husband
23 and wife: *Provided*, That the signature of both husband and
24 wife shall not be required when they have been living separate
25 and apart for a period of at least five months prior to the mak-
26 ing of such security agreement. A security interest taken in
27 violation of this subsection is void.

28 (4) A supervised lender may not renegotiate the original
29 loan, or any part thereof, or make a new contract covering
30 the original loan, or any part thereof, with any borrower, who
31 has received a discharge in bankruptcy of the original loan
32 or any balance due thereon at the time of said discharge from
33 any court of the United States of America exercising juris-
34 diction in insolvency and bankruptcy matters, unless said
35 supervised lender shall pay to and deliver to the borrower the
36 full amount of the loan shown on said note, promise to pay,
37 or security, less any deductions for charges herein specifically
38 authorized.

§46A-4-110. Conduct of business other than making loans.

1 No licensee shall conduct the business of making loans
2 under the provisions of this article within any office, room

3 or place of business in which any other business is solicited
4 or engaged in, or in association or conjunction therewith,
5 except as may be authorized in writing by the commissioner
6 upon his finding that the character of such other business is
7 such that the granting of such authority would not facilitate
8 evasions of this article or of the rules and regulations lawfully
9 made hereunder, except nothing herein shall prohibit the
10 licensee from purchasing installment sales contracts or the
11 sale or provision of insurance authorized by section one
12 hundred nine, article three of this chapter, or from making
13 loans authorized under the provisions of the West Virginia
14 secondary mortgage loan act as set forth in article seventeen,
15 chapter thirty-one of this code, or from making loans autho-
16 rized under the provisions of the "West Virginia Industrial
17 Bank and Industrial Loan Company Act" as set forth in
18 article seven, chapter thirty-one of this code.

CHAPTER 38

(Com. Sub. for S. B. 414—By Mr. Nelson)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to giving the West Virginia board of banking and financial institutions certain emergency banking powers and allowing said board, in certain instances where it finds that the financial condition of a bank is such as to constitute an imminent peril to its depositors, savings account holders, customers or creditors, without notice, examination, investigation or hearing, to enter an order approving or disapproving certain applications to incorporate and organize a state banking institution and without notice or hearing to enter an order approving or disapproving the request of any state bank to purchase or merge and consolidate with another state banking institution or with a national banking association to form a resulting state bank; definitions; permitting operation of banking business from separate premises under the same name, in certain circumstances, upon a finding of imminent peril; restrictions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

§31A-3-3. Hearings and orders

§31A-3-2. General powers and duties.

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

3 (1) Regulate its own procedure and practice;

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

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

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

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

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

24 (B) To engage in any financial institution activity,
25 services, procedures and practices in which financial
26 institutions of the same type subject to the jurisdiction of the
27 federal government may hereafter be authorized by federal
28 laws, rules or regulations to engage, notwithstanding any

29 contrary provision of this code: *Provided*, That no such
30 permission or authority shall be granted to any banking
31 institution to install or maintain any branch bank or engage in
32 business at any place other than its principal office in this
33 state in contravention of the provisions of section twelve,
34 article eight of this chapter;

35 (C) To pay interest on demand deposits of the United
36 States or any agency thereof, if the payment of such interest
37 shall be permitted under any applicable federal law, rule or
38 regulation.

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

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

50 (1) Restrict the withdrawal of deposits from any financial
51 institution when in the judgment of the board extraordinary
52 circumstances make such restrictions necessary for the
53 protection of creditors of and depositors in the affected
54 institution;

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

66 (3) Approve or disapprove applications to incorporate and
67 organize state banking institutions in accordance with the

68 provisions of sections six and seven, article four of this
69 chapter;

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

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

88 (6) Approve or disapprove the application of any state
89 bank to purchase the business and assets and assume the
90 liabilities of, or merge or consolidate with, another state
91 banking institution in accordance with the provisions of
92 section five, article seven of this chapter: *Provided*, That
93 nothing contained in this subdivision shall be construed as
94 permitting any banking institution to install or maintain any
95 branch bank or to take any other action or engage in any other
96 practice prohibited by section twelve, article eight of this
97 chapter, except as permitted by subdivision (8) of this
98 subsection (b);

99 (7) Approve or disapprove the application of any state
100 bank to purchase the business and assets and assume the
101 liabilities of a national banking association, or merge or
102 consolidate with a national banking association to form a
103 resulting state bank in accordance with the provisions of
104 section five, article seven of this chapter: *Provided*, That
105 nothing contained in this subdivision shall be construed as
106 permitting any banking institution to install or maintain any
107 branch bank or to take any other action or engage in any other

108 practice prohibited by section twelve, article eight of this
109 chapter, except as permitted by subdivision (8) of this
110 subsection (b); and

111 (8) Notwithstanding any provision contained in section
112 twelve, article eight of this chapter or elsewhere in this code
113 to the contrary, incident to the approval of an application
114 pursuant to subdivision (6) or subdivision (7) of this
115 subsection (b), permit the bank the application of which is so
116 approved to operate its banking business under its name
117 from the premises of the bank the business and assets of
118 which have been purchased and the liabilities of which have
119 been assumed by such applicant bank or with which such
120 applicant bank has merged or consolidated: *Provided*, That
121 such permission may be granted only if the board has made
122 the findings required by subsection (f), section three of this
123 article and such applicant bank has no common directors or
124 officers nor common ownership of stock exceeding ten
125 percent of total outstanding voting stock with the bank
126 whose business and assets are being purchased and liabilities
127 assumed or with whom such applicant bank is being merged.

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

§31A-3-3. Hearings and orders.

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

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

13 may be continued by the board on its own motion or for good
14 cause shown.

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

18 (b) After any such hearing and consideration of all of the
19 testimony and evidence, the board shall make and enter an
20 order deciding the matters with respect to which such
21 hearing was conducted, which order shall be accompanied by
22 findings of fact and conclusions of law as specified in section
23 three, article five, chapter twenty-nine-a of this code, and a
24 copy of such order and accompanying findings and
25 conclusions shall be served upon all parties to such hearing,
26 and their attorneys of record, if any.

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

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

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

53 such persons shall be entitled to a hearing thereon at the
54 earliest practicable time.

55 (f) Whenever the board shall find that the financial
56 condition of a state banking institution or a national banking
57 association constitutes an imminent peril to its depositors,
58 savings account holders, other customers or creditors, it may
59 forthwith without notice or hearing enter an order taking any
60 action permitted by subdivisions (6) and (7), subsection (b),
61 section two of this article. Immediately upon entry of such
62 order, certified copies thereof shall be served upon all
63 persons affected thereby and upon demand such persons
64 shall be entitled to a hearing thereon at the earliest
65 practicable time.

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

83 (h) Definitions:

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

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

93 the immediate future, to be due and demanded in the
94 ordinary course of business.

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

CHAPTER 39

(H. B. 1658—By Mr. Shepherd)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article seven, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to generally revising the state laws on receivership, conservatorship, liquidation, merger, consolidation, purchase, reorganization and closing of certain financial institutions in the state and giving the state commissioner of banking, the federal deposit insurance corporation as receiver and insurer, receivers and conservators broad general powers, duties and responsibilities with respect thereto; giving a certain purpose, rules of construction and definitions; providing for the appointment of conservators for said financial institutions and certain deposits and withdrawals during conservatorships and terminations of and reorganizations by conservatorships; requiring certain inventories; providing for the appointment of receivers for said financial institutions and their bonds and certificates; permitting certain suits against stockholders, closings and temporary emergency takeovers of financial institutions by said commissioner and certain court orders for said commissioner; requiring said commissioner to appoint said federal deposit insurance corporation as receiver in particular cases and making special provisions for said corporation's receivership; allowing said corporation certain subrogation rights, the emergency sale of assets, the right to go to circuit court and

other broad authority; providing for certain hearings and notices; discharging said commissioner from liability in certain cases; relating to when receivers may borrow from federal lending agencies and others; providing for the reorganization, purchase, merger and consolidation of and by said financial institutions and the conversions of national banks to state banks; giving the West Virginia board of banking and financial institutions certain authority with respect thereto; providing for the continuing effect of certain obligations and liens; allowing the voluntary liquidation of financial institutions; providing for the involuntary liquidation of said institutions in certain cases; relating to revocations of certificates, permits and licenses of certain financial institutions; providing for the assignment, assumption and termination of certain executory contracts and unexpired leases; specifying when said contracts or leases may not be terminated or modified; providing for the payment of the expenses and debts of said institutions, claims thereupon and the order of priority thereof; requiring the submission of certain claims to receivers, notices by mailing and publication and notice and proof of claim forms; relating to the loss, rejection and payment of said claims; providing a hearing procedure for contested claims and other disputed matters to be heard and decided by hearing examiners with judicial review thereof; relating to the exclusivity of said powers and procedures; and giving the circuit courts of the state certain general and limited jurisdiction with respect to certain matters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. REGULATION OF FAILING FINANCIAL INSTITUTIONS.

- §31A-7-1. Purpose; construction.
- §31A-7-2. Definitions
- §31A-7-3. Conservatorship; reorganization.
- §31A-7-4. Receivership.

- §31A-7-5. Provisions applicable to federal deposit insurance corporation only.
- §31A-7-6. Borrowing powers of receiver.
- §31A-7-7. Reorganization, purchase, merger or consolidation; conversion of national bank to state bank.
- §31A-7-8. Voluntary liquidation by financial institution.
- §31A-7-9. Involuntary liquidation of financial institution after revocation of certificate of authority, permit or license.
- §31A-7-10. Executory contracts and leases; assumption or rejection; court approval for assignments.
- §31A-7-11. General subrogation rights of federal deposit insurance corporation.
- §31A-7-12. Payment of expenses and debts; order of priority; rights of secured creditors.
- §31A-7-13. Claims procedure.
- §31A-7-14. Hearings; judicial review.
- §31A-7-15. Exclusivity of powers and procedures of article.

§31A-7-1. Purpose; construction.

- 1 (a) The purpose of this article is to:
- 2 (1) To the maximum extent possible, protect and preserve
3 the assets of depositors, shareholders and other creditors
4 in the financial institutions of this state;
- 5 (2) Maintain the financial integrity, stability and account-
6 ability of the financial institutions of this state;
- 7 (3) Strengthen and make more effective the authority of
8 the state commissioner of banking to protect and preserve
9 such assets and maintain such integrity, stability and account-
10 ability;
- 11 (4) Permit the federal deposit insurance corporation in all
12 appropriate cases to act as receiver for a failing financial
13 institution; and
- 14 (5) Make more practical and more flexible the conser-

15 vatorship and receivership provisions of this article dealing
16 with financial institutions that are substantially impaired, have
17 failed or appear to be about to fail.

18 (b) The provisions of this article are intended to be re-
19 medial and protective, and they shall be liberally construed
20 to carry out such intent and the purpose of this article.

§31A-7-2. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the commissioner of banking of
3 West Virginia and any authorized deputy or employee thereof;

4 (b) "Federal law" means all the provisions of Title XII of
5 the United States Code and all rules and regulations promul-
6 gated pursuant thereto;

7 (c) "Financial institution" means any bank, building and
8 loan association, industrial bank, industrial loan company,
9 supervised lender, credit union and any other person, firm
10 or corporation doing business under the jurisdiction and
11 supervision of the commissioner of banking of West Virginia;

12 (d) A financial institution is "about to be insolvent" when
13 it would be unable to meet the demands of its depositors or
14 to make adequate provision for the timely payment of its
15 depositors if it were immediately closed for the purpose of
16 liquidation;

17 (e) A financial institution is "insolvent" when it is un-
18 able to pay its debts to its depositors and other creditors in
19 the ordinary and usual course of business or when it is in a
20 state of balance sheet insolvency; and

21 (f) "Balance sheet insolvency" exists when the assets of
22 a financial institution are less than its liabilities, exclusive of
23 capital. For the purposes of ascertaining balance sheet insol-
24 vency, assets shall be valued at their book value, unless the
25 commissioner of banking determines that the assets are insuf-
26 ficient to meet liabilities within a reasonable time making prob-
27 able the liquidation of assets; and if any such determination
28 is made, the assets shall be valued at fair market value.

§31A-7-3. Conservatorship; reorganization.

1 (a) Whenever the commissioner considers it necessary in
2 order to protect or preserve the assets of any financial
3 institution in this state for the benefit of the depositors and
4 other creditors thereof, he may appoint a conservator for
5 such financial institution. The conservator may be an employee
6 of the state department of banking and shall give such bond
7 and security as the commissioner considers proper.

8 (b) The conservator, under the direction of the commis-
9 sioner, shall take possession of the papers, books, records and
10 assets of every description of such financial institution and
11 take such other action as is necessary to conserve such assets
12 pending further disposition of the business of the institution.
13 Immediately upon taking charge of the financial institution,
14 the conservator, in conjunction with a representative of the
15 institution designated by the directors thereof, shall make in
16 triplicate a complete inventory of all assets of the institution
17 and an itemized list of all its liabilities. The original and two
18 copies of the list shall be subscribed and sworn to by the
19 persons making them. The original shall be filed with the
20 commissioner as soon as practicable. One such copy shall
21 be furnished to the institution, and the other copy shall be
22 retained by the conservator.

23 (c) A conservator has all the rights, powers, duties, re-
24 sponsibilities and privileges that receivers have under this
25 article and is subject to all obligations to which such receivers
26 are subject.

27 (d) During the period that a conservator remains in posses-
28 sion of a financial institution, the legal relations of all parties
29 with respect thereto shall, subject to the other provisions
30 of this section, be the same as if a receiver had been appointed
31 therefor under other pertinent provisions of this article.

32 (e) All reasonable and necessary expenses actually incurred
33 in the course of any such conservatorship shall be paid out
34 of the assets of the financial institution and are a lien on such
35 assets, which lien has priority over any other lien. The

36 conservator shall be paid a reasonable compensation, to be
37 fixed by the commissioner, for his services but such compensa-
38 tion must not exceed the amount that would be paid to
39 employees of the state department of banking for similar
40 services.

41 (f) If the commissioner becomes satisfied that such a
42 course of action may be pursued safely and that it is in the
43 public interest, he may, in his discretion, terminate the
44 conservatorship and permit the financial institution to resume
45 the transaction of its business subject to such terms, condi-
46 tions, restrictions and limitations as he imposes or the com-
47 missioner may appoint a receiver pursuant to section four of
48 this article to take over the property and affairs of the
49 institution.

50 (g) While a financial institution is in the hands of
51 a conservator, the commissioner may require the conserva-
52 tor to set aside and make available for withdrawal by de-
53 positors and payment to other creditors, on a ratable basis,
54 such amounts as in the opinion of the commissioner may
55 be used safely for such purpose, subject to such priorities
56 and preferences as are provided by law. The com-
57 missioner may, in his discretion, permit the conservator to re-
58 ceive deposits, and such deposits are not subject to any limita-
59 tion as to payment or withdrawal. Such deposits shall be
60 segregated and shall not be used either to liquidate any in-
61 debtedness of the financial institution existing at the time
62 that the conservator was appointed for it or any subsequent in-
63 debtedness incurred for the purpose of liquidating any indebt-
64 edness of such institution existing at the time the conservator
65 was appointed.

66 Deposits received while a financial institution is in the
67 hands of a conservator shall: (1) Be kept on hand in cash
68 or (2) be deposited with a federal reserve bank or deposited
69 with such financial institution as the commissioner in his
70 discretion designates or (3) be invested in direct obligations
71 of the United States or the state of West Virginia or in funded
72 obligations of any political subdivision of this state approved
73 by the commissioner.

74 (i) In any reorganization of any financial institution under
75 a plan of a kind that by its own terms or under existing law
76 requires the consent, as the case may be, of depositors and
77 other creditors, or of stockholders, or of both depositors and
78 other creditors and stockholders, such reorganization shall
79 become effective only when the commissioner is satisfied
80 that the plan of reorganization is fair and equitable to all
81 depositors, other creditors and stockholders and that it is
82 in the public interest and has approved the plan subject to
83 such conditions, restrictions and limitations as he imposes,
84 and when, after reasonable notice of such reorganization, as
85 the case may be, depositors and other creditors of such
86 financial institution representing at least seventy-five percent
87 in amount of its total deposits and other liabilities; or stock-
88 holders owning at least two thirds in amount of its outstanding
89 capital stock; or both depositors and other creditors represent-
90 ing at least seventy-five percent in amount of the total
91 deposits and other liabilities and stockholders owning at
92 least two thirds in amount of its outstanding capital stock
93 have consented in writing to the plan of reorganization. Claims
94 of depositors or other creditors which will be satisfied in
95 full under the plan of reorganization shall not be included
96 among the total deposits and other liabilities of the financial
97 institution in determining the seventy-five percent thereof as
98 above provided.

99 (j) When any such reorganization becomes effective, all
100 books, records and assets of the financial institution shall be
101 disposed of in accordance with the provisions of the plan and
102 the affairs of the financial institution shall be conducted by
103 its board of directors in the manner provided by the plan and
104 under such conditions, restrictions and limitations that have
105 been imposed by the commissioner. In any such reorganization
106 that has been approved and has become effective as provided
107 herein, all depositors and other creditors and stockholders
108 of the financial institution, whether or not they have consented
109 to the plan of reorganization, are fully and in all respects
110 subject to and bound by its provisions, and the claims of all

111 depositors and other creditors shall be treated as if they had
112 consented to such plan of reorganization.

113 (k) Fifteen days after the affairs of the financial institution
114 have been returned to its board of directors by the conservator,
115 either with or without a reorganization as provided in sub-
116 section (i) of this section, the provisions of subsections (g)
117 and (h) of this section shall no longer be effective. Before
118 the conservator returns the affairs of the institution to its
119 board of directors, he shall publish a notice, in such form
120 as the commissioner approves, stating the date on which
121 the affairs of the financial institution will be returned to its
122 board of directors and that the provisions of subsections (g)
123 and (h) of this section will not be effective fifteen days after
124 such date. The notice shall be published as a Class I legal
125 advertisement in compliance with the provisions of article
126 three, chapter fifty-nine of this code, and the publication
127 area for such publication shall be the county in which the
128 financial institution is located. On the date of the publication
129 of such notice, the conservator shall send a copy of such
130 notice by registered mail to the last known address of every
131 person who is a depositor as shown by the records of the
132 institution. The conservator shall send a similar notice in
133 like manner to every person making a deposit in such insti-
134 tution under said subsection (g) after the date of such newspaper
135 publication and before the time when the affairs of the
136 institution are returned to its directors.

137 (l) The provisions of this section shall not under any
138 circumstances be construed to impair in any way any powers
139 of the governor or the commissioner provided elsewhere by
140 law with respect to any matter covered by this section.

141 (m) The commissioner may prescribe such rules and regu-
142 lations, not inconsistent with the provisions of this article, as
143 he considers necessary or convenient to carry out the pro-
144 visions of this section.

§31A-7-4. Receivership.

1 (a) If the commissioner ascertains from any source that
2 the capital of any financial institution is substantially im-

3 paired and such institution, after receiving notice from the
4 commissioner, does not promptly make good such impairment
5 to the satisfaction of the commissioner, or if the commissioner
6 ascertains from any source that any financial institution is
7 insolvent or reasonably appears about to be insolvent, the
8 commissioner shall appoint a receiver to take full and ex-
9 clusive possession and control of and title to the books,
10 records, papers, moneys, assets, business and all other things
11 of the financial institution. Such title shall pass to and vest
12 in the receiver by operation of law without the execution of
13 any instruments of conveyance, assignment, transfer or en-
14 dorsement. The commissioner shall give the receiver a cer-
15 tificate of appointment. Immediately upon taking such posses-
16 sion and control, the receiver shall establish and maintain such
17 books, records and procedures for accountability as the
18 commissioner prescribes and may exercise all the powers,
19 duties and authority provided for in this article.

20 Immediately upon taking charge of the financial institution,
21 the receiver, in conjunction with a representative of the
22 institution designated by the directors thereof, shall make in
23 triplicate a complete inventory of all assets of the institution
24 and an itemized list of all its liabilities. The original and
25 two copies of the list shall be subscribed and sworn to by
26 the persons making them. The original shall be filed with
27 the commissioner as soon as practicable. One such copy shall
28 be furnished to the institution, and the other copy shall be
29 retained by the receiver.

30 (b) In any case where a receiver is to be appointed
31 pursuant to subsection (a) of this section, if the involved
32 financial institution has deposits insured by the federal deposit
33 insurance corporation and if such corporation is required or
34 otherwise willing to be receiver for the institution, the com-
35 missioner shall appoint the federal deposit insurance cor-
36 poration as receiver for that financial institution.

37 (c) A receiver appointed under any provision of this
38 article has the following general powers, duties and respon-
39 sibilities:

40 (1) To take full and exclusive possession and control of
41 and title to the papers, books, records, moneys, assets,
42 business and all other things of every description and location
43 of the financial institution and to collect all debts, dues and
44 claims belonging to the financial institution;

45 (2) To sue upon and defend all rights, actions, issues,
46 questions, claims and other matters involving the financial
47 institution;

48 (3) To exercise all fiduciary functions of the financial
49 institution as of the date of the commencement of the re-
50 ceivership;

51 (4) To borrow such sums of money as are reasonable and
52 necessary in aiding any liquidation of the financial institution
53 and, in connection therewith, to secure any such borrowing
54 by the pledge, hypothecation or mortgage of the assets of the
55 institution;

56 (5) Subject to the approval of the circuit court of the
57 county in which the principal office of the financial institution
58 is located in any case where the federal deposit insurance
59 corporation is the receiver and subject to the approval of the
60 commissioner in every other case, to sell any real, personal
61 or mixed property of the financial institution and to compro-
62 mise and settle any bad or doubtful debts due to or from
63 the financial institution;

64 (6) In any case where the federal deposit insurance cor-
65 poration is the receiver, to do all acts and undertakings
66 permitted or required by federal law;

67 (7) To take all necessary or convenient actions, including
68 the bringing of any administrative action before the com-
69 missioner or a hearing examiner or any action in any court
70 of competent jurisdiction, to ascertain any matter concerning
71 the depositors or creditors of the financial institution relative
72 to the receivership of the institution or to proceed against
73 any officer, director or stockholder of the institution to
74 ascertain or enforce any liability thereof or for the determina-
75 tion or adjudication of any other matter involving the in-
76 stitution; and

77 (8) To do all other acts and undertakings, not inconsistent
78 with the provisions of this article, necessary or convenient to
79 carry out the provisions of this article or to effectively ac-
80 complish the intent and purpose of this article.

81 (d) In any case where the federal deposit insurance cor-
82 poration is not the receiver, if the assets of an insolvent
83 financial institution are not sufficient to pay in full all its
84 depositors and creditors, without waiting to administer the
85 assets of the institution and without delaying for any other
86 cause but only after having first obtained the approval of
87 the commissioner therefor, the receiver shall immediately
88 institute all civil actions necessary for the benefit of the
89 depositors and creditors to collect from the stockholders of
90 the financial institution all amounts for which the stockholders
91 are jointly or severally liable to the institution. According to
92 the direction of the commissioner, any such action may be
93 instituted and maintained in the name of the receiver, the
94 financial institution or the commissioner.

95 (e) Before entering upon the discharge of any function
96 under this article, each receiver other than the federal de-
97 posit insurance corporation shall enter into a bond in favor
98 of the state of West Virginia in an amount and penalty
99 fixed by the commissioner, with corporate surety authorized
100 to do business in this state and approved by the commissioner,
101 conditioned upon the faithful discharge of his duties as
102 receiver and upon his fully accounting for and handing over
103 as required by law all properties, moneys, funds and other
104 things that come into the possession or control, or both, of
105 the receiver and his agents, attorneys and other representatives.
106 Such bond and the certificate of appointment shall be recorded
107 in the office of the clerk of the county commission of the
108 county in which the principal office of the financial institu-
109 tion is located.

110 (f) The provisions of section three of this article do not
111 in any way inhibit or proscribe the appointment of a receiver
112 under this section, and, whenever a receiver is appointed under
113 this section, any conservatorship theretofore appointed for
114 the same financial institution shall by operation of law im-
115 mediately terminate.

116 (g) On a temporary emergency basis, when the com-
117 missioner has ascertained that the capital of a financial in-
118 stitution has become substantially impaired and the institution
119 has failed, refused or neglected to make good such impairment
120 to the commissioner's satisfaction or when the commissioner
121 has ascertained that a financial institution is insolvent or
122 reasonably appears about to be insolvent, the commissioner
123 may immediately give written or oral notice of such finding
124 to the involved financial institution and shall immediately
125 thereupon take and retain full and exclusive possession and
126 control of the business and property of the institution and
127 close such institution until a receiver has been appointed for
128 the institution in accordance with the provisions of subsection
129 (a) of this section or until the institution has been permitted
130 by the commissioner to resume its regular business, one or the
131 other of which must be done by the commissioner within
132 thirty days of the actual taking of such possession and
133 control. When the commissioner closes an institution, he
134 shall place an appropriate sign to that effect at the main
135 entrance of the financial institution. Effective as of the
136 closing of the institution a judgment lien, attachment lien
137 or any voluntary or involuntary lien of any kind shall not
138 attach in any way to any asset or other property of the
139 institution and the directors, officers and agents of the
140 institution shall not have any authority to act in any way
141 on behalf of the institution or to convey, transfer, assign,
142 pledge, mortgage or encumber any asset or other property
143 thereof. Any attempt by any director, officer or agent of
144 the financial institution to convey, transfer, assign, pledge,
145 mortgage or encumber or otherwise establish any lien upon
146 any asset or other property of the financial institution
147 or in any manner to prefer any depositor, creditor, shareholder,
148 director, officer, agent or any other person, firm or corpora-
149 tion after the posting of such notice or in contemplation thereof
150 is void.

151 (h) In any case where a financial institution is insolvent
152 or reasonably appears about to be insolvent and where the
153 commissioner has failed, refused or neglected to act under the
154 provisions of this section, any stockholder, depositor or creditor

155 of the financial institution may petition the circuit court of the
156 county in which the principal office of the institution is
157 located to order the commissioner to proceed in accordance
158 with the other pertinent provisions of this section, and the
159 court shall expeditiously hear and decide such matter and
160 assume jurisdiction and render a prompt decision with respect
161 to such matter. Any such petitioner shall give notice of the
162 contents of the petition and day, time and place of the hear-
163 ing by personal service upon the commissioner in the manner
164 prescribed by the West Virginia rules of civil procedure not
165 less than five days before the hearing date. Upon such
166 hearing, if the court finds that the condition of the involved
167 financial institution is that it is insolvent or reasonably
168 appears about to be insolvent and that the commissioner has
169 unreasonably failed, refused or neglected to act thereupon,
170 then the court shall order the commissioner to proceed in
171 accordance with the other pertinent provisions of this section.
172 If the commissioner fails, refuses or neglects to comply
173 with such court order and such order has become final, such
174 failure, refusal or neglect constitutes grounds for the com-
175 missioner's removal from office.

176 (i) Any finding made pursuant to this section by the com-
177 missioner that a financial institution is insolvent or reasonably
178 appears about to be insolvent is conclusive as to all parties
179 affected by such finding, including any court considering the
180 matter.

181 (j) With the consent of the commissioner or by court order,
182 as necessary, a financial institution may voluntarily submit
183 itself to receivership or conservatorship under the provisions
184 of this article.

**§31A-7-5. Provisions applicable to federal deposit insurance corp-
oration only.**

1 (a) The provisions of this section apply only to those
2 cases in which the commissioner has appointed the federal
3 deposit insurance corporation (hereinafter referred to as
4 the "corporation") as receiver for a financial institution.

5 (b) When it has been appointed by the commissioner as
6 the receiver for a financial institution pursuant to the pro-
7 visions of section four of this article, the corporation shall
8 immediately take full and exclusive possession and control
9 of and title to the books, records, papers, moneys, assets,
10 business and all other things of the financial institution.
11 Immediately upon taking charge of the financial institution,
12 the corporation, in conjunction with a representative of the
13 institution designated by the directors thereof, shall make
14 in triplicate a complete inventory of all assets of the institution
15 and an itemized list of all its liabilities. The original and two
16 copies of the list shall be subscribed and sworn to by the per-
17 sons making them. The original shall be filed with the
18 commissioner as soon as practicable. One such copy shall be
19 furnished to the institution, and the other copy shall be re-
20 tained by the corporation. Such title shall pass to and
21 vest in the corporation by operation of law without the
22 execution of any instruments of conveyance, assignment,
23 transfer or endorsement. The commissioner shall file a certi-
24 ficate of the corporation's appointment and acceptance as
25 soon thereafter as possible and have such certificate recorded
26 with the clerk of the county commission of the county in
27 which the principal office of the financial institution is located.
28 There shall not be any bond required of the corporation.
29 Upon the filing of such certificate, the commissioner is for-
30 ever and fully relieved from all responsibility and liability
31 with respect to the affairs of the financial institution.

32 (c) As receiver the corporation may liquidate and other-
33 wise handle the affairs of the financial institution in accordance
34 with this section and the other pertinent provisions of this
35 article and shall have all the powers, duties and authority
36 given a receiver under all pertinent provisions of this article.

37 (d) When the affairs of a financial institution have come
38 under the possession and control of the corporation as
39 receiver for purposes of liquidation, with the consent of
40 the circuit court of the county in which the principal office
41 of the financial institution is located and without approval
42 of the stockholders of the institution, the corporation may sell
43 all or any part of the institution's assets, real and personal, to

44 another financial institution, a national bank, the corporation
45 or any successor institution or the corporation may borrow
46 from itself, to the extent permitted by federal law, any amount
47 necessary to facilitate the assumption of deposit liabilities by
48 a newly chartered or existing financial institution, assigning any
49 part or all of the assets of the financial institution as security
50 for such loan.

51 (e) Whenever the corporation pays or makes available for
52 payment the insured deposit liabilities of a closed financial
53 institution or a financial institution under receivership, the
54 corporation is subrogated to all of the rights of the owners
55 of the deposits against the financial institution in the same
56 manner and to the same extent as subrogation of the corpora-
57 tion is provided for in sections 1811 through 1832, inclusive,
58 of Title XII of the United States Code and all rules and
59 regulations promulgated pursuant thereto.

60 (f) Where the corporation has become receiver of a
61 financial institution and is proceeding under other pertinent
62 provisions of this article, the commissioner does not have
63 any jurisdiction or authority with respect to the corporation and
64 the corporation may resolve all doubts, difficulties and other
65 matters concerning its receivership and obtain all convenient
66 or necessary approvals and other determinations from the
67 circuit court of the county in which the principal office of the
68 financial institution is located.

§31A-7-6. Borrowing powers of receiver.

1 With the written consent of the commissioner, any re-
2 ceiver of a financial institution appointed under the provisions
3 of this article may borrow money from and contract for
4 loans with any finance or lending agency of the United
5 States government or any other responsible agency or person
6 for the purpose of furnishing immediate relief to or aiding in
7 the reorganization, liquidation or reopening of such financial
8 institution, protecting and preserving the assets in charge
9 of the receiver, expediting the making of distributions and the
10 payment of dividends to depositors and other creditors of
11 the institution, providing for the expenses of administration

12 and liquidation or its merger or consolidation with another
13 financial institution, and paying the claims of secured creditors
14 where the security is deemed by the receiver and the com-
15 missioner to be of a value in excess of the debt so secured and
16 to be for the preservation of the assets of such institution; and
17 to pledge, hypothecate, assign or transfer to any such respon-
18 sible agency or person any assets or securities belonging to the
19 institution as collateral security for the payment of all such
20 loans, subject to such reasonable terms and conditions imposed
21 by and agreed upon between the parties.

22 All acts of the receiver or the commissioner under this
23 section are valid, binding and effective to transfer to any
24 such responsible agency or person, and any successors and
25 assigns thereof, assets and securities in accordance with
26 the terms of any such contract of pledge, transfer or assign-
27 ment.

28 The commissioner and receiver are not under any circum-
29 stances under any personal obligation to repay any such
30 loan and may take any action necessary or convenient to
31 consummate such loan and to provide for the repayment
32 thereof and to give bond, with sufficient corporate surety
33 authorized to do business in this state, the amount of bond
34 to be set by and the surety to be approved by the com-
35 missioner, for the faithful performance of all undertakings
36 in connection therewith. The authority herein conferred upon
37 a receiver for the procuring and obtaining of such loans in-
38 cludes the authority to renew them from time to time, with
39 the written consent of the commissioner.

40 An accurate record of all securities and exact copies of
41 all notes withdrawn from the files of the financial institution
42 to be pledged as collateral for borrowed money under the
43 provisions of this section shall be kept in the files of such
44 institution at all times.

**§31A-7-7. Reorganization, purchase, merger or consolidation; con-
version of national bank to state bank.**

1 Subject to the other provisions of this section, in any volun-
2 tary or involuntary proceeding to liquidate a financial insti-

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

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

30 Unless in conflict with a law of the United States of Ameri-
31 ca, at the completion of any purchase, merger or consolidation
32 permitted by this section and whether such financial institu-
33 tion is organized under the laws of this state or of the United
34 States, the purchasing, merged or consolidated institution is
35 substituted by operation of law in the place and stead of each
36 of the participating financial institutions in all fiduciary re-
37 lationships, titles, properties, offices, appointments, rights, pow-
38 ers, duties, obligations and liabilities of each participating fi-
39 nancial institution as trustee, agent, executor, administrator,
40 guardian, depository, registrar, transfer agent or other fidu-
41 ciary and every other capacity, office or position of each of the

42 participating financial institutions is by operation of law vested
43 in and devolved upon the purchasing, merged or consolidated
44 institution. Such purchasing, merged or consolidated institution
45 shall take, receive, accept, hold, administer and discharge all
46 grants, gifts, bequests, devises, conveyances, trusts, powers and
47 appointments made by deed, deed of trust, will, agreement,
48 order of court or otherwise to, in favor of or in the name of
49 any such participating institution, whether made, executed or
50 entered before or after such purchase, merger or consolida-
51 tion and whether to vest or become effective before or after
52 such purchase, merger or consolidation, as fully and to the
53 same effect as if the purchasing, merged or consolidated in-
54 stitution had been named in such deed, deed of trust, will,
55 agreement, order or other instrument instead of such parti-
56 cipating institution. All acts taken or performed in its own
57 name or in the name of or in behalf of any financial institu-
58 tion participating in any such purchase, merger or consoli-
59 dation by any purchasing, merged or consolidated institution
60 as trustee, agent, executor, administrator, guardian, depository,
61 registrar, transfer agent or other fiduciary are as good, valid
62 and effective as if this section had been applicable thereto
63 at the time of such taking or performance.

§31A-7-8. Voluntary liquidation by financial institution.

1 Any financial institution may, after thirty days' notice to
2 the commissioner, cease to transact business and go into volun-
3 tary liquidation and convert its assets into money and pay the
4 money to the persons entitled thereto.

**§31A-7-9. Involuntary liquidation of financial institution after re-
vocation of certificate of authority, permit or license.**

1 If the commissioner revokes the certificate of authority, per-
2 mit or license of any financial institution other than a state
3 bank or if the West Virginia board of banking and financial
4 institutions revokes the certificate, permit or license of a state
5 bank and such financial institution within a reasonable time
6 does not comply with the laws of the state and the requirements
7 of the commissioner or board and thereby fails to secure a new
8 certificate, permit or license to continue in business, the com-
9 missioner shall compel such financial institution to go into

10 liquidation, wind up its affairs and surrender its charter. In any
11 such case, the state attorney general, at the request of the
12 commissioner, shall institute an action in the circuit court of
13 the county in which the principal office of such financial in-
14 stitution is located, in the name of the state of West Virginia,
15 to liquidate, wind up the affairs of and dissolve such financial
16 institution, and such court shall either by itself or through the
17 commissioner or a receiver appointed by the commissioner,
18 fully liquidate, wind up the affairs of and dissolve the financial
19 institution.

§31A-7-10. Executory contracts and leases; assumption or rejection; court approval for assignments.

1 (a) Within the six-month period immediately following the
2 recordation of his certificate of appointment with the county
3 clerk, the receiver may assume or reject any executory contract
4 or any unexpired lease of the involved financial institution.
5 Notice of the receiver's rejection of any such contract or lease
6 shall be given to the other party to such contract or lease not
7 later than fifteen days before the day the termination takes
8 effect. Sufficient notice is given when the other party to
9 the contract or lease or any authorized agent or representative
10 thereof is actually given in person written or oral notice of
11 such rejection or when the receiver has mailed notice of such
12 rejection to the other party at his last known mailing address
13 by certified or registered mail, return receipt requested. As
14 of the date any such termination takes effect, any claim of
15 the other party to the contract or lease is limited to the
16 contract payment or rent accrued up to the time of rejection
17 plus an amount equal to six months of contract payment or
18 rent if such payment or rent would have otherwise been due
19 under the contract or lease had it not been terminated. If
20 the receiver assumes any such contract or lease, he shall do
21 so at the contract or rent amount and upon all terms set
22 forth in the contract or lease and shall cure any default in
23 the contract or lease.

24 (b) With the approval of the circuit court of the county
25 in which the principal office of the involved financial in-
26 stitution is located, the receiver may assign to any new

27 financial institution created to carry on the business of the
28 involved financial institution any executory contract or un-
29 expired lease not in default or the default of which has been
30 cured. In any such case, before the court approves any such
31 assignment, the receiver must prove to the court and the
32 court must find that the proposed assignment involves a risk
33 no greater to the new financial institution than that under-
34 taken by the involved financial institution at the time the
35 contract or lease was originally executed.

36 (c) Notwithstanding any provision in any executory con-
37 tract or unexpired lease to the contrary, an executory contract
38 or unexpired lease of a financial institution for which a receiver
39 has been appointed under the provisions of this article may not
40 be terminated or modified in any way after the appointment
41 of the receiver solely because of a provision in such con-
42 tract or lease that is conditioned upon the appointment of a
43 receiver or conservator for the institution or upon the insol-
44 vency or financial condition of the institution at any time
45 before a distribution of its proceeds pursuant to section twelve
46 of this article.

§31A-7-11. General subrogation rights of federal deposit insurance corporation.

1 In all cases where the federal deposit insurance corporation
2 pays or makes available for payment the insured deposit
3 liabilities of a closed financial institution or a financial in-
4 stitution under receivership, the federal deposit insurance
5 corporation, whether or not it is receiver of such institution,
6 is subrogated to all of the rights of the owners of the de-
7 posits against the financial institution in the same manner
8 and to the same extent as subrogation of the corporation is
9 provided for in sections 1811 through 1832, inclusive, of
10 Title XII of the United States Code in the closing of a national
11 banking association.

§31A-7-12. Payment of expenses and debts; order of priority; rights of secured creditors.

1 (a) Each receiver shall pay the expenses and just debts
2 of the involved financial institution in the manner specified

3 by this section. The receiver shall divide all claims against the
4 institution into the general classes set forth in this section with
5 the highest priority being given to the first listed class and then
6 to each subsequent class as it is ranked. All such payments
7 must be approved by the commissioner and shall be made from
8 the following general classes in accordance with the following
9 order of priority:

10 (1) First, the commissioner's costs of administration, in-
11 cluding, but not limited to, all expenses actually incurred by
12 the receiver in the course of the receivership; all expenses
13 actually incurred by the commissioner pursuant to any pro-
14 vision of this article; all costs actually incurred in the deter-
15 mination of any contested claim or other contested case under
16 this article; the payment of reasonable compensation to any
17 receiver, conservator, hearing examiner, attorney, accountant
18 or other person duly appointed or employed for the purpose of
19 carrying out any provision of this article; and all other expenses
20 expressly authorized by other provisions of this article;

21 (2) Second, wage claims for all wages due and owing
22 employees of the financial institution for the ninety-day
23 period immediately preceding the date of appointment of the
24 receiver up to an amount not to exceed one thousand five
25 hundred dollars per employee;

26 (3) Third, all depositors of the financial institution;

27 (4) Fourth, all state, federal and local taxes due for
28 the period during which the financial institution carried on
29 its business;

30 (5) Fifth, excluding all claims of shareholders of the
31 financial institution, all claims of creditors of the financial in-
32 stitution, whether by contract, judgment or otherwise; and

33 (6) Sixth, all the remaining proceeds to the shareholders
34 of the financial institution.

35 (b) Before the receiver makes any payment under sub-
36 section (a) of this section, he shall receive and approve or
37 reject all claims against the financial institution in the manner
38 provided for in section thirteen of this article. All ap-
39 proved claims shall be paid according to the order of priority

40 set in subsection (a) of this section. With respect to sub-
41 section (a) of this section, payment in full of all costs provided
42 for in subdivision (1) must be made before any payment can
43 be made in any other subdivision; next, payment in full of
44 all wage claims provided for in subdivision (2) must be made
45 before any payment can be made in any following subdivision;
46 next payment in full of all depositors provided for in subdivi-
47 sion (3) must be made before any payment can be made in any
48 following subdivision; next, payment in full of all taxes pro-
49 vided for in subdivision (4) must be made before any payment
50 can be made in any following subdivision; next, all creditors'
51 claims provided for in subdivision (5) must be made before
52 any shareholders can be paid anything; and, last, all remaining
53 proceeds shall be paid to the shareholders. If at any time
54 a situation develops in which proceeds are available to be
55 paid within a particular subdivision but such proceeds are
56 not sufficient to fully pay the creditors in that class, then
57 the receiver shall pay each creditor in that class his pro
58 rata share of the proceeds.

59 (c) The provisions of this section shall not be construed
60 or applied so as to take away or modify in any way the
61 rights of a secured creditor who has properly filed and per-
62 fected a security interest in any property of the financial
63 institution in compliance with other applicable law, except
64 that the receiver may postpone payment of a claim relating
65 thereto to allow for orderly administration.

§31A-7-13. Claims procedure.

1 (a) Within a reasonable time after taking possession and
2 control of the property and business of the financial institu-
3 tion, the receiver shall require all parties who may have
4 claims against the financial institution to present their claims
5 and provide satisfactory proof thereof within such reasonable
6 time, not to be more than sixty days from the date of receipt
7 of any mailed notice and not to be more than sixty days from
8 the date of publication of any published notice, as the re-
9 ceiver specifies.

10 (b) Notice shall be given by mailing to each known stock-
11 holder, depositor, creditor and other possible claimant of the
12 institution at his last known mailing address, as shown on the
13 books of the financial institution, by certified or registered
14 mail, return receipt requested, a written notice form and proof
15 of claim form, each of which shall be prescribed by the com-
16 missioner and must be uniform for all involved parties and
17 must clearly state in plain language that, due to the precarious
18 condition of the financial institution, the receiver has been
19 appointed by the commissioner to preserve and protect the
20 assets thereof and to pay the expenses and just debts thereof
21 and that each involved party must present his claim against
22 the institution along with satisfactory proof thereof, which may
23 be done by returning to the receiver the properly filled out
24 proof of claim form accompanied by a true copy of such proof,
25 within the specified time or he will lose all rights to payment
26 upon the claim. If he does not know the mailing address of
27 an involved party or if any mailed notice is returned unde-
28 liverable, the receiver shall make a reasonably diligent effort to
29 ascertain the mailing address and whereabouts of such party
30 and, if it is ascertained, shall mail the notice form and proof
31 of claim form to such party at such address in the manner
32 herein before provided. If the receiver is not able to ascertain
33 the mailing address and whereabouts of any such party, for
34 each such party, and all heirs and assignees thereof, and also
35 for all unknown and unascertainable parties, and all heirs and
36 assignees thereof, who may have claims against the institution,
37 notice shall be given by publication of the prescribed notice
38 form and proof of claim form as a Class III-O legal advertise-
39 ment in compliance with the provisions of article three, chapter
40 fifty-nine of this code, and the publication area for such
41 publication shall be the county in which the principal office
42 of the involved financial institution is located. Any such legal
43 publication and any mailed notice shall contain such additional
44 information and statements concerning the receivership and
45 the financial institution as the commissioner requires or as the
46 receiver, with the consent of the commissioner, considers
47 necessary or advisable.

48 (c) In the case of all deliverable mailed notices, within sixty
49 days following the date set for submission of such claims and,

50 in the case of all parties for whom notice by publication has
51 been given, within sixty days following the date set for sub-
52 mission of such claims, the receiver shall approve or reject,
53 in whole or in part, the claims submitted to him. Any party
54 not submitting a claim to the receiver within the prescribed
55 time loses all rights to payment upon the claim. The receiver
56 shall notify in writing each party whose claim has been wholly
57 or partly rejected of such rejection and the reasons therefor
58 not later than fifteen days after the rejection. Within ten days
59 after receipt of such rejection notice, such party may contest
60 the rejection and obtain a fair hearing thereupon in the manner
61 provided for in section fourteen of this article. With the consent
62 of the commissioner, the receiver shall pay all valid claims in
63 the manner provided for in this article.

§31A-7-14. Hearings; judicial review.

1 Except to the extent another provision of this article ex-
2 pressly authorizes a person to directly take action in a
3 court of competent jurisdiction, any person who is adversely
4 affected by any whole or partial rejection of a claim provided
5 for in section thirteen of this article or by any other order,
6 demand, action, refusal, failure to act, denial or requirement
7 of the receiver under the provisions of this article for the
8 financial institution with which such person is involved and
9 any person who is adversely affected by any order, demand,
10 action, refusal, failure to act, denial or requirement of the
11 commissioner (other than the promulgation of any rules and
12 regulations, which shall be done in accordance with the perti-
13 nent provisions of chapter twenty-nine-a of this code) under
14 the provisions of this article is entitled to a hearing thereupon
15 before a hearing examiner appointed by the commissioner
16 for such purpose. Any such hearing shall be conducted and
17 decided by the hearing examiner in the time and manner
18 provided for the hearing of contested cases in article five,
19 chapter twenty-nine-a of this code, and judicial review of the
20 hearing examiner's decision may be had in the time and
21 manner provided for judicial review of contested cases in
22 section four of said article five and in article six of said

23 chapter twenty-nine-a. Each hearing examiner appointed
24 under this section shall be qualified to act as such by reason
25 of his training, education or experience, but a stockholder,
26 creditor, depositor or other person affiliated in any way,
27 directly or indirectly, with the involved financial institution
28 may not be a hearing examiner. All costs and expenses of
29 any such hearing and any judicial review thereof shall be paid
30 as part of the expenses of administration of a receivership
31 as provided for in section twelve of this article.

§31A-7-15. Exclusivity of powers and procedures of article.

1 The provisions of this article provide full and exclusive
2 powers and procedures for the conservatorship, receivership
3 and liquidation of a financial institution, and a receiver or
4 conservator for a financial institution shall not under any
5 circumstances be appointed nor shall a conservatorship, re-
6 ceivership or liquidation of a financial institution under any
7 circumstances be conducted except in the manner provided
8 for in this article.

CHAPTER 40

(S. B. 191—By Mr. Palumbo and Mr. Rogers)

[Passed April 10, 1981; in effect from passage. Approved by the Governor.]

AN ACT to repeal section fourteen, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article six, chapter thirty-one of said code by adding thereto a new section, designated section forty-four; to amend and reenact section ten, article seven and section four, article ten, both of said chapter thirty-one; and to amend article four of said chapter thirty-one-a by adding thereto a new section, designated section forty-three, all relating to allowing building and loan associations, industrial banks, credit unions and banking institutions to permit the owner of a deposit, share or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of

making transfers to third parties if such deposit, share or account consists solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational or similar purposes and which is not operated for a profit.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31. Corporations.

31A. Banks and Banking.

CHAPTER 31. CORPORATIONS.

Article

6. Building and Loan Associations.

7. Industrial Banks and Industrial Loan Companies.

10. Credit Unions.

ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.

§31-6-44. Negotiable order of withdrawal accounts allowed.

1 Building and loan associations may permit the owner of a
 2 deposit or account on which interest or dividends are paid to
 3 make withdrawals by negotiable or transferable instruments
 4 for the purpose of making transfers to third parties if such
 5 deposit or account consists solely of funds in which the entire
 6 beneficial interest is held by one or more individuals or by an
 7 organization which is operated primarily for religious,
 8 philanthropic, charitable, educational or similar purposes
 9 and which is not operated for a profit.

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-10. Powers of industrial banks; limitation of powers.

1 (a) The provisions of sections thirteen and fourteen, article

2 four, chapter thirty-one-a to the contrary notwithstanding,
3 and subject to the provisions of subsection (b) of this section,
4 in addition to the general powers conferred upon
5 corporations by the laws of this state and subject to the
6 restrictions, rules and regulations of the federal deposit
7 insurance corporation and the provisions of chapter sixteen,
8 Title 12 of the United States Code, each industrial bank
9 organized pursuant to this article shall have power to exercise
10 by its board of directors or duly authorized officers or agents
11 only those powers conferred upon industrial loan companies
12 under the provisions of section eleven of this article and in
13 addition thereto shall have the power to receive deposits from
14 the general public only as long as such deposits are insured
15 by the federal deposit insurance corporation, but shall not be
16 depositories of funds from the government of the United
17 States or from any of its agencies or political subdivisions or
18 from the state of West Virginia or from any of its agencies or
19 political subdivisions or from any other governmental
20 agency. An industrial bank may permit the owner of a deposit
21 or account on which interest or dividends are paid to make
22 withdrawals by negotiable or transferable instruments for the
23 purpose of making transfers to third parties if such deposit or
24 account consists solely of funds in which the entire beneficial
25 interest is held by one or more individuals or by an
26 organization which is operated primarily for religious,
27 philanthropic, charitable, educational or similar purposes
28 and which is not operated for a profit.

29 (b) Notwithstanding the provisions of subsection (a) of
30 this section, an industrial bank under the provisions of this
31 article shall not:

32 (1) Make any loan under the provisions of this article for a
33 longer period than two years from the date thereof, except
34 upon express authorization of the board of directors of such
35 industrial bank;

36 (2) Hold at any one time the primary obligation or
37 obligations of any one person, firm or corporation, for more
38 than ten percent of the amount of the paid-up capital and
39 surplus of such industrial bank;

40 (3) Hold at any one time the obligation or obligations of
41 persons, firms or corporations purchased from any person,

42 firm or corporation in excess of twenty percent of the
43 aggregate paid-up capital and surplus of such industrial
44 bank;

45 (4) Make any loan or discount on the security of its own
46 capital stock unless such security or purchase shall be
47 necessary to prevent loss upon a debt previously contracted
48 in good faith. Stock so purchased or acquired shall be sold at
49 public or private sale or otherwise disposed of within ninety
50 days from the time of its purchase or acquisition;

51 (5) Have deposited with it deposits in an aggregate sum in
52 excess of ten times the aggregate amount of its paid-up
53 capital and surplus;

54 (6) Deposit any of its funds except with a national or state
55 bank doing business in this state or with solvent banking
56 institutions in other states which are federally insured;

57 (7) Pledge or hypothecate any of its securities or notes
58 owned by it to any of its creditors except in the same manner
59 as other banking institutions are permitted to do so under
60 either the provisions of chapter thirty-one-a of this code, the
61 rules and regulations of the commissioner of banking or the
62 rules and regulations of the federal deposit insurance
63 corporation and the provisions of chapter sixteen, Title 12 of
64 the United States Code;

65 (8) Pay any fees, bonuses, commissions, rewards, or other
66 consideration to any person, firm or corporation for the
67 privilege of using any plan of operation, scheme or device for
68 the organization or carrying on of business under this article,
69 or the use of any name, trademark or copyright to be so used;
70 nor shall any industrial bank organized under this article
71 enter into any contract for such purpose or purposes, or for
72 the purpose of giving to or vesting in any other corporation
73 any power or authority over the organization or management
74 of such industrial bank organized under this article;

75 (9) Pay greater rates of interest on its deposits than are
76 permitted to be paid by other banking institutions;

77 (10) Sell or offer for sale evidences or certificates of
78 indebtedness; or

79 (11) Receive checking accounts or demand deposits.

ARTICLE 10. CREDIT UNIONS.**§31-10-4. Powers.**

1 A credit union shall have the following powers:

2 (a) To receive the savings of its members either as
3 payment on shares, or as deposits (including the right to
4 conduct Christmas clubs, vacation clubs and other such thrift
5 organizations within the membership);

6 (b) To make loans to members for provident or productive
7 purposes;

8 (c) To make loans to cooperative society or other
9 organization having membership in the credit union;

10 (d) To deposit funds in state and national banks;

11 (e) To invest in any investment legal for savings banks;

12 (f) To borrow money as hereinafter indicated;

13 (g) To permit the owner of a share or deposit to make
14 withdrawals by negotiable or transferable instruments or
15 other orders for the purpose of making transfers to third
16 parties if such share or deposit is one in which the entire
17 beneficial interest is held by one or more individuals or
18 members or by an organization which is operated primarily
19 for religious, philanthropic, charitable, educational or other
20 similar purposes and which is not operated for profit.

CHAPTER 31A. BANKS AND BANKING.**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.****§31A-4-43. Negotiable order of withdrawal accounts allowed.**

1 A banking institution may permit the owner of a deposit or
2 account on which interest or dividends are paid to make
3 withdrawals by negotiable or transferable instruments for the
4 purpose of making transfers to third parties if such deposit or
5 account consists solely of funds in which the entire beneficial
6 interest is held by one or more individuals or by an
7 organization which is operated primarily for religious,
8 philanthropic, charitable, educational or similar purposes
9 and which is not operated for a profit.

CHAPTER 41

(S. B. 25—By Mr. Steptoe)

[Passed March 25, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fifteen-b, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections fifteen and sixteen of said article sixteen, all relating to nonintoxicating beer and abolishing the concurrent jurisdiction of courts of record to revoke or suspend beer licenses.

Be it enacted by the Legislature of West Virginia:

That section fifteen-b, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections fifteen and sixteen of said article sixteen be amended and reenacted, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-15. Revocation or suspension of license.

§11-16-16. Reissuance of license after revocation.

§11-16-15. Revocation or suspension of license.

1 The commissioner may revoke, or suspend, the license
2 of any licensee:

3 (a) For any of the reasons and upon any grounds de-
4 clared to be unlawful by section thirteen of this article;
5 or

6 (b) For any reason or ground upon which a license
7 might have been refused in the first instance had the
8 facts at the time of the issuance of such license been
9 known to the commissioner; or

10 (c) For the violation of any rule, regulation or order
11 promulgated by the commissioner under authority of this
12 article.

13 In addition to the grounds for revocation or suspension
14 of a license above set forth, conviction of the licensee of

15 any offense constituting a violation of the laws of this
16 state or of the United States relating to nonintoxicating
17 beer or alcoholic liquor shall be mandatory grounds for
18 revocation or suspension of a license.

§11-16-16. Reissuance of license after revocation.

1 No license shall be issued to any person who has for-
2 merly held a license, under the provisions of this article,
3 which has been revoked by the commissioner, within a
4 period of two years from the date of such revocation;
5 nor shall any license be issued hereunder to any person
6 who was an officer or stockholder of a corporation whose
7 license was revoked as aforesaid, nor to any person who
8 was a member of a partnership or association whose
9 license was revoked as aforesaid, nor to the wife or hus-
10 band of any person whose license was revoked as afore-
11 said, within said period of two years from the date of rev-
12 ocation; nor shall any license be issued to any corporation
13 having a stockholder or director who has had a license
14 revoked as aforesaid, within said period of two years from
15 the date of the revocation of such person's license.

CHAPTER 42

(Com. Sub. for H. B. 1179—By Mr. Brenda and Mr. Gvoyich)

[Passed April 11, 1981; in effect August 15, 1981. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty, relating to the regulation of trade and the holding of bingo games by licensed charitable or public service organizations; establishing a legislative intent; defining terms; providing for applications for bingo licenses and qualifications of applicants; providing for annual, limited occasion, and state fair bingo licenses; providing for collection and application of certain fees; establishing exemption from certain imposition of certain taxes and fees; specifying information to be included in application; providing

for amendment of license under specified circumstances; permitting licensee to adopt rules and regulations governing conduct of games; limiting prizes to be awarded; providing for certain bingo game operator or concessionaire requirements; providing for exceptions to concessionaire requirements; establishing limitations on payment of rent for premises for conduct of bingo; providing for a limit upon bingo expenses payable from gross receipts; providing limitations on dispersement of proceeds and time period for said dispersement; allowing for changes in dispersement and extension of such time period; prohibiting payment from gross receipts of certain expenses; allowing only certain individuals to conduct games; prohibiting payment of compensation for conducting games; requiring the keeping of records for a three-year period; permitting audit of records; permitting advertisement of bingo occasions; requiring the filing of financial reports by licensee; declaring proceeds accruing to state fair board to be for charitable or public service purposes; empowering state fair board to promulgate rules and regulations for the conduct of bingo games at the state fair; exempting state fair bingo licensee from certain provisions; requiring filing of copy of licenses with county commission and making license application available for public inspection; providing for administration of article by tax commissioner; establishing provisions for suspension, denial, revocation of or refusal to renew license by commissioner in accordance with chapter twenty-nine-a of this code, including emergency suspension; requiring commissioner to promulgate rules and regulations; establishing procedure for and effect of local option election; prohibiting certain acts by convicted persons; establishing requirements concerning use of bingo equipment; establishing effective date of article; providing for severability of any provision declared invalid; and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. CHARITABLE BINGO.

- §47-20-1. Legislative intent.
- §47-20-2. Definitions.
- §47-20-3. Who may hold bingo games; application for license; licenses not transferable.
- §47-20-4. Annual license; conditions on holding of games.
- §47-20-5. Limited occasion license; conditions on holding of games.
- §47-20-6. License fee and exemption from taxes.
- §47-20-7. Information required in application.
- §47-20-8. Amendment of license.
- §47-20-9. Licensee rules and regulations.
- §47-20-10. Limits on prizes awarded.
- §47-20-11. Operator of bingo games and related concessions.
- §47-20-12. Compensation.
- §47-20-13. Concessions exception.
- §47-20-14. Rent or other fee for use of premises; rent or other fee received by licensee prohibited; reimbursement of expenses.
- §47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.
- §47-20-16. Records; commissioner audit.
- §47-20-17. Advertising.
- §47-20-18. Fraud; penalties.
- §47-20-19. Obtaining license fraudulently; penalty.
- §47-20-20. Violation of provisions; penalties.
- §47-20-21. Proceeds of state fair.
- §47-20-22. State fair bingo license; rules and regulations.
- §47-20-23. Administration; rules and regulations.
- §47-20-24. Filing of reports.
- §47-20-25. Filing of copy of license; application open to public inspection.
- §47-20-26. County option election.
- §47-20-27. Prohibited acts by convicted individuals and corporations.
- §47-20-28. Restrictions on use of bingo equipment.
- §47-20-29. Effective date.
- §47-20-30. Severability.

§47-20-1. Legislative intent.

- 1 The Legislature, in recognition of the recreational enjoyment
- 2 the people of West Virginia receive from playing bingo and
- 3 of the need charitable and public service organizations have for

- 4 a practicable way of raising funds, declares its intent to grant
- 5 the privilege of holding bingo games to those organizations
- 6 which qualify for a license as provided below.

§47-20-2. Definitions.

1 For purposes of this article, unless specified otherwise:

2 (a) "Bingo" means the game wherein participants pay
3 consideration for the use of one or more cards bearing several
4 rows of numbers no two of which cards played in any one
5 game contain the same sequence or pattern. When the game
6 commences, numbers are selected by chance, one by one, and
7 announced. The players cover or mark those numbers an-
8 nounced as they appear on the card or cards which they are
9 using. The player who first announces that he has covered a
10 predetermined sequence or pattern which had been prean-
11 nounced for that game is, upon verification of such, declared
12 the winner of that game.

13 (b) "Bingo occasion" or "occasion" means a single gather-
14 ing or session at which a series of one or more successive bingo
15 games is played.

16 (c) "Charitable or public service activity or endeavor"
17 means any bona fide activity or endeavor which directly
18 benefits a number of people by:

19 (1) Assisting them to establish themselves in life as con-
20 tributing members of society through education or religion; or

21 (2) Relieving them from disease, distress, suffering, con-
22 straint, or the effects of poverty; or

23 (3) Increasing their comprehension of and devotion to
24 the principles upon which this nation was founded and to the
25 principles of good citizenship; or

26 (4) Making them aware of or educating them about issues
27 of public concern so long as the activity or endeavor is not
28 aimed at influencing legislation or supporting or participat-
29 ing in the campaign of any candidate for public office; or

30 (5) By lessening the burdens borne by government or volun-
31 tarily supporting, augmenting or supplementing services which
32 government would normally render to the people; or

33 (6) Providing or supporting nonprofit community activities
34 for youth, senior citizens or the disabled; or

35 (7) Providing or supporting nonprofit cultural or artistic
36 activities.

37 (d) "Charitable or public service organization" means a
38 bona fide, not for profit, tax-exempt, benevolent, educational,
39 philanthropic, humane, patriotic, civic, religious, fraternal, or
40 eleemosynary incorporated or unincorporated association or
41 organization; or a volunteer fire department, rescue unit or
42 other similar volunteer community service organization or
43 association; but does not include any nonprofit association
44 or organization, whether incorporated or not, which is organ-
45 ized primarily for the purposes of influencing legislation or
46 supporting or promoting the campaign of any candidate for
47 public office.

48 An organization or association is tax-exempt if it is, and
49 has received from the Internal Revenue Service a determination
50 letter that is currently in effect stating that the organization
51 is, exempt from federal income taxation under subsection
52 501(a) and described in subsection 501(c)(3), 501(c)(4),
53 501(c)(8), 501(c)(10), 501(c)(19) or 501(d) of the In-
54 ternal Revenue Code.

55 (e) "Commissioner" means the state tax commissioner.

56 (f) "Concession" means any stand, booth, cart, counter or
57 other facility, whether stationary or movable, where beverages,
58 both alcoholic and nonalcoholic, food, snacks, cigarettes or
59 other tobacco products, newspapers, souvenirs or any other
60 items are sold to patrons by an individual operating the
61 facility. Notwithstanding anything contained in subdivision
62 (2), subsection (a), section twelve, article seven, chapter
63 sixty of this code to the contrary, "concession" includes
64 beverages which are regulated by and shall be subject to the
65 provisions of chapter sixty of this code: *Provided*, That in
66 no case may the sale or the consumption of alcoholic bever-
67 ages or nonintoxicating beer be permitted in any area where
68 bingo is being played.

69 (g) "Conduct" means to direct the actual playing of a bingo

70 game by activities including, but not limited to, handing
71 out bingo cards, collecting fees, drawing the numbers, an-
72 nouncing the numbers, posting the numbers, verifying winners
73 and awarding prizes.

74 (h) "Expend net proceeds for charitable or public service
75 purposes" means to devote the net proceeds of a bingo oc-
76 casion or occasions to a qualified recipient organization or as
77 otherwise provided by this article and approved by the com-
78 missioner pursuant to section fifteen of this article.

79 (i) "Licensee" means any organization or association
80 granted an annual, limited occasion or state fair bingo license
81 pursuant to the provisions of this article.

82 (j) "Net proceeds" means the proceeds from all the bingo
83 occasions held by a licensee during a license period after pay-
84 ment of expenses authorized by sections ten, thirteen, fifteen
85 and twenty-two of this article.

86 (k) "Person" means any individual, association, society,
87 incorporated or unincorporated organization, firm, partnership
88 or other nongovernmental entity or institution.

89 (l) "Patron" means any individual who attends a bingo
90 occasion other than an individual who is participating in
91 the conduct of the occasion or in the operation of any con-
92 cession, whether or not the individual is charged an entrance
93 fee or plays any bingo games.

94 (m) "Qualified recipient organization" means any bona
95 fide, not for profit, tax-exempt, as defined in subdivision (d)
96 of this section, incorporated or unincorporated association
97 or organization which is organized and functions exclusively
98 to directly benefit a number of people as provided in sub-
99 paragraphs (1) through (7), subdivision (c) of this section.
100 "Qualified recipient organization" includes without limitation
101 any licensee which is organized and functions exclusively as
102 provided in this subdivision.

**§47-20-3. Who may hold bingo games; application for license;
licenses not transferable.**

1 Any charitable or public service organization which has

2 been in existence in this state two years prior to filing an
3 application for a bingo license issued pursuant to section
4 four or five of this article may hold bingo occasions in
5 accordance with the provisions of this article during such
6 time as it holds a valid license.

7 Application for a bingo license shall be made to the tax
8 commissioner and shall be on a form which shall be supplied
9 by him. The application shall contain the information required
10 by section seven of this article and any other information
11 which the commissioner considers necessary. An application
12 shall be filed not less than sixty days before the date when the
13 applicant intends to hold its first bingo occasion: *Provided,*
14 That for the first six months after the effective date of this
15 article, an application for an annual or limited occasion license
16 shall be filed not less than ninety days before such date, and
17 an application for a state fair bingo license shall be filed
18 not less than thirty days before such date. An application
19 which is not denied within thirty days after filing is con-
20 sidered approved and the commissioner shall, within five
21 days after the expiration of the said thirty days, send to the
22 applicant its license: *Provided,* That for the first six months
23 after the effective date of this article, an application which
24 is not denied within sixty days after filing is considered ap-
25 proved and the commissioner shall, within ten days after
26 expiration of the said sixty days, send to the applicant its
27 license.

28 For purposes of this article, any application for an annual
29 license or a limited occasion license received prior to the
30 effective date of this article is considered filed on said effective
31 date and any application for a state fair bingo license is
32 considered filed on the date of its receipt by the tax commis-
33 sioner.

34 No bingo license issued pursuant to this article may be
35 transferred.

§47-20-4. Annual license; conditions on holding of games.

1 A charitable or public service organization or any of its
2 auxiliaries or other organizations otherwise affiliated with it

3 may apply for an annual license. Only one license per year
4 in the aggregate may be granted to a charitable or public
5 service organization and all of its auxiliaries or other associa-
6 tions or organizations otherwise affiliated with it: *Provided,*
7 That for purposes of this section the various branches, chap-
8 ters or lodges of any national association or organization
9 or local churches of a nationally organized church are not
10 considered affiliates or auxiliaries of each other. The com-
11 missioner shall by regulation provide for the manner for
12 determining to which organization, whether the parent organi-
13 zation, an affiliate or an auxiliary, the one license allowed
14 under this section is granted. An annual license is valid for
15 one year from the date of issuance and entitles only the
16 licensee to hold no more than two bingo occasions per week.
17 No two or more organizations may hold a joint bingo occasion
18 under any annual licenses. No bingo occasion held pursuant to
19 an annual license may exceed six hours duration.

20 A licensee shall display its annual bingo license con-
21 spicuously at the location where the bingo occasion is held.

22 All bingo occasions shall be open to the general public.
23 No person under eighteen years of age may participate as a
24 player in any bingo game.

§47-20-5. Limited occasion license; conditions on holding of games.

1 A limited occasion license is valid only for the time
2 period specified in the application and entitles only the
3 licensee to hold a bingo occasion once every twenty-four
4 hours for a time period not to exceed two weeks. Two or
5 more organizations may hold a joint bingo occasion provided
6 each participating organization has been granted a limited
7 occasion bingo license for such jointly held occasion. No
8 bingo occasion held pursuant to a limited occasion license
9 may exceed twelve hours in duration. Each charitable or
10 public service organization which desires to hold bingo
11 occasions pursuant to this section, or any of its auxiliaries or
12 other organizations otherwise affiliated with it shall obtain a
13 limited occasion license notwithstanding the fact that it holds
14 a valid annual license: *Provided,* That no licensee which holds
15 an annual license may obtain more than one limited occasion
16 license.

17 Only three limited occasion licenses per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it, none of which hold an annual license. For purposes of this section the various branches, chapters or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by regulation provide the manner for determining to which organization, whether the parent organization, an affiliate or an auxiliary, the three licenses allowed under this section are granted.

29 A licensee shall display its limited occasion license conspicuously at the location where the bingo occasion is held.

31 All bingo occasions shall be open to the general public. No person under eighteen years of age may participate as a player in any bingo games.

§47-20-6. License fee and exemption from taxes.

1 (a) A license fee shall be paid to the tax commissioner
2 for annual licenses in the amount of one hundred
3 dollars, except that for bona fide senior citizen organizations the
4 fee is fifty dollars. A license fee shall be paid to the tax
5 commissioner for a limited occasion license in the amount of
6 twenty-five dollars. A license fee of four thousand dollars
7 shall be paid to the tax commissioner for a state fair license
8 as provided in section twenty-two of this article. The license
9 fee imposed by this section is in lieu of all other license or
10 franchise taxes or fees of this state, and no county or municipality
11 or other political subdivision of this state is empowered
12 to impose a license or franchise tax or fee.

13 (b) The gross proceeds derived from the conduct of a
14 bingo occasion are exempt from state and local business and
15 occupation taxes, income taxes, excise taxes and all special
16 taxes. The licensee is exempt from payment of consumers
17 sales and service taxes and use taxes on all purchases for
18 use or consumption in the conduct of a bingo occasion and is
19 exempt from collecting consumers sales taxes on any admission
20 fees and sales of bingo cards: *Provided*, That the exemp-

21 tion provided in this subsection does not apply to state fair
22 bingo proceeds.

§47-20-7. Information required in application.

1 An application for a bingo license shall include the
2 following information:

3 (a) Name of the applicant and name and headquarter's
4 address of any state or national organization of which it is
5 a local branch or lodge;

6 (b) The address and telephone number of the applicant
7 organization, if any. If the applicant organization has no tele-
8 phone, then the address and telephone number of the person
9 applying on behalf of such organization shall be supplied;

10 (c) For a limited occasion license, the names and addresses
11 of two or more bona fide active members of the applicant or-
12 ganization who are charged with overall responsibility for the
13 applicant's bingo operations, at least one of whom shall be pre-
14 sent at all times bingo is conducted; and the names and
15 addresses of the highest elected officer of the licensee and
16 his officially appointed designee, one of whom shall be
17 present at all times bingo is conducted; for an annual license,
18 the names, addresses and telephone numbers of three or more
19 bona fide active members of the applicant organization who
20 are charged with overall responsibility for the applicant's bingo
21 operations, at least one of whom shall be present at all times
22 bingo is conducted; and the names and addresses and tele-
23 phone numbers of the highest elected officer of the licensee
24 and his officially appointed designee, one of whom shall be
25 present at all times bingo is conducted;

26 (d) The address or location of the premises where licensed
27 bingo games are to be held;

28 (e) Information as may be required by the commissioner
29 to satisfy him that the applicant meets the requirements of:

30 (1) Being a charitable or public service organization as
31 required by this article; and

32 (2) Being in existence in this state two years prior to
33 filing an application for a bingo license;

34 (f) The day or days of the week, and the time or times
35 when the bingo occasions will be held;

36 (g) The name of the owner of the premises where the
37 bingo occasions are to be held and a copy of all rental
38 agreements involved if leased or subleased by the applicant
39 from the owner or lessee;

40 (h) A statement as to whether the applicant has ever had
41 a previous application for any bingo license refused, or
42 whether any previous license has been revoked or suspended;

43 (i) A statement of the charitable or public service purpose
44 or purposes for which the bingo proceeds will be expended;

45 (j) A statement or statements to the effect that the in-
46 dividuals specified in subdivision (c) of this section and
47 the officers of the applicant understand:

48 (1) That it is a violation of this article to allow any
49 persons other than those authorized by this article to con-
50 duct any part of the bingo games or concessions operated in
51 conjunction therewith;

52 (2) That it is required to file the reports and keep the
53 records as provided by this article; and

54 (3) That it is a crime to violate the provisions of this
55 article and, in addition, that a violation may result in sus-
56 pension or revocation of its license and denial of applications
57 for subsequent licenses;

58 (k) A sworn statement by an authorized representative of
59 the applicant that the information contained in the application
60 is true to the best of his knowledge;

61 (l) A list and description of estimated expenses to be
62 incurred in connection with the holding of the bingo oc-
63 casions and any concessions operated and the name and
64 address of each payee. If a concession is operated in accord-
65 ance with the provisions of section thirteen of this article, a
66 copy of any written agreement or an explanation of any
67 oral agreement providing for any type of remuneration to
68 be received by the concession operator shall be attached to
69 the application;

70 (m) A list of the names and addresses of all officers and
71 members of the board of directors, governors or trustees,
72 if any, of the applicant organization; and

73 (n) Any other necessary and reasonable information which
74 the commissioner may require.

§47-20-8. Amendment of license.

1 If circumstances beyond the control of the licensee organi-
2 zation prohibit it from holding any bingo occasion in accord-
3 ance with the information provided by it in its license appli-
4 cation form, the licensee organization may request approval
5 by the commissioner to:

6 (a) Modify the holding of one or more bingo occasions
7 held pursuant to an annual license if the changes are tempo-
8 rary; or

9 (b) Modify the holding of one or more bingo occasions
10 held pursuant to a limited occasion license if the changes
11 affect fewer than one-third the occasions to be held under
12 the license; or

13 (c) Amend its original license if the changes to the holding
14 of occasions pursuant to an annual license are permanent or
15 if the changes affect one third or more of the occasions to be
16 held under a limited occasion license.

§47-20-9. Licensee rules and regulations.

1 Each licensee may adopt rules and regulations, not incon-
2 sistent with or in violation of the provisions of this article, or
3 rules or regulations promulgated hereunder, to govern the
4 conduct of bingo occasions, except that no licensee may allow
5 an individual not present to play any bingo games.

6 Any rules and regulations adopted by the licensee shall
7 be made available for inspection at all bingo occasions held.
8 Any such rules and regulations adopted are a part of the
9 records required to be kept by section sixteen of this article.

§47-20-10. Limits on prizes awarded.

1 Except as provided otherwise in section twenty-two of this
2 article, the total prizes awarded by a licensee during the period

3 of a license may not exceed in value twenty-five percent of the
4 gross proceeds collected during said period or one hundred
5 thousand dollars, whichever amount shall be less. The
6 total prizes awarded by a licensee, or in the aggregate by
7 two or more limited occasion licensees holding a joint
8 bingo game, for any bingo occasion held pursuant to an
9 annual or limited occasion license may not exceed in value
10 one thousand dollars. Prizes may be money or merchandise
11 other than beer, nonintoxicating beer, wine, spirits or alcoholic
12 liquor as defined in section five, article one, chapter sixty
13 of this code. If the prizes are merchandise, the value assigned
14 to them is their fair market value at the time they are won.

§47-20-11. Operator of bingo games and related concessions.

1 Except as provided in sections thirteen and twenty-two of
2 this article, only individuals who are active members of the
3 licensee organization or its authorized auxiliary organization
4 may participate in any manner in the conduct of any bingo
5 game or operate any concession in conjunction with a bingo
6 occasion: *Provided*, That notwithstanding anything contained
7 in this article to the contrary, no individual under the age of
8 eighteen years may directly or indirectly participate in the con-
9 duct of a bingo game.

§47-20-12. Compensation.

1 Except as provided otherwise in sections thirteen and
2 twenty-two of this article, no individual who participates in
3 any manner in the conduct of a bingo occasion or the opera-
4 tion of a concession in conjunction with a bingo occasion may
5 receive or accept any commission, wage, salary, reward, tip,
6 donation, gratuity or other form of compensation or remun-
7 eration whether directly or indirectly, regardless of the source,
8 for his work, labor or services.

§47-20-13. Concessions exception.

1 A licensee may allow any individual, firm, partnership or
2 corporation to operate concessions in conjunction with bingo
3 occasions, and to be compensated for such operation, in ac-
4 cordance with the following provisions:

5 (a) The licensee organization is one which meets or holds
6 functions other than bingo occasions on a regular basis; and

7 (b) The concession to be operated at the bingo occasion is
8 operated regularly at such meetings or functions; and

9 (c) The individual, firm or corporation which operates the
10 concession at such regular meetings or functions is the same
11 which operates the concession at the bingo occasion; and

12 (d) The terms of the agreement under which the individual,
13 firm, partnership or corporation operates the concession at
14 the bingo occasion are the same terms under which the
15 concession is operated at the regular meetings or functions:
16 *Provided*, That a copy of such agreement is filed at the time
17 the application is made and any changes thereto are filed
18 within ten days of being made.

19 In addition, any charitable or public service organization
20 as defined by section two of this article may operate a conces-
21 sion at any bingo occasions held by a licensee provided
22 that the net proceeds it receives from that concession are
23 used solely for the charitable or public service purposes of
24 that organization.

**§47-20-14. Rent or other fee for use of premises; rent or other fee
received by licensee prohibited; reimbursement of
expenses.**

1 (a) No owner or lessee, including his agent, of premises
2 on which bingo occasions are held by one or more licensees
3 holding annual bingo licenses may receive rent or other fee
4 in any amount for the holding of more than two bingo
5 occasions per week on his premises. No owner or lessee,
6 including his agent, of premises on which bingo occasions
7 are held by one or more licensees holding limited occasion
8 licenses may receive rent or other fee in any amount for the
9 holding of more than forty-two bingo occasions per year on
10 his premises: *Provided, however*, That the total number of
11 bingo occasions for which any owner or lessee, including his
12 agent, may receive rent or other fee in any one year may
13 not exceed one hundred and four.

14 (b) No licensee may receive, either directly or indirectly,

15 rent or other fee in any amount for permitting its premises
16 to be used by any person, including any auxiliaries or other
17 organizations or entities otherwise associated with the licensee,
18 to hold a bingo occasion.

19 (c) Nothing in this section may prevent such owners,
20 lessees or licensees from being reimbursed, by any licensee
21 who does not pay rent or other fee to use the premises to
22 conduct a bingo occasion, for the reasonable, necessary and
23 actual expenses incurred by such use, not to exceed fifty
24 dollars.

§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

1 (a) The reasonable, necessary and actual expenses incurred
2 in connection with the holding of bingo occasions, not to
3 exceed ten percent of the gross receipts collected during a
4 license period, may be paid out of the proceeds of the conduct
5 of bingo, including, but not limited to:

6 (1) Rent paid for the use of the premises, provided that
7 a copy of the rental agreement was filed with the bingo license
8 application and any changes thereto were filed within ten days
9 of being made;

10 (2) The cost of custodial services;

11 (3) The cost to the licensee organization for equipment and
12 supplies used to hold the bingo occasion;

13 (4) The cost to the licensee organization for advertising
14 the bingo occasion; and

15 (5) The cost of hiring security personnel.

16 (b) The actual cost to the licensee for prizes, not to exceed
17 the amounts as specified in section ten of this article, may be
18 paid out of the proceeds of the conduct of bingo.

19 (c) The cost of any refreshments, souvenirs or any
20 other item sold or otherwise provided through any concession
21 to the patrons may not be paid for out of the proceeds from
22 the bingo occasion. The licensee shall expend all net bingo
23 proceeds and any interest earned thereon for the charitable

24 or public service purposes stated in the application within
25 one year after the expiration of the license under which the
26 bingo occasions were held. A licensee which does not qualify
27 as a qualified recipient organization may apply to the com-
28 missioner at the time it applies for a bingo license or as pro-
29 vided in subsection (e) of this section for permission to apply
30 any or all of its net bingo proceeds to directly support a
31 charitable or public service activity or endeavor which it
32 sponsors.

33 (d) No proceeds from any bingo operation may be devoted
34 or in any manner used by any licensee or qualified recipient
35 organization for the construction, acquisition, improvement,
36 maintenance or repair of real or personal property except
37 that which is used exclusively for one or more charitable or
38 public service purposes or as provided in subdivision (3),
39 subsection (a) of this section.

40 (e) Any licensee which, in good faith, finds itself unable
41 to comply with the requirements of this provision shall apply
42 to the commissioner for permission to expend its net proceeds
43 for one or more charitable or public service purposes other
44 than that stated in its license application or for permission
45 to expend its net proceeds later than the one-year time period
46 specified in this section. The application shall be on a form
47 furnished by the commissioner and shall include the par-
48 ticulars of the requested changes and the reasons for the
49 changes. The application shall be filed no later than sixty
50 days before the end of the one-year period specified in this
51 section. In the case of an application to extend the time in
52 which the net proceeds are to be expended for a charitable or
53 public service purpose, the licensee shall file such periodic
54 reports with the commissioner as the commissioner directs
55 until the proceeds are so expended.

§47-20-16. Records; commissioner audit.

1 Any licensee which holds a bingo occasion as provided by
2 this article shall maintain a separate account and separate
3 bookkeeping procedure for its bingo operations. All records
4 required by this article shall be maintained for at least
5 three years and shall be open to the commissioner for rea-

6 sonable inspection. Whenever the commissioner has reason-
7 able cause to believe a licensee has violated any of the pro-
8 visions of this article, he may perform or cause to be per-
9 formed an audit of the licensee's books and records.

§47-20-17. Advertising.

1 A licensee may advertise its bingo occasions in a manner
2 reasonably necessary to promote the occasion.

§47-20-18. Fraud; penalties.

1 In addition to any other offense set forth in this code,
2 any person who or licensee which knowingly conducts or
3 participates in a fraudulently or deceptively conducted bingo
4 game with intent to defraud is guilty of a felony, and, upon
5 conviction thereof, shall be fined not less than five hundred
6 nor more than ten thousand dollars, or imprisoned in the
7 penitentiary not less than one, nor more than five years,
8 or both fined and imprisoned.

§47-20-19. Obtaining license fraudulently; penalty.

1 In addition to any other offense set forth in this code, any
2 individual, association, organization or corporation which
3 knowingly obtains or assists another in obtaining a bingo license
4 under false, deceptive or fraudulent pretenses is guilty of a
5 misdemeanor, and, upon conviction thereof, shall be fined not
6 less than five hundred nor more than ten thousand dollars.

§47-20-20. Violation of provisions; penalties.

1 Any person who knowingly violates the provisions of this
2 article other than sections eighteen and nineteen is guilty of
3 a misdemeanor, and, upon conviction thereof, shall be fined
4 not less than one hundred nor more than one thousand dollars.
5 Any individual who knowingly violates the provisions of this
6 article other than sections eighteen and nineteen is guilty of
7 a misdemeanor, and, upon a second or subsequent conviction
8 thereof, shall be fined not less than one hundred nor more
9 than one thousand dollars or imprisoned not more than one
10 year or both fined and imprisoned.

§47-20-21. Proceeds of state fair.

1 The Legislature declares that the net proceeds of any bingo

2 game which accrue to the West Virginia state fair are con-
3 sidered used for charitable or public service purposes as de-
4 fined in section two of this article. Any proceeds allowed by
5 the state fair board to be paid to or retained by the licensee
6 are deemed to be expenses incurred by the state fair board.

§47-20-22. State fair bingo license; rules and regulations.

1 Any person who has held bingo games on a regular basis
2 for at least two years prior to the filing of an application may
3 apply to the tax commissioner for a state fair bingo license to
4 hold bingo occasions at the West Virginia state fair. A license
5 fee of four thousand dollars shall be paid to the commissioner
6 for a state fair bingo license. The provisions of sections ten,
7 eleven, twelve and fifteen of this article do not apply to a
8 state fair bingo license. No state fair bingo license may be
9 issued unless the application includes a copy of any lease
10 or agreement entered into between the state fair board and
11 the applicant, or the applicant and the state fair board's
12 lessee. The state fair board may adopt reasonable rules and
13 regulations, not inconsistent with or in violation of the pro-
14 visions of this article, to govern the holding of bingo games
15 at the state fair.

§47-20-23. Administration; rules and regulations.

1 (a) The tax commissioner shall administer the provisions of
2 this article in accordance with the provisions of chapter twenty-
3 nine-a of this code.

4 (b) The commissioner shall deny an application for a
5 license if he finds that the issuance thereof would be in viola-
6 tion of the provisions of this article.

7 (c) The commissioner may revoke, suspend or refuse to
8 renew a license if the licensee or any member of a licensee
9 organization has been convicted pursuant to section eighteen
10 or nineteen of this article and the commissioner finds that
11 it would be in the public interest to do so; or if the licensee
12 has violated any of the provisions of this article: *Provided*,
13 That before revoking or suspending a license issued under
14 the authority of this article, the commissioner shall give at
15 least ten days, three days for a limited occasion or state fair

16 license, notice to the licensee. Notice shall be in writing, shall
17 state the reason for revocation or suspension and shall desig-
18 nate a time and place when the licensee may show cause why
19 the license should not be revoked or suspended. Notice shall
20 be sent by certified mail to the address of the licensee or
21 served by certified mail or by personal or substituted service
22 on the person who applied for the license on behalf of the
23 licensee. The licensee may, at the time designated for the
24 hearing, produce evidence in its behalf and be represented
25 by counsel. A decision of the commissioner revoking or
26 suspending a license is subject to judicial review upon the
27 appeal of a licensee.

28 (d) The commissioner may suspend, revoke or refuse to
29 renew any license issued hereunder for a material failure to
30 maintain the records or file the reports required by this
31 article if the commissioner finds that said failure will sub-
32 stantially impair the commissioner's ability to administer the
33 provisions of this article with regard to said licensee.

34 (e) The commissioner shall promulgate reasonable rules
35 and regulations necessary to the administration of this article.

36 (f) The provisions of article five, chapter twenty-nine-a
37 of this code apply to the denial, revocation, suspension of
38 or refusal to renew a license hereunder.

39 (g) The burden of proof in any administrative or court
40 proceeding is on the applicant to show cause why a bingo
41 license should be issued or renewed and on the licensee to
42 show cause why its license should not be revoked or sus-
43 pended.

44 (h) Notwithstanding any other provision of this article,
45 the commissioner may issue an emergency order suspending a
46 bingo license in the following manner:

47 (1) An emergency order may be issued only when the
48 commissioner believes that:

49 (a) There has been a criminal violation of this article;

50 (b) Such action is necessary to prevent a criminal violation
51 of this article; or

52 (c) Such action is necessary for the immediate preservation
53 of the public peace, health, safety, morals, good order or
54 general welfare.

55 (2) The emergency order shall set forth the grounds upon
56 which it is issued, including a statement of facts constituting
57 the alleged emergency necessitating such action. This order
58 shall be served by personal or substituted service on the licensee
59 or the person who applied for the license on behalf of the
60 licensee.

61 (3) The emergency order is effective immediately upon
62 issuance and service upon the licensee.

63 (4) Within five days after issuance of an emergency order,
64 the commissioner shall set a time and place for a hearing
65 wherein the licensee may appear and show cause why its
66 license should not be revoked.

§47-20-24. Filing of reports.

1 Each licensee holding an annual license shall file with
2 the tax commissioner quarterly and an annual financial re-
3 ports summarizing its bingo operations for the time period
4 covered by the report. Each quarterly report shall be filed
5 within twenty days after the end of the quarter which it
6 covers. The annual report shall be filed within thirty days
7 after the expiration of the license under which the operations
8 covered by the report were held.

9 Each licensee holding a limited occasion license or state
10 fair license shall file with the tax commissioner a financial
11 report summarizing its bingo operations for the license period
12 within thirty days after the expiration of the license under
13 which the operations covered by the report are held. The
14 reports shall contain the name, address and social security
15 number of any individual who receives during the course of
16 a bingo occasion prizes the aggregate value of which exceeds
17 one hundred dollars, and other information required by the
18 commissioner .

§47-20-25. Filing of copy of license; application open to public inspection.

1 Whenever a license is granted pursuant to this article, the

2 commissioner shall cause a copy of the license to be filed
 3 and recorded with the clerk of the county commission of
 4 the county in which the bingo occasions are to be held. A
 5 copy of the application shall be made available for public
 6 inspection in the office of the commissioner.

§47-20-26. County option election.

1 The county commission of any county is authorized to
 2 call a local option election for the purpose of determining
 3 the will of the voters as to whether the provisions of this
 4 article shall continue in effect in said county: *Provided,*
 5 That no local option election may be called to disapprove
 6 the playing of bingo games at the state fair in accordance
 7 with the provisions of this article.

8 A petition for local option election shall be in the form
 9 specified in this section and shall be signed by qualified
 10 voters residing within said county equal to at least ten percent
 11 of the persons qualified to vote within said county at the
 12 last general election. The petition may be in any number
 13 of counterparts and is sufficient if substantially in the fol-
 14 lowing form:

15 PETITION ON LOCAL OPTION ELECTION
 16 RESPECTING THE CONDUCT OF
 17 BINGO GAMES FOR
 18 CHARITABLE PURPOSES
 19 IN COUNTY,
 20 WEST VIRGINIA

21 Each of the undersigned certifies that he or she is a per-
 22 son residing in county, West Virginia, and
 23 is duly qualified to vote in that county under the laws of
 24 the state, and that his or her name, address, and the date
 25 of signing this petition are correctly set forth below.

26 The undersigned petition the county commission to call
 27 and hold a local option election at (1) a special or (2) the
 28 next primary, general or special election (the petition shall
 29 specify (1) or (2)) upon the following question: Shall the pro-
 30 visions of article twenty, chapter forty-seven of the code of

31 West Virginia, one thousand nine hundred thirty-one, as
 32 amended, continue in effect in county, West
 33 Virginia?

34	Name	Address	Date
35	-----	-----	-----
36	(Each person signing must specify either his post-office address		
37	or his street number.)		

38 Upon the filing of a petition for a local option election
 39 in accordance with the provisions of this section, the county
 40 commission shall enter an order calling a local option election
 41 as specified in the petition. The county commission shall give
 42 notice of such local option election by publication thereof as a
 43 Class II-0 legal advertisement in compliance with the provisions
 44 of article three, chapter fifty-nine of this code, and the publica-
 45 tion area for such publication is the county. The notice shall
 46 be so published within fourteen consecutive days next pre-
 47 ceding the election.

48 Each person qualified to vote in the county at any pri-
 49 mary, general or special election shall likewise be qualified
 50 to vote at the local option election. The election officers
 51 appointed and qualified to serve as such at any primary,
 52 general or special election shall conduct the local option
 53 election. If the local option election is to be held at the
 54 same time as a primary, general or other special election, it
 55 shall be held in connection with and as a part of that primary,
 56 general or special election. The ballots in the local option
 57 election shall be counted and returns made by the election
 58 officers and the results certified by the commissioners of
 59 election to said county commission which shall canvass the
 60 ballots, all in accordance with the laws of the state of West
 61 Virginia relating to primary and general elections insofar as
 62 the same are applicable. The county commission shall, without
 63 delay, canvass the ballots cast at said local option election
 64 and certify the result thereof.

65 The ballot to be used in said local option election shall have
 66 printed thereon substantially the following:

67 "Shall the playing of bingo to raise money for charitable

68 or public service organizations continue in effect in
 69 county of West Virginia?

70 Yes No

71 (Place a cross mark in the square opposite your choice.)”

72 If a majority of the voters voting at any local option
 73 election vote no on the foregoing question, the provisions
 74 of article twenty, chapter forty-seven of the code of West
 75 Virginia, one thousand nine hundred thirty-one, as amended,
 76 no longer continue in effect in said county.

77 No local option election may be called in a county to
 78 resubmit said question to the voters of that county, whether
 79 the question was approved or disapproved at the previous
 80 local option election, sooner than five years after the last
 81 local option election.

§47-20-27. Prohibited acts by convicted individuals and corporations.

1 Any individual, organization, association or corporation
 2 convicted of any felony, or a misdemeanor for a gambling
 3 offense, is prohibited from directly or indirectly obtaining a
 4 bingo license, conducting a bingo game, operating a concession,
 5 or leasing or providing to a licensee organization any premises
 6 where bingo occasions may be held within ten years from
 7 said conviction.

§47-20-28. Restrictions on use of bingo equipment.

1 A licensee may use only bingo equipment which it owns
 2 or which it borrows without compensation, or leases for a
 3 reasonable and customary amount, from another licensee.

§47-20-29. Effective date.

1 The effective date of this article is the fifteenth day of
 2 August, one thousand nine hundred eighty-one.

§47-20-30. Severability

1 If, for any reason, any section, sentence, clause, phrase or
 2 provision of this article or the application thereof to any per-
 3 son or circumstance is held unconstitutional or invalid, such
 4 unconstitutionality or invalidity shall not affect other sections,

- 5 sentences, clauses, phrases or provisions or their application
6 to any other person or circumstance, and to this end each and
7 every article, section, sentence, clause, phrase or provision of
8 this article is hereby declared to be severable.

CHAPTER 43

(S. B. 140—By Mr. Palumbo)

[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article eighteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revenue bonds issued by urban renewal authorities and the interest rates on such bonds.

Be it enacted by the Legislature of West Virginia:

That section ten, article eighteen, 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 18. SLUM CLEARANCE.

§16-18-10. Bonds.

1 (a) An authority shall have power to issue bonds from
2 time to time in its discretion for any of its corporate
3 purposes including the payment of principal and interest
4 upon any advances for surveys and plans for redevelop-
5 ment projects. An authority shall also have power to issue
6 refunding bonds for the purpose of paying or retiring or
7 in exchange for bonds previously issued by it. An author-
8 ity may issue such types of bonds as it may determine,
9 including (without limiting the generality of the fore-
10 going) bonds on which the principal and interest are
11 payable:

12 (1) Exclusively from the income, proceeds and rev-
13 enues of the redevelopment project financed with the
14 proceeds of such bonds; or

15 (2) Exclusively from the income, proceeds and rev-
16 enues of any of its redevelopment projects whether or
17 not they are financed in whole or in part with the pro-
18 ceeds of such bonds: *Provided*, That any such bonds may
19 be additionally secured by a pledge of any loan, grant or
20 contributions, or parts thereof, from the federal govern-
21 ment or other sources, or a mortgage of any redevelop-
22 ment project or projects of the authority.

23 (b) Neither the commissioners of an authority nor any
24 person executing the bonds shall be liable personally on
25 the bonds by reason of the issuance thereof. The bonds
26 and other obligations of the authority (and such bonds
27 and obligations shall so state on their face) shall not be a
28 debt of the municipality, the county or the state and
29 neither the municipality, the county nor the state shall
30 be liable thereon, nor in any event shall such bonds or
31 obligations be payable out of any funds or properties
32 other than those of said authority acquired for the pur-
33 poses of this article. The bonds shall not constitute an
34 indebtedness within the meaning of any constitutional or
35 statutory debt limitation or restriction. Bonds of an
36 authority are declared to be issued for an essential public
37 and governmental purpose and to be public instrumental-
38 ities and, together with interest thereon and income
39 therefrom, shall be exempt from all taxes. Such bonds
40 need not be offered by the authority to the state sinking
41 fund commission at any time and an authority shall not
42 be required to turn over any surplus or sinking funds to
43 the state sinking fund commission.

44 (c) Bonds of an authority shall be authorized by its
45 resolution and may be issued in one or more series and
46 shall bear such date or dates, be payable upon demand or
47 mature at such time or times, bear interest at such rate or
48 rates, not exceeding twelve per centum per annum, be in
49 such denomination or denominations, be in such form
50 either coupon or registered, carry such conversion or
51 registration privileges, have such rank or priority, be ex-
52 ecuted in such manner, be payable in such medium of
53 payment, at such place or places, and be subject to such

54 terms of redemption (with or without premium) as such
55 resolution, its trust indenture or mortgage may provide.

56 (d) The bonds shall be sold at not less than par at
57 public sale held after notice published as a Class I legal
58 advertisement in compliance with the provisions of article
59 three, chapter fifty-nine of this code, and the publication
60 area for such publication shall be the area of operation.
61 Such publication shall be made at least ten days prior to
62 such sale. The notice may be published in such other me-
63 dium of publication as the authority may determine: *Pro-*
64 *vided*, That such bonds may be sold to the federal govern-
65 ment at private sale at not less than par, and, in the event
66 less than all of the bonds authorized in connection with
67 any project or projects are sold to the federal government,
68 the balance of such bonds may be sold at private sale at
69 not less than par at an interest cost to the authority of not
70 to exceed the interest cost to the authority of the portion
71 of the bonds sold to the federal government.

72 (e) In case any of the commissioners or officers of the
73 authority whose signatures appear on any bonds or cou-
74 pons shall cease to be such commissioners or officers be-
75 fore the delivery of such bonds, such signatures shall,
76 nevertheless, be valid and sufficient for all purposes, the
77 same as if such commissioners or officers had remained
78 in office until such delivery. Any provision of any law to
79 the contrary notwithstanding, any bonds issued pursuant
80 to this article shall be fully negotiable.

81 (f) In any suit, action or proceedings involving the
82 validity or enforceability of any bond of an authority or
83 the security therefor, any such bond reciting in substance
84 that it has been issued by the authority to aid in financing
85 a redevelopment project, as herein defined, shall be con-
86 clusively deemed to have been issued for such purpose
87 and such project shall be conclusively deemed to have
88 been planned, located and carried out in accordance with
89 the purposes and provisions of this article.

CHAPTER 44

(Com. Sub. for H. B. 1187—By Mr. Burdette and Miss Shuman)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections four, four-a, seven and eight, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and five, article one of said chapter; and to further amend said chapter by adding thereto a new article, designated article two-b, all relating to abolishing the state licensing board for child welfare agencies; transferring the powers and duties of the board to the commissioner of welfare; stating policy and purposes; defining terms; providing for licenses and approvals of all residential child care facilities, day care centers and child placing agencies; providing certain exceptions; requiring the commissioner to promulgate rules and regulations; empowering the commissioner to seek court injunctions, to make licenses conditional and to permit waivers and variances to requirements; providing for applications for licenses and approvals; requiring the commissioner to investigate child care facilities; providing for revocation of licenses or approvals and for provisional licensing and approval; empowering the commissioner to close facilities in certain cases; providing for administrative and judicial review; and providing for penalties.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Purposes; Definitions.

2B. Duties of Commissioner of Welfare for Child Welfare.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

§49-1-5. Definitions of other terms.

§49-1-1. Purpose.

1 (a) The purpose of this chapter is to provide a comprehensive system of child welfare throughout the state which will
2 assure to each child such care and guidance, preferably in his
3 or her home, and will serve the spiritual, emotional, mental and
4 physical welfare of the child; preserve and strengthen the child's
5 family ties whenever possible with recognition of the fundamental rights of parenthood and with recognition of the state's
6 responsibility to assist the family in providing necessary education and training and to reduce the rate of juvenile delinquency and to provide a system for the rehabilitation or detention of juvenile delinquents and the protection of the welfare
7 of the general public. In pursuit of these goals it is the intention of the Legislature to provide for removing the child from
8 the custody of parents only when the child's welfare or the safety and protection of the public cannot be adequately safeguarded without removal; and, when the child has to be removed from his or her family, to secure for the child custody,
9 care and discipline consistent with the child's best interests and other goals herein set out.

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20 (b) The child welfare service of the state shall be administered by the state department of welfare.

21
22 The state department of welfare is designated as the agency
23 to cooperate with the United States department of health & human services and United States department of justice
24 in extending and improving child welfare services, to comply
25 with regulations thereof, and to receive and expend federal
26 funds for these services.
27

§49-1-5. Definitions of other terms.

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

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

4 (3) "Commissioner" means the commissioner of welfare;

5 (4) "Child welfare agency" means any agency or facility
6 maintained by the state or any county or municipality thereof,
7 or any agency or facility maintained by an individual, firm,

8 corporation, association or organization, public or private, to
9 receive children for care and maintenance or for placement in
10 residential care facilities, including without limitation, private
11 homes, or any facility that provides care for unmarried mothers
12 and their children;

13 (5) "Custodian" means a person who has or shares actual
14 physical possession or care and custody of a child, regardless
15 of whether such person has been granted custody of the child
16 by any contract, agreement or legal proceedings;

17 (6) "Referee" means a juvenile referee appointed pur-
18 suant to section one, article five-a of this chapter, except that
19 in any county which does not have a juvenile referee the judge
20 or judges of the circuit court may designate one or more mag-
21 istrates of the county to perform the functions and duties
22 which may be performed by a referee under this chapter;

23 (7) "Court" means the circuit court of the county with juris-
24 diction of the case or the judge thereof in vacation unless
25 otherwise specifically provided; and

26 (8) "Guardian" means a person who has care and custody
27 of a child as a result of any contract, agreement or legal pro-
28 ceeding.

ARTICLE 2B. DUTIES OF COMMISSIONER OF WELFARE FOR CHILD WELFARE.

- §49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.
- §49-2B-2. Definitions.
- §49-2B-3. License and approval requirements.
- §49-2B-4. Rules and regulations.
- §49-2B-5. Penalties; injunctions.
- §49-2B-6. Conditions of licensure and approval.
- §49-2B-7. Waivers and variances to rules and regulations.
- §49-2B-8. Application for license or approval.
- §49-2B-9. Supervision and consultation required.
- §49-2B-10. Investigating authority.
- §49-2B-11. Revocation; provisional licenses and approvals.
- §49-2B-12. Closing of facilities by the commissioner; placement of children.
- §49-2B-13. Administrative and judicial review.
- §49-2B-14. Annual reports; directory; licensing reports and recommendations.

§49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.

1 It is the policy of the state to assist a child and his or her
2 family as the basic unit of society through efforts to strengthen
3 and preserve the family unit. In the event of absence, tempo-
4 rary or permanent, of parents or the separation of a child from
5 the family unit, for care or treatment purposes, it is the policy
6 of the state to assure that a child receives care and nurturing
7 as close as possible to society's expectations of a family's care
8 and nurturing of its child. The state has a duty to assure that
9 proper and appropriate care is given and maintained.

10 Through licensing and approving child care facilities, and
11 child welfare agencies, the state exercises its benevolent police
12 power to protect the user of a service from risks against which
13 he or she would have little or no competence for self protec-
14 tion. Licensing and approval processes must therefore continu-
15 ually balance the child's rights and need for protection with
16 the interests, rights and responsibility of the service providers.

17 In order to carry out the above policy, the Legislature enacts
18 this article to protect and prevent harm to children separated
19 from their families and to enhance their continued growth and
20 well-being while in care.

21 The purposes of this article are:

22 (i) To protect the health, safety and well-being of children
23 in substitute care by preventing improper and harmful care; (ii)
24 to establish statewide rules for regulating programs as defined
25 in this article; and (iii) to encourage and assist in the improve-
26 ment of child care programs. In order to carry out these pur-
27 poses, the powers of the child welfare licensing board, created
28 by chapter nineteen, acts of the Legislature, one thousand nine
29 hundred forty-five, are hereby transferred to the commissioner
30 of welfare, along with the other powers granted by this article.

§49-2B-2. Definitions.

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

2 "Approval" means a finding by the commissioner that a
3 facility operated by the state has met the requirements set

4 forth in the rules and regulations promulgated pursuant to
5 this article.

6 “Certificate of approval” means a statement of the commis-
7 sioner that a facility operated by the state has met the require-
8 ments set forth in the rules and regulations promulgated pur-
9 suant to this article.

10 “Certificate of license” means a statement issued by the
11 commissioner authorizing an individual, corporation, part-
12 nership, voluntary association, municipality or county, or any
13 agency thereof, to provide specified services for a limited period
14 of time in accordance with the terms of the certificate.

15 “Child” means any person under eighteen years of age.

16 “Child care” means responsibilities assumed and services
17 performed in relation to a child’s physical, emotional, psy-
18 chological, social and personal needs and the consideration of
19 the child’s rights and entitlements.

20 “Child placing agency” means a child welfare agency orga-
21 nized for the purpose of placing children in private family
22 homes for foster care or for adoption. The function of a child
23 placing agency may include the investigation and certification
24 of foster family homes and foster family group homes as pro-
25 vided in this chapter. The function of a child placing agency
26 may also include the supervision of children who are sixteen or
27 seventeen years old and living in unlicensed residences.

28 “Commissioner” means the commissioner of welfare.

29 “Day care center” means a facility operated by a child wel-
30 fare agency for the care of seven or more children on a non-
31 residential basis.

32 “Department” means the state department of welfare.

33 “Facility” means a place or residence, including personnel,
34 structures, grounds and equipment used for the care of a child
35 or children on a residential or other basis for any number of
36 hours a day in any shelter or structure maintained for that
37 purpose.

38 “Foster family group home” means a private residence

39 which is used for the care on a residential basis of six, seven
40 or eight children who are unrelated by blood, marriage or
41 adoption to any adult member of the household.

42 "Foster family home" means a private residence which is
43 used for the care on a residential basis of no more than five
44 children who are unrelated by blood, marriage or adoption
45 to any adult member of the household.

46 "Group home" means any facility, public or private, which
47 is used to provide residential care for ten or fewer children.

48 "Group home facility" means any facility, public or private,
49 which is used to provide residential care for eleven or more
50 children.

51 "License" means a grant of official permission to a facility
52 to engage in an activity which would otherwise be prohibited.

53 "Residential child care" or "child care on a residential
54 basis" means child care which includes the provision of night-
55 time shelter and the personal discipline and supervision of a
56 child by guardians, custodians or other persons or entities on
57 a continuing or temporary basis.

58 "Rule" means a statement issued by the commissioner of
59 the standard to be applied in the various areas of child care.

60 "Variance" means a declaration that a rule may be ac-
61 complished in a manner different from the manner set forth in
62 the rule.

63 "Waiver" means a declaration that a certain rule is inappli-
64 cable in a particular circumstance.

§49-2B-3. License and approval requirements.

1 (a) Any person, corporation or child welfare agency other
2 than a state agency, which operates a residential child care
3 facility, a child placing agency or a day care center shall have
4 a license.

5 (b) Any residential child care facility, day care center or
6 any child placing agency operated by the state shall obtain
7 approval of its operations from the commissioner. Such fa-
8 cilities and placing agencies shall maintain the same stan-

9 dards of care applicable to licensed facilities, centers or placing
10 agencies of the same category.

11 (c) This section does not apply to:

12 (1) a kindergarten, pre-school or school education program
13 which is operated by a public school or which is accredited by
14 the state department of education, or any other kindergarten,
15 pre-school or school programs which operate with sessions not
16 exceeding four hours per day for any child;

17 (2) a facility operated for occasional nonresidential care of
18 children for brief periods while parents are shopping, engaging
19 in recreational activities, attending religious services or en-
20 gaging in other business or personal affairs;

21 (3) summer recreation camps operated for children attend-
22 ing sessions for periods not exceeding thirty days; or

23 (4) hospitals or other medical facilities which are primarily
24 used for temporary residential care of children for treatment,
25 convalescence or testing.

§49-2B-4. Rules and regulations.

1 The commissioner shall promulgate rules and regulations
2 for the purpose of carrying out the provisions of this article
3 within one hundred eighty days of the effective date hereof
4 pursuant to the provisions of chapter twenty-nine-a of this
5 code. The rules and regulations of the child welfare licensing
6 board which are in effect on the date of its termination shall
7 continue in full force and effect until the rules and regulations
8 promulgated by the commissioner become effective.

9 The commissioner shall review the rules and regulations
10 promulgated pursuant to the provisions of this article at least
11 once every five years, making revisions when necessary or
12 convenient.

§49-2B-5. Penalties; injunctions.

1 (a) Any individual or corporation which operates a child
2 welfare agency, residential child care facility or day care center
3 without a license when a license is required is guilty of a mis-
4 demeanor, and, upon conviction thereof, shall be punished by

5 imprisonment in jail not exceeding one year, or a fine of not
6 more than five hundred dollars, or both fined and imprisoned.

7 (b) Where a violation of this article or a rule or regulation
8 promulgated by the commissioner may result in serious harm
9 to children under care, the commissioner may seek injunctive
10 relief against any person, corporation, child welfare agency,
11 child placing agency, day care center or governmental official
12 through proceedings instituted by the attorney general, or the
13 appropriate county prosecuting attorney, in the circuit court
14 of Kanawha County or in the circuit court of any county where
15 the children are residing or may be found.

§49-2B-6. Conditions of licensure and approval.

1 (a) A license or approval is effective for a period of two
2 years from the date of issuance, unless revoked or modified to
3 provisional status based on evidence of a failure to comply with
4 the provisions of this article or any rules and regulations
5 promulgated pursuant to this article. The license or approval
6 shall be reinstated upon application to the commissioner and
7 a determination of compliance.

8 The license or approval issued under this article is not
9 transferable and applies only to the facility and its location
10 stated in the application. The license or approval shall be pub-
11 licly displayed, except foster family homes, foster family group
12 homes and group homes shall be required to display licenses
13 upon request rather than by posting.

14 (b) A provisional license or approval may be issued as:

15 (i) An initial license or approval to a new facility which
16 has been unable to demonstrate full compliance because the
17 facility is not fully operational, or

18 (ii) A temporary license or approval to an established licens-
19 ed facility which is temporarily unable to conform to the pro-
20 visions of this article or the rules and regulations promulgated
21 hereunder.

22 A provisional license or approval shall expire six months
23 from the date of issuance and may be reinstated no more than
24 two times. The issuance of a provisional license or approval

25 shall be contingent upon the submission to the commissioner
26 of an acceptable plan to overcome identified deficiencies within
27 the period of the provisional license or approval.

28 (c) The commissioner, as a condition of issuing a license or
29 approval, may:

30 (i) Limit the age, sex or type of problems of children al-
31 lowed admission to a particular facility,

32 (ii) Prohibit intake of any children, or

33 (iii) Reduce the number of children which the agency or
34 facility operated by the agency is licensed or approved to
35 receive.

§49-2B-7. Waivers and variances to rules and regulations.

1 Waivers or variances of rules or regulations may be granted
2 by the commissioner if the health, safety or well-being of a
3 child would not be endangered thereby. The commissioner
4 shall promulgate by rule or regulation criteria and procedures
5 for the granting of waivers or variances so that uniform prac-
6 tices may be maintained throughout the state.

§49-2B-8. Application for license or approval.

1 Any person or corporation, or any governmental agency in-
2 tending to act as a child welfare agency shall apply for a
3 license or approval to operate child care facilities regulated
4 by this article. Applications for license or approval shall be
5 made separately for each child care facility to be licensed or
6 approved.

7 The commissioner may prescribe forms and reasonable ap-
8 plication procedures. Before issuing a license or approval, the
9 commissioner shall investigate the facility, program and persons
10 responsible for the care of children. The investigation shall
11 include, but not be limited to, review of resource need, repu-
12 tation, character and purposes of applicants, a check of per-
13 sonnel criminal records, if any, and personnel medical re-
14 cords, the financial records of applicants, and consideration
15 of the proposed plan for child care from intake to discharge.

16 The commissioner shall make a decision on each appli-

17 cation within sixty days of its receipt and shall provide to
18 unsuccessful applicants written reasons for the decision.

§49-2B-9. Supervision and consultation required.

1 The commissioner shall provide supervision to ascertain
2 compliance with the rules and regulations promulgated pur-
3 suant to this article through regular monitoring, visits to fa-
4 cilities, documentation, evaluation and reporting. The com-
5 missioner shall consult with applicants, the personnel of child
6 welfare agencies, and children under care to assure the highest
7 quality child care possible. The director of the department of
8 health and the state fire marshal shall cooperate with the com-
9 missioner in the administration of the provisions of this article
10 by providing such reports and assistance as may be requested
11 by the commissioner.

§49-2B-10. Investigating authority.

1 The commissioner shall enforce the provisions of this article.
2 An on-site evaluation of every facility regulated pursuant to
3 this article shall be conducted no less than once per year by
4 announced or unannounced visits. The commissioner shall have
5 access to the premises, personnel, children in care and records
6 of the facility, including, but not limited to, case records,
7 corporate and financial records and board minutes. Applicants
8 for licenses and approvals shall consent to reasonable on-site
9 administrative inspections, made with or without prior notice,
10 as a condition of licensing or approval. When a complaint is
11 received by the commissioner alleging violations of licensure or
12 approval requirements, the commissioner shall investigate the
13 allegations. The commissioner may notify the facility's director
14 before or after a complaint is investigated and shall cause a
15 written report of the results of the investigation to be made.

16 The commissioner may enter any unlicensed or unapproved
17 child care facility or personal residence for which there is
18 probable cause to believe that the facility or residence is oper-
19 ating in violation of this article. Such entries shall be made
20 with a law-enforcement officer present.

§49-2B-11. Revocation; provisional licenses and approvals.

1 The commissioner may revoke or make provisional the

2 license of any facility or child welfare agency regulated pur-
3 suant to this article if a certificate holder materially violates
4 any provision of this article, or any terms or conditions of the
5 license or approval issued, or fails to maintain established re-
6 quirements of child care.

§49-2B-12. Closing of facilities by the commissioner; placement of children.

1 When the commissioner finds that the operation of a child
2 care facility constitutes an immediate danger of serious harm
3 to children served by the facility, the commissioner shall issue
4 an order of closure terminating operation of the facility. When
5 necessary, the commissioner shall place or direct the place-
6 ment of the children in a residential child care facility which
7 has been closed into appropriate facilities. A facility closed by
8 the commissioner may not operate pending administrative or
9 judicial review without court order.

§49-2B-13. Administrative and judicial review.

1 Any person, corporation, governmental official or child
2 welfare agency, aggrieved by a decision of the commissioner
3 made pursuant to the provisions of this article may contest
4 the decision upon making a request for a hearing by the com-
5 missioner within thirty days of receipt of notice of the deci-
6 sion. Administrative and judicial review shall be made in ac-
7 cordance with the provisions of article five, chapter twenty-
8 nine-a of this code. Any decision issued by the commissioner
9 may be made effective from the date of issuance. Immediate
10 relief therefrom may be obtained upon a showing of good
11 cause made by verified petition to the circuit court of Kana-
12 wha County or the circuit court of any county where the
13 affected facility or child welfare agency may be located. The
14 pendency of administrative or judicial review shall not prevent
15 the commissioner from obtaining injunctive relief pursuant to
16 section five of this article.

**§49-2B-14. Annual reports; directory; licensing reports and recom-
mendations.**

1 The commissioner shall submit on or before the first day
2 of January of each year a report to the governor, and upon
3 request to members of the Legislature, concerning the regula-

4 tion of child welfare agencies, child placing agencies, day care
5 centers and child care facilities during the year. The report
6 shall include, but not be limited to, data on the number of
7 children and staff at each facility, applications received, types
8 of licenses and approvals granted, denied, made provisional
9 or revoked and any injunctions obtained or facility closures
10 ordered.

11 The commissioner also shall compile annually a directory
12 of licensed and approved child care providers including a brief
13 description of their program and facilities, the program's ca-
14 pacity and a general profile of children served.

15 Licensing reports and recommendations for licensure which
16 are a part of the yearly review of each licensed facility shall
17 be sent to the facility director. Copies shall be available to
18 the public upon written request to the commissioner.

CHAPTER 45

(S. B. 18—By Mr. Palumbo)

[Passed April 8, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-b, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the jurisdiction of municipal courts over persons under eighteen years of age; traffic and curfew ordinances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-1b. Jurisdiction of municipal courts over persons under eighteen years of age.

1 Notwithstanding any other section of this code to the
2 contrary, municipal courts shall have concurrent juvenile

3 jurisdiction with the circuit court only for alleged violations
 4 of municipal ordinances regulating traffic, except that
 5 municipal courts shall have no jurisdiction to impose a
 6 sentence of confinement for the violation of such laws.

7 Any municipal court of a municipality which has enacted
 8 an enforceable curfew ordinance may assume jurisdiction of
 9 a juvenile charged with violation of such ordinance and make
 10 any disposition thereof which could properly be made by a
 11 circuit court exercising its juvenile jurisdiction, except that
 12 municipal courts shall have no jurisdiction to impose a
 13 sentence of confinement for the violation of such laws.

CHAPTER 46

(H. B. 793—By Mr. Holmes and Mr. Otte)

[Passed February 23, 1981; 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 supreme court—mental hygiene fund; office of the state auditor—representation of needy persons fund; board of chiropractic examiners; board of regents; department of corrections; department of culture and history; department of finance and administration; department of health; department of public safety; division of vocational rehabilitation; nonintoxicating beer commission; office of the governor; state tax department; department of highways; department of motor vehicles; and alcohol beverage control commissioner, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
 2 recommendations reported to it by the court of claims con-

cerning various claims against the state and agencies thereof,
 and in respect to each of the following claims the Legislature
 adopts those findings of fact as its own, and hereby declares
 it to be the moral obligation of the state to pay each such
 claim in the amount specified below, and directs the auditor
 to issue warrants for the payment thereof out of any fund
 appropriated and available for the purpose.

(a) *Claims against the Supreme Court—Mental Hygiene Fund:*

11

TO BE PAID FROM GENERAL REVENUE FUND

12	(1) Richard K. Swartling	\$ 1,725.00
13	(2) Michael D. Sturm	402.50
14	(3) Helen Joyce Davis	94.47
15	(4) Boyd L. Warner	2,055.00
16	(5) Jack H. Walters	240.00
17	(6) Paul A. Viers	400.00
18	(7) James A. Varner	225.00
19	(8) Kennad L. Skeen	633.20
20	(9) James E. Seibert	2,864.00
21	(10) Royce B. Saville	487.50
22	(11) Michael B. Keller	718.75
23	(12) Jerald E. Jones	1,120.00
24	(13) John S. Holy	2,675.00
25	(14) R. R. Fredeking, II	11,780.00
26	(15) John S. Folio	592.50
27	(16) John J. Droppleman	454.25
28	(17) F. William Brogan, Jr.	3,957.50
29	(18) Ward D. Stone, Jr.	4,025.00
30	(19) Clyde A. Smith, Jr.	1,311.00
31	(20) Carroll T. Lay	270.00
32	(21) J. Burton Hunter, III	1,232.70
33	(22) John C. Higinbotham	4,300.00
34	(23) Grover C. Goode	1,225.00
35	(24) Dennis V. Dibenedetto	600.00
36	(25) Stephen Jon Ahlgren	347.50
37	(26) J. P. McMullen, Jr.	2,771.33
38	(27) Charles J. Hyer	1,900.00
39	(28) Lisa A. Stewart	30.00
40	(29) James A. Stewart	267.00
41	(30) Mary Jo Goettler	61.56

42	(31) Deborah K. Hunt	175.00
43	(32) Irene W. Ross	500.00
44	(33) Dorothy Springer	59.00
45	(34) Lorena B. Hoover	60.00
46	(35) Ginny L. McCoy	285.00
47	(36) Christine L. Bitner	275.00
48	(37) Elizabeth H. Field	496.50
49	(38) Teresa L. Anderson	50.00
50	(39) Teresa A. Meinke	75.00
51	(40) John L. Campbell	150.00
52	(41) Merleen B. Campbell	415.30
53	(42) Jacqui Sites	300.00
54	(43) Lawrence S. Miller, Jr.	1,263.69
55	(44) David B. Cross	1,032.50
56	(45) Larry N. Sullivan	4,580.00
57	(46) Gilbert Gray Coonts	2,300.00
58	(47) G. F. Hedges, Jr.	690.00
59	(48) J. K. Chase, Jr.	2,150.00
60	(49) John M. Thompson, Jr.	2,485.00
61	(50) Ralph D. Keightly, Jr.	1,412.50
62	(51) Lawrence B. Lowry	775.00
63	(52) Thomas M. Hayes	4,610.00
64	(53) W. Del Roy Harner	3,650.00
65	(54) John S. Hrko	80.00
66	(55) Ribel & Julian	327.50
67	(56) J. M. Tully	62.50
68	(57) James C. Recht	122.00
69	(58) Harold S. Yost	135.00
70	(59) Roy D. Law	459.00
71	(60) Harold B. Eagle	115.00
72	(61) Glenn O. Schumacher	303.33
73	(62) James M. Casey	538.00
74	(63) Simmons & Martin	440.00
75	(64) Joseph C. Hash, Jr.	160.00
76	(65) James M. Cook, Jr.	111.69
77	(66) Martin V. Saffer	324.25
78	(67) Roger D. Curry	884.60
79	(68) T. Owen Wilkins	295.00
80	(69) Dennis H. Curry	100.00
81	(70) Loudoun L. Thompson	112.50

82	(71) Charles E. Parsons	177.50
83	(72) James T. McClure	329.00
84	(73) Charles V. Wehner	35.00
85	(74) Bradley H. Thompson	7,426.47
86	(75) Robert E. Vital	10,370.00
87	(76) Ann E. Snyder	393.75
88	(77) Cynthia L. Dettman	180.00
89	(78) Edgar E. Bibb, III	70.00
90	(79) Peter A. Niceler	123.52
91	(80) George W. Hill, Jr.	600.50
92	(81) David G. Palmer	511.00
93	(82) James A. Matish	285.00
94	(83) Philip T. Lilly, Jr.	163.50
95	(84) James R. Sheatsley	50.00
96	(85) Michael E. Caryl	450.56
97	(86) Stephen L. Thompson	202.30
98	(87) Norman T. Farley	201.12
99	(88) H. F. Salsbery, Jr.	76.00
100	(89) Sam E. Schafer	595.00
101	(90) William E. Simonton, III	116.90
102	(91) Damon B. Morgan, Jr.	321.00
103	(92) William A. O'Brien	80.00
104	(93) John L. DePolo	347.50
105	(94) Rudolph J. Murensky, II	307.50
106	(95) Robert DePue	45.00
107	(96) C. Dallas Kayser	497.03
108	(97) Richard Thompson	200.00
109	(98) David R. Rexroad	290.50
110	(99) Laverne Sweney	207.50
111	(100) Susan K. McLaughlin	180.00
112	(101) Michael I. Spiker	262.25
113	(102) George Zivkovich	228.79
114	(103) David Lycan	215.00
115	(104) Randy R. Goodrich	64.57
116	(105) Michael H. Lilly	382.35
117	(106) Robin C. Capehart	460.00
118	(107) Paul T. Camilletti	749.50
119	(108) Jeffrey Corbin Dyer	233.00
120	(109) Core, Atkinson & Core	143.75
121	(110) James D. Terry	34.00

122	(111) David Cavender	37.50
123	(112) Linda Nelson Garrett	2,216.14
124	(113) John B. Breckinridge	200.00
125	(114) Stephen A. Davis	2,018.50
126	(115) Robert C. Melody	2,350.00
127	(116) Thomas L. Butcher	1,542.50
128	(117) Frank Ribel, Jr.	87.50
129	(118) James C. Blankenship, III	522.50
130	(119) David P. Born	145.84
131	(120) David Michael Fewell	624.55
132	(121) James Bradley, Jr.	793.50
133	(122) David G. Underwood	292.50
134	(123) Ronald F. Stein	1,842.50
135	(124) John Yeager, Jr.	873.40
136	(125) John L. Bremer	1,848.00
137	(126) Wayne D. Inge	407.50
138	(127) Mary H. Davis	205.50
139	(128) William W. Merow, Jr.	185.00
140	(129) John W. Bennett	176.10
141	(130) Samuel Spencer Stone	55.00
142	(131) John G. Ours	382.58
143	(132) Stobbs & Stobbs	2,368.75
144	(133) Michael Buchanan	47.50
145	(134) Karen L. Garrett	230.00
146	(135) Robert D. Fisher	50.00
147	(136) Edwin B. Wiley	1,233.55
148	(137) C. Blaine Myers	235.50
149	(138) Thomas C. Evans, III	222.10
150	(139) Raymond H. Yackel	45.00
151	(140) Janet Frye (Steele)	525.00
152	(141) H. H. Rose, III	115.00
153	(142) Michael T. Clifford	631.25
154	(143) William M. Miller	655.45
155	(144) Robert Edward Blair	100.00
156	(145) David M. Finnerin	228.75
157	(146) Frank B. Everhart	68.75
158	(147) Melvin C. Snyder, Jr.	45.00
159	(148) Frederick M. Dean Rohrig	138.33
160	(149) Robert E. Wise, Jr.	699.52
161	(150) C. William Harmison	172.50

162	(151) David L. Ziegler	342.50
163	(152) F. Christian Gall, Jr.	1,088.00
164	(153) Mark A. Taylor	205.50
165	(154) John J. Cowan	703.75
166	(155) Bernard R. Mauser	500.00
167	(156) Jeniver J. Jones	432.25
168	(157) Steven C. Hanley	1,067.50
169	(158) Harry A. Smith, III	852.50
170	(159) Jay Montgomery Brown	185.00
171	(160) Randall K. Dunn	909.84
172	(161) Timothy R. Ruckman	126.25
173	(162) Dan O. Callaghan	170.00
174	(163) F. Malcolm Vaughan	541.52
175	(164) James Wilson Douglas	437.50
176	(165) Paul S. Perfater	764.50
177	(166) Wayne R. Mielke	2,357.29
178	(167) Jeanne S. Hall	805.00
179	(168) Glen K. Matthews	310.00
180	(169) Colin Miller	370.00
181	(170) Stenomask Reporting Service	3,184.39
182	(171) Jennifer E. Vial	53.60
183	(172) Mary L. Yost	1,000.00
184	(173) Leslie D. Lucas, Jr.	112.50
185	(174) William W. Pepper	857.50
186	(175) David L. Parmer	517.50
187	(176) Marvin L. Downing	423.00
188	(177) Nancy Sue Miller	351.00
189	(178) Robert A. Burnside, Jr.	412.00
190	(179) Virginia Y. Smith	408.00
191	(180) David L. Hill	70.00
192	(b) <i>Claims against the Office of the State Auditor—Needy</i>	
193	<i>Persons Fund:</i>	
194	TO BE PAID FROM GENERAL REVENUE FUND	
195	(1) John S. Hrko	500.00
196	(2) Thomas L. Butcher	1,133.83
197	(3) Ribel & Julian	1,590.00
198	(4) J. M. Tully	645.00
199	(5) James C. Recht	946.50
200	(6) T. Owen Wilkins	800.50

201	(7) Frank Ribel, Jr.	115.00
202	(8) John C. Higinbotham	176.25
203	(9) John R. Glenn	45.00
204	(10) William H. Ansel, Jr.	1,028.40
205	(11) Cynthia L. Turco	1,107.52
206	(12) Paul R. Goode, Jr.	395.00
207	(13) Loudoun L. Thompson	3,551.75
208	(14) Michael D. Sturm	850.00
209	(15) Eugene D. Pecora	414.75
210	(16) Charles E. Parsons	852.50
211	(17) Raymond G. Musgrave	2,997.37
212	(18) John S. Holy	1,500.00
213	(19) Sprague Hazard	388.75
214	(20) Lucien Lewin	50.00
215	(21) Michael Scales	161.75
216	(22) J. Wendell Reed	341.30
217	(23) Stephen L. Thompson	227.00
218	(24) David S. Alter, II	272.85
219	(25) Charles F. Printz, Jr.	1,276.34
220	(26) V. Alan Riley	1,482.00
221	(27) Russell M. Clawges, Jr. ...	1,432.02
222	(28) Royce B. Saville	643.75
223	(29) John S. Kaul	1,148.80
224	(30) William O'Brien	410.00
225	(31) Stephen Jon Ahlgren	20.00
226	(32) Robert Poyourow	2,042.88
227	(33) George A. Markusic	1,169.96
228	(34) Core and Core	825.35
229	(35) James D. Terry	852.50
230	(36) C. Elton Byron, Jr.	815.00
231	(37) Carroll T. Lay	1,404.20
232	(38) Joseph C. Hash, Jr.	50.00
233	(39) Nancy S. Miller	135.00
234	(40) P. C. Duff	1,026.25
235	(41) Ray L. Hampton, II	295.00
236	(42) Peter A. Niceler	317.45
237	(43) Charles M. Kincaid	1,647.10
238	(44) Robert E. Vital	175.00
239	(45) Ronald E. Anderson	1,147.50
240	(46) Robert C. Chambers	1,062.50

241	(47) Paul A. Ryker	100.00
242	(48) Marsha Dalton	340.00
243	(49) George W. Hill, Jr.	2,146.50
244	(50) Richard Starkey	168.00
245	(51) John P. Anderson	964.75
246	(52) Thomas S. Lilly	250.00
247	(53) Simmons & Martin	65.00
248	(54) Bert Michael Whorton	968.25
249	(55) Sanders & Blue	1,142.97
250	(56) Paul Nagy	85.88
251	(57) Paul H. Woodford, II	302.50
252	(58) Philip A. Reale	444.40
253	(59) R. Terry Butcher	102.50
254	(60) David G. Palmer	3,767.02
255	(61) James A. Matish	522.50
256	(62) James R. Sheatsley	107.50
257	(63) William B. Kilduff	683.85
258	(64) Lane O. Austin	213.15
259	(65) Derek Craig Swope	161.50
260	(66) Philip T. Lilly, Jr.	170.00
261	(67) James L. Satterfield	157.09
262	(68) J. Burton Hunter, III	506.31
263	(69) Ernest M. Douglass	182.50
264	(70) Johnston, Holroyd & Gibson	7,561.55
265	(71) H. F. Salsbery, Jr.	167.00
266	(72) Louis H. Khourey	284.00
267	(73) David R. Gold	691.85
268	(74) Patrick N. Radcliff	234.50
269	(75) Charles W. Davis	322.79
270	(76) Edwin B. Wiley	6,126.08
271	(77) A. E. Cooper	142.50
272	(78) Roy David Arrington	501.75
273	(79) Ward D. Stone, Jr.	138.25
274	(80) Robert B. Stone	323.75
275	(81) Nicolette Hahon Granack	326.94
276	(82) Robert F. Gallagher	216.50
277	(83) Jeffrey Corbin Dyer	117.50
278	(84) David L. Solomon	280.00
279	(85) William W. Merow, Jr.	438.83
280	(86) Alan H. Larrick	87.50

281	(87) Jacob W. Ray	1,461.78
282	(88) Brown H. Payne	350.00
283	(89) Bradley J. Pyles	1,007.50
284	(90) Laverne Sweeney	1,882.25
285	(91) Richard W. Crews	1,240.00
286	(92) R. Thomas Czarnik	1,475.95
287	(93) George Zivkovich	320.78
288	(94) Larry N. Sullivan	1,903.78
289	(95) J. Robert Rogers	2,090.40
290	(96) Richard Thompson	1,229.10
291	(97) Boyce Griffith	1,872.50
292	(98) Robin C. Capehart	571.50
293	(99) Ronnie Z. McCann	1,147.50
294	(100) John W. Bennett	193.60
295	(101) Robert M. Vukas	766.77
296	(102) Robert W. Friend	670.00
297	(103) Bogarad & Robertson	340.30
298	(104) W. Dean Delamater	246.63
299	(105) George P. Bohach	667.75
300	(106) Fred Risovich, II	437.70
301	(107) Thomas C. Evans, III	851.25
302	(108) Orton A. Jones	484.25
303	(109) George D. Beter	805.95
304	(110) Howard M. Persinger, Jr.	1,792.50
305	(111) Kevin B. Burgess	534.38
306	(112) T. R. Harrington, Jr.	196.75
307	(113) Wayne D. Inge	306.25
308	(114) Frederick A. Jesser, III	606.50
309	(115) Phil J. Tissue	235.00
310	(116) Steve Vickers	241.60
311	(117) Janet Frye (Steele)	1,560.35
312	(118) John M. Thompson, Jr.	1,922.50
313	(119) Michael R. Cline	25.00
314	(120) Paul S. Perfater	125.00
315	(121) Thomas Ralph Mullins	366.25
316	(122) W. Ronald Denson	660.00
317	(123) David F. Greene	380.00
318	(124) Charles M. Walker	1,012.00
319	(125) Thomas M. Hayes	541.40
320	(126) Michael T. Chaney	150.00

321	(127) Phillip D. Gaujot	270.00
322	(128) Thomas R. Tinder	287.70
323	(129) Robert L. Twitty	712.50
324	(130) David L. Shuman	1,908.02
325	(131) Grant Crandall	1,000.75
326	(132) Penelope Crandall	21.60
327	(133) Robert M. Worrell	210.00
328	(134) Larry D. Taylor	115.00
329	(135) Mark A. Taylor	383.00
330	(136) Stephanie J. Racin	130.00
331	(137) Ralph C. Dusic, Jr.	265.00
332	(138) Harry M. Hatfield	950.00
333	(139) William C. Field	402.50
334	(140) Robert E. Douglas	437.50
335	(141) Stephen P. Swisher	458.50
336	(142) David M. Finnerin	2,248.45
337	(143) F. Alfred Sines, Jr.	871.25
338	(144) James G. Anderson, III ..	1,369.69
339	(145) Martin J. Glasser	853.97
340	(146) Charles H. Brown	12.50
341	(147) Lawrence L. Manypenny ..	243.74
342	(148) Billy E. Burkett	327.50
343	(149) F. Christian Gall, Jr.	1,417.95
344	(150) J. E. Wilkinson	740.00
345	(151) J. Franklin Long	9,887.95
346	(152) Robert L. Schumacher	3,722.82
347	(153) Hudgins, Coulling, Brewster & Morhous	856.50
348	(154) Michael H. Lilly	4,128.30
349	(155) Robert N. Bland	1,460.00
350	(156) Bernard R. Mauser	500.00
351	(157) Jeniver J. Jones	682.50
352	(158) Steven C. Hanley	1,410.00
353	(159) William Mitchell	235.00
354	(160) Jack L. Hickok	97.80
355	(161) John C. Krivonyak	346.25
356	(162) James E. Ansel	645.00
357	(163) W. Del Roy Harner	110.00
358	(164) G. David Brumfield	1,114.15
359	(165) McGinnis E. Hatfield, Jr.	616.25
360	(166) Richard A. Bush	2,447.19

361	(167) John R. Frazier	3,594.15
362	(168) David M. Flannery	119.90
363	(169) Henry C. Bowen	503.05
364	(170) Daniel A. Oliver	1,323.75
365	(171) Harry A. Smith, III	133.75
366	(172) C. Michael Bee	549.53
367	(173) Cletus B. Hanley	205.00
368	(174) James J. MacCallum	440.00
369	(175) Karen L. Garrett	932.50
370	(176) Jerry D. Moore	79.60
371	(177) Raymond G. Musgrave	1,500.00
372	(178) Dan O. Callaghan	426.74
373	(179) Thomas N. Chambers	230.00
374	(180) Thomas G. Freeman, II	690.00
375	(181) W. Henry Jernigan	50.00
376	(182) John R. Lukens	485.14
377	(183) Taunja Willis Miller	65.45
378	(184) Forrest H. Roles	93.65
379	(185) W. Warren Upton	100.15
380	(186) John S. Sibray	4,106.58
381	(187) Rudolph J. Murensky, II	115.00
382	(188) Donald E. Santee	255.00
383	(189) Alexander J. Ross	117.50
384	(190) Garrett, Whittier & Garrett	495.00
385	(191) James Wilson Douglas	712.50
386	(192) Michael T. Clifford	1,990.00
387	(193) William W. Pepper	473.70
388	(194) C. Blaine Myers	993.00
389	(195) Donald G. Underwood	640.00
390	(c) <i>Claim against the Board of Chiropractic Examiners:</i>	
391	TO BE PAID FROM GENERAL REVENUE FUND	
392	(1) Kanawha Office Equipment, Inc.	608.00
393	(d) <i>Claims against the Board of Regents:</i>	
394	TO BE PAID FROM GENERAL REVENUE FUND	
395	(1) Sue H. Ellis	948.00
396	(2) Jamison Electrical Construction Co.	21,662.27
397	(3) Kanawha Office Equipment, Inc.	2,028.00

398	(4) Ernest J. Sandy	1,459.00
399	(5) Spatial Data Systems, Inc.	650.00

400 (e) *Claims against the Department of Corrections:*

401 TO BE PAID FROM GENERAL REVENUE FUND

402	(1) Appalachian Regional Hospital	1,243.25
403	(2) Law Enforcement Ordnance Company	5,065.30
404	(3) Southern West Virginia Clinic	185.00
405	(4) Tony J. Veltri, d/b/a	
406	Farmers Delight Co.	5,172.78
407	(5) Weirton General Hospital	4,323.05

408 (f) *Claim against the Department of Culture and History:*

409 TO BE PAID FROM GENERAL REVENUE FUND

410	(1) IBM Corporation	658.00
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411 (g) *Claims against the Department of Finance and Administration:*

412 TO BE PAID FROM GENERAL REVENUE FUND

413	(1) Capital Business Interiors, Div. of	
415	Capitol Business Equipment, Inc.	141.00
416	(2) Uarco, Inc.	2,744.95

417 (h) *Claims against the Department of Health:*

418 TO BE PAID FROM GENERAL REVENUE FUND

419	(1) American Hospital Supply	424.32
420	(2) Appalachian Engineers, Inc.	1,325.00
421	(3) Dill's Mountaineer Associates, Inc.	2,406.00
422	(4) Barbara Gruber	3,556.66
423	(5) Huntington Water Corporation	543.52
424	(6) Lourdes Lezada	6,000.00
425	(7) Shaeffer and Associates	576.00
426	(8) Three Printers, Inc.	2,347.27
427	(9) Louis B. Varney, d/b/a Tri-State	
428	Inspection Service	4,250.00
429	(10) Harold L. Weber, Jr.	9,791.91

430	(11) William Paul Hall, Sr., Admin. of the	
431	Estate of William Paul	
432	Hall, Jr.	11,783.19
433	(i) <i>Claim against the Department of Public Safety:</i>	
434	TO BE PAID FROM GENERAL REVENUE FUND	
435	(1) Mary Louise Szelong	1,100.00
436	(j) <i>Claims against the Division of Vocational Rehabilitation:</i>	
437	TO BE PAID FROM GENERAL REVENUE FUND	
438	TO BE PAID FROM GENERAL REVENUE FUND	
439	(1) Clinic Private Division, University	
440	of Virginia	842.00
441	(2) Heck's, Inc.	245.56
442	(k) <i>Claim against the Nonintoxicating Beer Commission:</i>	
443	TO BE PAID FROM GENERAL REVENUE FUND	
444	(1) Falls City Industries, Inc., formerly	
445	Falls City Brewing Co.	156.75
446	(l) <i>Claim against the Office of the Governor:</i>	
447	TO BE PAID FROM GENERAL REVENUE FUND	
448	(1) Empire Foods, Inc.	3,165.50
449	(m) <i>Claim against the State Tax Department:</i>	
450	TO BE PAID FROM GENERAL REVENUE FUND	
451	(1) Consolidated Contractors	1,600.00
452	(n) <i>Claims against the Department of Highways:</i>	
453	TO BE PAID FROM STATE ROAD FUND	
454	(1) A. J. Baltes, Inc.	588,271.73
455	(2) Maria Caterina Anania	9,000.00
456	(3) Robert S. Atkinson and Evelyn	
457	Atkinson	4,948.90
458	(4) Russell Lee Barkley	1,080.00
459	(5) Harry H. Barrett	68.30
460	(6) Black Rock Contracting, Inc.	8,067.79

461	(7) Eli Blankenship, Jr., Admin.	
462	of the Estate of Johnny	
463	Blankenship, deceased	14,213.86
464	(8) The Board of Education of the County	
465	of Kanawha	1,694.81
466	(9) Virginia Burton	199.14
467	(10) Homer Bush	415.00
468	(11) George Carper	135.94
469	(12) John F. Clark	71.93
470	(13) Coleman Oil Company, Inc.	1,111.82
471	(14) Bertie K. Cox	180.25
472	(15) Melvin Dingess and Corenia Dingess ...	2,500.00
473	(16) Duling Brokerage, Inc.	115.59
474	(17) Joe B. Eller	120.62
475	(18) Edward Engel	48.34
476	(19) Daniel C. Farley, Jr.	1,500.00
477	(20) Robert L. Ferguson, Executor of the	
478	Estate of Elizabeth L. Ferguson,	
479	deceased	5,000.00
480	(21) Martin V. Gaston, Sr.	942.00
481	(22) Elizabeth Smith Grafton	9,000.00
482	(23) Drema D. Greenlee and	
483	Stephen E. Greenlee	54.00
484	(24) Walter A. Henriksen	458.35
485	(25) Deborah J. Hodges	43.21
486	(26) Kim Hope	47.27
487	(27) Theresa Kurucz	337.98
488	(28) Jean C. Littlepage	145.17
489	(29) Carroll Lynch	1,763.83
490	(30) Jonathan E. McDonald	2,000.00
491	(31) Jonathan E. McDonald, Admin. of the	
492	Estate of James Edgar McDonald,	
493	deceased	10,630.50
494	(32) Jonathan E. McDonald, Admin. of the	
495	Estate of Penny Jo McDonald,	
496	deceased	10,647.70
497	(33) S. A. Meadows	87.00
498	(34) Cleo Lively Moore	5,000.00
499	(35) Franklin L. Dalton	100.00
500	(36) Catherine Nestor	11,196.50

501	(37) Jack H. Parsons, Jr.	37.88
502	(38) Garnet L. Pelfrey	307.93
503	(39) Gerald L. Perry and Deloris Perry	146.86
504	(40) Joyce Porter	306.05
505	(41) Roy C. Rayburn, Jr.	171.67
506	(42) Dencil Reynolds and Judith Reynolds	44.12
507	(43) Roscoe Rhodes and Maxine V. Rhodes	2,000.00
508	(44) Ronnie Gene Roach	90.25
509	(45) Danny Lee Rockett and	
510	Kathy Newell Rockett	199.34
511	(46) Franklin D. Rowe	188.74
512	(47) Guy N. Sayre	285.72
513	(48) Jessie Sayre and Densil O. Sayre	41.01
514	(49) A. O. Secret	96.76
515	(50) Shel Products, Inc.	5,900.00
516	(51) Kevin E. Smith	128.40
517	(52) Larry Keith Smith	296.30
518	(53) Joe Snodgrass	189.49
519	(54) Charles H. Spradling, Jr.	117.62
520	(55) Gary Cline Spurgeon	185.00
521	(56) Harold Ray Stafford	917.50
522	(57) Posey L. Stevenson	72.10
523	(58) Stone Company, Inc.	4,500.00
524	(59) Frank Terango and Duel Terango	720.11
525	(60) Nancy J. Thabet	666.52
526	(61) Debra A. Vinson	44.29
527	(62) Alva Katherine White	1,000.00
528	(63) Paul White and Wanda White	4,000.00
529	(64) Rose M. Allen	15,900.00
530	(65) Ronald L. Bailey	280.09
531	(66) Carmet Company	946.57
532	(67) Frances Jeanette Casey	217.06
533	(68) Cochran Electric Company	7,800.00
534	(69) Chester Jones	3,760.60
535	(70) Barton Meaige	19.66
536	(71) Charles E. Williams	12,000.00
537	(o) <i>Claims against the Department of Motor Vehicles:</i>	
538	TO BE PAID FROM STATE ROAD FUND	
539	(1) Bank of Gassaway	3,061.16

540	(2) Randy Lee Shamblin	240.00
541	(p) <i>Claims against the Alcohol Beverage Control Commis-</i>	
542	<i>sioner:</i>	
543	TO BE PAID FROM SPECIAL REVENUE FUND	
544	(1) Nita Kay Colliton	5,833.49
545	(2) Handling, Inc.	1,031.00
546	(3) Nellis Motor Sales	260.97

547 The Legislature finds that the above moral obligations and
 548 the appropriations made in satisfaction thereof shall be the full
 549 compensation for all claimants, and that prior to the payments
 550 to any claimant provided for in this bill, the court of claims
 551 shall receive a release from said claimant releasing any and
 552 all claims for moral obligations arising from the matters con-
 553 sidered by the Legislature in the finding of the moral ob-
 554 ligations and the making of the appropriations for said clai-
 555 mant. The court of claims shall deliver all releases obtained
 556 from claimants to the department against which the claim was
 557 allowed.

CHAPTER 47

(H. B. 794—By Mr. Holmes and Mr. Otte)

[Passed February 23, 1981; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. **Finding and declaring certain claims against the department of corrections and the department of motor vehicles to be moral obligations of the state and directing payment thereof.**

- 1 The Legislature has heretofore made findings of fact that
- 2 the state has received the benefit of the commodities and

3 services rendered by certain claimants herein and has con-
 4 sidered claims against the state, the department of corrections
 5 and the department of motor vehicles, agencies thereof, which
 6 have arisen due to overexpenditures of departmental appro-
 7 priations by officers of such state spending unit, such claims
 8 having been previously considered by the court of claims
 9 which also found that the state has received the benefit of the
 10 commodities and services rendered by each claimant, but were
 11 denied by the court of claims on the purely statutory grounds
 12 that to allow such claims would be condoning illegal acts con-
 13 trary to the laws of the state. The Legislature, pursuant to its
 14 findings of fact and also by the adoption of the findings of
 15 fact by the court of claims as its own, and, while not condoning
 16 such illegal acts, hereby declares it to be the moral obligation
 17 of the state to pay each such claim in the amount specified
 18 below, and directs the auditor to issue warrants upon receipt
 19 of a properly executed requisition supported by an itemized
 20 invoice, statement or other satisfactory document as required
 21 by section ten, article three, chapter twelve of the code of
 22 West Virginia, one thousand nine hundred thirty-one, as
 23 amended, for the payment thereof out of any fund ap-
 24 propriated and available for the purpose.

25 (a) *Claims against the Department of Corrections:*

26 TO BE PAID FROM GENERAL REVENUE FUND

27	(1) Appalachian Regional Hospital	\$10,355.15
28	(2) Morris E. Brown, D.D.S.	24.00
29	(3) Climate Makers of Charleston, Inc.	2,568.00
30	(4) Dacar Chemical Co.	110.00
31	(5) Davis Memorial Hospital	1,096.62
32	(6) Exxon Company, U.S.A.	246.53
33	(7) Gulf Oil Co., U.S.	54.63
34	(8) George L. Hill, Jr.	600.00
35	(9) Huntington Steel & Supply Co.	1,028.99
36	(10) IBM Corporation	836.64
37	(11) Industrial Rubber Products Co.	301.47
38	(12) Kellogg Company	4,174.35
39	(13) The Kroger Co.	13.80
40	(14) Memorial General Hospital	46,156.75
41	(15) Ohio Valley Medical Center, Inc.	11,656.57

42	(16) Raleigh General Hospital	2,432.60
43	(17) Randolph County Board of Education	392.00
44	(18) Southern West Virginia Clinic	310.00
45	(19) Taylor County Commission	280.00
46	(20) Town & Country Dairy	2,096.08
47	(21) Union Oil Company of California	3,248.22
48	(22) Wheeling Hospital	585.95
49	(23) Xerox Corporation	1,050.66

50 (b) *Claim against the Department of Motor Vehicles:*

51 TO BE PAID FROM STATE ROAD FUND

52 (1) 3M Company 3,000.00

CHAPTER 48

(Com. Sub. for H. B. 1541—By Mr. Holmes and Mr. Otte)

[Passed April 6, 1981; 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 alcohol beverage control commissioner; board of regents; department of banking; department of corrections; department of finance and administration; department of health; department of highways; department of motor vehicles; department of public safety; division of vocational rehabilitation; insurance department; nonintoxicating beer commission; office of the state auditor-representation of needy persons fund; state building commission; and the supreme court-mental hygiene fund, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and

2 recommendations reported to it by the court of claims con-
 3 cerning various claims against the state and agencies thereof,
 4 and in respect to each of the following claims the Legislature
 5 adopts those findings of fact as its own, and hereby declares
 6 it to be the moral obligation of the state to pay each such
 7 claim in the amount specified below, and directs the auditor
 8 to issue warrants for the payment thereof out of any fund
 9 appropriated and available for the purpose.

10 (a) *Claim against the Alcohol Beverage Control Commissioner:*

11 TO BE PAID FROM SPECIAL REVENUE FUND

12 (1) Robert H. C. Kay, Trustee, Estate of
 13 W. F. Harless\$ 225.00

14 (b) *Claims against the Board of Regents:*

15 TO BE PAID FROM GENERAL REVENUE FUND

16 (1) Carolyn H. Arnold\$ 38.00
 17 (2) Charles L. Coffman\$ 22.41
 18 (3) Cynthia Donahue\$ 348.00
 19 (4) Modern Press, Inc.\$ 3,785.77
 20 (5) Patsy Spatafore\$ 994.00
 21 (6) Varian Associates—Instrument Division \$ 193.78

22 (c) *Claim against the Board of Regents:*

23 TO BE PAID FROM SPECIAL REVENUE FUND—

24 ACCOUNT NUMBER 8710

25 (1) Wente Construction Company, Inc.\$ 70,249.78

26 (d) *Claim against the Department of Banking:*

27 TO BE PAID FROM GENERAL REVENUE FUND

28 (1) Edward J. Hamilton\$ 167.93

29 (e) *Claims against the Department of Corrections:*

30 TO BE PAID FROM GENERAL REVENUE FUND

31 (1) Fairmont General Hospital\$ 265.95
 32 (2) Staunton Foods, Inc.\$ 1,842.65
 33 (3) Stewart-Decatur Security Systems, Inc. \$ 6,755.70

34 (f) *Claims against the Department of Finance and Admini-*
35 *stration:*

36 TO BE PAID FROM GENERAL REVENUE FUND

37	(1) Program Resources, Inc.	\$ 10,178.50
38	(2) Weirton Daily Times	\$ 34.94

39 (g) *Claims against the Department of Health:*

40 TO BE PAID FROM GENERAL REVENUE FUND

41	(1) American Scientific Products	\$ 6,626.00
42	(2) Appalachian Homes, Inc.	\$ 1,908.00
43	(3) Appalachian Power Co.	\$ 389.55
44	(4) Associated Radiologists, Inc.	\$ 6.00
45	(5) James Earl Campbell	\$ 1,500.00
46	(6) Kenneth Ray Campbell	\$ 1,500.00
47	(7) Melvin S. Campbell	\$ 1,500.00
48	(8) E. I. du Pont de Nemours & Co.	\$ 6,959.70
49	(9) J. Robert Evans, d/b/a Motor Car Supply Co.	\$ 60.94
51	(10) Thelma E. McIntyre, Admin. of the Estate of Wilma S. McIntyre, deceased	\$ 15,627.30
53	(11) Sargent-Welch Scientific Co.	\$ 663.50
54	(12) John Slone	\$ 7,500.00
55	(13) John Slone, Admin. of the Estate of Maude Slone, deceased	\$ 1,155.00
57	(14) Trojan Steel Company	\$ 9,200.00
58	(15) Weslakin Corporation	\$ 139.80

59 (h) *Claims against the Department of Highways:*

60 TO BE PAID FROM STATE ROAD FUND

61	(1) Timothy Adkins	\$ 2,250.00
62	(2) Allstate Construction & Roofing Co. ..	\$ 2,068.15
63	(3) Appalachian Power Co.	\$ 47,473.00
64	(4) Jeffrey A. Bailey	\$ 1,396.87
65	(5) Mary Jo Bailey	\$ 1,690.00
66	(6) William Frank Ball, d/b/a Ball Trucking, Inc.	\$ 948.00
68	(7) David S. Barnett	\$ 209.11
69	(8) Norman E. Benson	\$ 6,000.00

70	(9) Randy N. Bleigh	\$ 180.00
71	(10) Bracken Construction Company	\$ 1,928.30
72	(11) Harley C. Butler	\$ 132.16
73	(12) Carl M. Geupel Construction	
74	Co., Inc.	\$ 39,566.44
75	(13) Janet Aultz Casto	\$ 8,000.00
76	(14) Eugene W. Conn	\$ 100.00
77	(15) Violet Cook	\$ 178.87
78	(16) Richard E. Cozad	\$ 100.68
79	(17) Gloria M. Crissi	\$ 180.00
80	(18) Mr. and Mrs. Tamas A. de Kun	\$ 1,711.18
81	(19) Carol A. Demersman	\$ 225.48
82	(20) Reba C. Dunlap	\$ 218.44
83	(21) Sam Epling	\$ 292.04
84	(22) Fanning Funeral Home, Inc.	\$ 10,000.00
85	(23) J. G. Finney	\$ 230.47
86	(24) Irene E. Fragale	\$ 93.68
87	(25) Russell E. Freeman	\$ 199.53
88	(26) Randy B. Fry	\$ 900.00
89	(27) Sondra Lynn Funk	\$ 316.00
90	(28) Charles W. Garland	\$ 60.00
91	(29) Patricia K. Garrido	\$ 1,500.00
92	(30) Margaret Gibson	\$ 573.94
93	(31) Marjorie J. Gillispie	\$ 103.60
94	(32) Thomas P. Gunnoe	\$ 66.26
95	(33) Lee Roy Hamilton	\$ 2,804.25
96	(34) Gregory A. Harrison	\$ 599.09
97	(35) Cecil Ray Haught	\$ 2,300.00
98	(36) Highway Engineers, Inc.	\$ 33,181.09
99	(37) J. F. Allen Company	\$ 49,519.80
100	(38) Barney Dale Johnson	\$ 439.29
101	(39) Esther Johnson	\$ 523.68
102	(40) Maurice L. Jones	\$ 194.70
103	(41) Gary L. Knowlton	\$ 145.03
104	(42) Charles F. McCallister	\$ 1,099.43
105	(43) Sara H. McClung	\$ 80.48
106	(44) James A. McDougal	\$ 100.00
107	(45) McJunkin Corporation	\$ 1,354.50
108	(46) Carl Eugene McNeely	\$ 301.91
109	(47) Robert W. Mick	\$ 69.49

110	(48) Barbara L. Miller	\$ 52.56
111	(49) Carl Moats and Pauline Moats	\$ 165.00
112	(50) Carl C. Moles	\$ 583.74
113	(51) Virgil E. Moore	\$ 1,882.50
114	(52) Hughie C. Parks	\$ 1,212.50
115	(53) Reba Dixie Perry	\$ 2,887.07
116	(54) Zona Ruth Peters	\$ 451.00
117	(55) Roy Porterfield and Donna	
118	F. Porterfield	\$ 38.69
119	(56) Sterling L. Pullen, Jr.	\$ 2,148.81
120	(57) Glen L. Ramey	\$ 4,933.13
121	(58) Margaret K. Richardson	\$ 4,581.05
122	(59) Lee Roy Robertson	\$ 1,700.00
123	(60) Arden Leon Stull	\$ 2,070.00
124	(61) Gloria Tabit	\$ 6,950.00
125	(62) Gary Thompson	\$ 286.87
126	(63) Paul J. Underwood and	
127	Betty O. Underwood	\$ 3,777.09
128	(64) Myrtle Chaffins Watts and	
129	Elbert Watts	\$ 3,722.05
130	(65) West Virginia Telephone Company	\$ 1,293.33
131	(66) Virginia Williams	\$ 647.50
132	(67) Ernest Williamson	\$ 119.75
133	(68) Merwin B. Wingo	\$ 1,000.00
134	(69) Ernest N. Wolford &	
135	Patricia K. Wolford	\$ 1,861.82
136	(70) Albert Ted Wood	\$ 1,743.29
137	(71) David J. Yates	\$ 38.85
138	(72) E. H. Young	\$ 610.48
139	(73) Robert L. Zimmerman	\$ 250.00
140	(74) Dean R. Grim	\$ 25,000.00
141	(75) James R. Skinner d/b/a	
142	Jim's Grocery	\$ 3,000.00
143	(76) Michael J. Boland	\$ 3,500.00
144	(77) J. C. Boland	\$ 2,775.00
145	(i) <i>Claims against the Department of Motor Vehicles:</i>	
146	TO BE PAID FROM STATE ROAD FUND	
147	(1) General Motors	
148	Acceptance Corporation	\$ 9,147.03

149	(2) Malco Plastics, Inc.	\$ 539.58
150	(j) <i>Claims against the Department of Public Safety:</i>	
151	TO BE PAID FROM GENERAL REVENUE FUND	
152	(1) Appalachian Power Company	\$ 272.11
153	(2) Johnson Controls, Inc.	\$ 4,323.67
154	(k) <i>Claims against the Division of Vocational Rehabilitation:</i>	
155	TO BE PAID FROM GENERAL REVENUE FUND	
156	(1) Beckley Hospital, Inc.	\$ 26.95
157	(2) Davis and Elkins College	\$ 787.50
158	(3) Eye & Ear Clinic of	
159	Charleston, Inc. (The)	\$ 636.00
160	(l) <i>Claim against the Insurance Department:</i>	
161	TO BE PAID FROM GENERAL REVENUE FUND	
162	(1) Michael J. Davoli	\$ 9,734.00
163	(m) <i>Claim against the Nonintoxicating Beer Commission:</i>	
164	TO BE PAID FROM GENERAL REVENUE FUND	
165	(1) Cline Distributing Company	\$ 3,464.09
166	(n) <i>Claims against the Office of the State Auditor-</i>	
167	<i>Representation of Needy Persons Fund:</i>	
168	TO BE PAID FROM GENERAL REVENUE FUND	
169	(1) James G. Anderson, III	\$ 87.50
170	(2) James Michael Casey	\$ 2,148.15
171	(3) Barry L. Casto	\$ 1,781.02
172	(4) George M. Cooper	\$ 125.00
173	(5) James A. Esposito	\$ 656.25
174	(6) L. Edward Friend, II	\$ 821.00
175	(7) Robert F. Gallagher	\$ 1,097.00
176	(8) Nicolette Hahon Granack	\$ 787.50
177	(9) Peggy O'Neal (Hart)	\$ 338.96
178	(10) Jeniver J. Jones	\$ 320.00
179	(11) Carroll T. Lay	\$ 123.75
180	(12) Stephen C. Littlepage	\$ 1,291.60

181	(13) Elizabeth M. Martin	\$ 715.00
182	(14) William W. Merow, Jr.	\$ 35.00
183	(15) Damon B. Morgan, Jr.	\$ 610.00
184	(16) Raymond G. Musgrave	\$ 644.30
185	(17) H. F. Salsbery, Jr.	\$ 57.00
186	(18) Michael L. Solomon	\$ 1,937.50
187	(19) Francoise D. Stauber	\$ 447.00
188	(20) Robert B. Stone	\$ 506.25
189	(21) Ward D. Stone, Jr.	\$ 150.00
190	(22) Rosemarie Twomey	\$ 435.77
191	(23) Charles W. Wilson	\$ 94.00
192	(24) Nancy S. Miller	\$ 665.00
193	(25) Larry N. Sullivan	\$ 252.50

194 (o) *Claim against the State Building Commission:*

195 TO BE PAID FROM SPECIAL REVENUE FUND

196 ACCOUNT NO 9500-09

197 (1) Zando, Martin & Milstead, Inc. \$ 18,833.45

198 (p) *Claims against the Supreme Court—*

199 *Mental Hygiene Fund:*

200 TO BE PAID FROM GENERAL REVENUE FUND

201	(1) Robert N. Bland	\$ 400.00
202	(2) Samuel Broverman	\$ 211.00
203	(3) George M. Cooper	\$ 700.00
204	(4) James A. Esposito	\$ 182.50
205	(5) Jeniver J. Jones	\$ 25.00
206	(6) James A. Liotta	\$ 75.00
207	(7) Jacqui Sites	\$ 60.00
208	(8) Stenomask Reporting Service	\$ 50.00
209	(9) Eugene R. White	\$ 600.00
210	(10) Charles W. Wilson	\$ 808.00
211	(11) George Zivkovich	\$ 80.00

212 The Legislature finds that the above moral obligations and
 213 the appropriations made in satisfaction thereof shall be the full
 214 compensation for all claimants, and that prior to the payments
 215 to any claimant provided for in this bill, the court of claims
 216 shall receive a release from said claimant releasing any and

217 all claims for moral obligations arising from the matters con-
218 sidered by the Legislature in the finding of the moral obliga-
219 tions and the making of the appropriations for said claimant.
220 The court of claims shall deliver all releases obtained from
221 claimants to the department against which the claim was
222 allowed.

CHAPTER 49

(Com. Sub. for H. B. 1542—By Mr. Holmes and Mr. Otto)

[Passed April 6, 1981; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the board of regents; the department of corrections; the department of finance and administration; and the office of the governor, to be moral obligations of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact that the
2 state has received the benefit of the commodities and services
3 rendered by certain claimants herein and has considered claims
4 against the state, the board of occupational therapy, the board
5 of regents, the department of corrections, the department of
6 finance and administration and the office of the governor,
7 agencies thereof, which have arisen due to overexpenditures of
8 the departmental appropriations by officers of such state
9 spending unit, such claims having been previously considered
10 by the court of claims which also found that the state has re-
11 ceived the benefit of the commodities and services rendered by
12 each claimant, but were denied by the court of claims on the
13 purely statutory grounds that to allow such claims would be

14 condoning illegal acts contrary to the laws of the state. The
15 Legislature pursuant to its findings of fact and also by the
16 adoption of the findings of fact by the court of claims as its
17 own, and, while not condoning such illegal acts, hereby de-
18 clares it to be the moral obligation of the state to pay each
19 such claim in the amount specified below, and directs the
20 auditor to issue warrants upon receipt of a properly executed
21 requisition supported by an itemized invoice, statement or
22 other satisfactory document as required by section ten, article
23 three, chapter twelve of the code of West Virginia, one thou-
24 sand nine hundred thirty-one, as amended, for the payment
25 thereof out of any fund appropriated and available for the
26 purpose.

27 (a) *Claim against the Board of Regents:*

28 TO BE PAID FROM GENERAL REVENUE FUND

29 (1) Johnson Controls, Inc. \$ 7,780.00

30 (b) *Claims against the Department of Corrections:*

31 TO BE PAID FROM GENERAL REVENUE FUND

32 (1) Appalachian Mental Health Center \$ 4,875.00
33 (2) William R. Barton, M.D. \$ 153.00
34 (3) Betsy Ross Bakeries, Inc. \$ 687.95
35 (4) Capital Credit Corporation \$ 313.50
36 (5) Grafton City Hospital \$ 977.69
37 (6) Greenbrier Physicians, Inc. \$ 104.00
38 (7) Interstate Printers & Publishers, Inc. . \$ 157.30
39 (8) I. H. Luna, M.D. \$ 260.00
40 (9) M. Merrick & Associates, Inc. \$ 108.38
41 (10) Memorial General Hospital \$ 96,328.93
42 (11) Robert R. Weiler, M.D. \$ 1,259.00
43 (12) Xerox Corporation \$ 120.00

44 (c) *Claim against the Department of Finance and Adminis-*
45 *tration:*

46 TO BE PAID FROM GENERAL REVENUE FUND

47 (1) City of Charleston \$ 31,699.20

48 (d) *Claim against the Office of the Governor:*

49 TO BE PAID FROM GENERAL REVENUE FUND

50 (1) Joe L. Smith, Jr., Inc. d/b/a Biggs-

51 Johnston-Withrow \$ 24,126.92

CHAPTER 50

(H. B. 1167—By Mr. Harman, 33rd Dist., and Mr. Tucker)

[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, eighteen, nineteen, twenty-four and twenty-six, article one, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article one by adding thereto three new sections, designated sections eighteen-a, eighteen-b and eighteen-c, all relating to empowering the state commissioner of finance and administration to collect or cause to be collected certain debts due the state by consigning the collection of said debts to certain debt collection agencies and agents; relating to who may prosecute certain proceedings; providing for a certain compromise, settlement and dismissal of certain claims; relating to the selection and responsibility of certain collection agencies and agents; requiring a certain list; providing for certain fees and a certain fee limitation; and relating to certain compensation to the state auditor's agents and certain reports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. CLAIMS DUE THE STATE.

§14-1-1. Who may prosecute debt proceedings.

- §14-1-18. Settlement or dismissal of claims.
- §14-1-18a. Consignment of claims to debt collector.
- §14-1-18b. Regulations applicable to debt collectors.
- §14-1-18c. List of eligible debt collectors; statutory limitation applicable to debt collectors.
- §14-1-19. Appointment of collection agents by auditor.
- §14-1-24. Compensation of auditor's agents for collection of debts.
- §14-1-26. Reports to Legislature.

§14-1-1. Who may prosecute debt proceedings.

1 The auditor, commissioner of finance and administration
2 and any other officer or body authorized by law shall cause
3 appropriate proceedings, in the manner provided for in this
4 article, to be instituted and prosecuted to enforce payment
5 of any debt or liability due the state.

§14-1-18. Settlement or dismissal of claims.

1 The commissioner of finance and administration, auditor
2 or other officer or official body having authority to collect
3 the same may, with the advice of the attorney general, adjust
4 and settle upon just and equitable principles without regard
5 to strict legal rules any account or claim, in favor of the
6 state, which may at the time have been standing upon the
7 books of his or its office more than five years; and, with the
8 like advice, may dismiss any proceedings instituted by him or
9 it.

§14-1-18a. Consignment of claims to debt collector.

1 Any account, claim or debt that an agency of this state
2 is not able to collect within three months after trying with
3 due diligence to do so may be referred to the commissioner
4 of finance and administration for consignment by the com-
5 missioner to a responsible licensed and bonded debt collec-
6 tion agency or similar other responsible agent for collec-
7 tion. The commissicner shall not handle or consign any
8 such account, claim or debt unless he is satisfied that the

9 referring agency has made a diligent effort to collect the
10 debt on its own; that the account or claim is justly, prop-
11 erly and clearly due the state; and that the collection of
12 any such debt would not impose an undue, unjust, unfair
13 or unreasonable hardship or burden upon the health or
14 general welfare of the party owing the debt. In any such
15 case of undue, unjust, unfair or unreasonable hardship or
16 burden, the commissioner may, in his discretion, and with the
17 review and approval of the attorney general, compromise,
18 settle or dismiss the debt or claim. If he is satisfied that
19 the aforesaid terms of any conditions for collectibility have
20 been met, the commissioner may consign the account, claim
21 or debt to a responsible licensed and bonded debt collection
22 agency or similar other responsible agent for collection.
23 In any such case, the collection agency or other agent shall
24 stand in the place of the state as creditor and shall have
25 the same claims, rights and remedies against the debtor as
26 the state has, and the debtor shall have the same rights,
27 claims, defenses and setoffs against the collection agency or
28 other agent as he has against the state.

§14-1-18b. Regulations applicable to debt collectors.

1 The commissioner of finance and administration shall
2 promulgate rules and regulations for the determination and
3 regulation of responsible licensed and bonded debt collec-
4 tion agencies and other responsible agents for collection.
5 The commissioner shall determine the collection fees to be
6 paid to any such agency or agent, which fees shall be a per-
7 centage of the amount of the debt recovered, but the com-
8 missioner shall not under any circumstances pay any agency
9 or agent a fee of more than fifty percent of the amount of the
10 debt recovered.

**§14-1-18c. List of eligible debt collectors; statutory limitations ap-
plicable to debt collectors.**

1 The state tax commissioner shall establish and maintain
2 a list of debt collection agencies bonded and licensed with
3 the state. When choosing collection agencies under the pro-
4 visions of sections eighteen-a and eighteen-b of this article,

5 the commissioner of finance and administration shall select
6 and use only those collection agencies on the state tax com-
7 missioner's list. In collecting debts under sections eighteen-a
8 and eighteen-b of this article, each debt collection agency
9 and agent shall strictly abide by the provisions of (a) sec-
10 tions one hundred twenty-two through one hundred twenty-
11 nine, inclusive, of article two, chapter forty-six-a of this code;
12 (b) sections one through five, inclusive, of article sixteen, chap-
13 ter forty-seven of this code; and (c) the federal Fair Debt Col-
14 lection Practices Act, being Public Law 95-109 of the United
15 States Congress. If any debt collection agency or agent vio-
16 lates any provision of the aforesaid laws, the state tax com-
17 missioner shall remove the agency from his aforesaid list and
18 the commissioner of finance and administration shall immedi-
19 ately stop his employment and use of the agency or agent.

§14-1-19. Appointment of collection agents by auditor.

1 The auditor, subject to the approval of the commissioner
2 of finance and administration, may appoint agents to superin-
3 tend the collection of those debts to or claims of the state he
4 is by law responsible for. The auditor may authorize them to
5 secure payments thereof by installments or otherwise and give
6 further credit in consideration of additional security or in-
7 demnity satisfactory to him.

§14-1-24. Compensation of auditor's agents for collection of debts.

1 For the service rendered to the auditor by any agent
2 under the pertinent sections of this article, the auditor shall
3 recommend such compensation as may seem to him reason-
4 able, not exceeding in any case fifty percent of the money
5 actually paid into the treasury. The governor shall authorize
6 the payment of what may be so recommended or so much
7 thereof as in his judgment may be proper.

§14-1-26. Reports to Legislature.

1 The commissioner of finance and administration and the
2 auditor shall biennially report to the Legislature their pro-
3 ceedings under this article, setting forth particularly all the

- 4 agents appointed by them, and the agents' compensation, all
5 debts collected and property purchased by them, and all
6 arrangements made with public debtors.

CHAPTER 51

(S. B. 442—By Mr. Stagers)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred one, article one, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform controlled substances act and providing for a certain change in language to conform with federal standard.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEFINITIONS.

§60A-1-101. Definitions.

1 As used in this act:

2 (a) "Administer" means the direct application of a
3 controlled substance whether by injection, inhalation,
4 ingestion, or any other means, to the body of a patient or
5 research subject by:

6 (1) A practitioner (or, in his presence, by his authorized
7 agent), or

8 (2) The patient or research subject at the direction and in
9 the presence of the practitioner.

10 (b) "Agent" means an authorized person who acts on
11 behalf of or at the direction of a manufacturer, distributor or
12 dispenser. It does not include a common or contract carrier,
13 public warehouseman, or employee of the carrier or
14 warehouseman.

15 (c) "Bureau" means the "Bureau of Narcotics and
16 Dangerous Drugs, United States Department of Justice," or
17 its successor agency.

18 (d) "Controlled substance" means a drug, substance, or
19 immediate precursor in Schedules I through V of article two.

20 (e) "Counterfeit substance" means a controlled substance
21 which, or the container or labeling of which, without
22 authorization, bears the trademark, trade name, or other
23 identifying mark, imprint, number or device, or any likeness
24 thereof, of a manufacturer, distributor or dispenser other than
25 the person who in fact manufactured, distributed or
26 dispensed the substance.

27 (f) "Deliver" or "delivery" means the actual, constructive,
28 or attempted transfer from one person to another of a
29 controlled substance, whether or not there is an agency
30 relationship.

31 (g) "Dispense" means to deliver a controlled substance to
32 an ultimate user or research subject by or pursuant to the
33 lawful order of a practitioner, including the prescribing,
34 administering, packaging, labeling or compounding
35 necessary to prepare the substance for that delivery.

36 (h) "Dispenser" means a practitioner who dispenses.

37 (i) "Distribute" means to deliver other than by
38 administering or dispensing a controlled substance.

39 (j) "Distributor" means a person who distributes.

40 (k) "Drug" means (1) substances recognized as drugs in
41 the official "United States Pharmacopoeia, official
42 Homeopathic Pharmacopoeia of the United States, or official
43 National Formulary," or any supplement to any of them; (2)
44 substances intended for use in the diagnosis, cure, mitigation,
45 treatment or prevention of disease in man or animals; (3)
46 substances (other than food) intended to affect the structure
47 or any function of the body of man or animals; and (4)
48 substances intended for use as a component of any article
49 specified in clause (1), (2) or (3) of this subdivision. It does not
50 include devices or their components, parts or accessories.

51 (l) "Immediate precursor" means a substance which the
52 "West Virginia Board of Pharmacy" (hereinafter in this act

53 referred to as the state board of pharmacy) has found to be
54 and by rule designates as being the principal compound
55 commonly used or produced primarily for use, and which is
56 an immediate chemical intermediary used or likely to be used
57 in the manufacture of a controlled substance, the control of
58 which is necessary to prevent, curtail or limit manufacture.

59 (m) "Manufacture" means the production, preparation,
60 propagation, compounding, conversion or processing of a
61 controlled substance, either directly or indirectly or by
62 extraction from substances of natural origin, or
63 independently by means of chemical synthesis, or by a
64 combination of extraction and chemical synthesis, and
65 includes any packaging or repackaging of the substance or
66 labeling or relabeling of its container, except that this term
67 does not include the preparation or compounding of a
68 controlled substance by an individual for his own use or the
69 preparation, compounding, packaging or labeling of a
70 controlled substance:

71 (1) By a practitioner as an incident to his administering or
72 dispensing of a controlled substance in the course of his
73 professional practice, or

74 (2) By a practitioner, or by his authorized agent under his
75 supervision, for the purpose of, or as an incident to, research,
76 teaching, or chemical analysis and not for sale.

77 (n) "Marihuana" means all parts of the plant "Cannabis
78 sativa L.," whether growing or not; the seeds thereof; the
79 resin extracted from any part of the plant; and every
80 compound, manufacture, salt, derivative, mixture, or
81 preparation of the plant, its seeds, or resin. It does not include
82 the mature stalks of the plant, fiber produced from the stalks,
83 oil or cake made from the seeds of the plant, any other
84 compound, manufacture, salt, derivative, mixture, or
85 preparation of the mature stalks (except the resin extracted
86 therefrom), fiber, oil or cake, or the sterilized seed of the plant
87 which is incapable of germination.

88 (o) "Narcotic drug" means any of the following, whether
89 produced directly or indirectly by extraction from substances
90 of vegetable origin, or independently by means of chemical
91 synthesis, or by a combination of extraction and chemical
92 synthesis:

- 93 (1) Opium and opiate, and any salt, compound, derivative,
94 or preparation of opium or opiate.
- 95 (2) Any salt, compound, isomer, derivative, or preparation
96 thereof which is chemically equivalent or identical with any
97 of the substances referred to in clause (1) of this subdivision,
98 but not including the isoquinoline alkaloids of opium.
- 99 (3) Opium poppy and poppy straw.
- 100 (4) Coca leaves and any salt, compound, derivative, or
101 preparation of coca leaves, and any salt, compound, isomer,
102 derivative, or preparation thereof which is chemically
103 equivalent or identical with any of these substances, but not
104 including decocainized coca leaves or extractions of coca
105 leaves which do not contain cocaine or ecgonine.
- 106 (p) "Opiate" means any substance having an
107 addiction-forming or addiction-sustaining liability similar to
108 morphine or being capable of conversion into a drug having
109 addiction-forming or addiction-sustaining liability. It does
110 not include, unless specifically designated as controlled
111 under section 201, article two of this chapter, the
112 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and
113 its salts (dextromethorphan). It does not include its racemic
114 and levorotatory forms.
- 115 (q) "Opium poppy" means the plant of the species
116 "*Papaver somniferum* L.," except its seeds.
- 117 (r) "Person" means individual, corporation, government
118 or governmental subdivision or agency, business trust, estate,
119 trust, partnership or association, or any other legal entity.
- 120 (s) "Poppy straw" means all parts, except the seeds, of the
121 opium poppy, after mowing.
- 122 (t) "Practitioner" means:
- 123 (1) A physician, dentist, veterinarian, scientific
124 investigator, or other person licensed, registered, or
125 otherwise permitted to distribute, dispense, conduct research
126 with respect to, or to administer a controlled substance in the
127 course of professional practice or research in this state.
- 128 (2) A pharmacy, hospital, or other institution licensed,
129 registered, or otherwise permitted to distribute, dispense,

130 conduct research with respect to, or to administer a
131 controlled substance in the course of professional practice or
132 research in this state.

133 (u) "Production" includes the manufacture, planting,
134 cultivation, growing or harvesting of a controlled substance.

135 (v) "State," when applied to a part of the United States,
136 includes any state, district, commonwealth, territory, insular
137 possession thereof, and any area subject to the legal authority
138 of the United States of America.

139 (w) "Ultimate user" means a person who lawfully
140 possesses a controlled substance for his own use or for the
141 use of a member of his household or for administering to an
142 animal owned by him or by a member of his household.

CHAPTER 52

(Com. Sub. for H. B 907—By Mr. Speaker, Mr. See)

[Passed March 26, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred four, two hundred six, two hundred ten and two hundred twelve, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the schedules of controlled substances; additional substances included.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

§60A-2-206. Schedule II.

§60A-2-210. Schedule IV.

§60A-2-212. Schedule V.

§60A-2-204. Schedule I.

1 (a) The controlled substances listed in this section are in-
2 cluded in Schedule I.

3 (b) Unless specifically excepted or unless listed in another
4 schedule, any of the following opiates, including its isomers,
5 esters, ethers, salts and salts of isomers, esters, and ethers
6 whenever the existence of such isomers, esters, ethers, and
7 salts is possible within the specific chemical designation:

- 8 (1) Acetylmethadol;
- 9 (2) Allylprodine;
- 10 (3) Alphacetylmethadol;
- 11 (4) Alphameprodine;
- 12 (5) Alphamethadol;
- 13 (6) Benzethidine;
- 14 (7) Betacetylmethadol;
- 15 (8) Betameprodine;
- 16 (9) Betamethadol;
- 17 (10) Betaprodine;
- 18 (11) Clonitazene;
- 19 (12) Dextromoramide;
- 20 (13) Diampromide;
- 21 (14) Diethylthiambutene;
- 22 (15) Difenoxin;
- 23 (16) Dimemoxadol;
- 24 (17) Dimepheptanol;
- 25 (18) Dimethylthiambutene;
- 26 (19) Dioxaphetyl butyrate;
- 27 (20) Dipipanone;
- 28 (21) Ethylmethylthiambutene;

- 29 (22) Etonitazene;
- 30 (23) Etoxidine;
- 31 (24) Furethidine;
- 32 (25) Hydroxypethidine;
- 33 (26) Ketobemidone;
- 34 (27) Levomoramide;
- 35 (28) Levophenacymorphan;
- 36 (29) Morpheridine;
- 37 (30) Noracymethadol;
- 38 (31) Norlevorphanol;
- 39 (32) Normethadone;
- 40 (33) Norpipanone;
- 41 (34) Phenadoxone;
- 42 (35) Phenampromide;
- 43 (36) Phenomorphan;
- 44 (37) Phenoperidine;
- 45 (38) Piritramide;
- 46 (39) Proheptazine;
- 47 (40) Properidine;
- 48 (41) Propiram;
- 49 (42) Racemoramide;
- 50 (43) Sufentanil;
- 51 (44) Tilidine;
- 52 (45) Trimeperidine.

53 (c) Unless specifically excepted or unless listed in another
54 schedule, any of the following opium derivatives, its salts, iso-
55 mers and salts of isomers whenever the existence of such salts,
56 isomers and salts of isomers is possible within the specific
57 chemical designation:

- 58 (1) Acetorphine;
- 59 (2) Acetyldihydrocodeine;
- 60 (3) Benzylmorphine;
- 61 (4) Codeine methylbromide;
- 62 (5) Codeine-N-Oxide;
- 63 (6) Cyprenorphine;
- 64 (7) Desomorphine;
- 65 (8) Dihydromorphine;
- 66 (9) Drotebanol;
- 67 (10) Etorphine (except HCL Salt);
- 68 (11) Heroin;
- 69 (12) Hydromorphenol;
- 70 (13) Methyldesorphine;
- 71 (14) Methyldihydromorphine;
- 72 (15) Morphine methylbromide;
- 73 (16) Morphine methylsulfonate;
- 74 (17) Morphine-N-Oxide;
- 75 (18) Myrophine;
- 76 (19) Nicocodeine;
- 77 (20) Nicomorphine;
- 78 (21) Normorphine;
- 79 (22) Phoclodine;
- 80 (23) Thebacon.

81 (d) Unless specifically excepted or unless listed in another
82 schedule, any material, compound, mixture or preparation,
83 which contains any quantity of the following hallucinogenic
84 substances, or which contains any of the salts, isomers and
85 salts of isomers of any thereof whenever the existence of such
86 salts, isomers and salts of isomers is possible within the

- 87 specific chemical designation and for the purposes of this
88 subsection only, "isomer" includes the optical position and
89 geometric isomers;
- 90 (1) 2,5-dimethoxyamphetamine; also known by these trade
91 or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-
92 DMA;
- 93 (2) 3,4-methylenedioxy amphetamine;
- 94 (3) 4-bromo-2, 5-dimethoxyamphetamine or 4-bromo-2,5-
95 dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-DMA;
- 96 (4) 5-methoxy-3, 4-methylenedioxy amphetamine;
- 97 (5) 4-methoxyamphetamine; also known by these trade or
98 other names; 4-methoxy-a-methylphenethylamine; parameth-
99 oxyamphetamine; PMA;
- 100 (6) 3,4,5-trimethoxy amphetamine;
- 101 (7) Bufotenine; known also by these trade and other names;
102 3-(*B*-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethyla-
103 mino-ethyl)-5) indolol; *N-N*-dimethylserotonin; 5-hydroxy-*N*-
104 dimethyltryptamine; mappine;
- 105 (8) Diethyltryptamine; known also by these trade and other
106 names; *N-N*-Diethyltryptamine; "DET";
- 107 (9) Dimethyltryptamine; known also by the name "DMT";
- 108 (10) 4-methyl-2,5-dimethoxy amphetamine; known also by
109 these trade and other names: 4-methyl-2,5-dimethoxy-a-methyl-
110 phenethylamine; "DOM"; "STP";
- 111 (11) Iboqaine; known also by these trade and other names:
112 7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,
113 9-methano-5H-pyrido (1', 2': 1, 2 azepino 4,5b) indole; ta-
114 bernanthe iboga;
- 115 (12) Lysergic acid diethylamide;
- 116 (13) Marihuana;
- 117 (14) Mescaline;
- 118 (15) Peyote; meaning all parts of the plant presently
119 classified botanically as *Lophophora Williamsii* Lematrc,

- 120 whether growing or not; the seeds thereof; any extract from
121 any part of such plant; and every compound, manufacture,
122 salt, derivative, mixture or preparation of such plant, its seeds
123 or extracts;
- 124 (16) N-ethyl-3-piperidyl benzilate;
- 125 (17) N-methyl-3-piperidyl benzilate;
- 126 (18) Psilocybin;
- 127 (19) Psilocyn;
- 128 (20) Tetrahydrocannabinols; including synthetic equivalents
129 of the substances contained in the plant or in the resinous
130 extractives of Cannabis or synthetic substances, derivatives and
131 their isomers with similar chemical structure and pharma-
132 cological activity such as the following:
- 133 Delta 1
- 134 Cis or trans tetrahydrocannabinol, and their optical isomers;
- 135 Delta 6
- 136 Cis or trans tetrahydrocannabinol, and their optical isomers;
- 137 Delta 3, 4
- 138 Cis or trans tetrahydrocannabinil tetrahydrocannabinol, and
139 their optical isomers;
- 140 (21) Thiophene analog of phencyclidine; also known by these
141 trade or other names: (A) (1-(2-thienyl) cyclohexyl)
142 piperidine; (B) Thienyl analog of phencyclidine; TPCP;
- 143 (22) Ethylamine analog of phencyclidine. . . . Some trade
144 or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenyl-
145 cyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine,
146 cyclohexamine, PCE;
- 147 (23) Pyrrolidine analog of phencyclidine Some trade
148 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy,
149 PHP.
- 150 (e) Unless specifically excepted or unless listed in another
151 schedule, any of the following depressants, its salts, isomers
152 and salts of isomers whenever the existence of such salts,

153 isomers and salts of isomers is possible within the specific
154 chemical designation:

155 (1) Mecloqualone.

§60A-2-206. Schedule II.

1 (a) The controlled substances listed in this section are in-
2 cluded in Schedule II.

3 (b) Unless specifically excepted or unless listed in another
4 schedule, any of the following substances whether produced
5 directly or indirectly by extraction from substances of vege-
6 table origin, or independently by means of chemical syn-
7 thesis, or by a combination of extraction and chemical syn-
8 thesis:

9 (1) Opium and opiate, and any salt, compound, derivative
10 or preparation of opium or opiate excluding nalorphine,
11 naloxone and naltrexone and their respective salts, but in-
12 cluding the following:

- 13 (A) Raw opium;
- 14 (B) Opium extracts;
- 15 (C) Opium fluid extracts;
- 16 (D) Powdered opium;
- 17 (E) Granulated opium;
- 18 (F) Tincture of opium;
- 19 (G) Codeine;
- 20 (H) Ethylmorphine;
- 21 (I) Ethrophine HCL;
- 22 (J) Hydrocodone;
- 23 (K) Hydromorphone;
- 24 (L) Metopon;
- 25 (M) Morphine;
- 26 (N) Oxycodone;

- 27 (O) Oxymorphone;
- 28 (P) Thebaine;
- 29 (2) Any salt, compound, isomer derivative or preparation
30 thereof which is chemically equivalent or identical with any
31 of the substances referred to in subdivision (1) of this sub-
32 section, except that these substances shall not include the
33 isoquinoline alkaloids of opium;
- 34 (3) Opium poppy and poppy straw;
- 35 (4) Coca leaves and any salt, compound, derivative or
36 preparation of coca leaves, and any salt, compound, deriva-
37 tive or preparation thereof which is chemically equivalent or
38 identical with any of these substances, except that the sub-
39 stances shall not include decocainized coca leaves or extrac-
40 tions of coca leaves, which extractions do not contain cocaine
41 or ecgonine;
- 42 (5) Concentrate of poppy straw (the crude extract of poppy
43 straw in either liquid, solid or powder form which contains the
44 phenanthrine alkaloids of the opium poppy).
- 45 (c) Unless specifically excepted or unless in another sched-
46 ule, any of the following opiates, including its isomers, esters,
47 ethers, salts and salts of isomers, esters and ethers whenever
48 the existence of such isomers, esters, ethers and salts is
49 possible within the specific chemical designation:
- 50 (1) Alphaprodine;
- 51 (2) Anileridine;
- 52 (3) Bezitramide;
- 53 (4) Dextrorphan—excepted;
- 54 (5) Dihydrocodeine;
- 55 (6) Diphenoxylate;
- 56 (7) Fentanyl;
- 57 (8) Isomethadone;
- 58 (9) Levopropoxyphene—excepted;

- 59 (10) Levomethorphan;
- 60 (11) Levorphanol;
- 61 (12) Metazocine;
- 62 (13) Methadone;
- 63 (14) Methadone—Intermediate,
64 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 65 (15) Moramide-Intermediate,
66 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- 67 (16) Pethidine; (meperidine);
- 68 (17) Pethidine—Intermediate—A,
69 4-cyano-1-methyl-4-phenylpiperidine;
- 70 (18) Pethidine—Intermediate—B,
71 ethyl-4-phenylpiperiden-ethyl-4-phenylpiper-idin-4-carboxylate;
- 72 (19) Pethidine—Intermediate—C,
73 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 74 (20) Phenazocine;
- 75 (21) Piminodine;
- 76 (22) Racemethorphan;
- 77 (23) Racemorphan;
- 78 (24) Bulk Dextropropoxyphene (non dosage forms).
- 79 (d) Unless specifically excepted or unless listed in another
80 schedule, any material, compound, mixture or preparation
81 which contains any quantity of the following substances hav-
82 ing a stimulant effect on the central nervous system;
- 83 (1) Methamphetamine, including its salts, isomers and salts
84 of isomers;
- 85 (2) Amphetamine, its salts, optical isomers and salts of its
86 optical isomers;
- 87 (3) Phenmetrazine and its salts;
- 88 (4) Methylphenidate and its salts.

89 (e) Unless specifically excepted or unless listed in another
90 schedule, any material, compound, mixture or preparation
91 which contains any quantity of the following substances hav-
92 ing a depressant effect on the central nervous system, includ-
93 ing its salts, isomers and salts of isomers whenever the exist-
94 ence of such salts, isomers and salts of isomers is possible
95 within the specific chemical designation:

96 (1) Methaqualone;

97 (2) Amobarbital;

98 (3) Secobarbital;

99 (4) Pentobarbital;

100 (5) Phencyclidine.

101 (f) Immediate precursors. Unless specifically excepted or
102 unless listed in another schedule, any material, compound,
103 mixture, or preparation which contains any quantity of the
104 following substances:

105 (1) Immediate precursor to amphetamine and
106 methamphetamine;

107 (i) Phenylacetone

108 Some trade or other names: phenyl-2-propanone;

109 P2P; benzylymethyl ketone; methyl benzyl ketone.

110 (2) Immediate precursors to phencyclidine (PCP):

111 (i) 1-phenylcyclohexylamine

112 (ii) 1-piperidinocyclohexanecarbonitrile (PCC).

§60A-2-210. Schedule IV.

1 (a) The controlled substances listed in this section are
2 included in Schedule IV.

3 (b) Unless specifically excepted or unless listed in another
4 schedule, any material, compound, mixture or preparation
5 which contains any quantity of the following substances, in-
6 cluding its salts, isomers and salts of isomers whenever the
7 existence of such salts, isomers and salts of isomers is possible
8 within the specific chemical designation:

- 9 (1) Barbital;
- 10 (2) Chloral betaine;
- 11 (3) Chloral hydrate;
- 12 (4) Ethchlorvynol;
- 13 (5) Ethinamate;
- 14 (6) Methohexital;
- 15 (7) Meprobamate;
- 16 (8) Methylphenobarbital, as methobarbital;
- 17 (9) Paraldehyde;
- 18 (10) Petrichloral;
- 19 (11) Phenobarbital;
- 20 (12) Lorazepam;
- 21 (13) Mebutamate;
- 22 (14) Clorazepate;
- 23 (15) Chlordiazepoxide;
- 24 (16) Clonazepam;
- 25 (17) Diazepam;
- 26 (18) Flurazepam;
- 27 (19) Oxazepam;
- 28 (20) Prazepam;
- 29 (21) Pentazocine.

30 (c) Any material, compound, mixture or preparation which
31 contains any quantity of the following substance, including
32 its salts, isomers (whether optical, position or geometric)
33 and salts of such isomers whenever the existence of such
34 salts, isomers and salts of isomers is possible: Fenfluramine.

35 (d) Unless specifically excepted or unless listed in another
36 schedule, any material, compound, mixture or preparation
37 which contains any quantity of the following substances hav-

38 ing a stimulant effect on the central nervous system, including
39 its salts, isomers (whether optical, position or geometric) and
40 salts of such isomers whenever the existence of such salts,
41 isomers and salts of isomers is possible within the specific
42 chemical designation:

43 (1) Diethylpropion;

44 (2) Phentermine;

45 (3) Pemoline (including organometallic complexes and che-
46 lates thereof);

47 (4) Pipradrol:

48 (5) SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

49 (e) Other substances. Unless specifically excepted or unless
50 listed in another schedule, any material, compound, mixture or
51 preparation which contains any quantity of the following
52 substances, including its salts:

53 (1) Dextropropoxyphene (alpha - (+) - 4 - dimethylamino-
54 1, 2 - diphenyl - 3 - methyl - 2 - propionoxybutane).

55 (f) Not more than 1 milligram of difenoxin and not less
56 than 25 micrograms of atropine sulfate per dosage unit.

§60A-2-212. Schedule V.

1 (a) The controlled substances listed in this section are in-
2 cluded in Schedule V.

3 (b) Narcotic drugs containing nonnarcotic active medicinal
4 ingredients. Any compound, mixture or preparation contain-
5 ing any of the following limited quantities of narcotic drugs or
6 salts thereof, which shall include one or more nonnarcotic
7 active medicinal ingredients in sufficient proportion to confer
8 upon the compound, mixture or preparation valuable medi-
9 cinal qualities other than those possessed by the narcotic
10 drug alone:

11 (1) Not more than 200 milligrams of codeine per 100
12 milliliters or per 100 grams and not more than 10 milligrams
13 per dosage unit;

- 14 (2) Not more than 100 milligrams of dihydrocodeine per
15 100 milliliters or per 100 grams and not more than 5 milli-
16 grams per dosage unit;
- 17 (3) Not more than 100 milligrams of ethylmorphine per
18 100 milliliters or per 100 grams and not more than 5 milli-
19 grams per dosage unit;
- 20 (4) Not more than 2.5 milligrams of diphenoxylate and not
21 less than 25 micrograms of atropine sulfate per dosage unit;
- 22 (5) Not more than 100 milligrams of opium per 100 milli-
23 liters or per 100 grams;
- 24 (6) Not more than 0.5 milligram of difenoxin and not less
25 than 25 micrograms of atropine sulfate per dosage unit.
- 26 (c) Loperamide.
- 27 (d) Amyl Nitrite, isobutyl nitrite and the other organic
28 nitrites are controlled substances and no product containing
29 these compounds as a significant component shall be pos-
30 sessed, bought or sold other than pursuant to a bona fide
31 prescription, or for industrial or manufacturing purposes.

CHAPTER 53

(Com. Sub. for S. B. 123—By Mr. Shaw)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article by adding thereto a new section, designated section one-a, all relating to the West Virginia industrial home for girls; changing the name of the industrial home; and allowing boys to be transferred from the West Virginia industrial school for boys to the West Virginia industrial home for youth.

Be it enacted by the Legislature of West Virginia:

That section one, article three, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section one-a, all to read as follows:

ARTICLE 3. INDUSTRIAL HOME FOR YOUTH.

§28-3-1. Continuation; management.

§28-3-1a. Transfer of boys from West Virginia industrial school for boys.

§28-3-1. Continuation; management.

1 The West Virginia industrial home for girls, heretofore
2 established and located at Industrial, in Harrison County,
3 shall be continued and hereafter known as the "West Virginia
4 Industrial home for youth." The industrial home shall be
5 charged with the care, training and reformation of girls and
6 boys committed to its custody. It shall be managed, directed
7 and controlled as prescribed in article one, chapter
8 twenty-five of this code.

**§28-3-1a. Transfer of boys from West Virginia industrial school
for boys.**

1 Boys, fourteen years of age and younger, may be
2 transferred from the West Virginia industrial school for boys
3 to the West Virginia industrial home for youth in accordance
4 with section sixteen, article one, chapter twenty-five of this
5 code: *Provided*, That nothing in the foregoing shall prevent
6 the temporary transfer of any male youth for a period not to
7 exceed thirty days for the purpose of testing, evaluation or
8 diagnosis.

CHAPTER 54

(S. B. 427—By Mrs. Spears and Mr. McCune)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-k, relating to county commissions; and authorizing the use of county-owned property by nonprofit organizations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3k. Authority to lease, rent or permit the use of county property.

1 The county commission of each county is authorized to
2 lease, rent or to permit the use of county-owned buildings,
3 lands and other properties or any portion thereof by nonprofit
4 organizations. Authorized uses pursuant to this section shall
5 include the granting of meeting places, service outlets and
6 operational headquarters for organizations established within
7 the county.

8 Each county commission is authorized to charge and
9 collect fees for uses of county properties pursuant to this
10 section. In addition, each county commission is empowered
11 to promulgate rules and regulations in order to carry out the
12 provisions of this section within the county.

13 The allocation of county properties for use by organizations
14 shall be controlled either by the county commission or,
15 optionally, by a panel which may be appointed by the
16 commission for this purpose. Any panel appointed pursuant
17 to this section shall consist of not less than three nor more
18 than five members who shall serve at the will and pleasure of
19 the commission. All decisions of a panel, if one is appointed,
20 shall be subject to review by the county commission.

21 If a panel is appointed pursuant to this section, each
22 member shall be a resident of the county in which the panel
23 sits. A majority of the panel shall constitute a quorum for the
24 transaction of business, and all matters shall be decided by
25 the majority vote of those members present at a meeting.
26 Each panel is authorized to select from among its members
27 one secretary, who shall keep a record of all proceedings, and
28 one chairman. A member may be entitled to reimbursement
29 for all reasonable and necessary expenses actually incurred in
30 the performance of his duties.

CHAPTER 55

H. B. 1524—By Mr. Stephens and Mr. Tompkins)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be adding thereto a new section, designated section nineteen, relating to liability insurance for county officers and employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. FISCAL AFFAIRS.

§7-5-19. Liability insurance for county officers and employees.

1 Every county shall have plenary power and authority
2 to contract and expend public funds for the purchase of one
3 or more policies of public liability insurance, with or with-
4 out a sharing in the cost thereof by the officers, agents and
5 employees of such county, providing the county and its officers,
6 agents and employees insurance coverage for legal liability of
7 said county and its officers, agents and employees for bodily
8 injury, personal injury or damage (including, but not limited
9 to, false arrest and false imprisonments) and property damage,
10 and affording said county and its officers, agents and employees
11 insurance coverage against any and all legal liability arising
12 from, growing out of, by reason of or in any way connected
13 with, any acts or omissions of said county, or its officers,
14 agents or employees in the performance of their official duties.
15 So long as the coverage aforesaid is obtained and remains in
16 full force and effect as to the law-enforcement officers of a
17 county, the bond specified in section five, article seven,
18 chapter sixty-one of this code shall not be required as to such
19 police officers.

CHAPTER 56

(H. B. 779—By Mr. Stephens)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removal, discharge, suspension or reduction in rank or pay of a deputy sheriff; reduction in number of deputies; age requirements; payment of attorney fees.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article fourteen, 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 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17. Removal, discharge, suspension or reduction in rank or pay; reduction in force; mandatory retirement age.

1 (a) On and after the effective date of this article, no
2 deputy sheriff of any county subject to the provisions of
3 this article shall be removed, discharged, suspended or re-
4 duced in rank or pay except for just cause, which shall
5 not be religious or political, except as provided in section
6 fifteen of this article; and no such deputy shall on and
7 after the effective date of this article, be removed, dis-
8 charged, suspended or reduced except as provided in this
9 article and in no event until he shall have been furnished
10 with a written statement of the reasons for such action.
11 In every case of such removal, discharge, suspension or
12 reduction, a copy of the statement of reasons therefor and
13 of the written answer thereto, if the deputy sought to be
14 removed, discharged, suspended or reduced desires to file
15 such written answer, shall be furnished to the civil service
16 commission and entered upon its records. If the deputy

17 sought to be removed, discharged, suspended or reduced shall
18 demand it, the civil service commission shall grant him a
19 public hearing, which hearing shall be held within a period
20 of ten days from the filing of the charges in writing or the
21 written answer thereto, whichever shall last occur. At such
22 hearing the burden shall be upon the removing, discharging,
23 suspending or reducing sheriff, hereinafter in this section
24 referred to as "removing sheriff," to justify his action, and
25 in the event the removing sheriff fails to justify his action
26 before the commission, then the deputy removed, discharged,
27 suspended or reduced shall be reinstated with full pay,
28 forthwith and without any additional order, for the entire
29 period during which he may have been prevented from per-
30 forming his usual employment, and no charges shall be
31 officially recorded against his record. The deputy if reinstated
32 or exonerated, shall, if represented by legal counsel, be award-
33 ed an attorney fee of no more than two hundred fifty dollars
34 and such fee shall be determined by the commission and paid
35 by the removing sheriff from county funds. A written record of
36 all testimony taken at such hearing shall be kept and preserved
37 by the civil service commission, which record shall be sealed
38 and not be open to public inspection, if no appeal be taken
39 from the action of the commission.

40 (b) In the event that the civil service commission shall
41 sustain the action of the removing sheriff, the deputy re-
42 moved, discharged, suspended or reduced on or after the
43 effective date of this article, shall have an immediate right
44 of appeal to the circuit court of the county. In the event
45 that the commission shall reinstate the deputy removed, dis-
46 charged, suspended or reduced, the removing sheriff shall
47 have an immediate right of appeal to said circuit court.
48 Any appeal must be taken within ninety days from the date
49 of entry by the civil service commission of its final order.
50 Upon an appeal being taken and docketed with the clerk
51 of the circuit court of said county, the circuit court shall
52 proceed to hear the appeal upon the original record made
53 before the commission and no additional proof shall be
54 permitted to be introduced. The circuit court's decision shall
55 be final, but the deputy or removing sheriff, as the case may
56 be, against whom the decision of the circuit court is rendered

57 shall have the right to petition the supreme court of appeals
58 for a review of the circuit court's decision as in other civil
59 cases. Such deputy or removing sheriff shall also have the
60 right, where appropriate, to seek in lieu of an appeal, a writ
61 of mandamus. The deputy, if reinstated or exonerated by the
62 circuit court shall, if represented by legal counsel, be awarded
63 an attorney fee not to exceed five hundred dollars, and if
64 reinstated or exonerated by the supreme court of appeals, shall
65 be awarded an attorney fee not to exceed five hundred dollars,
66 and such fees shall be paid by the removing sheriff from
67 county funds: *Provided*, That the aggregate amount of attorney
68 fees awarded by the commission, the circuit court and the
69 supreme court of appeals, shall not exceed one thousand
70 dollars for any member litigant.

71 (c) The removing sheriff and the deputy sought to be
72 removed, discharged, suspended or reduced shall at all times,
73 both before the civil service commission and upon appeal,
74 be given the right to employ counsel to represent them.

75 (d) If for reasons of economy or other reasons it shall,
76 on and after the effective date of this article, be deemed
77 necessary by any appointing sheriff to reduce the number of
78 his deputies, he shall follow the procedure set forth in
79 this subsection (d). The reduction in the numbers of the
80 deputy sheriffs of the county shall be effected by suspending
81 the last man or men, including probationers, who have been
82 appointed as deputies. Such removal shall be accomplished
83 by suspending the number desired in the inverse order of
84 their appointment: *Provided*, That in the event the number
85 of deputies shall again be increased in numbers to the
86 strength existing prior to such reduction of deputies, the
87 deputies suspended under the terms of this subsection (d)
88 shall be reinstated in the inverse order of their suspension
89 before any new appointments of deputy sheriffs in the county
90 shall be made.

91 (e) Notwithstanding any other provision of this article,
92 no deputy sheriff in any county subject to the provisions of
93 this article shall, on or after the effective date of this article,
94 serve as a deputy sheriff in any county subject to the pro-
95 visions of this article after he attains the age of sixty-five.

CHAPTER 57

(H. B. 758—By Mr. Stephens)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-b, relating to providing for sick leave for deputy sheriffs; accumulation thereof; emergency sick leave.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17b. Sick leave.

1 (a) The county commission of each county shall allow the
2 sheriff's deputies sick leave with pay to be computed as follows:
3 Full-time deputies shall be entitled to one and one-half days
4 sick leave for each calendar month worked, or greater part
5 thereof; part-time deputies shall be entitled to sick leave at the
6 same rate and in the same proportion that hours actually work-
7 ed bears to hours regularly scheduled for full-time deputies.

8 (b) Sick leave shall be granted only when illness on the
9 part of or injury to the deputy incapacitates him for duty:
10 *Provided*, That the sheriff of the county in which the deputy
11 is employed shall have the authority to require the deputy to
12 produce a statement from an attending physician for each
13 day of sick leave beyond two days. This statement shall
14 include dates of treatment and also state that the deputy was
15 unable to work. In the absence of the required physician's
16 statement, annual leave shall be charged for the entire
17 period.

18 (c) Deputies with fifteen or more years of service may ac-
19 cumulate not more than ninety sick leave days. Deputies

20 with more than ten but less than fifteen years of service may
21 accumulate not more than eighty sick leave days. Deputies
22 with more than five but less than ten years of service may
23 accumulate not more than seventy sick leave days. Deputies
24 with not more than five years' service may accumulate not
25 more than sixty sick leave days. The accumulation of sick
26 leave pursuant to this subsection shall begin as of the effective
27 date of this section.

28 (d) In the event of illness, a full-time deputy may take
29 emergency sick leave without pay after all accrued sick leave,
30 annual leave and compensatory time available to such full-
31 time deputy has been exhausted: *Provided*, That the total
32 number of days of sick leave and emergency sick leave used
33 during such illness shall not exceed the total number of days
34 of sick leave which may be accumulated under the provisions
35 of subsection (c) of this section by any full-time deputy with
36 the same number of years of service.

CHAPTER 58

(H. B. 986—By Mrs. Blatnik)

[Passed April 2, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the fees to be charged by the clerk of the county commission for recordings and other services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-10. Fees to be charged by clerk of county commission.

1 For the purpose of this section, the word "page" is defined

2	as being a paper writing of not more than legal size, 8½" x	
3	13".	
4	The clerk of the county commission shall charge and col-	
5	lect the following fees:	
6	When a writing is admitted to record, for receiving	
7	proof of acknowledgment thereof, entering an order in	
8	connection therewith, endorsing clerk's certificate of	
9	recordation thereon and indexing in a proper index,	
10	where the writing is a deed of conveyance, trust deed,	
11	lease, or power of attorney concerning real estate	\$2.00
12	If such writing contains more than two pages, for	
13	each additional page, in counties where recording is	
14	done by photograph, fifty cents; and in counties where	
15	recording is done by typewriter, and such writing con-	
16	tains more than one thousand words, three cents for	
17	each additional twenty words.	
18	For recording a plat accompanying a deed or other	
19	writing	2.00
20	If such plat contains more than one hundred twenty	
21	square inches, for each additional square inch ..	.010
22	For recording and indexing a map to be placed in	
23	map book	3.00
24	If such map contains more than one hundred twenty	
25	square inches, for each additional square inch ..	.010
26	For recording and indexing assignment	2.00
27	If such assignment contains more than one reference	
28	to the record of property assigned, for each refer-	
29	ence	1.00
30	If such assignment does not give the reference to the	
31	record of property assigned, for search of record to	
32	determine such book and page50
33	If such assignment contains more than two pages,	
34	for each additional page	1.00
35	For recording and indexing and noting release of	
36	lien	2.00

37	If such release contains more than one reference to	
38	lien released, for each lien released thereby	2.00
39	If book and page reference to lien released is	
40	omitted, for search of record to determine such book	
41	and page50
42	For filing or refiling and entering conditional sales	
43	contract	2.00
44	For recording and indexing a satisfaction of a condi-	
45	tional sales contract	2.00
46	For filing each financing, continuation or termination	
47	statement or other statement or writing permitted to	
48	be filed under chapter forty-six of the code	2.00
49	For filing, preserving and indexing a security agree-	
50	ment filed under chapter forty-six of the code	3.00
51	For recording and indexing a certificate of	
52	incorporation	2.00
53	If such certificate contains more than two pages, for	
54	each additional page	1.00
55	For filing and indexing a certificate showing the	
56	name or names of a person or persons conducting	
57	business under an assumed name	2.00
58	For certifying to the assessor a transfer of real estate	
59	under section eight, article four, chapter eleven of the	
60	code	1.00
61	For swearing the witnesses and entering in the order	
62	or minute book, all orders in relation to the proof of a	
63	will which is admitted to record without contest, and	
64	copying such order on the will or on a paper annexed	
65	thereto, when fully proved and but one order	3.00
66	If the will be but partially proved on one day, for the	
67	order and entering the same on the will or paper an-	
68	nexed thereto	1.00
69	For each subsequent order and entering the same on	
70	the will or paper annexed thereto	1.00

71	For the same services where there is a contest	8.00
72	For preparing notices in connection with contest, or	
73	any hearing, each notice	1.00
74	For recording a will and the matter recorded there-	
75	with in the will book	2.00
76	If will and matter recorded therewith contains more	
77	than two pages, for each additional page	1.00
78	For entering orders and transmitting papers in case	
79	of appeal	3.00
80	If such order and transmittal contains more than five	
81	pages, for each additional page	1.00
82	If any personal representative or guardian qualify	
83	for administering necessary oaths, notating the bond,	
84	entering and copying on the will, order granting pro-	
85	bate or administration, making out copy of such order	
86	for personal representative or guardian, entering and	
87	copying orders of appraisalment	2.00
88	For each additional copy of qualification order	1.00
89	If several personal representatives qualify on the	
90	same estate at the same time or term the same fee	
91	shall be charged as if one had qualified, to wit . . .	2.00
92	For entering and copying an order granting a license	
93	under provisions of article twelve, chapter eleven of	
94	the code	1.00
95	For certificate for a license or endorsing assignment	
96	thereof	1.00
97	For issuance of marriage license, for preparing the	
98	application and administering the oath, for register-	
99	ing and recording the license, for mailing acknowledg-	
100	ment of minister's return to one of licensees, for	
101	notifying one of licensees after sixty days of the non-	
102	receipt of the minister's return	8.00
103	One dollar of the latter fee shall be paid by the	
104	county clerk into the state treasury as a state registra-	

105	tion fee, in the same manner that license taxes are paid	
106	into the treasury under article twelve, chapter eleven	
107	of the code.	
108	For search of anything in his office of over a year's	
109	standing, unless otherwise required by statute50
110	For recording certificates and posting a copy there-	
111	of under the provisions of section two, article one,	
112	chapter thirty-four of the code	1.50
113	For docketing or redocketing under article three,	
114	chapter thirty-eight of the code, a judgment, decree,	
115	bond or recognizance	1.00
116	If such writing contains more than one page, for	
117	each additional page	1.00
118	For recording and indexing an execution and noting	
119	the date of issuance and the date of filing of same	
120	upon the judgment record	1.50
121	For making out a transcript of the record and pro-	
122	ceedings in any case in due form so that the	
123	same may be used in appellate court, such fee shall	
124	be the same as specified herein for recording.	
125	For making out, in any other manner than copying,	
126	any paper to go out of the office which is not other-	
127	wise provided for	1.50
128	If such paper contains more than two pages, for	
129	each additional page	1.00
130	For any copy, if it be not otherwise provided for .	1.50
131	If such copy contains more than two pages, for each	
132	additional page	1.00
133	For annexing the seal of the court to any paper,	
134	writing certificates of clerk accompanying it	1.00
135	For writing a certificate of the president of the court	
136	or judge, when the clerk be required to do so	1.00
137	For recording and indexing an inventory or sale bill	1.50

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138	If such writing contains more than two pages, for	
139	each additional page	1.00
140	For entering an order confirming the report of a	
141	fiduciary	1.00
142	For recording and indexing such report and matter	
143	recorded therewith	3.00
144	If such report contains more than four pages, for	
145	each additional page	1.00
146	For recording and indexing any bond required by law	
147	to be recorded, including the certificate or other	
148	evidence of its execution	1.50
149	If such bond and certificate contains more than two	
150	pages, for each additional page	1.00
151	For recording and indexing a notice of mechanic's	
152	lien	1.50
153	If such notice contains more than two pages, for each	
154	additional page	1.00
155	For recording contract limiting liability of owner	
156	and bond of contractor to be filed therewith, as pre-	
157	scribed in article two, chapter thirty-eight of the	
158	code	2.00
159	If such contract and bond contains more than two	
160	pages, for each additional page	1.00
161	For recording and indexing a notice of lis pendens ..	1.50
162	If such notice contains more than two pages, for	
163	each additional page	1.00
164	For recording a certificate of real estate claimed as	
165	a homestead	1.00
166	For administering an oath not herein provided for,	
167	and writing a certificate thereof where the case re-	
168	quires one	1.00
169	For recording a writing containing pages in excess	

170	of legal size 8½" x 13", additional fee for each page,	
171	where recording is by photograph50
172	For recording and indexing instruments not specific-	
173	ally provided for herein	1.50
174	If such instrument contains more than two pages, for	
175	each additional page	1.00
176	For recording anew any will, deed or other paper, the	
177	same fee herein provided for the original recording.	
178	For any service other than recording and indexing	
179	not specifically provided for, the same fee as a clerk	
180	of the circuit court for similar services.	
181	All acts or parts of acts in conflict herewith are hereby	
182	repealed.	

CHAPTER 59

(H. B. 1493—By Mr. Chambers)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transcripts of court reporters' notes; cost per page of transcripts and copies.

Be it enacted by the Legislature of West Virginia:

That section four, article seven, 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 7. OFFICIAL REPORTERS.

§51-7-4. Transcript of notes; fees; authenticity; transcript for judge in criminal cases.

1 The reporter shall furnish, upon request, to any party
 2 to a case, a typewritten transcript of his shorthand notes
 3 of the testimony or other proceedings, which shall be upon
 4 paper measuring eight and one-half inches in width and

5 eleven inches in length, with margins of one-half inch on
6 the right side and bottom, one inch at the top and one and
7 one-half inches on the left, with the page filled as completely
8 as practicable, with at least twenty-four complete lines on each
9 page, with no more than double spacing used between lines,
10 with no more than five spaces used for indentation from the
11 left margin, with no larger than ten point pica type being
12 used, and shall certify the same as being correct and shall
13 be paid therefor, by the party requesting such transcript,
14 at the rate of one dollar and fifty-five cents for each page so
15 transcribed and certified; and for each carbon copy of such
16 transcript, ordered at the same time, he shall be paid sixty
17 cents for each page so furnished: *Provided*, That if any
18 transcript shall not conform with the specifications set forth
19 in this section, the party requesting the transcript shall not
20 be obligated to pay for said transcript.

21 A transcript of such testimony or proceedings, when cer-
22 tified by the official reporter and by the judge of the court,
23 shall be authentic for all purposes, and shall be used by the
24 parties to the cause in any further proceeding therein wherein
25 the use of the same may be required. It may be used, with-
26 out further authentication, in making up the record on appeal,
27 as provided in sections thirty-six and thirty-seven, article
28 six. chapter fifty-six of this code; and in all cases of appeal
29 such reporter shall also make a carbon copy of such tran-
30 script, which copy shall be filed in the office of the clerk of the
31 court in which the trial or proceedings were had, to be used,
32 if necessary, in making up the record on appeal, and, if so
33 used, the clerk shall not be entitled to any fee for that part
34 of the record. If, upon appeal or writ of error, the judgment,
35 decree or order entered in the cause be reversed, the cost
36 of such transcript shall be taxed as other costs; and if such
37 transcript be requested or required for the purpose of de-
38 murring to the evidence, the cost thereof shall be taxed in
39 favor of the party prevailing on the demurrer.

40 It shall also be the duty of such reporter in any criminal
41 case, upon the request of the court or the judge thereof, and
42 for his use, to furnish a transcript of his notes of the testi-
43 mony and proceedings without extra charge.

CHAPTER 60

(H. B. 1093—By Mr. Burdette)

[Passed March 16, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten, seventeen, nineteen, twenty and twenty-seven, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article ten by adding thereto a new section, designated section fifteen-a, all relating to credit unions; the approval of loans by the credit committee or a loan officer; the form for loan applications; appeal from a decision of the credit committee; appointment of loan officers; record of loan applications; prohibition on disbursement by a loan officer; line of credit accounts; review of line of credit accounts; default and termination of line of credit accounts; requirement for share and deposit insurance; exception; sanctions for failure to obtain insurance; extensions of time to obtain insurance; commitment for insurance a condition precedent for grant of new charter; availability of reports; appointment of liquidating agent; power to rediscount and borrow; limitations on amount of rediscounts and borrowings; security for loans to members; installment crop loans; loan to members of a credit committee; illegal loan to a nonmember; repayment of loans; reserve income; proportion of profits placed in reserve fund; conversion of state chartered credit union into federal credit union; notice, voting and approval by credit union members of the proposition for conversion; verification and filing of voting results; application for status as a federal credit union; cessation of applicability of this article; effect of conversion on assets and obligations; and providing for the conversion of a federal credit union or a credit union of another state to a credit union incorporated under the laws of this state.

Be it enacted by the Legislature of West Virginia:

That sections ten, seventeen, nineteen, twenty and twenty-seven,

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

ARTICLE 10. CREDIT UNIONS.

- §31-10-10. Loan applications and approval; appeals; lines of credit.
- §31-10-15a. Share and deposit insurance.
- §31-10-17. Rediscounts and borrowings.
- §31-10-19. Security for loans; installment crop loans; loan to member of credit committee; loans to nonmembers prohibited; repayment.
- §31-10-20. Fees, charges and proportion of profits placed in reserve fund; use of fund.
- §31-10-27. Conversion of charter.

§31-10-10. Loan applications and approval; appeals; lines of credit.

1 (a) The credit committee or its appointed loan officer
2 shall approve every loan or line of credit made by the
3 corporation to members. Every application for a loan shall
4 be made in writing on a form prepared by the board of
5 directors and shall state the purpose for which the loan is
6 desired and any security offered. Except as provided in subsec-
7 tion (b) of this section, no loan shall be made if it has not
8 received the approval of the entire number of such committee
9 present when it was considered, which number shall be at least
10 a majority of the members of such committee, nor if any
11 member of such committee shall disapprove thereof, but
12 the applicant for a loan may appeal from the decision of the
13 credit committee to the board of directors. The credit com-
14 mittee shall meet as often as may be required, after due
15 notice has been given to each member.

16 (b) The credit committee may appoint one or more loan
17 officers and delegate to him or them the power to approve

18 loans and lines of credit within amounts and under conditions
19 established by the credit committee. A member whose applica-
20 tion has been disapproved by a loan officer may appeal such
21 action to the credit committee. Each loan officer shall furnish
22 to the credit committee a record of each application approved
23 or not approved by him within seven days of the date of filing
24 of the application therefor. No individual shall have authority
25 to disburse funds of the credit union for any loan which has
26 been approved by him in his capacity as loan officer: *Pro-*
27 *vided*, That the loan officer may disburse funds approved by
28 him which are fully secured by shares or which do not exceed
29 the credit union's unsecured loan limit.

30 (c) With the written approval of the commissioner of
31 banking, and within lending limits established by the com-
32 missioner, a credit union may make line of credit loans in
33 accordance with the provisions of section one hundred six,
34 article three, chapter forty-six-a. The credit committee or the
35 loan officer may approve a member's application for a self-
36 replenishing line of credit, and loan advances may be granted
37 to the member within the limit of such line of credit. Each
38 such line of credit shall be reviewed not less than annually by
39 the credit committee and approved or disapproved as to
40 the grant of further loan advances. Any line of credit with
41 respect to which the member is in default by virtue of being
42 ninety days delinquent in payment shall automatically termi-
43 nate: *Provided*, That such termination shall not affect the
44 rights, liabilities and obligations of the credit union and the
45 defaulting member with respect to loans made prior to the
46 effective date of termination or any collateral securing such
47 loans.

§31-10-15a. Share and deposit insurance.

1 (a) All credit unions established pursuant to this chapter
2 shall qualify for and obtain insurance on shares and deposits as
3 provided by the National Credit Union Administration under
4 Title II of the Federal Credit Union Act, or alternatively, a

5 form of comparable insurance approved by the commissioner
6 of banking.

7 (b) Each credit union which fails to obtain insurance as
8 required herein by the first day of January, one thousand nine
9 hundred eighty-two, shall be prohibited from conducting
10 business as a credit union until such insurance is obtained. A
11 credit union which has been denied a commitment for such
12 insurance shall within thirty days commence steps to either
13 liquidate, or merge with an insured credit union, or apply
14 in writing to the commissioner of banking for additional time
15 to obtain an insurance commitment. The commissioner of
16 banking shall grant one or more extensions of time to obtain
17 the insurance commitment upon satisfactory evidence that the
18 credit union has made or is making a substantial effort to
19 achieve the conditions precedent to issuance of the commit-
20 ment.

21 (c) No credit union shall be granted a charter by the
22 commissioner of banking unless such credit union has ob-
23 tained a commitment for insurance of its members' share and
24 deposit accounts.

25 (d) The commissioner of banking may make available
26 reports of condition and examination findings to the National
27 Credit Union Administration or to any qualified insuring or-
28 ganization and may accept any report of examination made on
29 behalf of such agency or organization. The commissioner of
30 banking may appoint an official of the National Credit Union
31 Administration or of any qualified insuring organization as
32 liquidating agent of an insured credit union.

§31-10-17. Rediscounts and borrowings.

1 If the bylaws so provide, a credit union shall have the
2 power to rediscount, as hereinafter provided, or to borrow
3 money from any source, in addition to receiving deposits, as
4 indicated in section fifteen. Unless otherwise authorized in
5 writing by the commissioner of banking, the aggregate amount
6 of such rediscounts and borrowings shall at no time exceed
7 twenty percent of the sum total of the capital, surplus and re-
8 serve funds of such borrowing credit union, and in no event

9 shall such rediscounts and borrowings exceed fifty percent of
10 the sum total of the capital, surplus and reserve funds of such
11 borrowing credit union.

§31-10-19. Security for loans; installment crop loans; loan to member of credit committee; loans to nonmembers prohibited; repayment.

1 As provided in section eighteen of this article, a credit union
2 may loan to its members for such purposes and upon such
3 security and terms as the bylaws shall provide and the credit
4 committee shall approve; but security must be taken for any
5 loan in excess of two thousand five hundred dollars: *Provided,*
6 That upon written approval of the commissioner of banking,
7 credit unions having assets of more than one million dollars
8 may be authorized to make unsecured loans in excess of two
9 thousand five hundred dollars but not in excess of five thou-
10 sand dollars each. Endorsements of a note or assignment of
11 shares in any credit union shall be deemed security within the
12 meaning of this section.

13 A member who needs funds with which to purchase neces-
14 sary supplies for growing crops may receive a loan in fixed
15 monthly installments instead of in one sum.

16 If any member of the credit committee makes application to
17 borrow money from a credit union or becomes surety for any
18 other member whose application for a loan is under consider-
19 ation, the supervisory committee shall appoint a substitute to
20 act on the credit committee in the place of such member, dur-
21 ing the consideration of such application. All officers and
22 members of any committee in any way knowingly permitting or
23 participating in making a loan of funds of a credit union to a
24 nonmember thereof shall be guilty of a misdemeanor. The
25 credit union shall have the right to recover the amount of any
26 such illegal loan from the borrower or from any officer or
27 member of a committee who knowingly committed or parti-
28 cipated in the making thereof, or from all of them jointly.

29 A borrower may repay the whole or any part of his loan on
30 any day on which the office of the corporation is open for the
31 transaction of business.

§31-10-20. Fees, charges and proportion of profits placed in reserve fund; use of fund.

1 All entrance fees, transfer fees and charges shall, after
2 the payment of organization expenses, be known as reserve
3 income and shall be added to the reserve fund of the corpor-
4 ation. In addition to such reserves as the commissioner of
5 banking may from time to time require a credit union to main-
6 tain, each credit union shall set aside at the first closing of its
7 books, a reserve fund equal to the amount of all membership
8 fees collected that year plus three percent of the principal on
9 outstanding loans to members and notes purchased from another
10 credit union. Each subsequent year, upon the closing of the
11 books, fifteen percent of the net earnings shall be added to
12 the reserve fund until it equals five percent of outstanding loans
13 and notes. Then ten percent of the net earnings shall be
14 added until the fund equals seven percent of such loans and
15 notes. If the reserve fund becomes less than seven percent of
16 such loans and notes, then the schedule of allocation to the
17 reserve fund shall apply until the seven percent ratio is again
18 established.

19 The reserve fund shall belong to the corporation and shall
20 be held to meet contingencies, and shall not be distributed to
21 the members, except upon dissolution of the corporation.

§31-10-27. Conversion of charter.

1 A credit union chartered under state law may be con-
2 verted into a federal credit union under the laws of this state
3 by complying with the following requirements:

4 (a) The proposition for such conversion shall first be
5 approved, and a date set for a vote thereon by the members,
6 (either at a meeting to be held on such date or by written ballot
7 to be filed on or before such date), by a majority of the
8 directors of the said credit union. Written notice of the
9 proposition and of the date set for the vote shall then be de-
10 livered in person to each member, or mailed to each member
11 at the address for such member appearing on the records of
12 the credit union, not more than thirty or less than seven days
13 prior to such date. Approval of the proposition for con-

14 version shall be by the affirmative vote of two thirds of the
15 members, in person or in writing.

16 (b) A statement of the results of the vote, verified by the
17 affidavits of the president or vice president and the secretary,
18 shall be filed with the commissioner of banking within ten days
19 after the vote is taken.

20 (c) Promptly after the vote is taken and in no event later
21 than ninety days thereafter, if the proposition for conversion
22 was approved by such vote, the credit union shall take such
23 action as may be necessary under the applicable federal
24 law to make it a federal credit union, and within ten days after
25 receipt of the federal credit union charter there shall be filed
26 with the commissioner of banking a copy of the charter thus
27 issued. Upon such filing, the credit union shall cease to be
28 a credit union governed by state law.

29 (d) Upon ceasing to be a credit union chartered under
30 state law, such credit union shall no longer be subject to any
31 of the provisions of this article. The successor federal credit
32 union shall be vested with all the assets and shall continue to
33 be responsible for all of the obligations of the state credit
34 union to the same extent as though the conversion had not
35 taken place.

36 (e) A credit union organized under the laws of the United
37 States or of any other state may convert to a credit union
38 incorporated under the laws of this state. To effect such a
39 conversion, a credit union must comply with all the require-
40 ments of the jurisdiction under which it was originally or-
41 ganized and all requirements of the law of this state: *Pro-*
42 *vided*, That the commissioner of banking shall adopt such rules
43 and regulations as he deems necessary and proper, establishing
44 the procedure for converting such a credit union to a credit
45 union incorporated under the laws of this state. Proof shall be
46 filed by the credit union with the commissioner of banking
47 as to compliance with the requirements of the jurisdiction
48 under which it was originally organized and the requirements
49 of said commissioner.

CHAPTER 61

(Com. Sub. for H. B. 857—By Mr. Farley and Mr. Worden)

[Passed April 10, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to providing a system for the payment of reparations to victims of crimes; providing a short title for said article; the legislative purposes and intent with respect thereto; definitions of certain terms used with respect to said article; creating a crime victims reparation fund within the state; providing for the payment of additional costs in criminal cases to be paid into said fund and providing that said fund shall not be regarded as general revenues of the state; extending the jurisdiction of the court of claims to cases arising pursuant to said article; procedures for the appointment of commissioners by the court of claims for the purpose of hearing certain cases; the qualifications of said commissioners and their oath of office; requiring the attorney general to represent the interests of the state in such cases; providing for the filing of application for awards pursuant to said article; the contents of such application; requiring filing fees to be paid by the said applicant; the procedures for the filing of such applications; limitation of action; criminal penalties for filing false or fraudulent applications; procedures applicable to indigent applicants; providing that a copy of said application be furnished the attorney general; requiring certain investigation and recommendations to be made by the attorney general and for the time of filing certain findings of fact and recommendations by the attorney general; the assignment of claims made pursuant to said article to a judge or commissioner and procedures relating thereto; the approval of said claim by such judge or commissioner; the grounds for the denial or reduction of claims or awards made pursuant to said article and certain procedures with respect thereto; hearings to be held pursuant to said article and the procedures for such hearings; restricting certain privileges as to the communications and records applicable to claimants making application pursuant to said article; limiting the

contempt powers of the court of claims in certain instances; relating to the effect of the failure of prosecution or conviction of criminal offenders with respect to awards made pursuant to this article; providing for certain attorney and witness fees with respect to claims made pursuant to said article; the procedures for the certification and payment of claims made pursuant to said article; requiring annual reports of the activities of the court of claims with respect to said article; extending certain subrogation rights to the state with respect to payments made pursuant to said article; limiting the subrogation rights of persons making collateral payments to claimants; providing that payments and awards made pursuant to said article shall be exempt from execution or attachments and providing for certain exceptions with respect thereto; requiring the preparation and dissemination of information informing the public of the rights of claimants to the provisions of this article and the duty of law-enforcement agencies with respect thereto; empowering the court of claims to promulgate rules and regulations for the implementation of the provisions of said article; limiting the application of said article; and providing for an expiration date of said article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. REPARATION AWARDS TO VICTIMS OF CRIMES.

- §14-2A-1. Short title.
- §14-2A-2. Purpose and intent.
- §14-2A-3. Definitions.
- §14-2A-4. Creation of crime victims reparation fund.
- §14-2A-5. Jurisdiction.
- §14-A2-6. Appointment and compensation of commissioners.
- §14-2A-7. Qualifications of commissioners.
- §14-2A-8. Commissioners' oath of office.
- §14-2A-9. Attorney general to represent state.
- §14-2A-10. Filing of application for reparation award; filing fee; contents.
- §14-2A-11. Procedure for filing of application; indigent applicants.

- §14-2A-12. Investigation and recommendations by attorney general.
- §14-2A-13. Notice to claimant of attorney general's recommendation; evaluation of claim by judge or commissioner.
- §14-2A-14. Grounds for denial of claim or reduction of award.
- §14-2A-15. Hearings.
- §14-A2-16. Evidence.
- §14-2A-17. Contempt sanction not available.
- §14-2A-18. Effect of prosecution or conviction of offender.
- §14-2A-19. Attorney and witness fees.
- §14-2A-20. Procedure for certification and payment of claims.
- §14-2A-21. Annual report of court of claims.
- §14-2A-22. State's subrogation to claimant's rights.
- §14-2A-23. Subrogation rights of collateral source.
- §14-2A-24. Award not subject to execution or attachment; exceptions.
- §14-2A-25. Publicity.
- §14-2A-26. Rules and regulations.
- §14-2A-27. Application of article; expiration.

§14-2A-1. Short title.

- 1 This article shall be known and cited as the "West Virginia
- 2 Crime Reparation Act of 1981."

§14-2A-2. Purpose and intent.

- 1 The Legislature finds and declares that a primary purpose
- 2 of government is to provide for the safety of citizens and the
- 3 inviolability of their property. To the extent that innocent
- 4 citizens are victims of crime, particularly violent crime, and
- 5 are without adequate redress for injury to their person or
- 6 property, this primary purpose of government is defeated. The
- 7 people of West Virginia are demonstrably peaceful, and, in
- 8 comparison to the citizens of other states, suffer a lower crime
- 9 rate. Despite this history, the government of this state has not
- 10 fully met the expectations of its citizens to be free of the
- 11 devastating effects of criminal conduct by a small percentage
- 12 of their fellow citizens; therefore, the Legislature desires to
- 13 develop and perfect a system of reparations for the victims of
- 14 crime to partially address the fact that the present and existing

15 tools of crime prevention and correction are not wholly effective. This act of the Legislature is designed as an experimental
16 effort of the Legislature of this state on behalf of its people, to
17 provide a partial remedy for the failure of the state to fully
18 achieve the primary purpose of government herein described.
19 The demonstration project envisioned by this article is constructed to provide a system of reparations which is within the
20 resources of our society. Being experimental, this project should
21 be fully within the control of the Legislature as the repository of the powers of the people and be subject to review
22 and perfection by the Legislature during its initial experimental stages. The system herein provided should be fully reviewed in a reasonable time and, if successful, made a permanent part of the system of government. Pending the full
23 development of a more complete system of reparations the system should be retained in the legislative branch as an
24 expression of a moral obligation of the state, deferring to a later date consideration of the question of whether such
25 remedy should be defined as an enforceable legal right of each of the citizens of this state and the citizens of other states
26 entitled to the same privileges and immunities of our citizens. Pending such full development, no privilege herein granted
27 shall be deemed to be a vested right of any citizen, but this article shall rather be a means of defining and presenting, for
28 legislative consideration, the nature and extent of the moral obligation of this state and its ability to afford reparations to
29 its lawabiding citizens who suffer from the effect of violent
30 criminal conduct.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons who
3 claim an award of reparations under this article:

4 (1) A victim;

5 (2) A dependent of a deceased victim;

6 (3) A third person other than a collateral source;

7 (4) A person who is authorized to act on behalf of a victim,
8 a dependent, or a third person who is not a collateral source.

9 (b) "Collateral source" means a source of benefits or ad-
10 vantages for economic loss otherwise reparable that the victim
11 or claimant has received, or that is readily available to him,
12 from any of the following sources:

13 (1) The offender;

14 (2) The government of the United States or any of its
15 agencies, a state or any of its political subdivisions, or an
16 instrumentality of two or more states;

17 (3) Social security, medicare, and medicaid;

18 (4) State-required, temporary, nonoccupational disability
19 insurance;

20 (5) Workmen's compensation;

21 (6) Wage continuation programs of any employer;

22 (7) Proceeds of a contract of insurance payable to the
23 victim for loss that he sustained because of the criminally
24 injurious conduct;

25 (8) A contract providing prepaid hospital and other health
26 care services, or benefits for disability.

27 (c) "Criminally injurious conduct" means conduct that oc-
28 curs or is attempted in this state which by its nature poses a
29 substantial threat of personal injury or death, and is punish-
30 able by fine or imprisonment or death, or would be so pun-
31 ishable but for the fact that the person engaging in the conduct
32 lacked capacity to commit the crime under the laws of this
33 state. Criminally injurious conduct does not include conduct
34 arising out of the ownership, maintenance, or use of a motor
35 vehicle, except when the person engaging in the conduct in-
36 tended to cause personal injury or death, or except when the
37 person engaging in the conduct is shown under this article to
38 have committed negligent homicide, driving under the influence
39 of alcohol, controlled substances or drugs, or reckless driving.

40 (d) "Dependent" means an individual wholly or partially
41 dependent upon the victim for care and support, and includes
42 a child of the victim born after his death.

43 (e) "Economic loss" means economic detriment consisting

44 only of allowable expense, work loss, and replacement services
45 loss. If criminally injurious conduct causes death, economic
46 loss includes a dependent's economic loss and a dependent's
47 replacement services loss. Noneconomic detriment is not eco-
48 nomic loss, however, economic loss may be caused by pain
49 and suffering or physical impairment.

50 (f) "Allowable expense" means reasonable charges incurred
51 for reasonably needed products, services, and accommodations,
52 including those for medical care, rehabilitation, and other
53 remedial treatment and care.

54 Allowable expense includes a total charge not in excess of
55 five hundred dollars for expenses in any way related to funeral,
56 cremation and burial. It does not include that portion of a
57 charge for a room in a hospital, clinic, convalescent home,
58 nursing home, or any other institution engaged in providing
59 nursing care and related services in excess of a reasonable and
60 customary charge for semiprivate accommodations, unless ac-
61 commodation other than semiprivate accommodations are
62 medically required.

63 (g) "Work loss" means loss of income from work that the
64 injured person would have performed if he had not been injured
65 and expenses reasonably incurred by him to obtain services in
66 lieu of those he would have performed for income, reduced by
67 any income from substitute work actually performed by him,
68 or by income he would have earned in available appropriate
69 substitute work that he was capable of performing but un-
70 reasonably failed to undertake.

71 (h) "Replacement services loss" means expenses reasonably
72 incurred in obtaining ordinary and necessary services in lieu of
73 those the injured person would have performed, not for income
74 but for the benefit of himself or his family, if he had not been
75 injured.

76 (i) "Dependent's economic loss" means loss after a victim's
77 death of contributions of things of economic value to his
78 dependents, not including services they would have received
79 from the victim if he had not suffered the fatal injury, less
80 expenses of the dependents avoided by reason of the victim's
81 death.

82 (j) "Dependent's replacement service loss" means loss rea-
83 sonably incurred by dependents after a victim's death in ob-
84 taining ordinary and necessary services in lieu of those the
85 victim would have performed for their benefit if he had not
86 suffered the fatal injury, less expenses of the dependents avoid-
87 ed by reason of the victim's death and not subtracted in cal-
88 culating dependent's economic loss.

89 (k) "Noneconomic detriment" means pain, suffering, incon-
90 venience, physical impairment, or other nonpecuniary damage.

91 (l) "Victim" means a person who suffers personal injury or
92 death as a result of criminally injurious conduct.

§14-2A-4. Creation of crime victims reparation fund.

1 Every person within the state who is convicted of or pleads
2 guilty to a misdemeanor or felony offense, other than a traffic
3 offense that is not a moving violation, shall pay the sum of
4 three dollars as costs in the case, in addition to any other court
5 costs that the court is required by law to impose upon such
6 convicted person. The clerk of the circuit court, magistrate
7 court, or municipal court wherein such additional costs are
8 imposed shall, on or before the last day of each month, trans-
9 mit all such costs received under this article to the state trea-
10 surer for deposit in the state treasury to the credit of a special
11 revenue fund to be known as the "crime victims reparation
12 fund," which is hereby created. All moneys collected and re-
13 ceived under this article and paid into the state treasury and
14 credited to the "crime victims reparation fund" in the manner
15 prescribed in section two, article two, chapter twelve of this
16 code, shall be kept and maintained for appropriation by the
17 Legislature for the specific purposes of this article, and shall
18 not be treated by the auditor and treasurer as part of the gen-
19 eral revenue of the state.

§14-2A-5. Jurisdiction.

1 Any judge of the court of claims individually, or the court of
2 claims en banc, or any court of claims commissioner appointed
3 pursuant to section six of this article, shall have jurisdiction

4 to approve awards of reparations for economic loss arising
5 from criminally injurious conduct, in accordance with the pro-
6 visions of this article, if satisfied by a preponderance of the
7 evidence that the requirements for an award of reparations
8 have been met.

§14-2A-6. Appointment and compensation of commissioners.

1 (a) The court of claims, with the approval of the president
2 of the Senate and the speaker of the House of Delegates, shall
3 appoint at least three court of claims commissioners to hear
4 claims for an award of reparations and to approve awards of
5 reparations pursuant to the provisions of this article. Each
6 commissioner shall serve at the pleasure of the court of claims
7 and under the administrative supervision of the clerk of the
8 court of claims.

9 (b) The court of claims shall fix the compensation of the
10 court of claims commissioners in an amount not exceeding the
11 compensation for judges of the court of claims. Compensation
12 of judges and commissioners for services performed under this
13 article, and actual expenses incurred in the performance of
14 duties as judges and commissioners under this article shall be
15 paid out of the crime victims reparation fund.

§14-2A-7. Qualifications of commissioners.

1 Each commissioner appointed by the court of claims shall be
2 an attorney-at-law, licensed to practice in this state, and shall
3 have been so licensed to practice law for a period of not less
4 than three years prior to his appointment as commissioner. A
5 commissioner shall not be an officer or an employee of any
6 branch of state government, except in his capacity as com-
7 missioner of the court. A commissioner shall not hear or par-
8 ticipate in the consideration of any claim in which he is in-
9 terested personally, either directly or indirectly. When practi-
10 cable, the commissioners should be selected from different
11 congressional districts and be geographically located, with ref-
12 erence to their counties of residence, to facilitate the ap-
13 pearance of claimants and witnesses at hearings held pursuant
14 to this article.

§14-2A-8. Commissioners' oath of office.

1 Each commissioner shall, before entering upon the duties of
2 his office, take and subscribe to the oath prescribed by section
3 five, article four of the constitution of the state. The oath
4 shall be filed with the clerk.

§14-2A-9. Attorney general to represent state.

1 The attorney general shall represent the interests of the state
2 in all claims coming before the court of claims or a com-
3 missioner.

§14-2A-10. Filing of application for reparation award; filing fee; contents.

1 (a) A claim for an award of reparations shall be commenced
2 by filing an application for an award of reparations with the
3 clerk of the court of claims. Each application shall be accom-
4 panied by a filing fee of ten dollars unless waived pursuant to
5 subsection (b), section eleven of this article. The application
6 shall be in a form prescribed by the clerk of the court of
7 claims, and shall contain the following information:

8 (1) The name and address of the victim of the criminally
9 injurious conduct, the name and address of the claimant, and
10 the relationship of the claimant to the victim;

11 (2) If the victim is deceased, the name and address of each
12 dependent of the victim and the extent to which each is depen-
13 dent upon the victim for care and support;

14 (3) The nature of the criminally injurious conduct that is
15 the basis for the claim and the date on which the conduct oc-
16 curred;

17 (4) The law-enforcement agency or officer to whom the
18 criminally injurious conduct was reported and the date on
19 which it was reported;

20 (5) The nature and extent of the injuries that the victim
21 sustained from the criminally injurious conduct for which
22 reparations are sought, the name and address of any person
23 who gave medical treatment to the victim for the injuries, the
24 name and address of any hospital or similar institution where

25 the victim received medical treatment for the injuries, and
26 whether the victim died as a result of the injuries;

27 (6) The total amount of the economic loss that the victim,
28 a dependent, or the claimant sustained as a result of the crim-
29 inally injurious conduct, without regard to the financial limi-
30 tation set forth in subsection (g), section fourteen of this
31 article;

32 (7) The amount of benefits or advantages that the victim,
33 a dependent, or other claimant has received or is entitled to
34 receive from any collateral source for economic loss that re-
35 sulted from the criminally injurious conduct, and the name of
36 each collateral source;

37 (8) Whether the claimant is the spouse, parent, child, broth-
38 er or sister of the offender, or is similarly related to an ac-
39 complice of the offender who committed the criminally in-
40 jurious conduct;

41 (9) A release authorizing the court of claims, the court of
42 claims commissioners, and the staff of the attorney general to
43 obtain any report, document or information that relates to the
44 determination of the claim for an award of reparations;

45 (10) Any additional relevant information that the court of
46 claims may require. The court of claims may require the claim-
47 ant to submit, with the application, materials to substantiate
48 the facts that are stated in the application.

49 (b) All applications for an award of reparations shall be
50 filed within two years after the occurrence of the criminally
51 injurious conduct that is the basis of the application.

52 (c) A person who knowingly and willfully presents or
53 attempts to present a false or fraudulent application, or a
54 state officer or employee who knowingly and willfully par-
55 ticipates or assists in the preparation or presentation of a
56 false or fraudulent application, shall be guilty of a misde-
57 meanor. A person convicted, in a court of competent juris-
58 diction, of violation of this section shall be fined not more
59 than one thousand dollars or imprisoned for not more than
60 one year, or both, in the discretion of such court. If the

61 convicted person is a state officer or employee, he shall, in
62 addition, forfeit his office or position of employment, as
63 the case may be.

§14-2A-11. Procedure for filing of application; indigent applicants.

1 (a) The clerk of the court of claims shall establish a pro-
2 cedure for the filing, recording and processing of applications
3 for an award of reparations.

4 (b) If an applicant files an affidavit stating that he is an
5 indigent person and that payment of the filing fee would create
6 a financial hardship for him, the clerk, pursuant to rules es-
7 tablished by the court of claims, may accept the application for
8 filing without payment of the filing fee. If the application is
9 accepted without payment of the filing fee and an award is
10 made pursuant to the application, the amount of the award
11 shall be reduced by the amount of the filing fee.

§14-2A-12. Investigation and recommendations by attorney general.

1 (a) The clerk of the court of claims shall send a copy of the
2 application to the attorney general within seven days after the
3 filing of the application.

4 (b) The attorney general, upon receipt of an application for
5 an award of reparations from the clerk of the court of claims,
6 shall investigate the claim. After completing the investigation,
7 the attorney general shall make a written finding of fact and
8 recommendation concerning an award of reparations. He shall
9 file with the clerk the finding of fact and recommendation and
10 all information or documents that he used in his investigation.

11 (c) The attorney general while investigating the claim, may
12 require the claimant to supplement the application for an award
13 of reparations with any further information or documentary
14 materials, including any medical report readily available,
15 which may lead to any relevant facts aiding in the determina-
16 tion of whether, and the extent to which, a claimant qualifies
17 for an award of reparations. The attorney general may depose
18 any witness, including the claimant, in the same manner as

19 witnesses are deposed under the rules of civil procedure for
20 trial courts of record.

21 (d) The finding of fact that is issued by the attorney general
22 pursuant to subsection (b) of this section shall contain the
23 following:

24 (1) Whether the criminally injurious conduct that is the
25 basis for the application did occur, the date on which the
26 conduct occurred, and the exact nature of the conduct;

27 (2) If the criminally injurious conduct was reported to a
28 law-enforcement officer or agency, the date on which the
29 conduct was reported and the name of the person who reported
30 the conduct; or, the reasons why the conduct was not reported
31 to a law-enforcement officer or agency; or, the reasons why the
32 conduct was not reported to a law-enforcement officer or
33 agency within seventy-two hours after the conduct occurred;

34 (3) The exact nature of the injuries that the victim sustained
35 as a result of the criminally injurious conduct;

36 (4) A specific itemization of the economic loss that was
37 sustained by the victim, the claimant, or a dependent as a re-
38 sult of the criminally injurious conduct;

39 (5) A specific itemization of any benefits or advantages
40 that the victim, the claimant, or a dependent has received or is
41 entitled to receive from any collateral source for economic loss
42 that resulted from the conduct;

43 (6) Whether the claimant is the spouse, parent, child, broth-
44 er or sister of the offender, or is similarly related to an ac-
45 complice of the offender who committed the criminally injur-
46 ious conduct;

47 (7) Any additional information that the attorney general
48 deems to be relevant to the evaluation of the claim.

49 (e) The recommendation that is issued by the attorney gen-
50 eral pursuant to subsection (b) of this section shall contain the
51 following:

52 (1) Whether an award of reparations should be made to the
53 claimant and the amount of the award.

54 (2) If the attorney general recommends that an award not
55 be made to the claimant, the reason for his decision.

56 (f) The attorney general shall file his finding of fact and
57 recommendation with the clerk within sixty days after the filing
58 of the application, or within such additional time period as
59 may be provided by order of any court of claims judge or
60 commissioner upon good cause shown, but in no event later
61 than six months after such filing.

§14-2A-13. Notice to claimant of attorney general's recommendation; evaluation of claim by judge or commissioner.

1 (a) The clerk of the court of claims, upon receipt of the
2 attorney general's finding of fact and recommendation, shall
3 forward a copy of the finding of fact and recommendation to
4 the claimant with a notice informing the claimant that any re-
5 sponse, in the form of objections or comments directed to the
6 finding of fact and recommendation, must be filed with the
7 clerk within thirty days of the date of the notice. After the
8 expiration of such thirty-day period, the clerk shall assign the
9 claim to a judge or commissioner of the court.

10 (b) The judge or commissioner to whom the claim is assign-
11 ed shall review the finding of fact and recommendation and
12 any response submitted by the claimant and, if deemed appro-
13 priate, may request the attorney general to comment in writ-
14 ing on the claimant's response. The judge or commissioner
15 shall, within forty-five days after assignment by the clerk,
16 evaluate the claim without a hearing and either deny the claim
17 or approve an award of reparations to the claimant.

§14-2A-14. Grounds for denial of claim or reduction of award.

1 (a) The judge or commissioner shall not approve an award
2 of reparations to a claimant who did not file his application for
3 an award of reparations within two years after the date of the
4 occurrence of the criminally injurious conduct that caused the
5 injury or death for which he is seeking an award of reparations.

6 (b) An award of reparations shall not be approved if the
7 criminally injurious conduct upon which the claim is based was
8 not reported to a law-enforcement officer or agency within
9 seventy-two hours after the occurrence of the conduct, unless

10 it is determined that good cause existed for the failure to re-
11 port the conduct within the seventy-two hour period.

12 (c) The judge or commissioner shall not approve an award
13 of reparations to a claimant who is the offender or an accom-
14 plice of the offender who committed the criminally injurious
15 conduct, nor to any claimant if the award would unjustly bene-
16 fit the offender or his accomplice. Unless a determination is
17 made that the interests of justice require that an award be
18 approved in a particular case, an award of reparations shall
19 not be made to the spouse of, or to a person living in the same
20 household with, the offender or accomplice of the offender, or
21 to the parent, child, brother or sister of the offender or his
22 accomplice.

23 (d) A judge or commissioner, upon a finding that the claim-
24 ant or victim has not fully cooperated with appropriate law-
25 enforcement agencies, may deny a claim, reduce an award of
26 reparations, and may reconsider a claim already approved.

27 (e) An award of reparations shall not be approved if the
28 injury occurred while the victim was confined in any state,
29 county or city jail, prison or correctional facility.

30 (f) After reaching a decision to approve an award of re-
31 paration, but prior to announcing such approval, the judge or
32 commissioner shall require the claimant to submit current in-
33 formation as to collateral sources on forms prescribed by the
34 clerk of the court of claims. The judge or commissioner shall
35 reduce an award of reparations or deny a claim for an award
36 of reparations that is otherwise payable to a claimant to the
37 extent that the economic loss upon which the claim is based is
38 or will be recouped from other persons including collateral
39 sources, or if such reduction or denial is determined to be
40 reasonable because of the contributory misconduct of the
41 claimant or of a victim through whom he claims. If an award
42 is reduced or a claim is denied because of the expected recoup-
43 ment of all or part of the economic loss of the claimant from
44 a collateral source, the amount of the award or the denial of
45 the claim shall be conditioned upon the claimant's economic
46 loss being recouped by the collateral source: *Provided*, That
47 if it is thereafter determined that the claimant will not receive

48 all or part of the expected recoupment, the claim shall be re-
49 opened and an award shall be approved in an amount equal to
50 the amount of expected recoupment that it is determined the
51 claimant will not receive from the collateral source, subject
52 to the limitations set forth in subsection (g) of this section.

53 (g) Reparations payable to a victim and to all other claim-
54 ants sustaining economic loss because of injury to or the death
55 of that victim shall not exceed twenty thousand dollars in the
56 aggregate.

§14-2A-15. Hearings.

1 (a) If either the attorney general or the claimant disagrees
2 with the approval of an award or the denial of a claim in the
3 summary manner set forth on the preceding sections of this
4 article, the attorney general or the claimant, or both, shall file
5 with the clerk a request for hearing. Such request shall be
6 filed within twenty-one days after notification by the judge or
7 commissioner of his decision.

8 (b) Upon receipt of a request for hearing, the clerk shall
9 place the claim upon the regular docket of the court for hear-
10 ing, shall advise the attorney general and the claimant of the
11 receipt of the request and docketing of the claim, and shall re-
12 quest the attorney general to commence negotiations with the
13 claimant.

14 (c) During the period of negotiations and pending hearing,
15 the attorney general, shall, if possible, reach an agreement with
16 the claimant regarding the facts upon which the claim is based
17 so as to avoid the necessity for the introduction of evidence
18 at the hearing. If the parties are unable to agree upon the facts
19 an attempt shall be made to stipulate the questions of fact in
20 issue.

21 (d) The hearing held in accordance with this section shall
22 be before the court of claims, en banc, or, if the claim was
23 previously assigned to and decided by a judge of the court,
24 such hearing shall be held before the two remaining judges and
25 a commissioner: *Provided*, That if the amount of the economic
26 loss alleged in the application is less than ten thousand dollars,
27 the hearing may be held before a single judge or commissioner

28 to whom the claim has not been previously assigned. Hearings
29 before a single judge or commissioner may, in the discretion
30 of such hearing officer, be held at such locations throughout
31 the state as will facilitate the appearance of the claimant and
32 witnesses.

33 (e) The hearing shall be conducted so as to disclose all
34 material facts and issues. Judges and commissioners may exam-
35 ine or cross-examine witnesses. The judges and commissioners
36 may call witnesses or require evidence not produced by the
37 parties; may stipulate the questions to be argued by the parties;
38 and may continue the hearing until some subsequent time to
39 permit a more complete presentation of the claim.

40 (f) After the close of the hearing the court, judge or com-
41 missioner, as the case may be, shall consider the claim and shall
42 conclude its determination, if possible, within thirty days.

43 (g) The court shall adopt and may from time to time amend
44 rules of procedure, in accordance with the provisions of this
45 article, governing proceedings before the court. Rules shall be
46 designed to assure a simple, expeditious and inexpensive con-
47 sideration of claims. Rules shall permit a claimant to appear
48 in his own behalf or be represented by counsel.

49 Under its rules, the court shall not be bound by the usual
50 common law or statutory rules of evidence. The court may ac-
51 cept and weigh, in accordance with its evidential value, any
52 information that will assist the court in determining the factual
53 basis of a claim.

§14-2A-16. Evidence.

1 (a) There is no privilege, except the privileges arising from
2 the attorney-client relationship, as to communications or re-
3 cords that are relevant to the physical, mental or emotional
4 condition of the claimant or victim in a proceeding under this
5 article in which that condition is an element.

6 (b) If the mental, physical or emotional condition of a
7 victim or claimant is material to a claim for an award of re-
8 parations, the court, judge or commissioner may order the
9 victim or claimant to submit to a mental or physical exami-

10 nation by a physician or psychologist, and may order an au-
11 topsy of a deceased victim. The order may be made for good
12 cause shown and upon notice to the person to be examined and
13 to the claimant and the attorney general. The order shall speci-
14 fy the time, place, manner, conditions and scope of the exami-
15 nation or autopsy and the person by whom it is to be made,
16 and shall require the person who performs the examination or
17 autopsy to file with the clerk of the court of claims a detailed
18 written report of the examination or autopsy. The report shall
19 set out the findings, including the results of all tests made,
20 diagnosis, prognosis, and other conclusions and reports of
21 earlier examinations of the same conditions. On request of
22 the person examined, the clerk of the court of claims shall
23 furnish him a copy of the report. If the victim is deceased, the
24 clerk of the court of claims, on request, shall furnish the
25 claimant a copy of the report.

26 (c) The court, or a judge or commissioner thereof, may
27 order law-enforcement officers employed by the state or any
28 political subdivision thereof to provide it or the attorney gen-
29 eral with copies of any information or data gathered in the
30 investigation of the criminally injurious conduct that is the
31 basis of any claim to enable it to determine whether, and the
32 extent to which, a claimant qualifies for an award of repara-
33 tions.

34 (d) The court, or a judge or commissioner thereof, may
35 require the claimant to supplement the application for an
36 award of reparations with any reasonably available medical
37 or psychological reports relating to the injury for which the
38 award of reparations is claimed.

39 (e) The court, a judge, a commissioner, or the attorney
40 general, in a claim arising out of a violation of article eight-b,
41 chapter sixty-one of this code, shall not request the victim or
42 the claimant to supply any evidence of specific instances of the
43 victim's sexual activity, or reputation evidence of the victim's
44 sexual activity unless it involves evidence of the victim's past
45 sexual activity with the offender and then only to the extent
46 that the court, the commissioner, or the attorney general finds
47 that the evidence is relevant to a fact at issue in the claim.

48 (f) Notwithstanding any provision of this code to the con-
49 trary relating to the confidentiality of juvenile records, the
50 court of claims, a judge or commissioner thereof, or the at-
51 torney general shall have access to the records of juvenile pro-
52 ceedings which bear upon an application for reparations under
53 this article. The court of claims, the judges and commissioners
54 thereof, and the attorney general, shall, to the extent possible,
55 maintain the confidentiality of juvenile records.

§14-2A-17. Contempt sanction not available.

1 If a person refuses to comply with an order under this
2 article, or asserts a privilege, except privileges arising from
3 the attorney-client relationship, so as to withhold or suppress
4 evidence relevant to a claim for an award of reparations, the
5 court, judge or commissioner may make any just order, includ-
6 ing denial of the claim, but shall not find the person in con-
7 tempt. If necessary to carry out any of his powers and duties,
8 the attorney general may petition the court of claims for an
9 appropriate order, but the court of claims shall not find a
10 person in contempt for refusal to submit to a mental or physical
11 examination.

§14-2A-18. Effect of prosecution or conviction of offender.

1 The court, or a judge or commissioner thereof, may approve
2 an award of reparations whether or not any person is prose-
3 cuted or convicted for committing the conduct that is the
4 basis of the award. Proof of conviction of a person whose
5 conduct gave rise to a claim is conclusive evidence that the
6 crime was committed, unless an application for rehearing, an
7 appeal of the conviction, or certiorari is pending, or a rehearing
8 or new trial has been ordered.

9 The court, or a judge or commissioner thereof, shall suspend,
10 upon a request of the attorney general, the proceedings in any
11 claim for an award of reparations pending disposition of a
12 criminal prosecution that has been commenced or is imminent.

§14-2A-19. Attorney and witness fees.

1 (a) As part of an order, the court, or a judge or commis-
2 sioner thereof, shall determine and award reasonable attorney's
3 fees, commensurate with services rendered, to be paid from

4 the crime victims reparation fund to the attorney representing
5 a claimant in a proceeding under this article. Attorney's fees
6 may be denied upon a finding that the claim or appeal is friv-
7 olous. Awards of attorney's fees shall be in addition to awards
8 of reparations and attorney's fees may be awarded whether or
9 not an award of reparations is approved. An attorney shall not
10 contract for or receive any larger sum than the amount al-
11 lowed under this section.

12 (b) Each witness called by the court to appear in a hearing
13 on a claim for an award of reparations shall receive compen-
14 sation and expenses in an amount equal to that received by
15 witnesses in civil cases as provided in section sixteen, article
16 one, chapter fifty-nine of this code, to be paid from the crime
17 victims reparation fund.

§14-2A-20. Procedure for certification and payment of claims.

1 (a) The clerk shall certify to the department of finance and
2 administration, on or before the twentieth day of November of
3 each year, a list of all claims pursuant to this article for which
4 the court has made a final determination and approved an
5 award since the last such certificate.

6 (b) The governor shall include in his proposed budget bill
7 and revenue estimates:

8 (1) an estimate of the balance and receipts anticipated in
9 the crime victims reparation fund,

10 (2) an itemized report of the approved awards recommended
11 by the court to the Legislature,

12 (3) such recommendations to the Legislature for appropria-
13 tions from the crime victims reparation fund as he may deem
14 appropriate for the payment of fees, costs and expenses in-
15 curred, due or payable at any time from such fund, and

16 (4) such recommendations to the Legislature for appropria-
17 tions for the payment of claims arising under this article,
18 whether accrued and determined by the court and included in
19 the itemization of awards mentioned in this section or arising
20 during the ensuing fiscal year.

21 (c) The Legislature shall, by general law, provide for the

22 authorization to pay the itemized awards arising under this
23 article or so much thereof as may be deemed appropriate or for
24 awards arising during the ensuing fiscal year and provide by
25 appropriation from the crime victims reparation fund for the
26 payment of such awards authorized and for the payment of
27 fees, costs and expenses as from time to time may be appro-
28 priate. The clerk shall certify each authorized award and the
29 amount thereof and make requisition upon the crime victims
30 reparation fund relating thereto, to the auditor. The auditor
31 shall issue his warrant to the treasurer without further exami-
32 nation or review of the claim except for the question of a suffi-
33 cient unexpended balance in the appropriation.

§14-2A-21. Annual report of court of claims.

1 The court of claims shall prepare and transmit annually to
2 the governor and the Legislature a report of the activities of
3 the court of claims under this article. The report shall include
4 the number of claims filed, the number of awards made and
5 the amount of each award, and a statistical summary of claims
6 and awards made and denied including the average size of
7 claims and awards; the balance in the crime victims repara-
8 tion fund with a listing by source and amount of the moneys
9 that have been deposited in the fund; the amount that has
10 been withdrawn from the fund, including separate listings of
11 the administrative costs incurred by the court of claims, com-
12 pensation of judges, commissioners and court personnel, the
13 amount awarded as attorneys' fees, and the amount with-
14 drawn by the attorney general after certification of his costs
15 of investigation and recommendation. The attorney general
16 and auditor of the state shall assist the court of claims in the
17 preparation of the report required by this section.

§14-2A-22. State's subrogation to claimant's rights.

1 If an award of reparations is made under the provisions of
2 this article and is not reduced on account of the availability of
3 payment by a collateral source, the state, upon the payment of
4 the award or a part of the award, shall be subrogated to all
5 of the claimant's rights to receive or recover benefits or
6 advantages for economic loss for which an award of repara-
7 tions was made from such source if it were a collateral source

8 or would be a collateral source if it were readily available to
9 the victim or claimant. The claimant may sue the offender for
10 any damages or injuries caused by the offender's criminally
11 injurious conduct and not compensated for by an award of
12 reparations. The claimant may join with the attorney general
13 as co-plaintiff in any action against the offender. All moneys
14 that are collected by the state pursuant to its rights of
15 subrogation as provided in this section shall be deposited in
16 the crime victims reparation fund.

§14-2A-23. Subrogation rights of collateral source.

1 Subrogation rights which a collateral source may have shall
2 not extend to a recovery from a claimant of all or any part of
3 an award made under this article. A collateral source may not
4 apply, in the name of a claimant or otherwise, for an award
5 of reparations based upon injury to a claimant to whose rights
6 the collateral source may be subrogated.

§14-2A-24. Award not subject to execution or attachment; exceptions.

1 An award is not subject to execution, attachment, garnish-
2 ment, or other process, except that, upon receipt of an award
3 by a claimant, the part of the award that is for allowable
4 expense is not exempt from such action by a creditor to the
5 extent that he provides products, services or accommodations
6 the costs of which are included in the award and the part of
7 the award that is for work loss shall not be exempt from such
8 action to secure payment of alimony, maintenance or child
9 support.

§14-2A-25. Publicity.

1 (a) The clerk of the court of claims, with the assistance of
2 the attorney general, shall prepare an information brochure
3 for the benefit of the general public, outlining the rights of
4 claimants and procedures to be followed under this article.
5 Copies of such brochure shall be distributed to law-enforce-
6 ment agencies in the state, and be made available to other
7 interested persons.

8 (b) Any law-enforcement agency that investigates an offense

9 committed in this state involving personal injury, shall make
10 reasonable efforts to provide information to the victim of the
11 offense and his dependents concerning the availability of an
12 award of reparations and advise such persons that an appli-
13 cation for an award of reparations may be obtained from
14 the clerk of the court of claims.

§14-2A-26. Rules and regulations.

1 The court of claims may promulgate rules and regulations
2 to implement the provisions of this article.

§14-2A-27. Application of article; expiration.

1 (a) The provisions of this article shall not apply to any
2 injury or death resulting from criminally injurious conduct
3 which occurred on or before the thirty-first day of December,
4 one thousand nine hundred eighty-one, or on or after the
5 first day of January, one thousand nine hundred eighty-six.

6 (b) Any and all funds remaining in the crime victims
7 reparation fund after the payment of claims under this article
8 shall on the first day of July, one thousand nine hundred
9 eighty-seven, revert to the general revenue fund.

CHAPTER 62

(H. B. 933—By Mr. Speaker, Mr. See, and Mr. Tompkins)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to obtaining money and property by false pretenses and disposing of property to defraud creditors; providing certain criminal penalties therefor; making it a crime for any person, firm or corporation to obtain labor, services or other thing of value from another by certain false pretenses, with intent to defraud; and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, 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.

§61-3-24. Obtaining money, property and services by false pretenses; disposing of property to defraud creditors; penalties.

1 (a) If any person obtain from another, by any false pre-
2 tense, token or representation, with intent to defraud, money,
3 goods or other property which may be the subject of larceny,
4 or, if he obtain from another any money, goods or other
5 property, which may be the subject of larceny, on credit, by
6 representing that there is money due him, or to become due
7 him, and shall assign his claim for such money, in writing,
8 to the person from whom he shall obtain such money, goods
9 or other property, and shall afterwards collect the same
10 without the consent of such assignee, with intent to defraud,
11 he shall, in either case, be deemed guilty of larceny, and, if
12 the value of the money, goods or other property is two
13 hundred dollars or more, such person shall be guilty of a
14 felony, and, upon conviction thereof, shall be confined in
15 a penitentiary not less than one nor more than ten years, or,
16 in the discretion of the court, be confined in the county jail
17 not more than one year and shall be fined not more than five
18 hundred dollars. If the value of the money, goods or other
19 property is less than two hundred dollars, such person shall be
20 guilty of a misdemeanor, and, upon conviction thereof, shall be
21 confined in the county jail for a term not to exceed one year
22 or fined not to exceed five hundred dollars, or both, in the
23 discretion of the court. If any person obtain by any false
24 pretense, token or representation, with intent to defraud, the
25 signature of any other person to a writing, the false making
26 whereof would be forgery, such person shall be guilty of a
27 felony, and, upon conviction thereof, shall be confined in
28 the penitentiary not less than one nor more than five
29 years, or in the discretion of the court, be confined in jail
30 not more than one year and be fined not exceeding five

31 hundred dollars. And any person who shall remove any
32 of his property out of any county with intent to prevent
33 the same from being levied upon by any execution, or
34 who shall secrete, assign or convey, or otherwise dispose
35 of any of his property with intent to defraud any creditor
36 or prevent such property being made liable for payment of
37 his debts, and any person who shall receive such property,
38 with such intent, shall be deemed guilty of a misdemeanor,
39 and, upon conviction thereof, shall be fined not less than
40 twenty-five nor more than one thousand dollars and be
41 imprisoned in the county jail not exceeding one year. And
42 when the property so removed, secreted, concealed, assigned,
43 conveyed, received or otherwise disposed of, shall be worth
44 fifty dollars or less, such offense shall be tried by a magistrate
45 in the mode prescribed for the trial of other criminal offenses
46 by a magistrate: *Provided*, That upon conviction for such
47 offense before a magistrate the person so convicted shall be
48 fined not exceeding fifty dollars and confined in the county
49 jail not exceeding thirty days. But nothing in this section
50 contained shall prevent any creditor from proceeding against
51 any such fraudulent debtor as provided in article five, chapter
52 thirty-eight, and in article seven, chapter fifty-three of this
53 code, or of any other remedy in equity or at law now existing.

54 (b) If any person, firm or corporation obtain labor, services
55 or any other such thing of value from another, by any false
56 pretense, token or representation, with intent to defraud, such
57 person, firm or corporation, if the value of the labor, services
58 or any other such thing of value is two hundred dollars or
59 more, shall be guilty of a felony, and, upon conviction thereof,
60 shall be confined in a penitentiary not less than one nor
61 more than ten years, or, in the discretion of the court, be
62 confined in the county jail not more than one year and shall
63 be fined not more than five hundred dollars. If the value of
64 the labor, services or any other such thing of value is less
65 than two hundred dollars, such person, firm or corporation
66 shall be guilty of a misdemeanor, and, upon conviction
67 thereof, shall be confined in the county jail for a term not
68 to exceed one year or fined not to exceed five hundred dollars,
69 or both, in the discretion of the court.

CHAPTER 63

(Com. Sub. for H. B. 1055—By Mr. Carmichael and Mr. Gvoyich)

[Passed April 3, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four-c, relating to making it a crime to intercept or monitor certain customer telephone communications and providing a criminal penalty therefor; providing for circumstances by which certain telephone communications may be monitored; and providing for certain exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-24c. Intercepting or monitoring customer telephone calls; penalty.

1 (a) It is unlawful for any person, firm or corporation to
2 intercept or monitor, or to attempt to intercept or monitor, the
3 transmission of a message, signal or other communication by
4 telephone between an employee or similar agent of such
5 person, firm or corporation and a customer of such person,
6 firm or corporation unless such person, firm or corporation
7 does all of the following:

8 (1) Clearly marks each telephone instrument in the pos-
9 session of said person, firm or corporation from which any
10 such communication may be intercepted or in any way moni-
11 tored, with accompanying explanation in each telephone direc-
12 tory at the next succeeding publication after enactment of
13 this section and all succeeding publications used by its em-
14 ployees or customers.

15 (2) Throughout the period of each such interception or

16 monitoring or attempted interception or monitoring, utilizes an
17 automated tone warning device that produces a distinct warn-
18 ing signal or beep tone, which signal or tone is clearly audible
19 to each party to the communication or by other audible means
20 clearly indicates that such message, signal or other communi-
21 cation is being monitored or intercepted.

22 Any person, firm or corporation violating the provisions of
23 this section is guilty of a misdemeanor, and, upon conviction
24 thereof, shall be fined not less than two hundred dollars, or
25 imprisoned in the county jail not more than one year, or both
26 fined and imprisoned.

27 (b) Nothing contained in this section shall require marking
28 of telephone instruments and directories, nor require consent to
29 interception or monitoring, nor require utilization of an auto-
30 mated tone warning device, in the case of a wiretap or other
31 form of monitoring which is engaged in for the sole purpose
32 of law enforcement and which is lawful in all other respects.

33 (c) The public service commission shall not issue any rule
34 or regulation requiring or suggesting the monitoring of any
35 message, signal or other communication by telephone to or
36 from any telephone utility customer so as to obtain the con-
37 tent or substance of any such communication.

CHAPTER 64

(S. B. 641—Originating in the Senate Committee on Finance)

[Passed April 6, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine-e, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the service charge for dishonored checks.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine-e, 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.

§61-3-39e. 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
3 may send notice thereof to the drawer of the check, draft
4 or order. The payee or holder of any such dishonored
5 check may impose a service charge not to exceed ten
6 dollars. No service charge shall be imposed or collected
7 after a complaint for warrant has been delivered to
8 magistrate court. No payee or holder of a check, draft or
9 order which has been dishonored because of insufficient
10 funds or credit shall incur any civil or criminal liability
11 for the sending of a notice substantially in the form
12 provided herein, other provisions of law notwithstanding.
13 The form of such notice shall be substantially as fol-
14 lows:

15 "You are hereby notified that a check, number _____,
16 issued by you on (date of check), drawn upon (name
17 of bank), and payable to _____, has been dis-
18 honored. Pursuant to West Virginia law, you have ten
19 days from the date of this notice to tender payment of
20 the full amount of such check plus a ten dollar service
21 charge to the undersigned at _____. You are
22 further notified that in the event the above amount is
23 timely paid in full you will not be subject to legal
24 proceedings, civil or criminal.

25 Dated _____, 19_____.

26 (Signed) ."

27 The provisions of this section shall not authorize the
28 making of any other written or oral threats of prosecu-
29 tion to enforce or enhance the collection or honoring of
30 said dishonored check, draft or order.

31 The holder or payee of any such check, draft or note
32 shall relinquish the check, draft or order to the maker
33 upon tender of the full amount due at any time before

34 a complaint for warrant has been presented to magis-
35 trate court. In the event complaint for warrant has
36 been presented to magistrate court, payment may be
37 made only through such court and any holder or payee
38 unlawfully accepting payment after such time shall be
39 liable for all costs which may be imposed by magistrate
40 court in the matter, including all costs which may have
41 accrued by the time the magistrate court is notified of
42 such payment.

CHAPTER 65

(S. B. 590—By Mr. Boettner)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine-h, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes and their punishment; crimes against property; payment of costs in worthless check cases; disposition of certain costs; providing that costs in such cases are distributed to magistrates to be used in meeting expenses.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine-h, 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.

§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.

1 In any prosecution under sections thirty-nine or
2 thirty-nine-a of this article such costs as may otherwise be
3 imposed against the drawer of any such check, draft or order
4 shall be imposed on the person initiating the prosecution if
5 payment of the check, draft or order is accepted by the payee
6 or holder thereof after the filing of a complaint for warrant; if
7 the payee or holder had reason to believe that the check, draft

8 or order would be dishonored or if the same was postdated; or
9 if the matter is dismissed for failure to prosecute.

10 Costs collected by magistrate court for issuance of notice as
11 authorized by section thirty-nine-g of this article shall be paid
12 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.

18 A county may appropriate and spend from such fund such
19 sums as shall be necessary to defray the expenses of
20 providing bailiff and service of process services by the sheriff,
21 to defray the cost of acquiring or renting magistrate court
22 offices and providing utilities and telephones therefor and to
23 defray the expenses of such other services which by the terms
24 of this chapter are to be provided to magistrate court by the
25 county.

CHAPTER 66

(Com. Sub. for H. B. 881—By Mr. Teets)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-one, relating to the regulation of certain purchases of precious metals and precious gems in this state; imposing record-keeping and reporting requirements upon purchasers thereof; prohibiting the disposal, alteration or removal from the state of said metals and gems for a ten-day period after purchase; giving definitions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by

adding thereto a new section, designated section fifty-one, to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-51. Precious metals and gem dealers; records; prohibited acts.

1 (a) Each person, firm or corporation in the business of
2 purchasing precious metals or precious gems, or both, for
3 any purpose other than personal, family or household use,
4 shall be subject to the provisions of this section. Each such
5 purchaser shall secure from the seller of the precious metal
6 or precious gem sufficient proof of lawful ownership or a
7 sworn affidavit of ownership, the original of which shall be
8 retained by the purchaser.

9 (b) Each such purchaser of a precious metal or precious
10 gem shall truly and accurately list each purchase in a perma-
11 nent record book clearly showing the kind, character and
12 amount of metal or gem purchased, any special or unique
13 quality or item of description concerning the metal or gem
14 purchased, the date of purchase, the full name and residence
15 address and mailing address of the seller, and any telephone
16 number of the seller. Such record book shall be open to
17 inspection by any law-enforcement officer in this state during
18 normal business hours of the purchaser. If any such purchase
19 is made within a municipality, the purchaser shall report all
20 the information required by this section in writing to the
21 chief of the police department of the municipality within
22 twenty-four hours of the purchase. If any such purchase is
23 made outside of a municipality, the purchaser shall report all
24 the information required by this section in writing to the
25 sheriff of the county wherein the purchase was made within
26 twenty-four hours of the purchase. The information required
27 by this section shall be preserved for a period of not less
28 than three years.

29 (c) Each such purchaser of a precious metal or precious
30 gem shall not, for a period of ten calendar days after the

31 purchase, dispose of such metal or gem, remove such metal
32 or gem from the state or alter in any way the form or sub-
33 stance of such metal or gem.

34 (d) As used in this section, "precious metal" means any
35 gold, silver, platinum or other valuable metal; and "precious
36 gem" means any diamond, pearl, emerald, ruby, sapphire or
37 similar precious stone.

38 (e) Any person, firm or corporation violating any provision
39 of this section shall be guilty of a felony, and, upon con-
40 viction thereof, shall be confined in the penitentiary not less
41 than one nor more than two years, or, in the discretion of
42 the court, be confined in jail not more than one year or
43 shall be fined not less than one hundred dollars nor more
44 than five thousand dollars, or both fined and so confined in
45 either the penitentiary or jail, all in the discretion of the
46 court.

CHAPTER 67

(Com. Sub. for S. B. 560—By Mr. Palumbo)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article three-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to crimes and their punishment; shoplifting; defining the offense of shoplifting; providing evidence; providing criminal penalties for first, second and third convictions; mandatory penalty; shoplifting constituting breach of peace; detention of suspected shoplifter; making shoplifters civilly liable; and defining terms.

Be it enacted by the Legislature of West Virginia:

That article three-a, 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 3A. SHOPLIFTING.

§61-3A-1. Shoplifting defined.

§61-3A-2. Evidence.

§61-3A-3. Penalties.

§61-3A-4. Shoplifting to constitute breach of peace; detention.

§61-3A-5. Civil liability.

§61-3A-6. Definitions.

§61-3A-1. Shoplifting defined.

1 (a) A person commits the offense of shoplifting if, with
2 intent to appropriate merchandise without paying the
3 merchant's stated price for the merchandise, such person,
4 alone or in concert with another person, knowingly:

5 (1) Conceals the merchandise upon his or her person or in
6 another manner; or

7 (2) Removes or causes the removal of merchandise from
8 the mercantile establishment or beyond the last station for
9 payment; or

10 (3) Alters, transfers or removes any price marking affixed
11 to the merchandise; or

12 (4) Transfers the merchandise from one container to
13 another; or

14 (5) Causes the cash register or other sales recording device
15 to reflect less than the merchant's stated price for the
16 merchandise; or

17 (6) Removes a shopping cart from the premises of the
18 mercantile establishment.

19 (b) A person also commits the offense of shoplifting if
20 such person, alone or in concert with another person,
21 knowingly and with intent obtains an exchange or refund or
22 attempts to obtain an exchange or refund for merchandise
23 which has not been purchased from the mercantile
24 establishment.

§61-3A-2. Evidence.

1 (a) Evidence of stated price or ownership of merchandise
2 may include, but is not limited to:

3 (1) The actual merchandise alleged to have been
4 shoplifted; or

5 (2) The unaltered content of the price tag or marking from
6 such merchandise; or

7 (3) Properly identified photographs of such merchandise.

8 (b) Any merchant may testify at a trial as to the stated
9 price or ownership of merchandise, as well as to other matters
10 pertaining to the case.

§61-3A-3. Penalties.

1 A person convicted of shoplifting shall be punished as
2 follows:

3 (a) *First offense conviction.*—Upon a first shoplifting
4 conviction:

5 (1) When the value of the merchandise is less than or equal
6 to one hundred dollars, the defendant shall be guilty of a
7 misdemeanor and shall be fined not more than two hundred
8 fifty dollars.

9 (2) When the value of the merchandise exceeds one
10 hundred dollars, the defendant shall be guilty of a
11 misdemeanor and shall be fined not less than one hundred
12 dollars, nor more than five hundred dollars, and such fine
13 shall not be suspended; or the defendant shall be imprisoned
14 in the county jail not more than sixty days; or both fined and
15 imprisoned.

16 (b) *Second offense conviction.*—Upon a second shoplifting
17 conviction:

18 (1) When the value of the merchandise is less than or equal
19 to one hundred dollars, the defendant shall be guilty of a
20 misdemeanor and shall be fined not less than one hundred
21 dollars nor more than five hundred dollars, and such fine
22 shall not be suspended; or the defendant shall be imprisoned
23 in the county jail not more than six months; or both fined and
24 imprisoned.

25 (2) When the value of the merchandise exceeds one
26 hundred dollars, the defendant shall be guilty of a
27 misdemeanor and fined not less than five hundred dollars
28 and shall be imprisoned in the county jail for not less than six
29 months nor more than one year. At least thirty days shall
30 actually be spent in confinement and not subject to
31 probation.

32 (c) *Third offense convictions.*—Upon a third or subsequent
33 shoplifting conviction, regardless of the value of the
34 merchandise, the defendant shall be guilty of a felony and
35 shall be fined not less than five hundred dollars nor more
36 than five thousand dollars, and shall be imprisoned in the
37 penitentiary for one to ten years. At least one year shall
38 actually be spent in confinement and not subject to
39 probation.

40 (d) *Mandatory penalty.*—In addition to the fines and
41 imprisonment imposed by this section, in all cases of
42 conviction for the offense of shoplifting, the court shall order
43 the defendant to pay a penalty to the mercantile
44 establishment involved in the amount of fifty dollars, or
45 double the value of the merchandise involved, whichever is
46 higher. The mercantile establishment shall be entitled to
47 collect such mandatory penalty as in the case of a civil
48 judgment. This penalty shall be in addition to the mercantile
49 establishment's rights to recover the stolen merchandise.

50 (e) In determining the number of prior shoplifting
51 convictions for purposes of imposing punishment under this
52 section, the court shall disregard all such convictions
53 occurring more than seven years prior to the shoplifting
54 offense in question.

§61-3A-4. Shoplifting constitutes breach of peace; detention.

1 An act of shoplifting as defined herein, is hereby declared
2 to constitute a breach of peace and any owner of
3 merchandise, his agent or employee, or any law-enforcement
4 officer who has reasonable ground to believe that a person
5 has committed shoplifting, may detain such person in a
6 reasonable manner and for a reasonable length of time not to
7 exceed thirty minutes, for the purpose of investigating
8 whether or not such person has committed or attempted to
9 commit shoplifting. Such reasonable detention shall not
10 constitute an arrest nor shall it render the owner of
11 merchandise, his agent or employee, liable to the person
12 detained.

§61-3A-5. Civil liability.

1 (a) *General rule.*—Any person who commits any of the
2 acts described in section one of this article shall be civilly
3 liable:

4 (1) To restore the merchandise to the mercantile
5 establishment; and

6 (2) If such merchandise is not recoverable or is damaged,
7 for actual damages, including the value of the merchandise
8 involved in the shoplifting; and

9 (3) For other actual damages arising from the incident, not
10 including the loss of time or loss of wages incurred by the
11 mercantile establishment or any merchant in connection with
12 the apprehension and processing of the suspect; and

13 (4) In all cases, for a penalty to be paid to the mercantile
14 establishment in the amount of fifty dollars or double the
15 value of the merchandise, whichever is higher.

16 (b) *Costs and attorneys' fees.*—A merchant who is a
17 prevailing party under this section is entitled to costs.

18 (c) *Effect of conviction.*—A conviction for the offense of
19 theft by shoplifting is not a prerequisite to the maintenance of
20 a civil action authorized by this section. However, a merchant
21 who has recovered the penalty prescribed by section three of
22 this article is not entitled to recover the penalty imposed by
23 this section.

24 (d) *Right to demand payment.*—The fact that a mercantile
25 establishment may bring an action against an individual as
26 provided in this section does not limit the right of such
27 establishment to demand, orally or in writing, that a person
28 who is liable for damages or a penalty under this section remit
29 said damages or penalty prior to the commencement of any
30 legal action.

§61-3A-6. Definitions.

1 (a) "Conceal" means to hide, hold or carry merchandise so
2 that, although there may be some notice of its presence, it is
3 not visible through ordinary observation.

4 (b) "Merchant" means an owner or operator of any
5 mercantile establishment, and includes the merchant's
6 employees, servants, security agents or other agents.

7 (c) "Mercantile establishment" means any place where
8 merchandise is displayed, held or offered for sale, either at
9 retail or wholesale. "Mercantile establishment" does not

10 include adjoining parking lots or adjoining areas of common
11 use with other establishments.

12 (d) "Merchandise" means any goods, foodstuffs, wares or
13 personal property, or any part or portion thereof of any type
14 or description displayed, held or offered for sale, or a
15 shopping cart.

16 (e) "Value of the merchandise" means the merchant's
17 stated price of the merchandise, or, in the event of altering,
18 transferring or removing a price marking or causing a cash
19 register or other sales device to reflect less than the retail
20 value of the merchandise, as defined in section one of this
21 article, the difference between the merchant's stated price of
22 the merchandise and the altered price.

CHAPTER 68

(S. B. 577—By Mr. Boettner)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one-c, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to criminal procedure; bail; bail defined; forms; receipts; providing an increase in the maximum cash bail which a magistrate may receive.

Be it enacted by the Legislature of West Virginia:

That section two, article one-c, 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 1C. BAIL.

§62-1C-2. Bail defined; form; receipts.

1 Bail is security for the appearance of a defendant to answer
2 to a specific criminal charge before any court or magistrate at
3 a specific time or at any time to which the case may be
4 continued. It may take any of the following forms:

5 (a) The deposit by the defendant or by some other person
6 for him of cash, provided, if cash totaling more than
7 twenty-five hundred dollars for one or more offenses is
8 tendered as bail to a magistrate by or on behalf of any
9 defendant, the magistrate shall not receive same but shall
10 direct that the sum be forthwith deposited with the clerk of
11 the court having jurisdiction to try criminal cases.

12 (b) The written undertaking by one or more persons to
13 forfeit a sum of money equal to the amount of the bail if the
14 defendant is in default for appearance, which shall be known
15 as a recognizance.

16 (c) Such other form as the judge of the court that will have
17 jurisdiction to try the offense may determine.

18 All bail shall be received by the clerk of the court, or by the
19 magistrate and, except in case of recognizance, receipts shall
20 be given therefor by him.

CHAPTER 69

(Com. Sub. for H. B. 1176—By Mr. Tucker)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, thirteen and nineteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to probation and parole generally; the powers and duties of the board of parole; eligibility for probation or parole; ineligibility for probation or parole when firearm involved; the limitations and conditions with respect to such ineligibility; procedure for granting parole; violation of parole; and admission of parolee to bail.

Be it enacted by the Legislature of West Virginia:

That sections two, thirteen and nineteen, 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.

§62-12-2. Eligibility for probation.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

§62-12-19. Violation of parole.

§62-12-2. Eligibility for probation.

1 (a) All persons who have not been previously convicted of a
2 felony within five years from the date of the felony for which
3 they are charged, and who are found guilty of or plead guilty
4 to any felony, the maximum penalty for which is less than
5 life imprisonment, and all persons whether previously con-
6 victed or not, who are found guilty of or plead guilty to any
7 misdemeanor, shall be eligible for probation, notwithstanding
8 the provisions of sections eighteen and nineteen, article eleven,
9 chapter sixty-one of this code.

10 (b) The provisions of subsection (a) of this section to
11 the contrary notwithstanding, any person who commits or
12 attempts to commit a felony with the use, presentment or
13 brandishing of a firearm shall be ineligible for probation.
14 Nothing in this section shall apply to an accessory before the
15 fact or a principal in the second degree who has been convicted
16 as if he were a principal in the first degree if, in the commission
17 of or in the attempted commission of the felony, only the
18 principal in the first degree used, presented or brandished
19 a firearm.

20 (c) (1) The existence of any fact which would make any
21 person ineligible for probation under subsection (b) of this
22 section because of the commission or attempted commission
23 of a felony with the use, presentment or brandishing of a
24 firearm shall not be applicable unless such fact is clearly
25 stated and included in the indictment or presentment by
26 which such person is charged and is either (i) found by the
27 court upon a plea of guilty or nolo contendere, or (ii) found
28 by the jury, if the matter be tried before a jury, upon submitting
29 to such jury a special interrogatory for such purpose or (iii)
30 found by the court, if the matter be tried by the court, with-
31 out a jury.

32 (2) The amendments to this subsection adopted in the
33 year one thousand nine hundred eighty-one:

34 (A) shall apply to all applicable offenses occurring on or
35 after the first day of August of that year;

36 (B) shall apply with respect to the contents of any indict-
37 ment or presentment returned on or after the first day of
38 August of that year irrespective of when the offense occurred;

39 (C) shall apply with respect to the submission of a special
40 interrogatory to the jury and the finding to be made thereon
41 in any case submitted to such jury on or after the first day
42 of August of that year or to the requisite findings of the court
43 upon a plea of guilty or in any case tried without a jury:
44 *Provided*, That the state shall give notice in writing of its
45 intent to seek such finding by the jury or court, as the case
46 may be, which notice shall state with particularity the grounds
47 upon which such finding shall be sought as fully as such
48 grounds are otherwise required to be stated in an indictment,
49 unless the grounds therefor are alleged in the indictment or
50 presentment upon which the matter is being tried;

51 (D) shall not apply with respect to cases not affected
52 by such amendment and in such cases the prior provisions of
53 this section shall apply and be construed without reference
54 to such amendment; and

55 Insofar as such amendments relate to mandatory sentences
56 without probation, all such matters requiring such sentence
57 shall be proved beyond a reasonable doubt in all cases tried
58 by the jury or the court.

59 (d) For the purpose of this section, the term "firearm"
60 shall mean any instrument which will, or is designed to, or
61 may readily be converted to, expel a projectile by the action
62 of an explosive, gunpowder, or any other similar means.

**§62-12-13. Powers and duties of board; eligibility for parole;
procedure for granting parole.**

1 (a) The board of parole, whenever it is of the opinion
2 that the best interests of the state and of the prisoner will
3 be subserved thereby, and subject to the limitations hereinafter

4 provided, shall have the authority to release any such prisoner
5 on parole for such terms and upon such conditions as are
6 provided by this article. Any prisoner of a penitentiary of
7 this state, to be eligible for parole:

8 (1) (A) Shall have served the minimum term of his indeter-
9 minate sentence, or shall have served one third of his definite
10 term sentence, as the case may be, except that in no case shall
11 any person who committed, or attempted to commit a felony
12 with the use, presentment or brandishing of a firearm, be
13 eligible for parole prior to serving a minimum of three years
14 of his sentence or the maximum sentence imposed by the court,
15 whichever is less: *Provided*, That any person who committed,
16 or attempted to commit, any violation of section twelve, article
17 two, chapter sixty-one of this code, with the use, presentment
18 or brandishing of a firearm, shall not be eligible for parole
19 prior to serving a minimum of five years of his sentence or
20 one-third of his definite term sentence, whichever shall
21 be the greater. Nothing in this section shall apply to an
22 accessory before the fact or a principal in the second degree
23 who has been convicted as if he were a principal in the first
24 degree if, in the commission of or in the attempted com-
25 mission of the felony, only the principal in the first degree
26 used, presented or brandished a firearm. No person is in-
27 eligible for parole under the provisions of this subdivision
28 because of the commission or attempted commission of a
29 felony with the use, presentment or brandishing of a firearm
30 unless such fact is clearly stated and included in the indictment
31 or presentment by which such person was charged and was
32 either (i) found by the court at the time of trial upon a plea
33 of guilty or nolo contendere, or (ii) found by the jury upon
34 submitting to such jury a special interrogatory for such purpose
35 if the matter was tried before a jury, or (iii) found by the
36 court, if the matter was tried by the court without a jury.

37 For the purpose of this section, the term "firearm" shall
38 mean any instrument which will, or is designed to, or may
39 readily be converted to, expel a projectile by the action of an
40 explosive, gunpowder or any other similar means.

41 (B) The amendments to this subsection adopted in the
42 year one thousand nine hundred eighty-one:

43 (i) shall apply to all applicable offenses occurring on or
44 after the first day of August of that year;

45 (ii) shall apply with respect to the contents of any indict-
46 ment or presentment returned on or after the first day of August
47 of that year irrespective of when the offense occurred;

48 (iii) shall apply with respect to the submission of a special
49 interrogatory to the jury and the finding to be made thereon
50 in any case submitted to such jury on or after the first day
51 of August of that year or to the requisite findings of the
52 court upon a plea of guilty or in any case tried without a
53 jury: *Provided*, That the state shall give notice in writing
54 of its intent to seek such finding by the jury or court, as
55 the case may be, which notice shall state with particularity
56 the grounds upon which such finding shall be sought as
57 fully as such grounds are otherwise required to be stated in
58 an indictment, unless the grounds therefor are alleged in the
59 indictment or presentment upon which the matter is being
60 tried;

61 (iv) shall not apply with respect to cases not affected by
62 such amendment and in such cases the prior provisions of
63 this section shall apply and be construed without reference
64 to such amendment.

65 Insofar as such amendments relate to mandatory sentences
66 restricting the eligibility for parole, all such matters requiring
67 such sentence shall be proved beyond a reasonable doubt
68 in all cases tried by the jury or the court;

69 (2) Shall not be under punishment or in solitary confine-
70 ment for any infraction of prison rules;

71 (3) Shall have maintained a record of good conduct in
72 prison for a period of at least three months immediately pre-
73 ceding the date of his release on parole;

74 (4) Shall have satisfied the board that, if released on
75 parole, he will conduct himself in a lawful manner and that
76 his release is not incompatible with the best interests and
77 welfare of society generally.

78 Except in the case of one serving a life sentence, no
79 person who has been previously twice convicted of a felony

80 may be released on parole until he has served the minimum
81 term provided by law for the crime for which he was con-
82 victed. No person sentenced for life may be paroled until
83 he has served ten years, and no person sentenced for life
84 who has been previously twice convicted of a felony may
85 be paroled until he has served fifteen years. In the case of
86 a person sentenced to any penal institution of this state, it
87 shall be the duty of the board, as soon as such person be-
88 comes eligible, to consider the advisability of his or her
89 release on parole. If, upon such consideration, parole be
90 denied, the board shall at least once a year reconsider and
91 review the case of every prisoner so eligible, which recon-
92 sideration and review shall be by the entire board. If parole
93 be denied, the prisoner shall be promptly notified.

94 (b) In the case of any person sentenced to or confined
95 under sentence in any city or county jail in this state, the
96 board shall act only upon written application for parole.
97 If such jail prisoner is under sentence on a felony conviction,
98 the provisions hereof relating to penitentiary prisoners shall
99 apply to and control his release on parole. If such person
100 is serving time on a misdemeanor conviction, he is eligible
101 for parole consideration, upon receipt of his written parole
102 application and after time for probation release by the sen-
103 tencing court or judge has expired.

104 (c) The board shall, with the approval of the governor,
105 adopt rules and regulations governing the procedure in the
106 granting of parole. No provision of this article and none
107 of the rules and regulations adopted hereunder are intended
108 or shall be construed to contravene, limit or otherwise inter-
109 fere with or affect the authority of the governor to grant
110 pardons and reprieves, commute sentences, remit fines or
111 otherwise exercise his constitutional powers of executive
112 clemency.

113 The board shall be charged with the duty of supervising
114 all probationers and parolees whose supervision may have
115 been undertaken by this state by reason of any interstate
116 compact entered into pursuant to the uniform act for out of
117 state parolee supervision.

118 (d) When considering a penitentiary prisoner for release
119 on parole, the board of parole shall have before it an
120 authentic copy of or report on the prisoner's current criminal
121 record as provided through the department of public safety
122 of West Virginia, the United States department of justice or
123 other reliable criminal information sources and written reports
124 of the warden or superintendent of the penitentiary, as the
125 case may be, to which such prisoner is sentenced:

126 (1) On the prisoner's conduct record while in prison,
127 including a detailed statement showing any and all infractions
128 of prison rules by the prisoner and the nature and extent
129 of discipline and punishment administered therefor;

130 (2) On improvement or other changes noted in the
131 prisoner's mental and moral condition while in prison, in-
132 cluding a statement expressive of the prisoner's current attitude
133 toward society in general, toward the judge who sentenced
134 him, toward the prosecuting attorney who prosecuted him,
135 toward the policeman or other officer who arrested him
136 and toward the crime for which he is under sentence and
137 his previous criminal record;

138 (3) On the prisoner's industrial record while in prison,
139 showing the nature of his prison work or occupation and the
140 average number of hours per day he has been employed in
141 prison industry and recommending the nature and kinds of
142 employment which he is best fitted to perform and in which
143 he is most likely to succeed when he leaves prison;

144 (4) On physical, mental and psychiatric examinations of
145 the prisoner conducted, insofar as practicable, within the
146 two months next preceding parole consideration by the board.

147 The board may waive the requirement of any such report
148 when not available or not applicable as to any prisoner
149 considered for parole but, in every such case, shall enter in
150 the record thereof its reason for such waiver.

151 Before releasing any penitentiary prisoner on parole, the
152 board of parole shall arrange for him to appear in person
153 before the board and the board may examine and interrogate
154 him on any matters pertaining to his parole, including reports

155 before the board made pursuant to the provisions hereof. The
156 board shall reach its own written conclusions as to the
157 desirability of releasing such prisoner on parole. The warden
158 or superintendent shall furnish all necessary assistance and
159 cooperate to the fullest extent with the board of parole. All
160 information, records and reports received by the board shall
161 be kept on permanent file.

162 The board and its designated agents shall at all times
163 have access to inmates imprisoned in any penal or correctional
164 institutions of this state or in any city or county jail in this
165 state, and shall have the power to obtain any information or
166 aid necessary to the performance of their duties from other
167 departments and agencies of the state or from any political
168 subdivision thereof.

169 The board shall, if so requested by the governor, investi-
170 gate and consider all applications for pardon, reprieve or
171 commutation and shall make recommendation thereon to the
172 governor.

173 Prior to making such recommendation and prior to re-
174 leasing any penitentiary person on parole the board shall
175 notify the sentencing judge and prosecuting attorney at least
176 ten days before such recommendation or parole.

§62-12-19. Violation of parole.

1 If at any time during the period of parole, there shall be
2 reasonable cause to believe that the parolee has violated any
3 of the conditions of his release on parole, the probation and
4 parole officer may arrest him with or without an order or
5 warrant, or the board of probation and parole may issue its
6 written order or warrant for his arrest, which written order
7 or warrant shall be sufficient for his arrest by any officer
8 charged with the duty of executing an ordinary criminal
9 process. The board's written order or warrant delivered to
10 the sheriff against the paroled prisoner shall be a command
11 to keep custody of the parolee for the jurisdiction of the board,
12 and during the period of custody, the parolee may be ad-
13 mitted to bail by the court before which the parolee was
14 sentenced. If the parolee is not released on a bond, the costs
15 of confining such paroled prisoner shall be paid out of the

16 funds appropriated for the penitentiary from which he was
17 paroled.

18 When a parolee is under arrest for violation of the con-
19 ditions of his parole, he shall be given a prompt and summary
20 hearing, at which the parolee and his counsel shall be given
21 an opportunity to attend. If at the hearing, it shall appear
22 to the satisfaction of the board that the parolee has violated
23 any condition of his release on parole, or any rules and
24 regulations for his supervision, the board may revoke his
25 parole and may require him to serve in prison the remainder
26 or any portion of his maximum sentence for which, at the
27 time of his release, he was subject to imprisonment: *Provided,*
28 That if the violation of the conditions of parole or rules
29 and regulations for his supervision is not a felony as set
30 out in section eighteen of this article, the board may, if in
31 its judgment the best interests of justice do not require that
32 the parole be revoked, release him from custody and continue
33 him on parole.

34 When a parolee has violated the conditions of his release
35 on parole by confession to, or being convicted of any of the
36 crimes mentioned in section eighteen of this article, he shall
37 be returned to the penitentiary of this state to serve the
38 remainder of his maximum sentence, during which remaining
39 part of his sentence he shall be ineligible for further parole.

40 Whenever the parole of a paroled prisoner has been re-
41 voked, the warden shall upon receipt of the board's written
42 order of revocation, convey and transport the paroled pris-
43 oner to the penitentiary from which he was granted a release
44 on parole. A paroled prisoner whose parole has been re-
45 voked shall remain in custody of the sheriff until delivery to
46 guard sent and duly authorized by the warden for the removal
47 of the paroled prisoner to the penitentiary; the cost of
48 confining such paroled prisoner shall be paid out of the funds
49 appropriated for the penitentiary from which he was paroled.

50 When a paroled prisoner is convicted of, or confesses to,
51 any one of the crimes enumerated in section eighteen of this
52 article, it shall be the duty of the board to cause him to be
53 returned to this state for a summary hearing as provided by

54 this article. A warrant filed by the board shall stop the
55 running of his sentence until the paroled prisoner is within
56 the jurisdiction of West Virginia. Whenever a paroled prisoner
57 has absconded supervision, the board shall issue its warrant
58 for his apprehension and return to this state for the summary
59 hearing provided by this article: *Provided*, That the board
60 may, if it be of opinion the best interests of justice do not
61 require such hearing, cause the paroled absconder to be
62 released to continue on parole.

CHAPTER 70

(H. B. 1041—By Mr. Givens and Mr. Harman, 33rd Dist.)

[Passed April 4, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and six, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty by adding thereto four new sections, designated sections nine-a, twenty, twenty-one and twenty-two, all relating to dogs; increasing the head tax on dogs; posting description of unlicensed dogs at animal shelters; authorizing county commissions to promulgate and enforce certain ordinances, rules and regulations; requiring owners of dogs which bite any person to confine the dog for rabies observation; the killing of vicious dogs by humane officers; requirement of special license for dangerous or vicious dog; and the confinement of female dogs during period of estrus.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS.

- §19-20-2. Collection of head tax on dogs; duties of assessor and sheriff; registration of dogs; disposition of head tax; taxes on dogs not collected by assessor.
- §19-20-6. County dog warden; rules and regulations for dog control.
- §19-20-9a. Rabies observation.
- §19-20-20. Keeping vicious dogs; humane officers may kill such dogs.
- §19-20-21. License fee for keeping vicious or dangerous dog.
- §19-20-22. Confinement of female dogs.

§19-20-2. Collection of head tax on dogs; duties of assessor and sheriff; registration of dogs; disposition of head tax; taxes on dogs not collected by assessor.

1 It shall be the duty of the county assessor and his deputies
2 of each county within this state, at the time they are making
3 assessment of the personal property within such county, to
4 assess and collect a head tax of three dollars on each dog,
5 male or female; and in addition to the above, the assessor and
6 his deputies shall have the further duty of collecting any such
7 head tax on dogs as may be levied by the ordinances of each
8 and every municipality within the county. In the event that
9 the owner, keeper or person having in his possession or
10 allowing to remain on any premises under his control any dog
11 above the age of six months, shall refuse or fail to pay such
12 tax, when the same is assessed or within fifteen days there-
13 after, to the assessor or deputy assessor, then such assessor
14 or deputy assessor shall certify such tax to the county dog
15 warden; if there be no county dog warden he shall certify
16 such tax to the county sheriff, who shall take charge of the
17 dog for which the tax is delinquent and impound the same
18 for a period of fifteen days, for which service he shall be
19 allowed a fee of one dollar and fifty cents to be charged
20 against such delinquent taxpayer in addition to the taxes
21 herein provided for. In case the tax and impounding charge
22 herein provided for shall not have been paid within the period
23 of fifteen days, then the sheriff may sell the impounded dog
24 and deduct the impounding charge and the delinquent tax
25 from the amount received therefor, and return the balance, if
26 any, to the delinquent taxpayer. Should the sheriff fail to sell

27 the dog so impounded within the time specified herein, he
28 shall kill such dog and dispose of its body.

29 At the same time as the head tax is assessed, the assessor
30 and his deputies shall, on the forms prescribed under section
31 four of this article, take down the age, sex, color, character of
32 hair (long or short) and breed (if known) and the name and
33 address of the owner, keeper or harbinger thereof. When the
34 head tax, and extra charges, if any, are paid, the officer to
35 whom payment is made shall issue a certificate of registration
36 and a registration tag for such dog.

37 In addition to the assessment and registration above pro-
38 vided for, whenever a dog either is acquired or becomes
39 six months of age after the assessment of the personal property
40 of the owner, keeper or harbinger thereof, the said owner,
41 keeper or harbinger of said dog shall, within ten days after
42 the acquisition or maturation, register the said dog with
43 the assessor, and pay the head tax thereon unless the prior
44 owner, keeper or harbinger paid the head tax.

45 All certificates of registration and registration tags issued
46 pursuant to the provisions of this section shall be issued for
47 the fiscal year and shall be valid from the date on which
48 issued until the thirtieth day of June of that fiscal year, or
49 until reissued by the assessor or his deputy in the regular
50 performance of his duties, but in no case shall previous
51 registration tags be valid after September thirtieth of the next
52 ensuing fiscal year.

53 The assessor collecting the head tax on dogs shall be
54 allowed a commission of ten percent upon all such taxes
55 collected by him, and shall turn in to the county treasury
56 ninety percent of such taxes so collected, as are levied by this
57 section; and the assessor shall turn over to the treasurer or
58 other proper officer of each and every municipality within the
59 county ninety percent of such taxes levied by the ordinances
60 of such municipality. All such dog taxes, except those be-
61 longing to municipalities, shall be accredited to the dog
62 and kennel fund provided for in section ten of this article.
63 Such dog taxes as are collected for and turned over to
64 municipalities shall be deposited by the proper officer of such

65 municipalities to such fund and shall be expended in such
66 manner as the law of such municipality may provide. All
67 taxes on dogs not collected by the assessor shall be col-
68 lected by the regular tax collecting officer of the county and
69 placed to the credit of the dog and kennel fund.

§19-20-6. County dog warden; rules and regulations for dog control.

1 (a) The county commission of each county may appoint
2 and employ a county dog warden, and such number of deputies,
3 for such time, and at such compensation, as such county
4 commission shall deem reasonable and necessary to enforce
5 the provisions of this code with respect to the control and
6 registration of dogs, the impounding, care and destruction
7 of unlicensed dogs. Such county dog warden may be ap-
8 pointed a deputy assessor for the purpose of collecting the
9 dog tax and registration fees, taking the dog registration and
10 providing the tags authorized by this article. The county dog
11 warden or any deputies may, in the discretion of the county
12 commission, be regularly employed officers or agents of any
13 humane society or society for the prevention of cruelty to
14 animals, organized and operating under the laws of this
15 state and owning, controlling and operating a suitable place
16 within the county for impounding and destroying dogs. In
17 addition to the compensation provided for above, a bounty of
18 fifty cents per dog shall be paid to the county dog warden
19 or deputy who captures an unregistered dog. Such county dog
20 warden and deputy wardens shall each give bond in a sum of
21 not less than one thousand dollars and not more than two
22 thousand dollars conditioned on the faithful performance of
23 their duties. Such bonds shall be filed with the county com-
24 mission by which such persons are appointed.

25 The county dog warden and his deputies shall patrol the
26 county in which they are appointed and shall seize on sight
27 and impound any dog more than six months of age found not
28 wearing a valid registration tag, except dogs kept constantly
29 confined in a registered dog kennel. They shall be responsible
30 for the proper care and final disposition of all impounded
31 dogs. The county dog warden shall make a monthly report,

32 in writing, to the county commission of his county. When
33 any dog shall have been seized and impounded, the county
34 dog warden shall forthwith give notice to the owner of such
35 dog, if such owner be known to the warden, that such dog
36 has been impounded and that it will be sold or destroyed if
37 not redeemed within five days. If the owner of such dog be
38 not known to the dog warden, he shall post a notice in the
39 county courthouse. The notice shall describe the dog and the
40 place where seized and shall advise the unknown owner that
41 such dog will be sold or destroyed if not redeemed within five
42 days.

43 (b) Any county commission may promulgate and enforce
44 such ordinances, rules and regulations, not inconsistent with the
45 provisions of this article, as it considers necessary or con-
46 venient for the control and management of all dogs in the
47 county, or any portion thereof, regardless of the age of any
48 such dog: *Provided*, That the county commissions may pro-
49 mulgate and enforce such ordinances, rules and regulations to
50 the extent necessary for the implementation of the provisions
51 contained in this article.

§19-20-9a. Rabies observation.

1 Any person who owns or harbors a dog, whether licensed or
2 unlicensed, which bites any other person shall forthwith
3 confine and quarantine the dog for a period of fourteen days
4 for rabies observation. If such dog is not so confined and
5 quarantined, the humane officer, dog warden or sheriff may
6 cause such dog to be placed in the custody and care of a
7 licensed veterinarian for such purpose at the owner's expense.

§19-20-20. Keeping vicious dogs; humane officers may kill such dogs.

1 Except as provided in section twenty-one of this article, no
2 person shall own, keep or harbor any dog known by him to be
3 vicious, dangerous, or in the habit of biting or attacking other
4 persons, whether or not such dog wears a tag or muzzle. Upon
5 satisfactory proof before a circuit court or magistrate that
6 such dog is vicious, dangerous, or in the habit of biting or
7 attacking other persons or other dogs or animals, the judge

8 may authorize the humane officer to cause such dog to be
9 killed.

§19-20-21. License fee for keeping vicious or dangerous dog.

1 Any person who keeps a dog which is generally considered
2 to be vicious, for the purpose of protection, shall acquire a
3 special license therefor from the county assessor. The assessor
4 shall charge ten dollars for such license. Such license shall
5 be required in addition to the license required under section
6 two of this article. The keeper or owner shall properly
7 secure such dog in such a manner so as to prevent injury to a
8 person who lawfully passes through or enters upon the property
9 of the keeper or owner. Nothing contained in this section
10 shall constitute a defense to any action for personal injury,
11 wrongful death or damage to property.

§19-20-22. Confinement of female dogs.

1 Every person owning or harboring a female dog, whether
2 licensed or unlicensed, shall keep such dog confined in a
3 building or secure enclosure for twenty-five days during the
4 period of estrus.

CHAPTER 71

(Com. Sub. for H. B. 767—By Mr. Whitlow and Mr. Gilliam)

[Passed March 27, 1981; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact sections fourteen, fifteen, sixteen, seventeen, eighteen and nineteen, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including swine as livestock for which owners of dogs are liable for damages caused by their dogs in worrying, wounding or killing livestock or poultry; criminal penalty.

Be it enacted by the Legislature of West Virginia:

That sections fourteen, fifteen, sixteen, seventeen, eighteen and nineteen, article twenty, chapter nineteen of the code of West Vir-

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

ARTICLE 20. DOGS.

- §19-20-14. Dog killing, wounding or worrying livestock or poultry—Recovery of damages.
- §19-20-15. Same—Assessment of damages; appraisers.
- §19-20-16. Same—When lawful to kill dog.
- §19-20-17. Same—Unlawful to harbor dog; penalty.
- §19-20-18. Same—Duty of owner to kill dog; proceeding before magistrate on failure of owner to kill.
- §19-20-19. Offenses; criminal penalties; jurisdiction.

**§19-20-14. Dog killing, wounding or worrying livestock or poultry
—Recovery of damages.**

1 If any dog has killed or assisted in killing, wounding or
2 worrying any sheep, lambs, goats, kids, calves, cattle, swine
3 or poultry out of the enclosure of the owner of the dog, the
4 owner or keeper of the dog shall be liable for the sheep, lambs,
5 goats, kids, calves, cattle, swine or poultry in the amount of
6 the damages sustained, to be recovered in an action before any
7 court or magistrate having jurisdiction of the action. It shall
8 not be necessary to sustain the action to prove that the owner
9 of the dog knew the dog was accustomed to worrying, killing
10 or wounding. A recovery under this section shall bar and
11 preclude the owner of the sheep, lambs, goats, kids, calves,
12 cattle, swine or poultry from obtaining compensation from the
13 county commission under the provisions of this article. If the
14 person suffering the loss or damage cannot ascertain the
15 owner or keeper of the dog, or if the owner or keeper is not
16 financially responsible, then the person suffering the loss or
17 damage may file his claim with and prove the same before the
18 county commission of the county in which the loss or damage
19 is sustained, in the manner provided in this article, and the
20 commission shall pay the loss or damage out of the fund pro-
21 vided for such purposes and according to the provisions of this
22 article. When compensation is so obtained from the county
23 commission, the county commission is authorized to sue under
24 this section and recover as the owner of the sheep, lambs,
25 goats, kids, calves, cattle, swine or poultry. The amount so re-

26 covered shall be paid into the county treasury; but no suit
27 shall be commenced unless authorized by the county com-
28 mission.

§19-20-15. Same—Assessment of damages; appraisers.

1 Authority is hereby given to magistrates and notaries public
2 within this state, and within their respective jurisdictions, to
3 summon three substantial, upright and worthy bona fide resi-
4 dents, citizens and taxpayers of his county to assess the dam-
5 ages suffered by any person on account of the destruction, loss
6 or injury of any sheep, lambs, goats, kids, calves, cattle, swine
7 or poultry by dogs within the county. The appraisers shall be
8 appointed upon the request of a person suffering damages on
9 account of such destruction, loss or injury. The appraisers
10 shall go upon the ground and investigate fully the extent of the
11 destruction, loss or injury, taking all the evidence deemed nec-
12 essary to arrive at the facts to be passed upon in arriving at
13 the amount of damage, if any, suffered by the party making
14 the complaint. Before the appraisers may be summoned by the
15 magistrate or notary public, the complainant shall be required
16 to make a sworn complaint before the magistrate or notary
17 public, setting out in plain, easily comprehensible terms the
18 facts concerning his damages to the best of his knowledge.
19 After making a full investigation of the facts involved, the ap-
20 praisers, with the assistance of the magistrate or notary public,
21 shall make a sworn statement and report the facts ascertained
22 and the damages suffered. The report and statement shall be
23 filed with the county commission or the clerk thereof in vaca-
24 tion. The fees and mileage for services allowed in such cases
25 shall be the same as are allowed magistrates, witnesses and
26 arbitrators in magistrates' courts in this state for similar ser-
27 vices. In the event that the appraisers find that the complain-
28 ant has suffered no damage, then the complainant shall be re-
29 sponsible for and pay all the costs and expenses of the pro-
30 ceeding. In the event that the complainant has suffered dam-
31 ages on account of the destruction, loss or injury of his domes-
32 tic animals, according to the finding of the appraisers, the
33 owner, keeper or person permitting the dog, or dogs, causing
34 the damage to remain upon the premises under his control
35 shall be liable for all damages sustained by the complainant,

36 including all costs and necessary expenses. All the damages
37 shall be collectible by an action at law before any court or
38 magistrate having jurisdiction of the matter. All papers in
39 connection with any claim shall be filed and preserved in the
40 office of the clerk of the county commission.

§19-20-16. Same—When lawful to kill dog.

1 A person may kill a dog that he may see chasing, worrying,
2 wounding or killing any sheep, lambs, goats, kids, calves,
3 cattle, swine or poultry outside of the enclosure of the owner
4 of the dog unless the chasing or worrying be done by the
5 direction of the owner of the sheep, lambs, goats, kids, calves,
6 cattle, swine or poultry.

§19-20-17. Same—Unlawful to harbor dog; penalty.

1 A person who shall harbor or secrete or aid in secreting
2 a dog which he knows or has reasons to believe has worried,
3 chased or killed any sheep, lambs, goats, kids, calves, cattle,
4 swine or poultry not the property of the owner of the dog,
5 out of his enclosure, or knowingly permits the same to be
6 done on any premises under his control, is guilty of a mis-
7 demeanor, and, upon conviction thereof, before any court or
8 magistrate having jurisdiction thereof in the county in which
9 the offense is committed, shall be fined not less than ten
10 dollars nor more than fifty dollars, and, at the discretion
11 of the court or magistrate imprisoned in the county jail not
12 more than thirty days. Each day that the dog is harbored, kept
13 or secreted shall constitute a separate offense.

**§19-20-18. Same—Duty of owner to kill dog; proceeding before
magistrate on failure of owner to kill.**

1 The owner or keeper of a dog that has been worrying,
2 wounding, chasing or killing any sheep, lambs, goats, kids,
3 calves, cattle, swine or poultry not the property of the
4 owner or keeper, out of his enclosure, shall, within forty-
5 eight hours, after having received notice thereof in writing
6 from a reliable and trustworthy source, under oath, kill the
7 dog or direct that the dog be killed. If the owner or keeper
8 refuses to kill the dog as hereinbefore provided, the magistrate,
9 upon information, shall summon the owner or keeper of the

10 dog, and, after receiving satisfactory proof that this dog did
11 the mischief, shall issue a warrant on application being made
12 by the owner of the sheep, lambs, goats, kids, calves, cattle,
13 swine or poultry killed; and give it into the hands of the sheriff,
14 who shall kill the dog forthwith or dispose of by other available
15 methods. The cost of the proceedings shall be paid by the
16 owner or keeper of the dog so killed, including a fee of fifty
17 cents to the officer killing the dog. The owner or keeper of the
18 dog so killed shall, in addition to the costs, be liable to the
19 owner of the sheep, lambs, goats, kids, calves, cattle, swine or
20 poultry or to the county commission for the value of the sheep,
21 lambs, goats, kids, calves, cattle, swine or poultry so killed or
22 injured.

§19-20-19. Offenses; criminal penalties; jurisdiction.

1 A person who violates any of the provisions of this article
2 for which no specific penalty is prescribed is guilty of a mis-
3 demeanor, and, upon conviction thereof, shall be fined not
4 more than one hundred dollars, or imprisoned in the county
5 jail not more than thirty days, or both fined and imprisoned.
6 Magistrates shall have concurrent jurisdiction with the circuit
7 courts to enforce the penalties prescribed by this article.

CHAPTER 72

(H. B. 1613—By Mrs. Burke)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twenty-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the cost of vaccination of dogs for rabies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20A. VACCINATION OF DOGS FOR RABIES.**§19-20A-5. Type of vaccine to be furnished; fee.**

1 It shall be the duty of the veterinarian, or person vaccinating
2 each animal to furnish vaccine of a type capable of establishing
3 and maintaining immunity for a period of not less than
4 twenty-four months and he shall charge and collect a fee of
5 not more than four dollars for each animal vaccinated, if
6 done at a clinic established by a county commission or, if
7 vaccinated at any other place, he shall charge and collect
8 a reasonable fee for his services.

CHAPTER 73

(S. B. 356—By Mr. Palumbo)

[Passed April 8, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the age of consent for marriage; parental consent of a female and male below the age of eighteen; exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. MARRIAGE.**§48-1-1. Age of consent; exceptions.**

1 Except as provided in section eight of this article, for
2 marriage the age of consent of the male and the female shall
3 be eighteen years of age. If, however, the male or female, or
4 both, be under the age of consent as aforesaid, and if a
5 licensed physician shall certify in writing that he has
6 examined said female and found her to be pregnant, or if such
7 female has previously given birth to a child, and if in either of
8 such events consent be obtained from the parents, parent or
9 guardian in the manner prescribed in section eight of this

10 article, the judge of any court of record of the county, in
11 which county an application for marriage license may
12 otherwise be properly filed as provided in this article, may
13 direct the issuance of a marriage license by the clerk of the
14 county commission of such county. In the absence or
15 incapacity to act of the judges of all courts of record of the
16 county in which the application is to be filed, the order may
17 be made and directed to the clerk of the county commission
18 of such county by any judge of a court of record in any
19 judicial circuit adjoining the circuit in which such county is
20 located.

CHAPTER 74

(Com. Sub. for S. B. 117—By Mrs. Chace)

[Passed April 9, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four; and to further amend said chapter forty-eight by adding thereto a new article, designated article two-c, all relating to domestic violence and the funding of shelters and programs; assessing additional fifteen dollar marriage license fee to be paid into special revenue account; stating legislative purpose; defining terms; creating family protection subcommittee to governor's committee on crime, delinquency and correction; outlining certain duties of the governor's committee on crime, delinquency and correction and the family protection subcommittee; establishing requirements for funding applications; establishing criteria for awarding funds; requiring annual reports of shelters, programs and the subcommittee; directing the governor's committee to seek funds and assistance from other agencies; and requiring law-enforcement and other public officers to refer certain persons to shelters and programs.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Marriage.

2C. Family Protection Shelter Support Act.

ARTICLE 1. MARRIAGE.

§48-1-24. Additional fee to be collected for each marriage license issued.

- 1 In addition to any fee heretofore established for the
- 2 issuance of a marriage license, the county clerk shall collect a
- 3 sum of fifteen dollars for each marriage license issued which
- 4 additional sum shall be paid into a special revenue account of
- 5 the state treasury to be dispersed to local family protection
- 6 shelters as provided in article two-c of this chapter.

ARTICLE 2C. FAMILY PROTECTION SHELTER SUPPORT ACT.

§48-2C-1. Purpose.

§48-2C-2. Definitions.

§48-2C-3. Family protection subcommittee.

§48-2C-4. Duties of governor's committee.

§48-2C-5. Funding application requirements.

§48-2C-6. Award provisions.

§48-2C-7. Annual reports of shelter and programs.

§48-2C-8. Governor's committee annual reports.

§48-2C-9. Referral to shelters.

§48-2C-1. Purpose.

- 1 The Legislature hereby declares its intent to assist local
- 2 communities in maintaining shelters to provide services and
- 3 to house and care for, on a temporary basis, victims of
- 4 domestic violence or abuse and their children.

§48-2C-2. Definitions.

- 1 As used in this article, unless the context clearly requires
- 2 otherwise:

- 3 (a) "Family protection program" or "program" means a

4 program offered by a locally controlled organization
5 comprised of concerned individuals organized primarily for
6 the purpose of providing shelter and services to victims of
7 domestic violence or abuse and their children;

8 (b) "Family protection shelter" or "shelter" means a
9 facility created for the purpose of receiving, on a temporary
10 basis, persons who are victims of domestic violence or abuse
11 and their children and for providing services to them, which
12 services may include counseling services where appropriate;

13 (c) "Family protection subcommittee" or "subcommittee"
14 means that subcommittee of the governor's committee on
15 crime, delinquency and correction established pursuant to
16 section three of this article; and

17 (d) "Governor's committee" means the governor's
18 committee on crime, delinquency and correction established
19 as a state planning agency by the provisions of section one,
20 article nine, chapter fifteen of this code.

§48-2C-3. Family protection subcommittee.

1 (a) A subcommittee of the governor's committee on crime,
2 delinquency and correction shall be created and assigned
3 primary responsibility for review and administration of
4 programs for the funding of family protection shelters and
5 programs. The subcommittee shall be comprised of five
6 members of the governor's committee who represent
7 consumers or the public-at-large. At least three of the
8 members of the subcommittee shall be persons identified in
9 their separate communities across the state for past and
10 continuing involvement in local activities promoting local
11 family protection shelters and programs.

12 (b) The subcommittee shall elect a chairperson and a vice
13 chairperson. Special meetings may be held upon the call of
14 the chairperson or of a majority of the subcommittee
15 members. A majority of the members of the subcommittee
16 constitutes a quorum for the transaction of business.

§48-2C-4. Duties of governor's committee.

1 It is the duty of the governor's committee, upon
2 recommendation of the family protection subcommittee:

3 (a) To receive and consider applications for the
4 development and maintenance of shelters and to approve or
5 reject the same within forty-five days after receipt of
6 applications;

7 (b) To facilitate the formation and operation of the family
8 protection subcommittee;

9 (c) To distribute funds to a shelter within forty-five days
10 after approval of its proposal;

11 (d) To evaluate annually each shelter to determine its
12 compliance with the goals and objectives set out in its
13 original application for funding;

14 (e) To seek appropriate additional funding to supplement
15 the state appropriations for shelters and programs; and

16 (f) To award to shelters for each fiscal year a total sum
17 equal to no less than ninety-five percent of the total funds
18 collected and paid over during that fiscal year to the special
19 revenue account established pursuant to section twenty-four,
20 article one of this chapter and to expend during said period a
21 sum not in excess of five percent of said funds for costs of
22 administering the provisions of this article.

§48-2C-5. Funding application requirements.

1 (a) A shelter or program may apply to the governor's
2 committee for a grant of funds as provided by this article. The
3 application shall include all of the following:

4 (1) Evidence that the organization submitting the
5 application is incorporated in this state as a nonprofit
6 corporation;

7 (2) A list of the incorporators of the corporation and a list
8 of the officers and the board of directors;

9 (3) The proposed budget of the shelter or program for the
10 following fiscal year;

11 (4) A summary of the services proposed to be offered in
12 the following fiscal year by the shelter or program;

13 (5) An evaluation of local needs for a shelter or program;
14 and

15 (6) An estimate of the number of people to be served by
16 the shelter or program during the following fiscal year.

17 (b) In order to qualify for a grant of funds under this
18 article, each family protection shelter or program shall:

19 (1) Provide or propose to provide a facility which will
20 serve as temporary shelter to receive, care and provide
21 services for persons who are victims of domestic violence or
22 abuse and their children;

23 (2) Be incorporated in this state as a nonprofit
24 corporation;

25 (3) Have a board of directors which represents the racial,
26 ethnic and socio-economic diversity of the community to be
27 served, including at least one person who is or has been a
28 victim of domestic violence or abuse;

29 (4) Receive at least sixty-five percent of its funds from
30 sources other than funds distributed under this article. These
31 sources may be public or private and may include
32 contribution of goods or services; and

33 (5) Require persons employed by or volunteering services
34 to the shelter or program to maintain the confidentiality of
35 any information which may identify individuals served by it.

36 (c) A family protection shelter or program may not be
37 funded initially if it is shown that it discriminates in its
38 services on the basis of race, religion, age, sex, marital status,
39 national origin or ancestry. If such discrimination occurs
40 after initial funding, the shelter or program may not be
41 refunded until the discrimination ceases.

42 (d) A family protection shelter program may not be
43 refunded if its original application projected the provision of
44 residential services and such services were not provided in
45 the first six months following disbursement of the original
46 funds under this article: *Provided*, That upon a subsequent
47 showing that the funds were used in the manner proposed in
48 the original application, the shelter or program is not barred
49 from subsequent funding.

§48-2C-6. Award provisions.

1 Grants made pursuant to this article shall be awarded on
2 the basis of the following criteria:

- 3 (a) Demonstration of local need for proposed services;
- 4 (b) Merit of project as proposed;
- 5 (c) Demonstration of local control of the shelter or
6 program;
- 7 (d) Administrative design and efficiency of the project;
8 and
- 9 (e) No portion of the award granted shall be used for
10 salaries, wages or personal services.

§48-2C-7. Annual reports of shelter and programs.

1 A shelter or program receiving funds pursuant to this
2 article shall file an annual report with the subcommittee by
3 the thirty-first day of each October for the prior fiscal year.
4 The report shall include statistics on the number of persons
5 served, the relationship of the victim to the abuser, services
6 provided to the abuser, the number of referrals made for
7 medical, psychological, financial, educational, vocational,
8 child care or legal services and shall include the results of an
9 independent audit. No information contained in the report
10 may identify any person served by the shelter or enable any
11 person to determine the identity of any such person.

§48-2C-8. Governor's committee annual reports.

1 By the first day of January of each year, the subcommittee
2 shall submit to the governor and, upon request to members of
3 the Legislature, a report which shall contain, but not be
4 limited to, the following information:

- 5 (a) A summary of the work and activities of the governor's
6 committee and the subcommittee relating to administration
7 of this article during the preceding fiscal year;
- 8 (b) The number of persons treated or assisted by shelters
9 receiving funding through the governor's committee; and
- 10 (c) A listing of services or efforts organized to prevent the
11 potential for domestic violence or abuse as identified by the
12 subcommittee, the estimated annual costs of services to
13 prevent the potential for domestic violence, identification of
14 possible funding sources for such services and the projected
15 benefits of providing such services.

§48-2C-9. Referral to shelters.

- 1 Where shelters are available, any law-enforcement officer or
- 2 any public authority investigating an alleged incident of
- 3 domestic violence shall advise the person subject to abuse of
- 4 the availability of the family protection shelter to which such
- 5 person may be admitted.

CHAPTER 75

(Com. Sub. for H. B. 806—By Mr. Hendricks)

[Passed April 7, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto a new section, designated section four-a, relating to grounds for divorce; providing for divorce on the ground of insanity; providing for divorce on ground of irreconcilable differences when defendant files verified answer that admits or avers the same; providing a form of verified answer; and requiring circuit clerks to maintain and provide said form at no charge.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-4. Grounds for divorce.

§48-2-4a. Form of verified answer.

§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 marriage
4 has, in or out of this state, been convicted for the com-
5 mission of a crime which is a felony, and such conviction
6 has been 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 by either party against
10 the other, which includes reasonable apprehension of bodily
11 harm, false accusation of adultery or homosexuality, conduct
12 or treatment which destroys or tends to destroy the mental
13 or physical well-being, happiness and welfare of the other
14 and render continued cohabitation unsafe or unendurable:
15 *Provided*, That under no circumstances shall it be necessary
16 to allege or prove acts of physical violence in order to estab-
17 lish cruel and inhuman treatment as a ground for divorce;
18 or

19 (5) For habitual drunkenness of either party subsequent
20 to the marriage; or

21 (6) For the addiction of either party, subsequent to the
22 marriage, to the habitual use of any narcotic or dangerous
23 drug defined in this code; or

24 (7) Where the parties have lived separate and apart in
25 separate places of abode without any cohabitation and without
26 interruption for one year, whether such separation was the
27 voluntary act of one of the parties or by the mutual consent
28 of the parties: *Provided*, That a plea of *res judicata* or of
29 recrimination with respect to any other provision of this section
30 shall not be a bar to either party's obtaining a divorce on this
31 ground: *Provided, however*, That if alimony is sought under
32 the provision of section fifteen of this article, the court may
33 inquire into the question of who is the party at fault and may
34 award alimony according to the right of the matter: *Pro-*
35 *vided further*, That this determination shall not affect the
36 right of either party to obtain a divorce on this ground; or

37 (8) For permanent and incurable insanity, only if the
38 person is permanently and incurably insane and has been con-
39 fined in a mental hospital or other similar institution for a

40 period of not less than three consecutive years next preceding
41 the filing of the complaint and the court has heard competent
42 medical testimony that such insanity is permanently incur-
43 able: *Provided*, That a court granting a divorce on this grounds
44 may in its discretion order support and maintenance for the
45 permanently incurably insane party by other: *Provided, how-*
46 *ever*, That in an action for divorce or annulment, where the
47 plaintiff is permanently incurably insane the defendant shall
48 not enter a plea of recrimination based upon the insanity of
49 the plaintiff; or

50 (9) For abuse or neglect of a child of the parties or of
51 one of the parties, "abuse" meaning any physical or mental
52 injury inflicted on such child including, but not limited to,
53 sexual molestation; and "neglect" is willful failure to provide,
54 by a party who has legal responsibility for such child, the
55 necessary support, education as required by law, or medical,
56 surgical or other care necessary for the well-being of such
57 child: *Provided*, That a divorce shall not be granted on this
58 ground except upon clear and convincing evidence sufficient
59 to justify permanently depriving the offending party of his
60 parental rights to the custody and control of the abused or
61 neglected child; or

62 (10) If one party to a marriage shall file a verified com-
63 plaint, for divorce, against the other, alleging that irrecon-
64 cilable differences have arisen between the parties, and stat-
65 ing the names of the dependent children of the parties or of
66 either of them, and if the other party shall file a verified answer
67 to the complaint and admit or aver that irreconcilable differ-
68 ences exist between the parties, the court shall grant a divorce:
69 *Provided*, That the defendant may file and serve an answer
70 with or without an attorney, and said verified answer shall be
71 sufficient if it is of the form as set out in section four-a of this
72 article: *Provided, however*, That the circuit clerk of each
73 county shall maintain sufficient supplies of said form and
74 provide the same to any person at no charge. No corroboration
75 shall be required of the ground for the divorce or the issues of
76 jurisdiction or venue or any other proof for a divorce on the
77 ground of irreconcilable differences of the parties. The court
78 may make orders for or approve, modify or reject any agree-

79 ment between the parties pertaining to just and equitable, (i)
 80 alimony, (ii) custody, support or maintenance of children, or
 81 (iii) visitation rights.

82 (b) It shall not be necessary to allege the facts constituting
 83 the ground or grounds relied upon, and a complaint or counter
 84 complaint shall be sufficient if any one of the grounds is al-
 85 leged in the language of such ground as set forth in subsection
 86 (a) of this section.

§48-2-4a. Form of verified answer.

1 A verified answer to a divorce complaint alleging as one of
 2 the grounds for divorce, the ground of irreconcilable differ-
 3 ences as contained in subdivision (10), subsection (a), section
 4 four of this article, may be in the form or effect as follows:

5 IN THE CIRCUIT COURT OF COUNTY,
 6 WEST VIRGINIA

7
 8 Plaintiff

9 vs. CIVIL ACTION NO.

10
 11 Defendant

12 ANSWER

13 Now comes the defendant for answer to the complaint and
 14 says as follows:

15 (1) The defendant admits all the allegations contained in the
 16 complaint except the allegations contained in paragraph num-
 17 bers(s), which allegations the defendant denies.

18 (2) That irreconcilable differences exist between the parties.

19
 20 Defendant

21

VERIFICATION

22 STATE OF WEST VIRGINIA,

23 COUNTY OF _____,

24 _____, the defendant named in the
25 foregoing answer, being duly sworn, says that the facts and
26 allegations therein contained are true, except so far as they
27 are therein stated to be on information, and that, so far as
28 they are therein stated to be on information, the defendant
29 believes them to be true.

30

31

Defendant

32 Taken, sworn to and subscribed before me this _____

33 day of _____,

34 My commission expires _____

35

36

Notary Public

37

CERTIFICATE OF SERVICE

38 I have mailed a true copy of the foregoing answer to _____

39 _____, plaintiff's attorney, by first-class

40 mail, at his last known address at _____

41 on the _____ date of _____,

42

43

Defendant.

CHAPTER 76

(Com. Sub. for H. B. 713—By Mr. Farley)

[Passed February 24, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section

ten-a, relating to privileged communications between clergyman and parties to actions.

Be it enacted by the legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-10a. Communications between clergyman and party.

1 In any action brought pursuant to the provisions of this
 2 article, no priest, minister, rabbi or other clergyman, as de-
 3 fined in section twelve-a, article one of this chapter, of any
 4 religious denomination or organization who is not a party to
 5 said action shall be compelled to testify regarding any com-
 6 munications or statements made to such clergyman in his
 7 capacity as spiritual counselor or spiritual adviser by a party
 8 to said action, if (a) both the clergyman and the party making
 9 such communications or statements claim that the communi-
 10 cations or statements were made to the clergyman in his
 11 capacity as a clergyman and spiritual counselor or spiritual
 12 adviser to such party; and (b) no person, other than the
 13 clergyman, such party and the spouse of such party, was
 14 present when such communications or statements were made;
 15 and (c) the party making such communications or statements
 16 does not either consent to their disclosure or otherwise waive
 17 the privilege granted by this section: *Provided*, That the
 18 privilege granted by this section shall be in addition to and
 19 not in derogation of any other privileges recognized by law.

CHAPTER 77

(H. B. 1143—By Mr. Chambers and Mr. Gilliam)

[Passed March 5, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article two, chapter forty-eight of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to allowing either spouse to maintain an action for separate maintenance in the circuit courts of the state.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, 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.

§48-2-28. Action for separate maintenance.

1 Whenever a spouse shall, without good and sufficient cause,
2 have failed to provide suitable support for the other spouse,
3 or have abandoned or deserted such spouse, or if one spouse
4 shall have grounds for divorce, the court of any county that
5 would have jurisdiction of an action for divorce between the
6 parties, shall, at the action of such spouse, whether or not
7 a divorce be prayed for, order to such spouse as alimony and
8 separate maintenance such sum out of the other spouse's
9 earnings or income as the court may determine, considering
10 the circumstances of the parties and their stations in life,
11 and may prohibit the other spouse from imposing any re-
12 straint on the personal liberty of such spouse and may free
13 such spouse's real and personal property from possession,
14 control or any interest of the other spouse; and during the
15 pendency of the action the court shall have the same powers
16 to make such orders as are provided for actions for divorce
17 by section thirteen of this article insofar as the same are
18 applicable on behalf of either spouse. Any order entered in
19 the case shall be effective during such time as the court shall
20 by its order direct, or until the further order of the court
21 thereon, and upon the petition of either party, the court may,
22 from time to time afterwards, revise or alter such order, or
23 make further orders, concerning the maintenance of either
24 spouse and the interest of one spouse in the property of the
25 other spouse, and the care, custody, education and main-
26 tenance of the minor children of the parties, and may deter-
27 mine with which of their parents the children or any of them
28 shall remain.

CHAPTER 78

(Com. Sub. for H. B. 802—By Mrs. Hartman)

[Passed April 4, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to the prevention of domestic violence and requiring law-enforcement agencies to maintain records on all incidents of family or household abuse reported to them and to make reports to department of public safety; contents of reports; identification of abused or abusing party not permitted; providing for compilation and dissemination with certain limitations, by the department of data derived from such reports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-9. Record-keeping and reporting.

- 1 (a) Each law-enforcement agency shall maintain records
- 2 on all incidents of family or household abuse reported to it, and
- 3 shall monthly make and deliver to the department of public
- 4 safety a report on a form prescribed by the department, listing
- 5 all such incidents of family or household abuse. Such reports
- 6 shall include:
 - 7 (1) The age and sex of the abused and abusing parties;
 - 8 (2) The relationship between the parties;
 - 9 (3) The type and extent of abuse;
 - 10 (4) The number and type of weapons involved;
 - 11 (5) Whether the law-enforcement agency responded to the
 - 12 complaint and if so, the time involved, the action taken and the

13 time lapse between the agency's action and the abused's request
14 for assistance;

15 (6) Whether the complaining party reported having filed
16 complaints with regard to family or household abuse on any
17 prior occasion and if so, the number of such prior complaints;
18 and

19 (7) The effective dates and terms of any order of protection
20 issued prior to or following the incident to protect the abused
21 party: *Provided*, That no information which will permit the
22 identification of the parties involved in any incident of abuse
23 shall be included in such report.

24 (b) The department of public safety shall tabulate and
25 analyze any statistical data derived from the reports made by
26 law-enforcement agencies pursuant to this section, and publish
27 a statistical compilation in the department's annual uniform
28 crime report, as provided for in section twenty-four, article
29 two, chapter fifteen of this code.

30 (c) The statistical compilation shall include, but is not
31 limited to, the following:

32 (1) The number of family violence complaints received;

33 (2) The number of complaints investigated;

34 (3) The number of complaints received from alleged vic-
35 tims of each sex;

36 (4) The average time lapse in responding to such com-
37 plaints;

38 (5) The number of complaints received from alleged vic-
39 tims who have filed such complaints on prior occasions;

40 (6) The number of aggravated assaults and homicides re-
41 sulting from such repeat incidents;

42 (7) The type of police action taken in disposition of the
43 cases; and

44 (8) The number of alleged violations of orders of pro-
45 tection.

46 (d) As used in this section, the terms "abuse" and "family
47 or household members" shall have the meanings given them in

48 section two, article two-a, chapter forty-eight of this code;
49 and the term "law-enforcement agency" shall include the West
50 Virginia department of welfare in those instances of child
51 abuse reported to the department which are not otherwise
52 reported to any other law-enforcement agency.

53 (e) Nothing in this section shall be construed to authorize
54 the inclusion of information contained in a report of an in-
55 cident of abuse in any local, state, interstate, national or in-
56 ternational systems of criminal identification pursuant to
57 section twenty-four, article two, chapter fifteen of this code:
58 *Provided*, That nothing in this section shall prohibit the de-
59 partment of public safety from processing information through
60 its criminal identification bureau with respect to any actual
61 charge or conviction of a crime.

CHAPTER 79

(Com. Sub. for S. B. 317—By Mr. Boettner)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten, relating to the enforcement procedure for temporary and protective orders of a court to protect against abuse; arrest for violation of such orders; contempt proceedings; and limiting the remedies to certain violations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-10. Enforcement procedure for temporary and protective order.

1 (1) Upon issuance of a temporary order as provided in

2 section five of this article, and service thereof upon the
3 defendant, or under relief granted in a protective order as
4 provided in subsections (a) and (b), section six of this article
5 of which the defendant has notice, a copy of such order shall,
6 no later than the close of the next business day, be delivered
7 to a local office of the city police, the county sheriff, and the
8 West Virginia department of public safety, where it shall be
9 placed in a confidential file, with access provided only to the
10 law-enforcement agency and the respondent named on said
11 order: *Provided*, That upon the expiration of any order issued
12 pursuant to section five or six of this article, any such
13 law-enforcement agency which has any such order on file,
14 shall immediately expunge its confidential file of any
15 reference thereto and destroy all copies of such order in its
16 possession, custody or control. A sworn affidavit may be
17 executed by the party awarded exclusive possession of the
18 residence or household, pursuant to an order entered under
19 subsection (b), section six of this article, and delivered to such
20 law-enforcement agency simultaneously with any such order,
21 giving his consent for a law-enforcement officer to enter such
22 residence or household, without a warrant, to enforce such
23 protective order or temporary order.

24 Any person who observes a violation of such order or the
25 violated party may call a local law-enforcement agency,
26 which shall verify the existence of a current order, and shall
27 direct a law-enforcement officer to immediately investigate
28 the alleged violation.

29 Where a law-enforcement officer observes a violation of a
30 valid order he may immediately arrest the subject of the
31 order. In cases of violation of such orders occurring outside
32 the presence of the investigating officer, the complainant may
33 apply to a court in session for a warrant of arrest. If the court
34 finds probable cause to believe that a valid order has been
35 violated, the court shall issue such warrant for the arrest of
36 the subject of the order wherever he may be found.

37 Where there is an arrest, the officer shall take the arrested
38 person before a court or the magistrate assigned to be
39 available at such time and upon a finding of probable cause to
40 believe a violation of an order has taken place, the court or
41 magistrate shall set a time and place for a hearing, to take
42 place within five days, and serve forthwith upon the alleged

43 violator an order to show cause why he or she should not be
44 held in contempt for violation of the prior order, which unless
45 waived by the defendant shall be by trial by a jury of six
46 persons. The remedies provided by this section shall be
47 limited to violations of a temporary order or protective order
48 entered pursuant to subsection (a) or (b), section six of this
49 article.

CHAPTER 80

(H. B. 1605—By Mr. Hatcher)

[Passed April 7, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adoptions; the contents of a petition for adoption; requirement of verification; requiring specific finding when person petitioning for adoption is less than fifteen years older than child and providing an exception to such requirement.

Be it enacted by the Legislature of West Virginia:

That section two, article four, 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 4. ADOPTION.

§48-4-2. Contents of petition; age of petitioner.

1 Such petition shall set forth the name, age and place of
2 residence of the petitioner or petitioners, and of the child,
3 and the name by which the child shall be known; whether such
4 child be possessed of any property, and a full description of
5 the same, if any; whether such child has either father or mother,
6 or both, and if he, she or they are alive, then the name or
7 names, and place of residence of such father or mother, or if
8 such be the fact, that the same are unknown to the petitioner

9 or petitioners. The petition shall be duly verified according
10 to law.

11 When the person petitioning for adoption is less than fifteen
12 years older than the child sought to be adopted, such fact shall
13 be set forth specifically in the petition. In such case, the court
14 shall grant the adoption only upon a specific finding that not-
15 withstanding the nearness in age of the petitioner and child,
16 such adoption is in the best interests of the child: *Provided*,
17 That when the petitioner seeks to adopt a child of his or her
18 spouse, such specific finding shall not be required and an adop-
19 tion shall not be denied on the sole basis of proximity in age.

CHAPTER 81

(S. B. 335—By Mr. McGraw, Mr. President)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia economic development authority, providing for certain legislative findings and purposes with respect thereto; the definition of terms used; composition of such authority and providing for the appointment of the members thereof and their respective terms; permitting certain members of the authority to designate the person to act in their stead; rules with respect to voting by such members; the compensation and expenses of such members; establishing the general powers of the authority; permitting the authority to make certain loans to industrial development agencies for industrial development projects and industrial subdivision projects, acquisitions and improvements; establishing certain requirements with certain loan applications and for hearings thereon; providing for equipment loans and security interests incidental to loans; establishing the economic development fund; permitting the authority to borrow money; providing that the notes, security interests and bonds of the authority are general obligations of the authority but not of the state; providing that such notes,

security interests and bonds are negotiable instruments; providing for the redemption of such notes, security interests or bonds; providing a disclaimer of any liability of the state of West Virginia with respect thereto; creating a trust for the holders of such notes, security interests and bonds issued by the authority; providing for certain rules with respect to defalcation by the authority in the payment of principal or interest upon any note, security interest or bond issued by the authority; authorizing certain governmental agency, banks and other financial institutions to invest in the notes, security interests and bonds issued by the authority and providing certain limits with respect thereto; extending tax exemption status to such notes, security interests and bonds issued by such authority and providing certain exemptions with respect thereto; placing certain limits upon the authority with respect to its borrowing powers; providing for the validity of any pledge contained in any mortgage, deed of trust or security interest for the benefit of the authority; establishing a governing body for the authority and providing for its powers; establishing certain rules with respect to the meetings, organizations and for quorum of such governing body; providing for deposit into the state treasury of all moneys received by the authority and for crediting such money to the economic development fund; providing for certain rules with respect to agreements entered into by various state agencies with the federal government and its agencies; voiding certain contracts or agreements approved by the board where conflicts of interest exist with respect to any member of such board; establishing rules for the auditing of the accounts, books and records of the authority; and providing certain rules of construction with respect to the provisions of the article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

- §31-15-1. 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. Equipment loans.
- §31-15-10. Economic development fund.
- §31-15-11. Borrowing of money.
- §31-15-12. Notes, security interests and bonds as general obligations of authority.
- §31-15-13. Notes, security interests and bonds as negotiable instruments.
- §31-15-14. Authorizing resolutions.
- §31-15-15. Redemption of notes, security interest or bonds.
- §31-15-16. Disclaimer of any liability of state of West Virginia.
- §31-15-17. Trust existing in favor of existing holders of notes, security interests or bonds.
- §31-15-18. Default in payment of principal or interest.
- §31-15-19. Investment in notes, bonds and security interests.
- §31-15-20. Tax exemption.
- §31-15-21. Authorized limit on borrowing.
- §31-15-22. Validity of any pledge, mortgage, deed of trust or security instrument.
- §31-15-23. Governing body; organization and meetings; quorum; powers.
- §31-15-24. Money of the authority.
- §31-15-25. Conflict of interest; when contracts void.
- §31-15-25. Agreement with federal agencies not to alter or limit powers of authority.
- §31-15-27. Audits.
- §31-15-28. Construction.

§31-15-1. Short title.

This article shall be known and may be cited as "The 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 many
- 3 areas of the state and may well come about, from time to time,
- 4 in other areas of the state; (b) that in some areas of the state,
- 5 unemployment is a serious problem and has been for so long
- 6 a period of time that, without remedial measures, it may
- 7 become so in other areas of the state; (c) that economic
- 8 insecurity due to unemployment is a serious menace to the
- 9 health, safety, morals and general welfare of the people of the
- 10 entire state; (d) that widespread industry unemployment
- 11 produces indigency which falls with crushing force upon all

12 unemployed workers and ultimately upon the state in the
13 form of welfare and unemployment compensation; (e) that
14 the absence of employment and business opportunities for
15 youth is a serious threat to the strength and permanence of
16 their faith in our American political and economic
17 institutions and the philosophy of freedom on which those
18 institutions are based; (f) that lack of employment and
19 business opportunities has resulted in thousands of workers
20 and their families leaving the state to find such opportunities
21 elsewhere, and that this exodus has adversely affected the tax
22 base of counties and municipalities resulting in an
23 impairment of their financial ability to support education and
24 other local government services; (g) that security against
25 unemployment and the spread of indigency and economic
26 stagnation can best be provided by the promotion, attraction,
27 stimulation, rehabilitation and revitalization of commerce,
28 tourism, industry and manufacturing; (h) that the present and
29 future health, safety, morals, right to gainful employment and
30 general welfare of the people of the state require as a public
31 purpose the promotion and development of new and
32 expanded coal production, industrial, commercial, tourist
33 and manufacturing enterprises within this state; (i) that the
34 device under which private community industrial
35 development organizations in the state acquire or build
36 industrial buildings or sites and equip the same with funds
37 raised through popular subscription, loans or otherwise for
38 lease and sale to new or expanding industries has proven
39 effective in creating new employment and business
40 opportunities locally, is in accord with the American tradition
41 of community initiative and enterprise, and requires and
42 deserves encouragement and support from the state, as a
43 means toward alleviation of unemployment and economic
44 distress; (j) that community industrial development
45 corporations in the state have invested substantial funds in
46 successful coal production, industrial development projects
47 and are experiencing difficulty in undertaking additional
48 projects by reason of the partial inadequacy of their own
49 funds potentially available from local subscription sources
50 and by reason of limitations of local financial institutions in
51 providing additional and sufficiently sizeable first deed of
52 trust or mortgage loans; (k) that an urgent need exists to
53 stimulate a larger flow of private investment funds from

54 banks, investment houses, insurance companies and other
55 financial institutions into community industrial building
56 programs; (l) that by increasing the number of community
57 industrial building projects presenting attractive
58 opportunities for private investment, a larger portion of the
59 private capital available in this state for investment can be
60 put to use for the general economic development of the state;
61 and (m) that it is in the public interest, in order to address the
62 needs aforesaid, that a state instrumentality be created as a
63 public body corporate with full powers to accept grants, gifts
64 and appropriations, to generate revenues, to borrow money
65 and issue its bonds, notes and security interests to the end
66 that funds obtained thereby may be used to furnish money
67 and credit to approved industrial development agencies.

§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 to
3 promote, assist, encourage and, in conjunction with such
4 banking corporations or institutions, trust companies,
5 savings banks, building and loan associations, insurance
6 companies or related corporations, partnerships, foundations
7 or other institutions to develop and advance the business
8 prosperity and economic welfare of the state of West Virginia;
9 to encourage and assist in the location of new business and
10 industry; to stimulate and assist in the expansion of all kinds
11 of business activity which will tend to promote the business
12 development and maintain the economic stability of this
13 state, provide maximum opportunities for employment,
14 encourage thrift and improve the standard of living of the
15 citizens of this state; to cooperate and act in conjunction with
16 other organizations, public or private, the objects of which are
17 the promotion and advancement of industrial, commercial,
18 tourist or manufacturing developments in this state; to
19 borrow moneys and to issue its bonds, notes and security
20 interests; to furnish money and credit to approved industrial
21 development agencies in this state, thereby establishing a
22 source of credit not otherwise available therefor. Such
23 purposes 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
26 employment, 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 in
2 this article:

3 (a) "Authority" means the West Virginia economic
4 development authority.

5 (b) "Board" means the governing body of the authority.

6 (c) "Bonds" means bonds of the authority issued under
7 this article.

8 (d) "Cost of establishing an industrial development
9 project" means the cost of equipment or the cost of
10 construction, cost of all lands, water areas, property rights
11 and easements, financing charges, interest prior to and
12 during construction, cost of engineering and legal services,
13 plans, specifications and surveys, estimates of costs and any
14 other expenses necessary or incident to determining the
15 feasibility or practicability of any industrial development
16 project, together with such other expenses as may be
17 necessary or incidental to the financing and the construction
18 of the industrial development project and the placing of the
19 same in operation.

20 (e) "Cost of industrial subdivision project improvements"
21 means equipment or construction cost of site preparation,
22 cost of grading and planting, construction cost of utilities,
23 sewage disposal facilities, storm drains, access roads and
24 dock facilities, construction cost of internal streets and roads,
25 curbs, walks, parking areas, lighting, shell buildings and rail
26 spurs, cost of acquiring easements and property rights in
27 other lands and, in connection therewith, financing charges,
28 interest prior to and during the construction of such
29 improvements, cost of engineering and legal services,
30 preparation of plans, specifications, surveys and estimates of
31 costs, together with such other expenses as may be necessary
32 or incidental to the financing and construction of industrial
33 subdivision project improvements.

34 (f) "County" means any county of this state.

35 (g) "Federal agency" means the United States of America
36 and any department, corporation, agency or instrumentality
37 created, designated or established by the United States of
38 America.

39 (h) "Fund" means the economic development fund
40 provided for in section ten of this article.

41 (i) "Government" means state and federal government,
42 and any political subdivision, agency or instrumentality
43 thereof, corporate or otherwise.

44 (j) "Industrial development agency" means any
45 incorporated organization, foundation, association or agency
46 to whose members or shareholders no profit inures, which
47 has as its primary function the promotion, encouragement
48 and development of industrial, commercial, manufacturing
49 and tourist facility enterprises in this state.

50 (k) "Industrial development project" means any land or
51 water site, structure, facility, equipment or undertaking
52 comprising or being connected with or a part of an industrial,
53 commercial, manufacturing or tourist facility enterprise
54 established, to be established or proposed to be acquired by
55 an industrial development agency in this state.

56 (l) "Industrial subdivision project" means any tract of
57 land or area of water and includes, where appropriate, related
58 utilities, services and access roads, the clear and marketable
59 legal title to which is held or is proposed to be acquired by an
60 industrial development agency for sale or lease for an
61 industrial development project.

62 (m) "Industrial subdivision project improvements" means
63 site preparation, grading, planting and the installation of
64 utilities, sewage disposal facilities, storm drains, dock
65 facilities, internal streets and roads, curbs, walks, parking
66 areas, lighting, shell buildings, equipment and rail spurs
67 upon an industrial subdivision project.

68 (n) "Municipality" means any city or town in this state.

69 (o) "Notes" means any notes of the authority issued under
70 this article.

71 (p) "Responsible buyer" means government and any
72 person, partnership, firm, company or corporation organized
73 for profit deemed by the authority, after proper investigation,
74 to be financially responsible to assume all obligations
75 prescribed by it in the acquisition of an industrial
76 development project from an industrial development agency

77 and in the operation of an industrial, commercial,
78 manufacturing or tourist facility enterprise thereon.

79 (q) "Responsible tenant" means government and any
80 person, partnership, firm, company or corporation organized
81 for profit deemed by the authority, after proper investigation,
82 to be financially responsible to assume all rental and other
83 obligations prescribed by it in the leasing of an industrial
84 development project and in the operation of an industrial,
85 commercial, manufacturing or tourist facility enterprise
86 thereon.

87 (r) "Revenues" means all fees, charges, moneys, profits,
88 payments or principal of, or interest on, loans and other
89 investments, gifts, grants, appropriations, contributions and
90 all other income derived or to be derived by the authority
91 under this article.

92 (s) "Security interest" means an interest in the loan
93 portfolio of the authority which interest is secured by an
94 underlying loan or loans and is evidenced by a note issued by
95 the authority.

**§31-15-5. West Virginia economic development authority;
composition; appointment; terms; delegation of
authority by certain members; voting;
compensation and expenses.**

1 The West Virginia industrial development authority
2 heretofore created is hereby continued as a body corporate
3 and politic, constituting a public corporation and government
4 instrumentality, but shall hereafter be known as the West
5 Virginia economic development authority.

6 The authority shall be composed of a board of members
7 consisting of a chairman, who shall be the governor or his
8 designated representative, the state treasurer, the tax
9 commissioner, the commissioner of banking and five
10 appointed members who shall be broadly representative of
11 the geographic regions of the state.

12 The governor shall nominate and, by and with the advice
13 and consent of the Senate, appoint five members of the
14 commission for staggered terms of four years. Of the
15 members of the commission first appointed, one shall be
16 appointed for a term ending the thirtieth day of June, one

17 thousand nine hundred seventy-eight, and one each for terms
18 ending one, two, three and four years thereafter: *Provided*,
19 That each person serving as a member of the West Virginia
20 industrial development authority, for a term which has not
21 expired on the effective date of this article, shall be appointed
22 by the governor without Senate confirmation to the West
23 Virginia economic development authority as one of the five
24 appointed members, for the term ending the thirtieth day of
25 June in the year in which his term would expire as a member
26 of the West Virginia industrial development authority. As
27 these original appointments expire, each subsequent
28 appointment shall be for a full four-year term. Any member
29 whose term has expired shall serve until his successor has
30 been duly appointed and qualified. Any person appointed to
31 fill a vacancy shall serve only for the unexpired term. Any
32 member shall be eligible for reappointment.

33 The governor, state treasurer, tax commissioner and
34 commissioner of banking may, by written notice filed with
35 the secretary of the authority, from time to time, delegate to
36 any subordinate the power to represent them at any meeting
37 of the authority. In such case, the subordinate shall have the
38 same power and privileges as the official he represents and
39 may vote on any question.

40 Members of the authority shall not be entitled to
41 compensation for services performed as members, but shall
42 be entitled to reimbursement for all reasonable and necessary
43 expenses actually incurred in the performance of their duties.

§31-15-6. General powers of authority.

1 The authority, as a public corporation and governmental
2 instrumentality exercising public powers of the state, shall
3 have and may exercise all powers necessary or appropriate to
4 carry out the purposes of this article, including the power:

5 (a) To cooperate with industrial development agencies in
6 efforts to promote the expansion of industrial, commercial,
7 manufacturing and tourist activity in this state.

8 (b) To determine, upon the proper application of an
9 industrial development agency, whether the declared public
10 purposes of this article have been or will be accomplished by
11 the establishment by such agency of an industrial
12 development project in this state.

- 13 (c) To conduct examinations and investigations and to
14 hear testimony and take proof, under oath or affirmation, at
15 public or private hearings, on any matter relevant to this
16 article and necessary for information on the establishment of
17 any industrial development project.
- 18 (d) To issue subpoenas requiring the attendance of
19 witnesses and the production of books and papers relevant to
20 any hearing before such authority or one or more members
21 appointed by it to conduct any hearing.
- 22 (e) To apply to the circuit court having venue of such
23 offense to have punished for contempt any witness who
24 refuses to obey a subpoena, to be sworn or affirmed or to
25 testify or who commits any contempt after being summoned
26 to appear.
- 27 (f) To authorize any member of the authority to conduct
28 hearings, administer oaths, take affidavits and issue
29 subpoenas.
- 30 (g) To make, upon proper application of any industrial
31 development agency, loans to such agency for industrial
32 development projects, industrial subdivision projects and
33 industrial subdivision project improvements and to provide
34 for the repayment and redeposit of such loans in the manner
35 provided in this article.
- 36 (h) To sue and be sued, implead and be impleaded, and
37 complain and defend in any court.
- 38 (i) To adopt, use and alter at will a corporate seal.
- 39 (j) To make bylaws for the management and regulation of
40 its affairs.
- 41 (k) To appoint officers, agents, employees and servants.
- 42 (l) To make contracts of every kind and nature to execute
43 all instruments necessary or convenient for carrying on its
44 business.
- 45 (m) Without in any way limiting any other subdivision of
46 this section, to accept grants from and enter into contracts
47 and other transactions with any federal agency.
- 48 (n) To take title by foreclosure to any industrial

49 development project or any industrial subdivision project
50 where acquisition is necessary to protect any loan previously
51 made by the authority and to sell, transfer and convey such
52 project to any responsible buyer. In the event such sale,
53 transfer and conveyance cannot be effected with reasonable
54 promptness, the authority may, in order to minimize financial
55 losses and sustain employment, lease the project to a
56 responsible tenant. The authority shall not lease an industrial
57 development project or industrial subdivision project, except
58 under the conditions and for the purposes cited in this
59 section.

60 (o) To participate in any reorganization proceeding
61 pending pursuant to the United States Code (being the act of
62 Congress establishing a uniform system of bankruptcy
63 throughout the United States, as amended) or in any
64 receivership proceeding in a state or federal court for the
65 reorganization or liquidation of a responsible buyer or
66 responsible tenant. The authority may file its claim against
67 any such responsible buyer or responsible tenant in any of
68 the foregoing proceedings, vote upon any question pending
69 therein which requires the approval of the creditors
70 participating in any reorganization proceeding or
71 receivership, exchange any evidence of such indebtedness
72 for any property, security or evidence of indebtedness offered
73 as a part of the reorganization of such responsible buyer or
74 responsible tenant or of any other entity formed to acquire
75 the assets thereof and may compromise or reduce the
76 amount of any indebtedness owing to it as a part of any such
77 reorganization.

78 (p) To borrow money and to issue its negotiable bonds,
79 security interests or notes and to provide for and secure the
80 payment thereof, and to provide for the rights of the holders
81 thereof, and to purchase, hold and dispose of any of its bonds,
82 security interests or notes.

83 (q) To sell, at public or private sale, any bond or other
84 negotiable instrument, security interests or obligation of the
85 authority in such manner and upon such terms as the
86 authority deems would best serve the purposes of this article.

87 (r) To issue its bonds, security interests and notes payable
88 solely from the revenues or funds available to the authority

89 therefor; and the authority may issue its bonds, security
90 interests or notes in such principal amounts as it shall deem
91 necessary to provide funds for any purposes under this
92 article, including:

93 (i) The making of loans to approved industrial
94 development agencies.

95 (ii) The payment, funding or refunding of the principal of,
96 interest on, or redemption premiums on, any bonds, security
97 interests or notes issued by it whether the bonds, security
98 interests, notes or interest to be funded or refunded have or
99 have not become due.

100 (iii) The establishment or increase of reserves to secure or
101 to pay bonds, security interests, notes or the interest thereon
102 and all other costs or expenses of the authority incident to
103 and necessary or convenient to carry out its corporate
104 purposes and powers. Any bonds, security interests or notes
105 may be additionally secured by a pledge of any revenues,
106 funds, assets or moneys of the authority from any source
107 whatsoever.

108 (s) To issue renewal notes, or security interests, to issue
109 bonds to pay notes or security interests and, whenever it
110 deems refunding expedient, to refund any bonds by the
111 issuance of new bonds, whether the bonds to be refunded
112 have or have not matured except that no such renewal notes
113 shall be issued to mature more than ten years from date of
114 issuance of the notes renewed and no such refunding bonds
115 shall be issued to mature more than twenty-five years from
116 the date of issuance.

117 (t) To apply the proceeds from the sale of renewal notes,
118 security interests or refunding bonds to the purchase,
119 redemption or payment of the notes, security interests or
120 bonds to be refunded.

121 (u) To accept gifts or grants of property, funds, security
122 interests, money, materials, labor, supplies or services from
123 the United States of America or from any governmental unit
124 or any person, firm or corporation, and to carry out the terms
125 or provisions of, or make agreements with respect to, or
126 pledge, any gifts or grants, and to do any and all things
127 necessary, useful, desirable or convenient in connection with
128 the procuring, acceptance or disposition of gifts or grants.

129 (v) To the extent permitted under its contracts with the
130 holders of bonds, security interests or notes of the authority,
131 to consent to any modification of the rate of interest, time of
132 payment of any installment of principal or interest, security
133 or any other term of any bond, security interests, note or
134 contract or agreement of any kind to which the authority is a
135 party.

136 (w) To sell security interests in the loan portfolio of the
137 authority. Such security interests shall be evidenced by
138 instruments issued by the authority. Proceeds from the sale
139 of security interests may be used in the same manner and for
140 the same purposes as bond and note revenues.

141 (x) To procure insurance against any losses in connection
142 with its property, operations or assets in such amounts and
143 from such insurers as the authority deems desirable.

144 (y) To take and hold security interests for equipment loans
145 as prescribed in this article.

**§31-15-7. Loans to industrial development agencies for
industrial development projects.**

1 When it has determined upon application of an industrial
2 development agency and upon hearing in the manner
3 hereinafter provided that the establishment or acquisition of
4 a particular industrial development project has accomplished
5 or will accomplish the public purposes of this article, the
6 authority may contract to loan such agency an amount not in
7 excess of fifty percent of the cost or estimated cost of such
8 project, as established, to be established or proposed to be
9 acquired, subject to the following conditions:

10 (a) Industrial development projects to be established or
11 acquired.

12 (1) The authority shall have first determined that the
13 industrial development agency holds funds in an amount
14 equal to or property of a value equal to not less than ten
15 percent of the estimated cost of establishing or acquiring the
16 industrial development project, which funds or property are
17 available for and shall be applied to the establishment or
18 acquisition of the project.

19 (2) The authority shall have also determined that the

20 industrial development agency has obtained from other
21 independent and responsible sources, such as banks and
22 insurance companies, a firm commitment for all other funds
23 over and above the loan of the authority and such funds or
24 property as the agency may hold, necessary for payment of all
25 the estimated cost of establishing or acquiring the industrial
26 development project and that the sum of all these funds is
27 adequate to ensure completion and operation of the industrial
28 development project.

29 (b) Industrial development projects established or
30 acquired with initial authority loan participation.

31 (1) The authority shall have first determined that the
32 industrial development agency has expended funds in an
33 amount equal to, or has applied property of a value equal to,
34 not less than ten percent of the cost of establishing or
35 acquiring the industrial development project.

36 (2) The authority shall have also determined that the
37 industrial development agency obtained from other
38 independent and responsible sources, such as banks and
39 insurance companies, other funds necessary for payment of
40 all the cost of establishing or acquiring the industrial
41 development project and that the industrial development
42 agency participation and these funds have been adequate to
43 ensure completion and operation or acquisition of the
44 industrial development project. The proceeds of any loan
45 made by the authority to the industrial development agency
46 pursuant to this subdivision (b) shall be used only for the
47 establishment or acquisition of industrial development
48 projects in furtherance of the public purposes of this article.

49 The loan of the authority shall be for such period of time
50 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 and by
53 deed of trust on the industrial development project for which
54 the loan was made or by assignment of any deed of trust and
55 negotiable promissory note and other security taken by the
56 industrial development agency on the industrial
57 development project, such deed of trust and note, assignment
58 of deed of trust, and note and other security to be second and
59 subordinate only to the deed of trust securing the first lien

60 obligation issued to secure the commitment of funds from the
61 independent and responsible sources and used in the
62 financing of the industrial development project.

63 Money loaned by the authority to an industrial
64 development agency shall be withdrawn from the fund and
65 paid over to the agency in such manner as is provided by
66 rules and regulations of the authority.

67 The authority shall deposit all payments of interest on loans
68 and the principal thereof in the fund. When any federal
69 agency participates, the authority may adjust the required
70 ratios of financial participation by the industrial development
71 agency, the source of independent funds and the authority in
72 such manner as to ensure the maximum benefit available to
73 the industrial development agency, the authority, or both, by
74 the participation of the federal agency. When ratios are
75 adjusted as aforesaid, no such adjustment shall be made
76 which shall cause the authority to grant a loan to the
77 industrial development agency in excess of fifty percent of
78 the cost or estimated cost of the industrial development
79 project.

80 Where any federal agency participating in the financing of
81 an industrial development project is not permitted to take as
82 security for such participation a deed of trust or assignment
83 of deed of trust and other security the lien of which is junior
84 to the deed of trust or assignment of deed of trust and other
85 security of the authority, the authority may take as security
86 for its loan to the industrial development agency a deed of
87 trust or assignment of deed of trust and other security junior
88 in lien to that of the federal agency.

**§31-15-7a. Loans to industrial development agencies for
industrial subdivision project acquisitions and
improvements.**

1 When it has been determined upon application of an
2 industrial development agency and upon hearing in the
3 manner hereinafter provided that the acquisition or
4 improvement of a particular industrial subdivision project by
5 such agency will accomplish the public purposes of this
6 article, the authority may contract to loan such industrial
7 development agency an amount not in excess of fifty percent
8 of the cost or estimated cost of such industrial subdivision

9 project acquisition or improvement, except as to shell
10 buildings, in which case the agency may contract to loan an
11 amount not in excess of ninety percent of the cost of such
12 shell building, subject to the following conditions:

13 (1) The authority shall have determined that the industrial
14 development agency has obtained from other independent
15 and responsible sources, such as banks and insurance
16 companies, a firm commitment for all other funds, over and
17 above the loan of the authority, necessary for payment of all
18 the estimated cost of the industrial subdivision project
19 acquisition or improvement and that the sum of all these
20 funds is adequate to ensure completion of the project
21 acquisition or improvement.

22 (2) The authority shall have also determined that the
23 industrial development agency has or proposes to acquire
24 clear and marketable legal title to the industrial subdivision
25 project to be improved or acquired.

26 (3) The industrial development agency shall covenant in
27 writing with the authority that, as long as any loan made by
28 the authority to the agency for the acquisition or
29 improvement of any industrial subdivision project remains
30 unpaid, no portion of such industrial subdivision project shall
31 be sold, leased or otherwise encumbered except for the
32 purpose of establishing an industrial development project on
33 such land by the agency.

34 (4) In the case of a contract to loan more than fifty percent
35 of the cost of a shell building, subject to the maximum
36 limitation of ninety percent as aforesaid, the industrial
37 development agency shall furnish to the authority evidence
38 that such industrial development agency has entered into a
39 contract whereby a responsible buyer or responsible tenant is
40 legally obligated to acquire or lease such shell building. The
41 Legislature finds and declares that it does not believe it
42 would be in the best interest of the state for the authority to
43 contract to loan more than fifty percent of the cost of a shell
44 building, subject to the maximum limitation of ninety
45 percent as aforesaid, unless it is clear that the use to be made
46 of such shell building will result in the employment of a
47 reasonably substantial work force.

48 The loan of the authority shall be for such period of time

49 and shall bear interest at such rate as the authority
50 determines and it shall be secured by the negotiable
51 promissory note of the industrial development agency and by
52 deed of trust on the industrial subdivision project for which
53 the loan was made, such deed of trust to be second and
54 subordinate only to the deed of trust securing the first lien
55 obligation issued to secure the commitment of funds from the
56 independent and responsible sources and used in the
57 financing of the industrial subdivision project acquisition or
58 improvement.

59 The authority may, in its discretion, defer the payment of
60 principal and interest, or principal only, or interest only, upon
61 any loan made to an industrial development agency for any
62 industrial subdivision project acquisition or improvement,
63 such deferment to be for such period as the authority
64 determines, not to exceed five years from the date of the deed
65 of trust securing the loan. If any portion of such industrial
66 subdivision project is sold or leased by the agency prior to the
67 expiration of the five-year period, all deferred installments of
68 the principal of the loan accrued on the date of such sale or
69 lease, or the proportionate part of such deferred principal
70 which the sold or leased portion of the project bears to its
71 total acreage, together with all unpaid interest accrued on the
72 date of such sale or lease, shall, at the option of the authority,
73 become due and payable immediately or subject to
74 renegotiation by either increasing or decreasing the number
75 and amount of each installment of principal and interest,
76 without effecting any change in the amount of principal of the
77 original loan or the rate of interest as originally fixed by the
78 authority in the deed of trust and note.

79 Money loaned by the authority to an industrial
80 development agency shall be withdrawn from the fund and
81 paid over to the agency in such manner as is provided by
82 rules and regulations of the authority.

83 The authority shall deposit all payments of interest on any
84 loans and the principal thereof in the fund.

85 Where any federal agency participating in the financing of
86 industrial subdivision project acquisition or improvement is
87 not permitted to take as security for such participation a deed
88 of trust or assignment of deed of trust and other security the

89 lien of which is junior to the deed of trust or assignment of
90 deed of trust and other security of the authority, the authority
91 may take as security for its loan to the industrial development
92 agency a deed of trust or assignment of deed of trust and
93 other security 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 or
3 for an industrial subdivision project acquisition or
4 improvement, the authority shall receive from such agency a
5 loan application in such form as adopted by the authority.

6 (1) If the loan application is for an industrial development
7 project, the form shall contain at least the following:

8 (a) A general description of the project and a general
9 description of the industrial, commercial, manufacturing or
10 tourist enterprise for which the project has been or will be
11 established.

12 (b) A legally sufficient description of all real estate
13 necessary for the project.

14 (c) Such plans and other documents as may be required to
15 show the type, structure and general character of the project.

16 (d) A general description of the type, classes and number
17 of employees employed or to be employed in the operation of
18 the project.

19 (e) Cost or estimates of cost of establishing the project.

20 (f) A general description and statement of value of any
21 property, real or personal of the industrial development
22 agency applied or to be applied to the establishment of the
23 project.

24 (g) A statement of cash funds previously applied, or held
25 by the industrial development agency, which are available for
26 and are to be applied to the establishment of the project.

27 (h) Evidence of the arrangement made by the industrial
28 development agency for the financing of all cost of the project
29 over and above its own participation.

30 (i) A general description of the responsible tenant to

31 which the industrial development agency has leased or will
32 lease the project or of the responsible buyer to which the
33 agency has sold or will sell the project.

34 (j) A general description of the form of lease or sales
35 agreement entered into or to be entered into between the
36 industrial development agency and its responsible tenant or
37 responsible buyer.

38 (k) Evidence that the establishment of the project will not
39 cause the removal of an industrial, commercial,
40 manufacturing or tourist facility from one area of the state to
41 another area of the state.

42 (2) If the loan application is for an industrial subdivision
43 project acquisition or improvement, the form shall contain at
44 least the following:

45 (a) A general description of the industrial subdivision
46 project and a general description of its adaptability to
47 industrial, commercial, manufacturing or tourist purposes,
48 including the type of industrial development project which
49 may be established thereon upon completion of the
50 acquisition or improvement for which the loan is requested.

51 (b) A legally sufficient description of the industrial
52 subdivision project.

53 (c) Such plans and other documents as may be required to
54 show the type, structure and general character of the
55 proposed industrial subdivision project acquisition or
56 improvement.

57 (d) Cost or estimates of cost of the proposed industrial
58 subdivision project acquisition or improvement.

59 (e) Evidence of the arrangement made by the industrial
60 development agency for the financing of all cost of the
61 industrial subdivision project acquisition or improvement
62 over and above its own participation.

63 (f) Evidence that the establishment of the project to be
64 acquired or improved will not cause the removal of an
65 industrial, commercial, manufacturing or tourist facility from
66 one area of the state to another area of the state.

67 The board of the authority shall hold such hearings and

68 examinations on each loan application as shall be necessary
69 to determine whether the public purposes of this article will
70 be accomplished by the granting of such loan..

71 When the board determines that a loan will accomplish the
72 public purposes of this article, it shall grant such loan in
73 accordance with the provisions of this article.

§31-15-9. Equipment loans.

1 The authority may make loans for equipment as part of
2 industrial development projects or industrial subdivision
3 projects or improvement thereto subject to the same
4 application and loan procedures and limitations as usually
5 apply to loans for industrial development projects or
6 industrial subdivision projects or improvements thereto:
7 *Provided*, That such loans shall be secured by a first lien on
8 the equipment financed by the loan and shall be additionally
9 secured by a deed of trust in real property and any
10 improvement thereto; such additional security shall be upon
11 such terms and in such amount satisfactory to the authority.

§31-15-10. Economic development fund.

1 The industrial development fund, to which shall be
2 credited any appropriation made by the Legislature to the
3 authority and such other deposits as are provided for in this
4 section, is hereby continued in the state treasury as a special
5 account, but shall hereafter be known as the economic
6 development fund.

7 The authority shall requisition from the fund such amounts
8 as are necessary to provide for the payment of the
9 administrative expenses of this article. Notwithstanding
10 section seven-a of this article, whenever the authority
11 determines it to be necessary to purchase at a foreclosure sale
12 any industrial development project or industrial subdivision
13 project pursuant to subdivision (o), section six of this article,
14 it may requisition from the fund such amount as is necessary
15 to pay the purchase price thereof, notwithstanding that the
16 purchase price in the foreclosure sale of any industrial
17 development project may exceed fifty percent of the original
18 cost of the project, or that in the foreclosure sale of any
19 industrial subdivision project the purchase price may exceed
20 fifty percent of the original cost of the project or
21 improvement thereon.

22 The authority shall requisition from the fund such amounts
23 as are allocated and appropriated for loans to industrial
24 development agencies for industrial development projects,
25 industrial subdivision projects and industrial subdivision
26 project acquisitions or improvements. As loans to industrial
27 development agencies are repaid to the authority pursuant to
28 the terms of mortgages and other agreements, the authority
29 shall pay such amounts into the fund, consistent with the
30 intent of this article that the fund shall operate as a revolving
31 fund whereby all appropriations and payments made thereto
32 may be applied and reapplied for the purposes of this article.
33 Revenues deposited into the fund may be used to make
34 payments of interest and principal and may be pledged as
35 security for bonds, security interests or notes issued by the
36 authority pursuant to this article.

37 Whenever the authority determines that the balance in the
38 fund is in excess of the immediate requirements for loans, it
39 may request that such excess be invested until needed for
40 loan purposes, in which case such excess shall be invested in
41 a manner consistent with the investment of other temporary
42 state funds. Interest earned on any money invested pursuant
43 to this section shall be credited to the fund.

44 If the authority determines that funds held in the fund are
45 in excess of the amount needed to carry out the purposes of
46 this article, it shall take such action as is necessary to release
47 such excess and transfer it to the general fund of the state
48 treasury.

§31-15-11. Borrowing of money.

1 The borrowing of money and the notes, bonds and security
2 interests evidencing any such borrowing shall be authorized
3 by resolution approved by the board, shall bear such date or
4 dates, and shall mature at such time or times, in the case of
5 any such bonds, not exceeding twenty-five years from the
6 date of issue, as such resolution or resolutions may provide.
7 The notes, bonds and security interests shall bear interest at
8 such rate or rates, be in such denominations, be in such form,
9 either coupon or registered, carry such registration privileges,
10 be executed in such manner, be payable in such medium of
11 payment, at such place or places, and be subject to such terms
12 or conditions of redemption as such resolution or resolutions
13 may provide.

§31-15-12. Notes, security interests and bonds as general obligations of authority.

1 Except as may otherwise be provided by the authority,
2 every issue of its notes, security interests and bonds shall be
3 general obligations of the authority payable out of any
4 revenues or moneys of the authority, subject only to any
5 agreements with the holders of particular notes, security
6 interests or bonds pledging any particular revenues.

§31-15-13. Notes, security interests and bonds as negotiable instruments.

1 The notes, security interests and bonds issued by the
2 authority shall be and hereby are made negotiable
3 instruments under the provisions of article eight, chapter
4 forty-six of this code, subject only to the provisions of the
5 notes, security interests or bonds for registration.

§31-15-14. Authorizing resolutions.

1 Any resolution or resolutions authorizing any notes, bonds
2 or security interests or any issue thereof, may contain
3 provisions, which shall be a part of the contract with holders,
4 as to:

5 (1) Pledging all or part of the revenues of the authority to
6 secure the payment of the notes, security interests or bonds
7 or any issue thereof, subject to such agreements with
8 bondholders, holders of security interests or noteholders as
9 may then exist;

10 (2) Pledging all or any part of the assets of the authority to
11 secure the payment of the notes, security interests or bonds
12 or any issue thereof, subject to such agreements with
13 bondholders, holders of security interests or noteholders as
14 may then exist;

15 (3) The setting aside of reserves or sinking funds and the
16 regulation and disposition thereof;

17 (4) Limitations on the purposes to which the proceeds of
18 sale of notes, security interests or bonds may be applied and
19 pledging such proceeds to secure the payment of the notes,
20 security interests or bonds or of any issue thereof;

21 (5) Limitations on the issuance of additional notes,

22 security interests or bonds; the terms upon which additional
23 notes, security interests or bonds may be issued and secured;
24 and the refunding of outstanding or other notes, security
25 interests or bonds;

26 (6) The procedure, if any, by which the terms of any
27 contract with noteholders, holders of security interests or
28 bondholders may be amended or abrogated, the amount of
29 notes, security interests or bonds the holders of which must
30 consent thereto, and the manner in which such consent may
31 be given;

32 (7) Limitations on the amount of moneys to be expended
33 by the authority for operating, administrative or other
34 expenses of the authority;

35 (8) Vesting in a trustee or trustees the property, rights,
36 powers and duties of a trustee appointed by the bondholders
37 pursuant to section eighteen of this article, and limiting or
38 abrogating the right of the bondholders to appoint a trustee
39 under section eighteen of this article or limiting the rights,
40 powers and duties of such trustees; and

41 (9) Any other matters, of like or different character, which
42 in any way affect the security or protection of the notes,
43 security interests or bonds.

§31-15-15. Redemption of notes, security interests or bonds.

1 The authority, subject to such agreements with
2 noteholders, holders of security interests or bondholders as
3 may then exist, shall have power, out of any funds available
4 therefor, to purchase notes, security interests or bonds of the
5 authority.

6 If the notes, security interests or bonds are then
7 redeemable, the price of such purchase shall not exceed the
8 redemption price then applicable plus accrued interest to the
9 next interest payment date thereon. If the notes, security
10 interests or bonds are not then redeemable, the price of such
11 purchase shall not exceed the redemption price applicable on
12 the first date after such purchase upon which the notes,
13 security interests or bonds become subject to redemption
14 plus accrued interest to such date. Upon such purchase such
15 notes, security interests or bonds shall be canceled.

§31-15-16. Disclaimer of any liability of state of West Virginia.

1 The state of West Virginia shall not be liable on notes,
2 security interests or bonds or other evidences of
3 indebtedness of the authority and such notes, security
4 interests or bonds or other evidence of indebtedness shall not
5 be a debt of the state of West Virginia, and such notes,
6 security interests or bonds or other evidence of indebtedness
7 shall contain on the face thereof a statement to such effect.

§31-15-17. Trust existing in favor of existing holders of notes, security interests or bonds.

1 The properties and interests in properties, real, personal
2 and mixed, tangible and intangible, standing or held in the
3 name of or for and in behalf of, or for the benefit of, the
4 authority, or the state of West Virginia to the extent that the
5 same are or were acquired or improved by the expenditure of
6 the proceeds of notes, security interests or bonds heretofore
7 or hereafter issued by the authority, and the moneys,
8 deposits, securities and choses in action and other rights held
9 in the name of or for and in behalf of, or for the benefit of, the
10 authority, other than moneys, deposits, securities, choses in
11 action and other rights which are, or which are investments
12 of, (1) proceeds of bonds heretofore issued by the authority
13 held for expenditure for completion of now existing projects
14 of the authority, or (2) revenues of the authority from existing
15 projects of the authority which, after provision for operation
16 and maintenance expenses and coverage requirements not
17 otherwise provided for, are in excess of sums required to pay
18 the principal of and interest on the bonds of the commission
19 heretofore issued, as and when due and payable, or (3)
20 proceeds of bonds of the authority issued hereafter, or (4)
21 revenues of the authority from projects hereafter financed by
22 or participated in by the authority, are declared to be subject
23 to and shall be held by the authority in trust for the
24 satisfaction of the obligations evidenced by the bonds
25 heretofore issued by the authority and the interest coupons
26 thereon: *Provided*, That nothing in this article shall be taken
27 to validate or to attempt to validate any agreement which
28 provides for payments from general tax revenues of the state.
29 Until the satisfaction in full of the obligations evidenced by
30 bonds heretofore issued by the authority, the authority shall
31 hold, manage and operate the aforesaid trust properties and

32 interests in properties, moneys, deposits, securities and
33 choses in action and other rights, separate from all other
34 properties and interests in properties, moneys, deposits,
35 securities and choses in action and other rights that may
36 hereafter be held and owned by the authority. Upon the
37 satisfaction of all of the aforesaid obligations of the authority,
38 all of the aforesaid trust properties and interests in properties,
39 moneys, deposits, securities and choses in action and other
40 rights shall become and be free and clear of the aforesaid
41 trust.

§31-15-18. Default in payment of principal or interest.

1 In the event the authority shall default in the payment of
2 principal of or interest on any issue of its notes, security
3 interests or bonds after the same shall become due, whether
4 at maturity or upon call for redemption, and such default
5 shall continue for a period of thirty days, or in the event the
6 authority shall fail or refuse to comply with the provisions of
7 this article or shall default in any agreement made with the
8 holders of any issue of notes, security interests or bonds, the
9 holders of twenty-five percent in aggregate principal amount
10 of the notes, security interests or bonds of such issue then
11 outstanding, by instrument or instruments filed in the office
12 of the clerk of the county commission of any county in which
13 the authority operates and has an office and acknowledged in
14 the same manner as a deed to be recorded, may appoint a
15 trustee to represent the holders of such notes, security
16 interests or bonds for the purposes herein provided:

17 (1) Any such trustee, upon the written request of the
18 holders of twenty-five percent in principal amount of such
19 notes, security interests or bonds of the authority then
20 outstanding, shall, in his or its own name, do any one or more
21 of the following:

22 (i) By civil action or other proceeding, enforce all rights of
23 the noteholders, holders of security interests or bondholders,
24 including the right to require the authority to perform its
25 duties under this article;

26 (ii) Bring a civil action upon such notes, security interests
27 or bonds;

28 (iii) By civil action or other proceeding, require the

29 authority to account as if it were the trustee of an express
30 trust for the holders of such notes, security interests or bonds;

31 (iv) By civil action or other proceeding, enjoin any acts or
32 things which may be unlawful or in violation of the rights of
33 the holders of such notes, security interests or bonds;

34 (v) Declare all such notes, security interests or bonds due
35 and payable, and if all defaults shall be made good, then
36 annul such declaration and its consequences.

37 (2) In addition to the foregoing, such trustee shall have
38 and possess all of the powers necessary or appropriate for the
39 exercise of any functions specifically set forth herein or
40 incident to the general representation of holders of notes,
41 security interests or bonds of the authority in the
42 enforcement and protection of their rights.

43 (3) Before declaring the principal of any notes, security
44 interests or bonds due and payable, the trustee shall first give
45 thirty days' notice in writing to the authority.

§31-15-19. Investment in notes, bonds and security interests.

1 The notes, bonds and security interests of the authority are
2 hereby made securities in which the state board of
3 investments, all insurance companies and associations, and
4 other persons carrying on an insurance business, all banking
5 institutions, trust companies, building and loan associations,
6 savings and loan associations, investment companies and
7 other persons carrying on a banking business, and other
8 persons, except administrators, guardians, executors,
9 trustees and fiduciaries, who are now or who may hereafter
10 be authorized to invest in bonds or other obligations of the
11 state, may properly and legally invest funds including capital
12 in their control or belonging to them: *Provided*, That the state
13 board of investments, prior to investing funds, including
14 capital in such notes, security interests or bonds of the
15 authority shall first inquire fully into the integrity and
16 sufficiency of the collateral securing such investment and
17 shall be fully satisfied as to the sufficiency and integrity
18 thereof; and may only so invest if the yield therefrom is at
19 least equal to or greater than the prevailing market yield from
20 similar United States twenty-six week treasury bills:
21 *Provided, however*, That the state board of investments shall

22 not purchase evidences of indebtedness having terms in
23 excess of eighteen months from date of purchase to date of
24 maturity.

§31-15-20. Tax exemption.

1 The exercise of the powers granted to the authority by this
2 article will be in all respects for the benefit of the people of
3 the state, for the improvement of their health, safety,
4 convenience and welfare and for the enhancement of their
5 residential, agricultural, recreational, economic, commercial
6 and industrial opportunities and is a public purpose. As the
7 operation and maintenance of economic development
8 projects will constitute the performance of essential
9 governmental functions, the authority shall not be required to
10 pay any taxes or assessments upon any economic
11 development project or upon any property acquired or used
12 by the authority or upon the income therefrom. Such bonds
13 and notes and all interest and income thereon shall be exempt
14 from all taxation by this state, or any county, municipality,
15 political subdivision or agency thereof, except inheritance
16 taxes.

§31-15-21. Authorized limit on borrowing.

1 The aggregate principal amount of notes, security interests
2 and bonds issued by the authority shall not exceed one
3 hundred million dollars outstanding at any one time:
4 *Provided*, That in computing the total amount of notes,
5 security interests and bonds which may at any one time be
6 outstanding, the principal amount of any outstanding notes,
7 security interests and bonds refunded or to be refunded
8 either by application of the proceeds of the sale of any
9 refunding bonds, security interests or notes of the authority
10 or by exchange for any such refunding bonds, security
11 interests or notes shall be excluded. The provisions of section
12 nineteen of this article notwithstanding, the state board of
13 investments shall have invested no more than a total
14 aggregate principal amount of fifteen million dollars at any
15 one time in such notes, security interests or bonds.

§31-15-22. Validity of any pledge, mortgage, deed of trust or security instrument.

1 It is the intention hereof that any pledge, mortgage, deed of

2 trust or security instrument made by or for the benefit of the
3 authority shall be valid and binding between the parties from
4 the time the pledge, mortgage, deed of trust or security
5 instrument is made; and that the moneys or property so
6 pledged, encumbered, mortgaged or entrusted shall
7 immediately be subject to the lien of such pledge, mortgage,
8 deed of trust or security instrument without any physical
9 delivery thereof or further act.

**§31-15-23. Governing body; organization and meetings; quorum;
powers.**

1 The governing body of the authority shall consist of the
2 members of the authority acting as a board, which shall
3 exercise all the powers given to the authority in this article.
4 The governor or his designated representative shall be
5 chairman of the board and its chief executive officer. On the
6 second Monday of July of each year, the board shall meet to
7 elect a secretary and a treasurer from among its own
8 members.

9 A majority of the members shall constitute a quorum for
10 the purpose of conducting business. Except in the case of a
11 loan application or unless the bylaws require a larger number,
12 action may be taken by majority vote of the members present.
13 Approval or rejection of a loan application shall be made by
14 majority vote of the full membership of the board.

15 The board shall manage the property and business of the
16 authority and prescribe, amend and repeal bylaws and rules
17 and regulations governing the manner in which the business
18 of the authority is conducted.

19 The governor shall provide staff services to the authority
20 for administration of this article, including liaison between
21 the authority and industrial development agencies and
22 related organizations and between the authority and other
23 state agencies whose facilities and services may be useful to
24 the authority in its work. The authority may reimburse any
25 state spending unit for any special expense actually incurred
26 in providing any service or the use of any facility to the
27 authority.

28 The authority shall employ an executive director and any
29 other personnel it determines necessary, and may appoint its

30 own counsel and legal staff, and retain such temporary
31 engineering, financial and other consultants or technicians as
32 may be required for any special study or survey consistent
33 with the provisions of this article.

§31-15-24. Money of the authority.

1 All money accruing to the authority from whatever source
2 derived, except legislative appropriations, shall be collected
3 and received by the treasurer of the authority, who shall pay it
4 into the state treasury in the manner required by section two,
5 article two, chapter twelve of this code, which shall be
6 credited to the fund.

§31-15-25. 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 in any
3 manner in any contract or agreement with the authority
4 whereby liability or indebtedness against or to the authority
5 is in any manner created. Any contract or agreement made in
6 violation of the provisions of this section shall be void and no
7 action thereon shall be maintained against the authority.

§31-15-26. Agreement with federal agencies not to alter or limit powers of authority.

1 The state hereby pledges to and agrees with each federal
2 agency that, if such agency constructs or loans or contributes
3 any funds for the acquisition, construction, extension,
4 improvement or enlargement of any industrial development
5 project or industrial subdivision project or for industrial
6 subdivision project improvements, the state will not alter or
7 limit the rights and powers of the authority in any manner
8 which would be inconsistent with the due performance of any
9 agreement between the authority and such federal agency
10 and that the authority shall continue to have and exercise all
11 powers granted for carrying out the purposes of this article
12 for so long as necessary.

§31-15-27. Audits.

1 As soon as possible after the close of each fiscal year, the
2 authority shall make an annual report of its activities for the
3 preceding fiscal year to the governor and the Legislature.
4 Each such report shall set forth a complete operating and

5 financial statement covering the authority's operations
6 during the preceding fiscal year. The authority shall cause an
7 audit of its books and accounts to be made at least once each
8 fiscal year by certified public accountants and the cost
9 thereof may be treated as a part of the cost of construction or
10 of operations of its projects.

§31-15-28. Construction.

1 The provisions of this article are remedial and shall be
2 liberally construed and applied so as to promote the purposes
3 set out in section three of this article.

CHAPTER 82

(Com. Sub. for H. B. 1050—By Mr. Stephens and Mr. Tompkins)

[Passed March 24, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article five of said chapter by adding thereto a new section, designated section fifteen-a, all relating to providing the study of multi-cultural education to certain prospective and existing school personnel by the state board of education and county boards of education.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **State Board of Education.**
2. **County Board of Education.**

ARTICLE 2. STATE BOARD OF EDUCATION.**§18-2-6. Training of teachers; accreditation, classification and standardization of schools; standards for degrees and diploma.**

1 The education of teachers in the state shall be under
2 the general direction and control of the state board of
3 education, which shall, through the state superintendent of
4 schools, exercise supervisory control over teacher preparation
5 programs in all institutions of higher education, including
6 student teaching in the public schools, in accordance with
7 standards for program approval stated in writing by the
8 board. Such standards shall include a provision for the study
9 of multicultural education.

10 As used in this section, multicultural education means the
11 study of the pluralistic nature of American society including
12 its values, institutions, organizations, groups, status positions
13 and social roles.

14 To give prospective teachers the teaching experience needed
15 to demonstrate competence, as a prerequisite to licensure,
16 the state board of education may enter into an agreement
17 with county boards of education for the use of the public
18 schools. Such agreement shall recognize student teaching as
19 a joint responsibility of the teacher preparation institution
20 and the cooperating public schools and shall include (1) the
21 minimum qualifications for the employment of public school
22 teachers selected as supervising teachers; (2) the remunera-
23 tion to be paid public school teachers by the state board, in
24 addition to their contractual salaries, for supervising student
25 teachers; and (3) minimum standards to guarantee adequacy
26 of facilities and program of the public school selected for
27 student teaching. The student teacher, under the direction and
28 supervision of the supervising teacher, shall exercise the
29 authority of a substitute teacher.

30 Institutions of higher education approved for teacher pre-
31 paration may cooperate with each other and with one or
32 more county boards of education in the organization and
33 operation of centers to provide selected phases of the teacher
34 preparation program such as student teaching or internship

35 programs, instruction in methodology, seminar programs for
36 college students, first year teachers and supervising teachers.

37 Such institutions of higher education and participating county
38 boards of education may budget and expend funds for the
39 operation of such centers through payments to the appropriate
40 fiscal office of the county designated by mutual agreement of
41 participating county school boards and higher education in-
42 stitutions to serve as the administering agency of the center.

43 The provisions of this section shall not be construed to
44 require the discontinuation of an existing student teacher
45 training center or school which meets the standards of the
46 state board of education.

47 The state board of education shall make rules and regulations
48 for the accreditation, classification and standardization of all
49 schools in the state, except institutions of higher education,
50 and shall determine the minimum standards for the granting of
51 diplomas and other certificates of proficiency, except those
52 conferred or granted by institutions of higher education. No
53 institution of less than collegiate or university status may
54 grant any diploma or other certificate of proficiency on any
55 basis of work or merit below the minimum standards prescribed
56 by the state board of education. All institutions of higher
57 education approved for teacher preparation in the school
58 year of nineteen hundred sixty-two—sixty-three shall con-
59 tinue to hold that distinction so long as they measure up to
60 the minimum standards for teacher preparation. Nothing
61 contained herein shall infringe upon the rights granted to
62 any institution by charter given according to law previous to
63 the adoption of this code.

64 No charter or other instrument containing the right to
65 issue diplomas or other certificates of proficiency shall be
66 granted by the state of West Virginia to any institution or
67 other associations or organizations of less than collegiate
68 or university status within the state until the condition of
69 granting or issuing such diplomas or other certificates of
70 proficiency has first been approved in writing by the state
71 board of education.

ARTICLE 5. COUNTY BOARD OF EDUCATION.**§18-5-15a. Study of multicultural education for school personnel.**

1 County boards of education shall annually provide a pro-
2 gram, during at least one noninstructional day of the school
3 term, for the study of multicultural education for all school
4 personnel as defined in subsection (a), section one, article one,
5 chapter eighteen-a of this code. The study provided shall be in
6 compliance with regulations to be developed by the state board
7 of education.

8 As used in this section, multicultural education means the
9 study of the pluralistic nature of American society, including
10 its values, institutions, organizations, groups, status positions
11 and social roles.

CHAPTER 83

(S. B. 710-S—Originating in the Senate Committee on Education)

[Passed April 9, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, five, seven and eight, article two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to classification of school subjects into adoption groups and adoption schedules; request for textbook samples and bids; selection and publication of multiple list of textbooks; selection of textbooks by county boards; retail outlets, exchange privilege and use of supplementary books; requiring the approval and listing of textbooks by the state board of education; stating when changes in textbooks may be effected; rules and regulations by the state board of education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. TEXTBOOK ADOPTION.

§18-2A-1. Classification of school subjects into adoption groups; adoption schedule.

§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.

§18-2A-5. Selection by county boards.

§18-2A-7. Retail outlets; exchange privilege; use of supplementary books.

§18-2A-8. Textbooks must be approved and listed; when changes of textbooks may be effected; rules and regulations.

§18-2A-1. Classification of school subjects into adoption groups; adoption schedule.

1 On or before the first day of July, one thousand nine
2 hundred seventy-two, the state board of education shall
3 classify the elementary and secondary school subjects now
4 required to be taught in the schools of our state into five
5 adoption groups. The five adoption groups shall be grouped
6 by related subject fields as nearly as possible.

7 The schedule for the periods of adoption shall be as follows:

8 (a) Adoptions in Group I shall be made in one thousand
9 nine hundred seventy-three for a period of five years.

10 (b) Adoptions in Group II shall be made in one thousand
11 nine hundred seventy-four for a period of five years.

12 (c) Adoptions in Group III shall be made in one thousand
13 nine hundred seventy-five for a period of five years.

14 (d) Adoptions in Group IV shall be made in one thousand
15 nine hundred seventy-six for a period of five years.

16 (e) Adoptions in Group V shall be made in one thousand
17 nine hundred seventy-seven for a period of five years:
18 *Provided*, That the adoption of secondary textbooks for
19 Group V shall be made in one thousand nine hundred
20 eighty-one and Groups I through IV respectively in each
21 successive year.

22 Upon the expiration of the periods of adoption, as set out in
23 the aforesaid adoption schedule, the period of adoption and
24 contract of each adoption group in which textbooks for all the
25 subjects are adopted shall be for a period of five years.

§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.

1 Prior to each adoption year after the one thousand nine

2 hundred seventy-two adoption, and after the one thousand
3 nine hundred eighty-one adoption of secondary textbooks,
4 and not later than the first day of August, the state board by
5 written request or otherwise shall ask the various publishers
6 of textbooks in the United States to submit samples and
7 prices on all textbooks required to be taught in the public
8 elementary and secondary schools of the state for the current
9 adoption period.

10 All bids or proposals shall be under seal, and each bidder
11 shall deposit in the state treasury such sum of money as the
12 state board may designate, such deposit to be not less than
13 one thousand dollars, and not more than three thousand
14 dollars; and such deposit shall be forfeited to the general
15 school fund if such bidder shall fail or refuse to make and
16 execute such contract and bond as are herein required in case
17 of acceptance of all or part of his bid, and otherwise shall be
18 returned to such bidder after the contract has been made.

19 All bids shall be opened by the state board in public
20 session. After considering the subject matter, printing,
21 binding, general suitability, and prices of books submitted,
22 the board shall, prior to the first day of July, one thousand
23 nine hundred eighty-one, and prior to the first day of March of
24 each subsequent year in which the multiple adoptions are
25 made by the state board of education, establish a committee
26 of teachers and other educational specialists not to exceed
27 thirty members and with the aid of said committee, shall on
28 or before the first day of December, prior to county
29 adoptions, select, approve and publish a list of at least five
30 books or series of books in each subject and grade in the
31 elementary and secondary subjects required to be taught by
32 said board. If less than five books or series of books in any
33 subject and grade are offered, the state board may list fewer
34 than five. The committee of teachers and other educational
35 specialists shall report their recommendations to the state
36 board on or before the first day of November of the year
37 preceding the adoption by the county board.

§18-2A-5. Selection by county boards.

1 Textbook publishers, upon requests of county
2 superintendents, shall furnish to county boards of education
3 the requested sample copies of books that were selected and

4 placed on the state multiple list of textbooks by the state
5 board of education. The textbook publishers shall ship and
6 bill to the county boards of education at the lowest wholesale
7 prices with shipping charges prepaid. After the counties have
8 made their textbook adoptions and certified them to the state
9 board of education, all sample copies of books may be
10 returned to the publishers from whom obtained, shipping
11 charges to be paid by the publisher. County boards may, if
12 they elect to do so, retain the sample books, but shall pay the
13 publishers the lowest wholesale prices for them.

14 The county board of education shall, upon
15 recommendation of the county superintendent with the aid of
16 a committee of teachers not to exceed fifteen members and
17 not later than the first day of May of the year following that in
18 which the multiple list for the group was made and approved,
19 have the option to select from the state multiple list one or
20 more book(s) or series of books for each subject and grade to
21 be used as exclusive basal textbooks in the county for a
22 period of five years.

23 After the county board of education has adopted the basal
24 textbooks for use in the county, and not later than the
25 fifteenth day of May, the county superintendent shall send to
26 the state board of education and the respective publishers a
27 complete list of books adopted, properly certified by the
28 president of the county board of education, in such form as
29 the state board of education shall prescribe.

**§18-2A-7. Retail outlets; exchange privilege; use of
supplementary books.**

1 It shall be the duty of each contractor at his own expense to
2 place a sufficient number of books to supply the demand in
3 no less than three locations in the county as designated by the
4 county board of education. The books shall be available at the
5 designated locations at least two weeks before the beginning
6 of each school term. He shall also arrange for the exchange of
7 books at such places, allowing pupils or boards of education
8 an exchange price as liberal as granted on the same books to
9 any city, county, or state in the United States, like conditions
10 prevailing. The exchange privilege shall extend through one
11 entire school year. Nothing in this article is to be construed as
12 preventing the use of supplementary books, provided they do

13 not displace the adopted books, nor the use of more advanced
14 books in such schools as may be ready for the same.

§18-2A-8. Textbooks must be approved and listed; when changes of textbooks may be effected; rules and regulations.

1 No textbook shall be used in any public elementary or
2 secondary school in West Virginia as a basal textbook for
3 state required courses unless it has been approved and listed
4 on the state multiple list of textbooks by the state board of
5 education. Any changes of textbooks made by the state board
6 of education shall not become effective until grades and
7 classes of the respective county school districts have
8 completed work for which the adopted book then in use was
9 originally intended. The state board of education may upon
10 request by a county board of education and upon justification
11 of that request, and subsequent to the adoption by a county
12 board of education, approve the adoption of additional books
13 to meet the needs of specific children which were not
14 provided for in the original adoption. Nothing in this section
15 shall apply to the supplementary books that are needed from
16 time to time.

17 The state board of education is authorized to make such
18 rules and regulations as it may deem necessary and expedient
19 to carry out the provisions of this article.

CHAPTER 84

(H. B. 1355—By Mr. Tucker and Mr. Goff)

[Passed April 10, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to meetings of the county board of education; employment of teachers; public hearing concerning budget; publication of notice; compensation of members.

Be it enacted by the Legislature of West Virginia:

That section four, article five, chapter eighteen of the code of

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

1 The board shall meet on the first Monday of January, ex-
2 cept that in the year one thousand nine hundred eighty-two,
3 and every year thereafter, the board shall meet on the first
4 Monday of July, and upon the dates provided by law for the
5 laying of levies, and at such other times as the board may fix
6 upon its records. At any meeting as authorized above and in
7 compliance with the provisions of article four of this chapter,
8 the board may employ such qualified teachers, or those who
9 will qualify by the time of entering upon their duties, necessary
10 to fill existing or anticipated vacancies for the current or next
11 ensuing school year. At a meeting of the board, on or before
12 the first Monday of May, the superintendent shall furnish in
13 writing to the board a list of those teachers to be considered
14 for transfer and subsequent assignment for the next ensuing
15 school year; all other teachers not so listed shall be considered
16 as reassigned to the positions held at the time of this meeting.
17 Such list of those recommended for transfer shall be included
18 in the minute record and the teachers so listed shall be notified
19 in writing, which notice shall be delivered in writing, by certi-
20 fied mail, return receipt requested, to such teachers' last-known
21 addresses within ten days following said board meeting, of their
22 having been so recommended for transfer and subsequent
23 assignment.

24 Special meetings may be called by the president or any three
25 members, but no business shall be transacted other than that
26 designated in the call.

27 In addition, a public hearing shall be held concerning the
28 preliminary operating budget for the next fiscal year not less
29 than ten days after such budget has been made available to the
30 public for inspection and within a reasonable time prior to
31 the submission of said budget to the West Virginia board of

32 education for approval and at such hearing reasonable time
33 shall be granted to any person or persons who wish to speak
34 regarding parts or all of such budget. Notice of such hearing
35 shall be published as a Class I legal advertisement in com-
36 pliance with the provisions of article three, chapter fifty-nine of
37 this code.

38 A majority of the members shall constitute the quorum
39 necessary for the transaction of official business.

40 Board members may receive compensation at a rate not to
41 exceed forty dollars per meeting attended. But they shall not
42 receive pay for more than fifty-two meetings in any one
43 fiscal year.

44 Members shall also be paid, upon the presentation of an
45 itemized sworn statement, for all necessary traveling expenses,
46 including all authorized meetings, incurred on official busi-
47 ness, at the order of the board.

48 When, by a majority vote of its members, a county board
49 of education deems it a matter of public interest, such board
50 may join the West Virginia school board association and the
51 national school board association, and may pay such dues as
52 may be prescribed by said associations and approved by action
53 of the respective county boards. Membership dues and actual
54 traveling expenses of board members for attending meetings
55 of the West Virginia school board association may be paid by
56 their respective county boards of education out of funds avail-
57 able to meet actual expenses of the members, but no allowance
58 shall be made except upon sworn itemized statements.

CHAPTER 85

(S. B. 210—By Mr. Ash and Mrs. Chace)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the school term;

employment term; instructional term; extension of terms; number of noninstructional days that may be scheduled.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARDS OF EDUCATION.

§18-5-15. School term; levies; ages of persons to whom schools are open.

1 The board shall provide a school term for its schools which
2 shall be comprised of (a) an employment term for teachers,
3 and (b) an instructional term for pupils.

4 The employment term for teachers shall be no less than ten
5 months, a month to be defined as twenty employment days
6 exclusive of Saturdays and Sundays: *Provided*, That the
7 board may contract with all or part of the personnel for a
8 longer term. The employment term shall be fixed within such
9 beginning and closing dates as established by the state board:
10 *Provided, however*, That the time between the beginning and
11 closing dates does not exceed forty-three weeks.

12 Within the employment term there shall be an instructional
13 term for pupils of not less than one hundred eighty nor more
14 than one hundred eighty-five instructional days. Instruc-
15 tional and noninstructional activities may be scheduled dur-
16 ing the same employment day. The instructional term shall
17 commence no earlier than the first day of September and
18 shall terminate no later than the eighth day of June and shall
19 not cover a period greater than two hundred seventy-eight
20 calendar days.

21 Noninstructional days in the employment term may be
22 used for making up canceled instructional days, curriculum
23 development, preparation for opening and closing of the in-
24 structional term, in-service and professional training of
25 teachers, teacher-pupil-parent conferences, professional
26 meetings and other related activities. However, no more than
27 seven such noninstructional days, except holidays, may be
28 scheduled prior to the first day of January in a school term.

29 Notwithstanding any other provisions of the law to the
30 contrary, if the board has canceled instructional days equal to
31 the difference between the total instructional days scheduled
32 and one hundred seventy-eight, each succeeding instruc-
33 tional day canceled shall be rescheduled, utilizing only the
34 remaining noninstructional days, except holidays, following
35 such cancellation, which are available prior to the second day
36 before the end of the employment term established by such
37 county board.

38 Where the employment term overlaps a teacher's participa-
39 tion in a summer institute or institution of higher learning for
40 the purpose of professional growth, the teacher may substi-
41 tute, with the approval of the county superintendent, such
42 participation for not more than four of the noninstructional
43 days of the employment term.

44 The board may extend the instructional term beyond one
45 hundred eighty-five instructional days provided the
46 employment term is extended an equal number of days. If the
47 state revenues and regular levies, as provided by law, are
48 insufficient to enable the board of education to provide for
49 the school term, the board may at any general or special
50 election, if petitioned by at least five percent of the qualified
51 voters in the district, submit the question of additional levies
52 to the voters. If at the election sixty percent of the qualified
53 voters cast their ballots in favor of the additional levy, the
54 board shall fix the term and lay a levy necessary to pay the
55 cost of the additional term. The additional levy fixed by the
56 election shall not continue longer than five years without
57 submission to the voters. The additional rate shall not exceed
58 by more than one hundred percent the maximum school rate
59 prescribed by article eight, chapter eleven of the code, as
60 amended.

61 The public schools shall be open for the full instructional
62 term to all persons who have attained the entrance age as
63 stated in section five, article two and section eighteen, article
64 five, chapter eighteen of this code: *Provided*, That persons
65 over the age of twenty-one may enter only those programs or
66 classes authorized by the state board of education and
67 deemed appropriate by the county board of education con-
68 ducting any such program or class: *Provided, however*, That
69 authorization for such programs or classes shall in no way

70 serve to affect or eliminate programs or classes offered by
 71 county boards of education at the adult level for which fees
 72 are charged to support such programs or classes.

CHAPTER 86

(Com. Sub. for S. B. 205—By Mr. Nelson)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, establishing maximum teacher-pupil ratio of one to twenty-five per classroom in grades four through six by the school year one thousand nine hundred eighty-three—eighty-four, and authorizing state superintendent of schools to grant exemptions from such requirement under certain conditions; promulgation of rules and regulations by the state board of education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18a. Maximum teacher-pupil ratio.

1 County boards of education shall provide, by the school
 2 year one thousand nine hundred eighty-three—eighty-four,
 3 and continue thereafter, sufficient personnel, equipment and
 4 facilities as will ensure that each first, second, third, fourth,
 5 fifth and sixth grade classroom or classrooms for two or more
 6 grades, including one or more of the first, second, third,
 7 fourth, fifth and sixth grades, shall not have more than
 8 twenty-five pupils for each teacher of the grade or grades.
 9 County boards of education shall also provide by the school
 10 year one thousand nine hundred eighty-three—eighty-four,
 11 and thereafter, sufficient personnel, equipment and facilities

12 as will ensure that there will not be more than twenty pupils
13 in each kindergarten session in any given school situation:
14 *Provided*, That in the school year one thousand nine hundred
15 eighty-three—eighty-four, upon application of a county board
16 of education to the state superintendent, and approval thereof
17 by the state superintendent, as to each specific classroom for
18 which the application is made, a county board may maintain
19 the classroom, equipment and teacher for more than
20 twenty-five pupils in grades one through three, or for more
21 than twenty pupils in kindergarten: *Provided, however*, That
22 in the school year one thousand nine hundred
23 eighty-three—eighty-four, and thereafter, the state
24 superintendent is authorized, consistent with sound
25 educational policy, (a) to permit on a statewide basis in grades
26 four through six, more than twenty-five pupils per teacher in
27 a classroom for the purposes of instruction in music and
28 physical education, and (b) to permit more than twenty-five
29 pupils per teacher in a classroom in grades four through six
30 during a school year in the event of extraordinary
31 circumstances as determined by the state superintendent
32 after application by a county board of education during such
33 year.

34 The state board of education shall promulgate rules and
35 regulations defining and setting forth what constitutes
36 extraordinary circumstances as used in this section.

CHAPTER 87

(S. B. 182—By Mr. Galperin)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-seven, relating to required school breakfast programs for pupils to be provided by county boards of education, where federal funds provided, except when waiver obtained; basis for waiver application, notice and hearing thereon; permissive

school breakfast program after termination of federal funding; annual report to Legislature on exemptions granted; participation in school breakfast program by classroom teachers to be voluntary and not a part of their regular duties; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That article five, 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 thirty-seven, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-37. School breakfast programs.

1 Beginning the school year one thousand nine hundred
 2 eighty-one—eighty-two, and continuing thereafter, each
 3 county board of education shall establish and operate a
 4 school breakfast program under which a nutritious breakfast
 5 shall be made available to all pupils enrolled in the schools of
 6 the county in accord with standards of the state department
 7 of education. Such standards shall include guidelines for
 8 determining the eligibility of pupils for paid breakfasts, free
 9 breakfasts and reduced price breakfasts: *Provided*, That
 10 nothing herein contained shall prohibit any school from
 11 providing free breakfasts to all its pupils if revenues received
 12 from such programs exceed the costs of such programs:
 13 *Provided, however*, That a particular school which because of
 14 compelling circumstances is not able to provide a satisfactory
 15 school breakfast program may apply to the state
 16 superintendent of schools for a waiver. Upon application the
 17 state superintendent of schools shall give notice and the
 18 opportunity to be heard to the parents and school and shall
 19 review the specific reasons for the waiver request, and if the
 20 state superintendent determines that a particular school is,
 21 because of compelling circumstances, not able to provide a
 22 satisfactory school breakfast program, it may be granted a
 23 waiver not to exceed two years except upon reapplication:
 24 *Provided further*, That if at any time federal financial
 25 appropriations to this state for school breakfast programs are
 26 terminated, county boards of education are hereby
 27 authorized but not required to continue such programs at
 28 their own expense.

29 The state superintendent of schools shall annually report to
 30 the Legislature on the first day of the regular session the
 31 schools exempted for that school term under the provisions
 32 of this section and shall state the reasons for such
 33 exemptions: *Provided*, That classroom teachers shall not be
 34 required to participate in the operation of the school
 35 breakfast program as part of their regular duties.

CHAPTER 88

(S. B. 267—By Mrs. Chace)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven-a, 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-a, relating to prohibiting forced retirement of college or university professors with unlimited tenure prior to age seventy.

Be it enacted by the Legislature of West Virginia:

That article seven-a, 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-a, to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-25a. Prohibited forced retirement of college and university professors.

1 As of the effective date of this section, no person serving
 2 under a contract of unlimited tenure or similar arrangement
 3 providing for unlimited tenure at an institution of higher
 4 education shall be compelled to retire from such employment
 5 prior to attaining seventy years of age. In the event such
 6 person shall reach age seventy in the middle of a semester or
 7 fiscal year, such person shall not be compelled to retire prior
 8 to the end of the semester or fiscal year: *Provided*, That in no
 9 event shall such retirement be postponed beyond six months
 10 after the date on which such person attained the age of
 11 seventy: *Provided, however*, That nothing in this section shall
 12 be construed to preclude discharge of such person for cause.

CHAPTER 89

(Com. Sub. for H. B. 853—By Mr. Brenda and Mr. Givens)

[Passed March 13, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to excluding auxiliary and service personnel salaries from publication requirement.

Be it enacted by the Legislature of West Virginia:

That section three-a, article nine, 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 9. SCHOOL FINANCES.

§18-9-3a. Preparation, publication and disposition of financial statements by county boards of education.

1 The county board of education of every county, within
2 four weeks after the beginning of each fiscal year, shall prepare
3 on a form to be prescribed by the state tax commissioner
4 and the state superintendent of free schools, and cause to be
5 published a statement revealing (a) the receipts and expendi-
6 tures of the board during the previous fiscal year arranged
7 under descriptive headings, (b) the name of each firm, cor-
8 poration and person who received more than fifty dollars
9 in the aggregate from all funds during the previous fiscal
10 year, together with the aggregate amount received from all
11 funds and the purpose for which paid: *Provided*, That such
12 statement shall not include the name of any person who has
13 entered into a contract with this board pursuant to the pro-
14 visions of sections two, three, four and five, article two,
15 chapter eighteen-a of this code, and (c) all debts of the board,
16 the purpose for which each debt was contracted, its due date,
17 and to what date the interest thereon has been paid. Such
18 statement shall be published as a Class I-O legal advertise-
19 ment in compliance with the provisions of article three, chapter
20 fifty-nine of this code, and the publication area for such
21 publication shall be the county. The county board of education

22 shall pay the cost of publishing such statement from the main-
23 tenance fund of the board.

24 As soon as is practicable following the close of the fiscal
25 year, a copy of the published statement herein required shall
26 be filed by the county board of education with the state tax
27 commissioner and with the state superintendent of free
28 schools.

29 The county board of education shall transmit to any resi-
30 dent of the county requesting the same a copy of the published
31 statement for the fiscal year designated, supplemented by a
32 list of the names of all school personnel employed by the
33 board during such fiscal year showing the amount paid to
34 each, and a list of the names of each firm, corporation, and
35 person who received less than fifty dollars from any fund
36 during such fiscal year showing the amount paid to each and
37 the purpose for which paid.

CHAPTER 90

(S. B. 340—By Mr. McGraw, Mr. President)

[Passed March 27, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, article seventeen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to admission and record of applicants to the West Virginia schools for the deaf and blind; pupils' period of attendance; special admissions; programs for youths over twenty-three years of age.

Be it enacted by the Legislature of West Virginia:

That sections two and four, article seventeen, 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 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND THE BLIND.

§18-17-2. Admission and record of applicants; special programs and services.

§18-17-4. Period of attendance; special admissions.

§18-17-2. Admission and record of applicants; special programs and services.

1 Deaf and/or blind youth residents in the state, between the
2 ages of five and twenty-three, inclusive, shall be enrolled in
3 the schools on application to the superintendent, until the
4 schools are filled. Applicants shall be admitted by the
5 superintendent on the basis of need and degree of
6 impairment as determined by the schools' admissions
7 committee. It shall be the duty of the superintendent to keep
8 a careful record of the names of all applicants with the dates
9 of their admission and discharge, their ages, post-office
10 addresses, the names of their parents or guardians, and the
11 degree, cause and circumstances of their deafness or
12 blindness.

13 Nothing in this section shall be construed to prevent the
14 school from providing special education programs including,
15 but not limited to, classes, parent education, home teaching
16 or visiting teacher services for deaf and blind children from
17 birth. The schools may also enter into contractual
18 arrangements with counties to provide evaluation, short-term
19 instruction and other educational services, including direct
20 instruction.

§18-17-4. Period of attendance; special admissions.

1 The pupils of said schools may continue therein until
2 completion of the prescribed course of study, or a lesser
3 period of time which the condition and progress of the pupils
4 may justify, as determined by the state board of education
5 upon recommendation of the school's superintendent. After
6 all applicants between the prescribed ages of five and
7 twenty-three years, inclusive, who are deaf or blind
8 individuals working toward completion of the requirements
9 for high school graduation have been enrolled, if there are
10 additional accommodations, the superintendent, on
11 recommendation of the admissions committee, may enroll
12 other deaf pupils and blind pupils who first are of preschool
13 age, and second are post-secondary students up to
14 twenty-three years of age who have completed the
15 requirements for high school graduation, and upon such
16 terms as the state board of education may prescribe; but it
17 shall be distinctly understood that such persons shall
18 withdraw from the institution in the order of their admission

19 to make room for new applicants between the ages prescribed
20 in section two of this article.

21 Vocational education and other educational services may
22 be provided for deaf and blind students beyond age
23 twenty-three in cooperation with the division of vocational
24 rehabilitation.

CHAPTER 91

(S. B. 579—By Mr. Galperin and Mr. Nelson)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section one-a; and to amend and reenact sections six, seven, eight and nine, article twenty-six of said chapter eighteen, all relating to the West Virginia board of regents fixing tuition and other fees at state institutions of higher education and establishing a higher education resource fee to be charged all students enrolled for credit at state institutions of higher education; providing for the disposition of fee collections and institutional reports on the use of portions of said collections; requiring the West Virginia board of regents to hold a certain number of meetings each year and requiring said board to meet with certain persons, organizations and groups; establishing a certain structure and organization for the staff of said board; establishing and defining certain powers and duties of said board regarding planning, budgeting, submission of reports, review and evaluation of institutional programs and presidents and other areas; replacing institutional advisory boards with institutional boards of advisors.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty-four, chapter eighteen of

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

Article

24. Fees and Other Moneys Collected at State Institutions of Higher Education.

26. West Virginia Board of Regents.

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-1. Enrollment, tuition and other fees at educational institutions; refund of fees.

§19-24-1a. Higher education resource fee.

§18-24-1. Enrollment, tuition and other fees at educational institutions; refund of fees.

1 The board of regents shall fix tuition and other fees
2 for each school term for the different classes or categories
3 of students enrolling at each state institution of higher
4 education and may include among such fees any one or
5 more of the following: (1) Health service fees, (2) infir-
6 mary fees; (3) student activities, recreational, athletic
7 and extracurricular fees, which said fees may be used to
8 finance a student's attorney to perform legal services for
9 students in civil matters at the state universities and
10 state colleges: *Provided*, That such legal services shall be
11 limited to only those types of cases, programs or services
12 approved by the administrative head of the state educa-
13 tional institution where such legal services are to be per-
14 formed; and (4) graduate center fees, and branch college
15 fees, or either, if the establishment and operation of
16 graduate centers or branch colleges are otherwise au-
17 thorized by law. All fees collected under (1), (2) and (3)
18 shall be paid into special funds and shall be used only for
19 the purposes for which the fees are collected; and all fees
20 collected at any graduate center or at any branch college
21 shall be paid into special funds and shall be used solely

22 for the maintenance and operation of the graduate center
23 or branch college at which they were collected: *Provided,*
24 That the maximum fees to be collected under this section
25 for resident students shall not exceed five hundred dol-
26 lars per semester; and for nonresident students, one
27 thousand dollars per semester. The schedule of all fees,
28 and any changes therein, shall be entered in the minutes
29 of the meeting of the board, and the board shall file with
30 the legislative auditor a certified copy of such schedule
31 and changes.

32 In addition to the fees mentioned in the preceding
33 paragraph, the board of regents may impose and collect a
34 student union building fee. All such building fees collected
35 at the institution shall be paid into a special student
36 union building fund for such institution, which is hereby
37 created in the state treasury, and shall be used only for
38 the construction, operation and maintenance of a student
39 union building or a combination student union and dining
40 hall building or for the payment of the principal of and
41 interest on any bond issued to finance part or all of the
42 construction of a student union building or a combination
43 student union and dining hall building or the renovation
44 of an existing structure for use as a student union build-
45 ing or a combination student union and dining hall build-
46 ing, all as more fully provided in section six of this
47 article. Any moneys in such funds not immediately
48 needed for such purposes may be invested in any such
49 bonds or other securities as are now or hereafter
50 authorized as proper investments for state funds.

51 Refund, as an erroneous payment, may be made of any
52 such fees, upon the voluntary or involuntary withdrawal
53 from classes of any student, until eight weeks of the
54 school semester or term have expired, but no refund may
55 be made thereafter.

§18-24-1a. Higher education resource fee.

1 In addition to the fees specifically provided for in
2 section one of this article, all students enrolled for
3 credit at the state's public colleges and universities shall

4 pay a higher education resource fee. The West Virginia
5 board of regents shall fix the fee rates for the various
6 institutions and classes of students and may from time to
7 time change these rates. The amount of the fee charged
8 at each institution shall be prorated for part-time stu-
9 dents. The fee imposed by this section is in addition to the
10 maximum fees allowed to be collected under the provision
11 of section one of this article and is not limited thereby.
12 Refunds of such fee may be made in the same manner as
13 any other fee collected at state institutions of higher
14 education.

15 Eighty percent of the total fees collected at each in-
16 stitution pursuant to this section shall be deposited in a
17 special fund in the state treasury for the institution at
18 which the fees are collected and may be used by the
19 institution for libraries and library supplies, including
20 books, periodicals, subscriptions and audiovisual materi-
21 als, instructional equipment and materials; and for the
22 improvement in quality and scope of student services. The
23 remaining twenty percent of fee collections shall be
24 deposited in a special fund and expended or allocated by
25 the board of regents to meet general operating expenses
26 of the state system of higher education, excluding per-
27 sonal services: *Provided*, That the board shall, to the
28 maximum extent practicable, offset the impact, if any, on
29 financially needy students of any potential fee increases
30 under this section by allocating an appropriate amount of
31 such fee revenue to the state scholarship program to be
32 expended in accordance with the provisions of article
33 twenty-two-b of this chapter.

34 The board of regents shall, on or before the first day
35 of July of each year, provide the legislative auditor with
36 a report of the projected fee collections for the board and
37 each of its institutions and the expenditures proposed for
38 such fee.

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-6. Meetings; compensation of members.

§18-26-7. Organization of board; staff; offices.

§18-26-8. Powers and duties.

§18-26-9. Institutional boards of advisors.

§18-26-6. Meetings; compensation of members.

1 The board shall hold at least ten meetings in every
2 fiscal year commencing July one and ending the following
3 June thirty, one of which meetings, to be known as the
4 annual meeting, shall be held in June. At least four meet-
5 ings shall be held on the campuses of different state
6 colleges and universities each year, at which meetings
7 the board shall set aside time to afford administrators,
8 faculty, students and classified staff an opportunity to
9 discuss issues affecting those groups. At least one meeting
10 each year shall be held with both the advisory council of
11 faculty and the advisory council of students, each of these
12 bodies to be met with separately. Except as otherwise
13 provided in this section, meetings shall be held on such
14 dates and at such places as the board may prescribe. In
15 addition to the statutorily required meetings, the board
16 may meet at such other times as may be necessary, such
17 meetings to be held upon its own resolution or at the
18 request of at least five appointed members of the board.

19 Of the twelve members, six members of the board shall
20 constitute a quorum, and a majority vote of the quorum
21 shall be necessary to pass upon matters before the board.

22 The members of the board shall be paid one hundred
23 dollars per diem for actual time spent in the performance
24 of duties under this article and shall be reimbursed for
25 actual and necessary expenses incident to the perfor-
26 mance of their duties, upon presentation of an itemized
27 sworn statement thereof. The foregoing per diem and
28 reimbursement for actual and necessary expenses shall
29 be paid from appropriations made by the Legislature to
30 the board.

§18-26-7. Organization of board; staff; offices.

1 At its annual meeting in June of each year, the board
2 shall elect a president and such other officers as the board

3 may deem necessary or desirable for a one-year term
4 commencing the first day of July following the annual
5 meeting and ending the thirtieth day of June of the fol-
6 lowing year. The president and such other officers shall
7 be elected from the members of the board appointed by
8 the governor. The president of the board shall be eligible
9 to succeed himself for one term.

10 The board shall employ a chancellor and such other
11 professional, administrative, clerical and other employees
12 as may be necessary to assist the board in the perfor-
13 mance of its duties and responsibilities. The board shall
14 further delineate staff responsibilities as deemed desir-
15 able and appropriate to provide mission and program
16 liaison with (1) the state universities, graduate schools
17 and professional schools, (2) the state colleges, exclusive
18 of the community colleges, and (3) the community col-
19 leges and community college components of four-year
20 institutions, recognizing the inherent differences in the
21 missions and capabilities of these three categories of
22 higher education institutions. The board shall prescribe
23 the duties and fix the compensation and emoluments of
24 all such employees, and they shall serve at the will and
25 pleasure and under the direction and control of the board
26 or its designated representative. The board shall provide
27 suitable offices for the chancellor and his staff in Charles-
28 ton.

§18-26-8. Powers and duties.

- 1 (a) The board shall have the power and duty to:
- 2 (1) Determine, control, supervise and manage the
3 financial, business and educational policies and affairs of
4 the state colleges and universities;
- 5 (2) Prepare a master plan for public higher education
6 in the state, including therein, both statewide and for
7 each state college and university, the goals, missions,
8 resource requirements, physical plant needs, state man-
9 power needs, enrollment levels and other planning de-
10 terminates and projections necessary in such a plan. The
11 plan shall also address the roles and missions of other

12 public and private postsecondary education providers in
13 the state. The board shall involve in the development of
14 the plan all segments of postsecondary education in the
15 state, the executive and legislative branches of govern-
16 ment and the general public. The plan shall be established
17 for periods of not less than five nor more than ten years,
18 and shall be periodically revised as necessary;

19 (3) Prescribe and allocate among the state colleges and
20 universities, in accordance with the master plan, specific
21 functions and responsibilities to meet the higher educa-
22 tion needs of the state and to avoid unnecessary duplica-
23 tion;

24 (4) Consult with the executive branch and the Legis-
25 lature in the establishment of funding parameters, pri-
26 orities and goals;

27 (5) Establish guidelines for and direct the preparation
28 of budget requests for each of the state colleges and
29 universities, such requests to relate directly to missions,
30 goals and projections in the state master plan for higher
31 education;

32 (6) Consider, revise and submit to the appropriate
33 agencies of the executive and legislative branches of state
34 government separate budget requests on behalf of the
35 state colleges and universities; or the board may, in its
36 discretion, submit a single budget for the state colleges
37 and universities, but, if a single budget is submitted, it
38 shall be accompanied by a tentative schedule of proposed
39 allocations of funds to the separate colleges and univer-
40 sities;

41 (7) Prepare and submit to the speaker of the House of
42 Delegates and the president of the Senate, no later than
43 the first day of the regular session of the Legislature, and
44 to any member of the Legislature upon request, an analy-
45 sis of the budget request submitted under subdivision
46 (6) of this subsection. The analysis shall summarize all
47 amounts and sources of funds outside of the general rev-
48 enue fund anticipated to be received by each state college
49 and university and the effect of such funds on the budget
50 request;

51 (8) Prepare and submit to the legislative auditor, no
52 later than the first day of July of each year, the approved
53 operating budgets of each state college and university for
54 the fiscal year beginning on that date and shall also
55 submit, no later than the first day of August, a summary
56 of federal and other external funds received at each in-
57 stitution during the previous fiscal year;

58 (9) Establish a system of information and data manage-
59 ment that can be effectively utilized in the development
60 and management of higher education policy, mission and
61 goals;

62 (10) Review, at least every five years, all academic
63 programs offered at any state college and university. The
64 review shall address the viability, adequacy and necessity
65 of the programs in relation to the master plan;

66 (11) Utilize faculty, students, and classified staff in
67 planning and decision making at the institution level
68 which affects those groups;

69 (12) Administer a uniform system of personnel classi-
70 fication and compensation for all employees other than
71 faculty and policy level administrators;

72 (13) Establish a uniform system for the hearing of
73 employee grievances and appeals therefrom, so that ag-
74 grieved parties may be assured of timely and objective
75 review;

76 (14) Conduct performance evaluations of institution
77 presidents in every fourth year of their employment as
78 president, recognizing unique characteristics of their
79 institutions and utilizing institutional personnel, institu-
80 tional boards of advisors, board staff and persons
81 knowledgeable in higher education matters who are not
82 otherwise employed by the board; and

83 (15) Submit to the joint committee on government and
84 finance, no later than the first day of December of each
85 year, an annual report of the performance of the state
86 system of higher education during the previous fiscal year
87 as compared to stated goals in the master plan and the
88 budget appropriations for that fiscal year.

89 (b) The power herein given to the board to prescribe
90 and allocate among the state colleges and universities
91 specific functions and responsibilities to meet the higher
92 educational needs of the state and avoid unnecessary
93 duplication shall not be restricted by any provision of law
94 assigning specified functions and responsibilities to desig-
95 nated state colleges and universities but such power shall
96 supersede any such provision of law: *Provided*, That the
97 board may delegate, with prescribed standards and limi-
98 tations, such part of its power and control over the
99 business affairs of a particular university or state college
100 to the president or other administrative head of such
101 university or college in any case where it deems such
102 delegation necessary and prudent in order to enable such
103 institution to function in a proper and expeditious man-
104 ner. Any such delegation of power and control may be
105 rescinded by the board at any time, in whole or in part.

106 The board is authorized and empowered, from time to
107 time, to promulgate such rules and regulations as it may
108 deem necessary and convenient to ensure the full imple-
109 mentation of its powers and duties.

§18-26-9. Institutional boards of advisors.

1 (a) After the thirtieth day of June, one thousand nine
2 hundred eighty-one, there shall be established at each
3 state college and university, hereinafter referred to as
4 the "institution," excluding centers and branches thereof,
5 an institutional board of advisors. The board of
6 advisors shall replace any advisory board in ex-
7 istence under the previous provisions of this section,
8 except that any such advisory board may continue un-
9 til the thirtieth day of June, one thousand nine hundred
10 eighty-one. The board of advisors shall consist of
11 eleven members, including an administrative officer of
12 the institution appointed by the president of the institu-
13 tion; a full-time member of the faculty with the rank
14 of instructor or above duly elected by the faculty; a
15 member of the student body in good academic standing,
16 enrolled for college credit work and duly elected by the

17 student body; a member of the institutional classified
18 staff duly elected by the classified staff; and, appointed
19 by the board of regents, seven lay citizens of the state who
20 have demonstrated a sincere interest in and concern for
21 the welfare of the institution and who are representative
22 of its population and occupations, including at least two
23 alumni of the institution. Of the seven lay citizen
24 members, no more than four may be of the same political
25 party. The administrative officer, faculty member, stu-
26 dent member and classified staff member shall serve for
27 a term of one year and the seven lay citizen members
28 shall serve terms of four years each, except that the
29 initial appointments shall be for terms of one, two,
30 three and four years. All members shall be eligible to
31 succeed themselves for no more than one additional
32 term. A vacancy in an unexpired term of a member
33 shall be filled within sixty days of the occurrence thereof
34 in the same manner as the original appointment or
35 election. All initial terms shall begin on the first day
36 of July, one thousand nine hundred eighty-one. Except
37 in the case of a vacancy, all elections shall be held and
38 all appointments shall be made no later than the thirtieth
39 day of April preceding the commencement of the term.

40 (b) The board of advisors shall hold a regular meet-
41 ing at least quarterly, commencing in July of each year.
42 Additional meetings may be held upon the call of the
43 chairman, president of the institution, or upon the re-
44 quest of at least four members. One of the seven lay
45 citizen members shall be elected as chairman by the
46 board of advisors in July of each year: *Provided*, That
47 a lay citizen member may not serve as chairman for
48 more than two consecutive years at a time. A majority
49 of the members shall constitute a quorum for conduct-
50 ing the business of the board of advisors. The presi-
51 dent of the institution shall make available resources
52 of the institution for conducting the business of the
53 board of advisors. The members of the board of ad-
54 visors shall be reimbursed for all reasonable and neces-
55 sary expenses actually incurred in the performance of
56 their duties under this section upon presentation of an
57 itemized sworn statement thereof. All expenses incurred

58 by the board of advisors and the institution under this
59 article shall be paid from funds allocated to the institu-
60 tion for such purpose.

61 (c) The board of advisors shall have the authority
62 and duty to review, prior to their submission by the
63 president to the board of regents, all proposals of the
64 institution in the areas of mission, academic programs,
65 budget, capital facilities and such other matters as re-
66 quested by the president of the institution or the board
67 of regents or otherwise assigned to it by law. The board
68 of advisors shall comment on each such proposal in
69 writing, with such recommendations for concurrence
70 therein or revision or rejection thereof as it deems proper.
71 Such written comments and recommendations shall ac-
72 company the proposal to the board of regents, and the
73 board of regents shall include such comments and recom-
74 mendations in its consideration of and action on the
75 proposal. The board of regents shall promptly acknowl-
76 edge receipt of the comments and recommendations and
77 shall notify the board of advisors in writing of any
78 action taken thereon.

79 (d) The board of advisors shall have the authority
80 and duty to review, prior to their implementation by
81 the president, all proposals regarding institution-wide
82 personnel policies. The board of advisors may com-
83 ment on such proposals in writing.

84 (e) Upon the occurrence of a vacancy in the office
85 of president of the institution, the board of advisors
86 shall serve as a search and screening committee for
87 candidates to fill the vacancy under guidelines estab-
88 lished by the board of regents. When serving as a search
89 and screening committee, the board of advisors and the
90 board of regents are each authorized to appoint up to
91 three additional persons to serve on the committee as
92 long as the search and screening process is in effect. The
93 three additional appointees of the board of advisors shall
94 be faculty members of the institution. Only for the pur-
95 poses of the search and screening process, such addi-
96 tional members shall possess the same powers and rights
97 as the regular members of the board of advisors, includ-

98 ing reimbursement for all reasonable and necessary
99 expenses actually incurred. Following the search and
100 screening process, the committee shall submit the
101 names of at least three candidates to the board of
102 regents for consideration and appointment. If the board of
103 regents rejects all candidates so submitted, the committee
104 shall submit the names of at least three additional candi-
105 dates, and this process shall be repeated until the board of
106 regents appoints one of the candidates so submitted. The
107 board of regents shall provide all necessary staff assist-
108 ance to the board of advisors in its role as a search and
109 screening committee.

CHAPTER 92

(Com. Sub. for H. B. 1230—By Mr. Whitlow and Mr. Smith)

[Passed April 10, 1981; 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 nine-c, relating to education; West Virginia board of regents; establishment of advisory council for classified employees.

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 nine-c, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-9c. Advisory council of classified employees.

1 During the month of April, one thousand nine hundred
2 eighty-two, and annually thereafter, each state college, com-
3 munity college, including Potomac state college of West Vir-
4 ginia University, and university president or other administra-
5 tive head shall convene a meeting of all classified employees of

6 his institution. At these meetings, the classified employees of
7 each such college and university shall elect one classified em-
8 ployee to serve on the advisory council of classified employees,
9 which is hereby created, consisting of one classified employee,
10 so elected, from each such college and university. Terms of the
11 members of such council shall be for one year and shall be-
12 gin on the first day of May of each year.

13 The advisory council of classified employees shall meet at
14 least once each quarter, and shall meet during the month of
15 June each year at which meeting the council shall elect a
16 chairman. No member may vote by proxy at such election. In
17 the event of a tie in the last vote taken for such election, a
18 member authorized by the council shall select the chairman
19 by lot from the names of those persons tied. Immediately fol-
20 lowing the election of a chairman, the council shall elect, in
21 the manner prescribed by this section for the election of a
22 chairman, a member of the council to preside over meetings
23 of the council in the chairman's absence. Should the chairman
24 vacate the position, the council shall meet and elect a new
25 chairman to fill the unexpired term within thirty days follow-
26 ing such vacancy.

27 The advisory council of classified employees, through its
28 chairman and in any other appropriate manner, shall consult
29 and advise the board of regents in matters of higher education
30 in which the classified employees of this state's colleges and
31 universities may have an interest.

32 Members of the advisory council shall be eligible to succeed
33 themselves. Members of the advisory council shall serve with-
34 out compensation, but shall be entitled to reimbursement for
35 actual and necessary expenses incurred in the performance of
36 the duties of their office to be paid by the state college or
37 university served.

38 The board of regents shall furnish a secretarial service to
39 the advisory council, and the advisory council shall cause to be
40 prepared minutes of its meetings, which minutes shall be
41 available, upon request, to any classified employee of the
42 state's colleges and universities.

43 As used in this section the term "classified employees" means

44 those employees designated by the board of regents as classi-
45 fied and does not include faculty and certain executive and
46 administrative personnel.

CHAPTER 93

(Com. Sub. for S. B. 635—By Mr. McGraw, Mr. President)

[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing provisions for leave of absence for a tenured professional for nonelected governmental employment while retaining tenure, rank and position.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, 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.

§18-26-25. Effect of leave of absence on academic tenure, rank, etc.

1 Any other provision of law to the contrary notwith-
2 standing any tenured professional at any higher educa-
3 tional institution subject to the control and supervision
4 of the West Virginia board of regents, who shall, with the
5 consent of the governing authority of the higher educa-
6 tional institutions by which he is employed, absent him-
7 self from his duties at such institution to accept employ-
8 ment in any nonelected governmental capacity shall be
9 afforded such benefits of academic tenure, rank and
10 position as if such person had remained continuously in
11 the position retained and held at such higher educational
12 institutions immediately preceding any such absence:
13 *Provided*, That such leave of absence shall not exceed two

14 years: *Provided, however,* That tenure and rank may be
15 retained during an absence of more than two years if the
16 president of the institution from which such person is on
17 leave of absence submits in writing during each of such
18 years a request for such retention to the board of regents,
19 and the board of regents approves such request for each
20 such year: *Provided further,* That any individual who re-
21 mains in governmental employment with leave granted in
22 accordance with this section shall forfeit all rights to
23 academic tenure, rank and position formerly held by him
24 at such institution after the eighth year of such employ-
25 ment.

CHAPTER 94

(Com. Sub. for H. B. 1286—By Mr. Kidd)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school personnel and authorizing the county board of education, when needed, to employ and assign, through written contract, assistant principals who shall work under the direction of the school principals.

Be it enacted by the Legislature of West Virginia:

That section nine, 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-2-9. Duties and responsibilities of school principals; assistant principals.

1 Upon the recommendation of the county superintendent of
2 schools, the county board of education shall employ and assign,
3 through written contract, public school principals who shall
4 supervise the management and the operation of the school or
5 schools to which they are assigned. Such principals shall hold

6 valid administrative certificates appropriate for their assign-
7 ments.

8 Under the supervision of the superintendent and in ac-
9 cordance with the rules and regulations of the county board of
10 education, the principal shall assume administrative and in-
11 structional supervisory responsibility for the planning, manage-
12 ment, operation and evaluation of the total educational pro-
13 gram of the school or schools to which he is assigned.

14 The principal may submit recommendations to the superin-
15 tendent regarding the appointment, assignment, promotion,
16 transfer and dismissal of all personnel assigned to the school or
17 schools under said principal's control. Such recommendation
18 shall be submitted in writing as prescribed by the superin-
19 tendent.

20 The principal shall perform such other duties as may be
21 assigned by the superintendent pursuant to the rules and regula-
22 tions of the county board of education.

23 Upon recommendation of the county superintendent of
24 schools, the county board of education shall, when needed,
25 employ and assign, through written contract, assistant princi-
26 pals who shall work under the direction of the school principal.
27 Such assistant principals shall hold valid administrative certi-
28 ficates appropriate for their assignments.

29 Nothing contained in this section shall be construed to
30 reduce or limit the rights and privileges of principals and
31 assistant principals as teachers under the provisions of section
32 one, article one, chapter eighteen of the code of West Virginia
33 as amended; section one, article one, chapter eighteen-a; and
34 other provisions of this code.

CHAPTER 95

(Com. Sub. for S. B. 164—By Mr. Gilligan)

[Passed April 11, 1981; 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 eleven, relating to the right of an employee to a hearing on a dispute with a county board of education; and requiring the board to pay reasonable attorney's fees, court costs, and court reporter's fees when employee prevails.

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 eleven, to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-11. Employee's right to hearing on any dispute; fees and costs.

1 In case of dispute or controversy between the county board
2 of education and any county board employee, except the
3 superintendent, associate superintendent, or assistant
4 superintendent, regarding transfer, suspension, dismissal,
5 assignment, grievance, salary, termination of contract, job
6 classification, or any similar matter, the employee shall be
7 entitled to the payment of attorney fees and court reporter
8 costs as hereinafter provided. When the dispute involves
9 assignment, transfer, suspension, termination or renewal of
10 contract or dismissal, the employee shall have a right, upon
11 request, to an immediate hearing before the board. When the
12 dispute involves grievance, salary, job classification, or any
13 similar matter, the employee shall have a right to a hearing,
14 upon request, before the board after exhausting all available
15 grievance procedures exclusive of a board hearing.

16 If, after such a hearing, the employee institutes any
17 proceeding in a circuit court against the board, based upon
18 such dispute or controversy, and shall substantially prevail,
19 the board shall be liable to the employee, upon final judgment
20 or order, for court costs, and for reasonable attorney's fees, to
21 be set by the court, for representing the employee in the
22 hearing before the board, in the circuit court, and in the
23 supreme court of appeals, and shall be further liable to the
24 employee for the charges, if any, for any court reporter's costs
25 incurred during the hearing before the board: *Provided*, That

26 in no event shall such attorney's fees be awarded in excess of
27 a total of five hundred dollars for the board hearing and
28 circuit court proceedings nor an additional five hundred
29 dollars for supreme court proceedings: *Provided, however,*
30 That the requirements of this section shall not be construed
31 to limit the school employee's right to recover reasonable
32 attorney's fees in a mandamus proceeding brought under
33 section eight, article four, chapter eighteen-a of this code.

CHAPTER 96

(Com. Sub. for H. B. 1206—By Mr. Barley and Mr. Harden)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, 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-b, relating to providing certain rights based on seniority for school personnel; providing certain rules with respect to such seniority and when such seniority shall begin.

Be it enacted by the Legislature of West Virginia:

That article four, 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-b, to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8b. Seniority rights.

1 A county board of education shall make decisions affecting
2 promotion of auxiliary and service personnel on the basis of
3 seniority, qualifications and evaluation of past service.

4 For purposes of determining seniority under this section, an
5 employee's seniority begins on the date that he enters into
6 his assigned duties.

7 Notwithstanding any other provisions of this chapter to the
8 contrary, decisions affecting such personnel with respect to

9 extra-duty assignments, shall be made in the following manner:
10 An employee with the greatest length of service time in a
11 particular category of employment shall be given priority in
12 accepting such assignments, followed by other fellow em-
13 ployees on a rotating basis according to the length of their
14 service time until all such employees have had an opportunity
15 to perform similar assignments. The cycle then shall be
16 repeated.

17 All decisions by county boards of education concerning
18 reduction in work force of all personnel shall be made on the
19 basis of seniority, as hereinafter provided:

20 (1) The seniority of any such service and auxiliary per-
21 sonnel shall be determined on the basis of the length of time
22 the employee has been employed by the county board of
23 education within a particular job classification. For the pur-
24 pose of establishing seniority for a preferred recall list as
25 hereinafter provided, when an employee has been employed
26 in one or more classifications, the seniority accrued in each
27 previous classification shall be retained by the employee.

28 Should a county board of education be required to reduce
29 the number of employees within a particular job classification,
30 the employee with the least amount of seniority within that
31 classification or grades of classification shall be properly
32 released and employed in a different grade of that classification
33 if there is a job vacancy: *Provided*, That if there is no job
34 vacancy for employment within such classification or grades
35 of classification, he shall be employed in any other job
36 classification which he previously held with the county board
37 if there is a vacancy and shall retain any seniority accrued in
38 such job classification or grade of classification.

39 If two or more employees accumulate identical seniority,
40 the priority shall be determined by a random selection system
41 established by the employees and approved by the county
42 board.

43 (2) The seniority of professional personnel shall be deter-
44 mined on the basis of the length of time the employee has been
45 employed by the county board of education. For the purposes
46 of establishing seniority for a preferred recall list as herein-

47 after provided, when an employee holds valid certification or
48 licensure in one or more areas, the seniority shall accrue in
49 each area.

50 Whenever a county board is required to reduce the number
51 of professional personnel in its employment, the employee
52 with the least amount of seniority shall be properly notified
53 and released from employment pursuant to the provisions of
54 section two, article two of this chapter: *Provided*, That such
55 employee shall be employed in any other position for which he
56 is certified and/or licensed if his seniority is greater than
57 the seniority of any other employee in that area of certification
58 and/or licensure.

59 All employees whose seniority with the county board is
60 insufficient to allow their retention by the county board
61 during a reduction in work force shall be placed upon a pre-
62 ferred recall list and shall be recalled to employment by the
63 county board on the basis of seniority.

64 Employees placed upon the preferred list shall be recalled
65 to any position openings by the county board within the
66 classification(s), where they had previously been employed,
67 or to any position for which the employee is qualified or to
68 an area for which an employee has certification and/or
69 licensure.

70 Employees on the preferred recall list shall not forfeit their
71 right to recall by the county board if compelling reasons
72 require an employee to refuse an offer of reemployment by the
73 county board.

74 The county board shall be required to notify all employees
75 on the preferred recall list of all position openings that from
76 time to time exist. Such notice shall be sent by certified mail
77 to the last known address of the employee; it shall be the duty
78 of each such employee to notify the county board of any
79 change in the address of such employee.

80 No position openings may be filled by the county board,
81 whether temporary or permanent, until all employees on the
82 preferred recall list have been properly notified of existing
83 vacancies and have been given an opportunity to accept re-
84 employment.

CHAPTER 97

(Com. Sub. for H. B. 711—By Mrs. Wehrle)

[Passed April 4, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend article four, 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 ten-a, relating to bonus that county boards of education may pay to employees for unused days of personal leave.

Be it enacted by the Legislature of West Virginia:

That article four, 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 ten-a, to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-10a. Bonus for unused days of personal leave.

- 1 County boards of education are authorized to pay to their
- 2 employees or to defined groups thereof, for the purpose of
- 3 reducing absenteeism, a bonus at the end of an employment
- 4 term for each unused day of personal leave accumulated by
- 5 the employee during that employment term.

CHAPTER 98

(Com. Sub. for S. B. 194—By Mr. Holliday)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school personnel;

salaries, wages and other benefits; duty-free lunch period for teachers; establishing and implementing a daily planning period for teachers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-14. Duty-free lunch and daily planning periods for teachers.

1 Notwithstanding the provisions of section seven, article
2 two of this chapter, every public school teacher:

3 (1) Shall be provided a daily lunch recess of not less than
4 thirty consecutive minutes, and no teacher shall be assigned
5 any responsibilities during this recess.

6 (2) Shall be provided at least one planning period per day
7 for each teacher to be used to complete necessary prepara-
8 tions for the instruction of pupils. Such planning period shall
9 be the length of the usual class period in the school to which
10 the teacher is assigned, and shall be not less than thirty mi-
11 nutes. No teacher shall be assigned any responsibilities dur-
12 ing this period.

13 Principals, and assistant principals, where applicable, shall
14 cooperate in carrying out the provisions of this subsection,
15 including, but not limited to, assuming control of the class
16 period or supervision of students during the time the teacher
17 is engaged in the planning period. Substitute teachers may
18 also be utilized to assist with classroom responsibilities under
19 this subsection.

20 (3) Nothing in this section shall be construed to prevent
21 any teacher from exchanging his right to a lunch recess or a
22 daily planning period for any compensation or benefit mutu-
23 ally agreed upon by that teacher and the county superinten-
24 dent of schools or his agent: *Provided*, That the parties may
25 not agree to terms which are different from those available to
26 any other teacher within the individual school or in any way
27 discriminate among teachers within the individual school.

CHAPTER 99

(S. B. 428—By Mr. Galperin and Mr. Palumbo)

[Passed April 9, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend article four, 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 fifteen, relating to the employment of substitute auxiliary and service personnel and establishing their pay.

Be it enacted by the Legislature of West Virginia:

That article four, 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 fifteen, to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-15. Employment of auxiliary and service personnel substitutes.

- 1 The county board may employ and the county
- 2 superintendent, subject to the approval of the county board
- 3 of education, may employ and assign substitute auxiliary and
- 4 service personnel to perform any of the following duties:
- 5 (1) To fill the temporary absence of another auxiliary or
- 6 service employee;
- 7 (2) To fill the position of a regular auxiliary or service
- 8 employee on leave of absence: *Provided*, That if such leave of
- 9 absence is to extend beyond thirty days, the board, within ten
- 10 working days from the commencement of the leave of
- 11 absence, shall give regular employee status to a person hired
- 12 to fill such position, giving preferential hiring treatment to
- 13 persons previously assigned to such position. The substitute
- 14 shall hold such position and regular employee status only
- 15 until the regular employee returns to such position and shall
- 16 have and shall be accorded all rights, privileges and benefits
- 17 pertaining to such position;
- 18 (3) To perform the service of an auxiliary or service
- 19 employee who is authorized to be absent from duties without
- 20 loss of pay;

21 (4) To temporarily fill a vacancy in a permanent position
22 caused by severance of employment by the resignation,
23 retirement, permanent disability or death of the regular
24 auxiliary or service employee who had been assigned to fill
25 such position: *Provided*, That within ten working days from
26 the commencement of the vacancy, the board shall give
27 regular employee status to a person hired to fill such vacancy
28 so created, giving preferential hiring treatment to persons
29 previously assigned to such position, and such person shall
30 have and shall be accorded all rights, privileges and benefits
31 pertaining to such position; or

32 (5) To fill the vacancy created by a regular employee's
33 suspension: *Provided*, That a substitute auxiliary and service
34 employee shall not be assigned to fill the vacancy on a
35 permanent basis until such termination by the county board
36 of education becomes final.

37 The salary of a substitute auxiliary or service employee
38 shall be based upon his years of employment as defined in
39 section eight of this article and as provided in the state
40 minimum pay scale set forth in section eight-a of this article
41 and shall be in accordance with the salary schedule of
42 persons regularly employed in the same position in the
43 county in which he is employed.

44 Before any auxiliary or service substitute employee enters
45 upon his duties, he shall execute with the county board of
46 education a written contract as provided in sections four and
47 five, article two of this chapter.

CHAPTER 100

(Com. Sub. for S. B. 462—By Mr. Heck)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, 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 sixteen, relating to extracurricular assignments for school employees.

Be it enacted by the Legislature of West Virginia:

That article four, 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 sixteen, to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-16. Extracurricular assignments.

1 (1) Notwithstanding the provisions of section seven,
2 article two of this chapter and section eight, article four of this
3 chapter, the assignment of teachers and auxiliary and service
4 personnel to extracurricular assignments shall be made only
5 by mutual agreement of the employee and the
6 superintendent, or a designated representative, subject to
7 board approval. Extracurricular duties shall mean, but not be
8 limited to, any activities that occur at times other than
9 regularly scheduled working hours, which include the
10 instructing, coaching, chaperoning, escorting, providing
11 support services or caring for the needs of students, and
12 which occur on a regularly scheduled basis.

13 (2) The employee and the superintendent, or a designated
14 representative, subject to board approval, shall mutually
15 agree upon the maximum number of hours of extracurricular
16 assignment in each school year for each extracurricular
17 assignment.

18 (3) The terms and conditions of the agreement between
19 the employee and the board of education shall be in writing
20 and signed by both parties.

21 (4) An employee's contract of employment shall be
22 separate from the extracurricular assignment agreement
23 provided for in this section and shall not be conditioned upon
24 the employee's acceptance or continuance of any
25 extracurricular assignment proposed by the superintendent,
26 a designated representative, or the board: *Provided*, That if a
27 properly certified replacement for a coach or assistant coach
28 of one or more interscholastic athletic teams or a band
29 director satisfactory to the board cannot be employed, the
30 employee under the extracurricular assignment agreement
31 for such duty shall continue that assignment until a properly
32 certified person is employed for the position, but such

33 continued assignment shall not be longer than one year:
 34 *Provided, however,* That dismissal of an interscholastic
 35 athletic coach or assistant coach or band director for cause
 36 pursuant to section eight, article two of this chapter, under
 37 his contract of employment or his extracurricular assignment
 38 agreement shall be grounds, at the instance of either party, for
 39 termination of the other such contract: *Provided further,* That
 40 any interscholastic athletic head coach, assistant coach or
 41 band director who resigns from his extracurricular
 42 assignment may at the discretion of the board be placed on
 43 the list of transfer and subsequent reassignment pursuant to
 44 section seven, article two, chapter eighteen-a of this code.

CHAPTER 101

(Com. Sub. for H. B. 923—By Mr. Tompkins and Mr. Seacrist)

[Passed April 6, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and fourteen, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the time of holding municipal elections in the year one thousand nine hundred eighty-one and thereafter; providing that certain municipal elections may be held at the same time as state elections; and providing for certain conditions applicable to such elections.

Be it enacted by the Legislature of West Virginia:

That sections five and fourteen, article five, 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 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-5. Regular election of officers; establishment of longer terms.

§8-5-14. Municipal executive committees; election expenses; applicability of state primary and general election laws; election days.

§8-5-5. Regular election of officers; establishment of longer terms.

1 After the first election of officers of a city, town or village,
2 the regular election of officers thereof shall be held on the
3 first Tuesday in May of the appropriate year, unless other-
4 wise provided in the charter of said city or the special legisla-
5 tive charters of said towns or villages, as the case may be:
6 *Provided*, That no such municipal election, whether the same
7 be constituted a primary or general election may be held on
8 the same day as the county-state primary election unless the
9 voting precinct boundaries in such city, town or village coin-
10 cide with the voting precinct boundaries established by the
11 county commission and there are separate election officials pro-
12 vided for conducting the municipal election. In the event that
13 the charter of a city or the special legislative charter of a town
14 or village provides for its municipal election to be held on the
15 same day as the county-state primary election, and the voting
16 precinct boundaries established by the city, town or village do
17 not coincide with the voting precinct boundaries established by
18 the county commission, then, beginning in the year one thou-
19 sand nine hundred eighty-one, such charter provision, in the
20 case of a city, or such special legislative charter provision, in the
21 case of a town or village, shall be null and void and such mun-
22 icipal election shall be held on the first Tuesday in May: *Pro-*
23 *vided, however*, That where such charter provision provides for
24 separate registration books and separate election officials for
25 municipal elections, a city, town or village may conduct its
26 municipal election on the same day as the county-state primary
27 election notwithstanding that its voting precinct boundaries do
28 not coincide with the voting precinct boundaries established by
29 the county commission. The language of this section shall not
30 be construed to prevent any city, town or village from amending
31 the provisions of its charter or special legislative charter, as the
32 case may be, to provide that its municipal election be held on
33 some day other than the first Tuesday in May: *Provided fur-*
34 *ther*, That said amendment is not in conflict with the provisions
35 of this section. Officers of a city may be elected for a four-year
36 term at the same election at which a proposed charter, proposed
37 charter revision as a whole or charter amendment, as the case
38 may be, providing for four-year terms is voted upon and ap-
39 proved by a majority of the legal votes cast, but the ballots, or

40 ballot labels where voting machines are used, for the election of
41 officers must bear information to the effect that the officers are
42 being elected for four-year terms in the event the proposed
43 charter, the proposed charter revision as a whole or charter
44 amendment, as the case may be, is approved as aforesaid:
45 *And provided further,* That officers of a town or village may
46 be elected for a four-year term upon submission to the qualified
47 voters of the town or village at a regular municipal election of a
48 proposition calling for four-year terms and approval of such
49 proposition by a majority of the legal votes cast with respect
50 thereto. Officers of a town or village may be elected for
51 a four-year term at the same election at which the proposition
52 calling for four-year terms is voted upon and approved by a
53 majority of the legal votes cast, but the ballots, or ballot
54 labels where voting machines are used, for the election of
55 officers must bear information to the effect that the officers
56 are being elected for four-year terms in the event the proposi-
57 tion is approved as aforesaid.

§8-5-14. Municipal executive committees; election expenses; applicability of state primary and general election laws; election days.

1 Except as otherwise provided by charter provision or
2 ordinance or this code, municipal executive committees shall
3 exercise similar functions and be governed by the same laws
4 in regard to municipal primary elections and regular municipal
5 elections as county executive committees in regard to county-
6 state primary and general elections, so far as the same may be
7 applicable. All expenses of conducting municipal primary
8 elections and regular municipal elections shall be paid by
9 the municipality. The provisions of chapter three of this
10 code, referring more particularly to primary elections and
11 general elections, shall, so far as the same can be applied
12 and so far as not otherwise provided by charter provision or
13 ordinance, govern the conduct of municipal primary elections
14 and regular municipal elections, as the case may be. No
15 municipal primary election shall be held on the day of the
16 county-state primary election except as provided in section
17 five of this article nor less than twenty-five days immediately
18 preceding the regular municipal election, unless a shorter
19 period of time is established by charter or ordinance.

CHAPTER 102

(Com. Sub. for H. B. 1174—By Mr. Shiflet)

[Passed March 23, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to municipal elections generally; providing for the application of the provisions of the West Virginia election code to municipal elections; making the offenses and penalties contained in article nine and other articles of said chapter three applicable to all municipal elections; and directing every municipality to designate by charter or ordinance the persons who perform the same duties as the election officers named in said chapter.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-2a. Municipal elections.

1 Notwithstanding other provisions of this code or the pro-
2 visions of any special legislative or home rule city charter, the
3 provisions of articles eight and nine of this chapter and of any
4 regulations promulgated under authority granted in articles
5 eight and nine of this chapter and any provisions of this chapter
6 making a practice or conduct unlawful shall apply to every
7 municipal election held for any purpose.

8 For the purposes of this section and the application of
9 articles eight and nine of this chapter, the application of the
10 regulations mentioned in this section and the application of
11 provisions of this chapter making a practice or conduct un-
12 lawful, the provisions of law which impose any duty upon or
13 define any offense or prohibition with respect to the duty or

14 authority of a county officer or county election officer or
15 body of county election officers shall be construed to and
16 shall apply with equal force and effect to the person or persons
17 in a municipal election upon whom this code or the city
18 charter or ordinance imposes such duty or vests the same or
19 similar authority.

20 Every municipality shall by charter or ordinance designate
21 the persons in such municipality who perform the same duties
22 as an officer in a county election.

23 This section shall not be construed to abrogate the appli-
24 cability of other provisions of this chapter to municipal elec-
25 tions.

CHAPTER 103

(Com. Sub. for S. B. 131—By Mr. Tonkovich)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article one; section eleven, article four; and section twelve, article four-a, all of chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to elections; and drawing by lot to determine the ballot position of candidates for the office of delegate to a political party national convention.

Be it enacted by the Legislature of West Virginia:

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

Article

1. General Provisions and Definitions.
4. Voting Machines.
- 4A. Electronic Voting Systems.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**§3-1-21. Ballots.**

1 It shall be the duty of the board of ballot commissioners for
2 each county to provide printed ballots for every election for
3 public officers in which the voters or any of the voters within
4 the county participate, and cause to be printed, on the
5 appropriate ballot, the name of every candidate, but in no
6 case shall the ballot contain any title, position, rank, degree,
7 or such, including, but not limited to, doctor, reverend, PhD.,
8 or the equivalent, whose name has been certified to or filed
9 with the clerk of the circuit court of the county in any manner
10 provided for in this chapter. In any case wherein the
11 constitution or statutes limit or prescribe the number of
12 candidates or elected officers to be selected by the voters in
13 any district or other governmental subdivision, the ballot
14 commissioners, in the preparation of such ballots, shall cause
15 to be printed thereon, in plainly worded language, the
16 number of candidates to be voted for in each district or other
17 governmental subdivision.

18 The clerk of the circuit court shall appoint a time at which
19 all candidates for the office of delegate to a political party
20 national convention are to appear in his office for the purpose
21 of drawing by lot to determine where their names will appear
22 on the ballots. The clerk shall give due notice of such time to
23 each such candidate by registered or certified mail, return
24 receipt requested. At the time appointed, all such candidates
25 for the office of delegate to a political party national
26 convention shall assemble in the office of such clerk and such
27 candidates shall then proceed to draw by lot to determine
28 where their names shall appear on the ballots. The number so
29 drawn by each such candidate shall determine where his or
30 her name shall appear on the ballots. In the event any
31 candidate or candidates fail to appear at the time appointed,
32 the clerk shall draw for such absent candidate or candidates
33 in the presence of those candidates assembled, if any, and the
34 number so drawn by the clerk shall determine where the
35 name of any absent candidate or candidates shall appear on
36 the ballots.

37 The printing of the ballots, and all other printing caused to
38 be done by the board of ballot commissioners, shall be

39 contracted for with the lowest responsible bidder. Ballots
40 other than those caused to be printed by the respective
41 boards of ballot commissioners, according to the provisions
42 of this chapter, shall not be cast, received or counted in any
43 election.

44 For each such election to be held in their county and at least
45 thirty days before the date of such election, the board of ballot
46 commissioners shall cause to be printed official ballots to not
47 more than one and one-fifth times the number of registered
48 voters in the county. Provisions of article five of this chapter
49 shall govern the printing of ballots for primary elections. The
50 ballots so printed shall be wrapped and tied in packages, one
51 for each precinct in their county, containing ballots to the
52 number of one and one-twentieth times the number of
53 registered voters in such precinct. Each package of ballots
54 shall be sealed with wax, and plainly marked with the
55 number of ballots therein, the name of the magisterial
56 district, and the number of the voting place therein, to which
57 it is intended to be sent. The names of the ballot
58 commissioners shall also be endorsed thereon.

ARTICLE 4. VOTING MACHINES.

§3-4-11. Ballot label arrangement in machines; drawing by lot to determine position of candidates on machines; adjustment; records.

1 When the ballot labels are printed and delivered to the clerk
2 of the county commission, he shall place them in the ballot
3 frames of the voting machines in such manner as will most
4 nearly conform to the arrangement prescribed for paper
5 ballots, and as will clearly indicate the party designation or
6 emblem of each candidate. Each column or row containing
7 the names of the office and candidates for such office shall be
8 so arranged as to clearly indicate the office for which the
9 candidate is running. The names of the candidates for each
10 office indicated shall be placed on the ballot.

11 The clerk of the circuit court shall appoint a time at which
12 all candidates for the House of Delegates and the office of
13 delegate to a political party national convention are to appear
14 in his office for the purpose of drawing by lot to determine
15 where their names will appear on the voting machines. The
16 clerk shall give due notice of such time to each candidate by

17 registered or certified mail, return receipt requested. At the
18 time appointed, all such candidates for the House of
19 Delegates and office of delegate to a political party national
20 convention shall assemble in the office of such clerk and such
21 candidates shall then proceed to draw by lot to determine
22 where their names shall appear on the voting machines. The
23 number so drawn by each such candidate shall determine
24 where his or her name shall appear on the voting machines. In
25 the event any candidate or candidates fail to appear at the
26 time appointed, the clerk shall draw for such absent
27 candidate or candidates in the presence of those candidates
28 assembled, if any, and the number so drawn by the clerk shall
29 determine where the name of any absent candidate or
30 candidates shall appear on the voting machines.

31 The clerk shall then see that the counters referred to in
32 subsection eleven of section eight of this article are set at zero
33 (000) and shall lock the operating device and mechanism and
34 devices protecting the counter and ballot labels. The clerk
35 shall then enter in an appropriate book, opposite the number of
36 of each precinct, the identifying or distinguishing number of
37 the specific voting machine or machines to be used in that
38 precinct.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-12. Ballot label arrangement in vote recording devices; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; re- cord of identifying numbers.

1 When the ballot labels are printed and delivered to the clerk
2 of the county commission, he shall place them in the vote
3 recording devices in such manner as will most nearly
4 conform to the arrangement prescribed for paper ballots, and
5 as will clearly indicate the party designation or emblem of
6 each candidate. Each column row or page containing the
7 names of the office and candidates for such office shall be so
8 arranged as to clearly indicate the office for which the
9 candidate is running. The names of the candidates for each
10 office indicated shall be placed on the ballot.

11 The clerk of the circuit court shall appoint a time at which
12 all candidates for the House of Delegates and the office of

13 delegate to a political party national convention are to appear
14 in his office for the purpose of drawing by lot to determine
15 where their names will appear on the ballots or ballot labels.
16 The clerk shall give due notice of such time to each such
17 candidate by registered or certified mail, return receipt
18 requested. At the time appointed, all such candidates for the
19 House of Delegates and the office of delegate to a political
20 party national convention shall assemble in the office of such
21 clerk and such candidates shall then proceed to draw by lot to
22 determine where their names shall appear on the ballots or
23 ballot labels. The number so drawn by each such candidate
24 shall determine where his or her name shall appear on the
25 ballots or ballot labels. In the event any candidate or
26 candidates fail to appear at the time appointed, the clerk shall
27 draw for such absent candidate or candidates in the presence
28 of those candidates assembled, if any, and the number so
29 drawn by the clerk shall determine where the name of any
30 absent candidate or candidates shall appear on the ballots or
31 ballot labels. The clerk shall then seal the vote recording
32 devices so as to prevent tampering with ballot labels. The
33 clerk shall then enter in an appropriate book, opposite the
34 number of each precinct, the identifying or distinguishing
35 number of the specific vote recording device or devices to be
36 used in that precinct.

CHAPTER 104

(S. B. 487—By Mr. Wright)

[Passed April 10, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to giving absent voters outside the continental limits of the United States, to the maximum extent practicable, an effective vote by enlarging the time during which said voters can apply for an official absent voter's ballot; restricting the time in which said ballots must be mailed to said voters; eliminating the oath and attestation requirements for federal postcard

applications executed outside the continental limits of the United States; and giving county commissions and circuit clerks certain duties and responsibilities with respect to the foregoing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-5. Voting an absent voter's ballot by mail.

1 A person desiring to vote an absent voter's ballot by
 2 mail may, not more than one hundred twenty days prior
 3 to the date of any primary, general or special election in
 4 the case of any person outside the continental limits of
 5 the United States and not more than sixty days prior to
 6 the date of any primary, general or special election in the
 7 case of any other person, make application by mail to the
 8 clerk of the circuit court of the county in which he is
 9 registered to vote for an official absent voter's ballot or
 10 ballots to be voted at such election, except that the clerk
 11 of the circuit court shall not honor any such application
 12 for an absent voter's ballot received by him after the
 13 fourth day next preceding the date of the election. In
 14 computing such fourth day, the day of conducting the
 15 election shall be excluded. The application to be used by
 16 persons who wish to vote an absent voter's ballot by mail
 17 shall be prescribed by the secretary of state and shall be
 18 in substantially the following form:

19 APPLICATION FOR VOTING AN ABSENT
 20 VOTER'S BALLOT BY MAIL

21 KNOWING THAT I CAN BE FINED NOT MORE
 22 THAN ONE THOUSAND DOLLARS OR IMPRISONED
 23 IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE
 24 THAN ONE YEAR OR BOTH SUCH FINE AND IM-
 25 PRISONMENT FOR KNOWINGLY MAKING A FALSE
 26 STATEMENT OR REPRESENTATION HEREIN, I,
 27 hereby declare
 28 that I am now, or will have been a resident of the state of

29 West Virginia for twelve months, and of the county of
30 _____, for sixty days, next preceding
31 the date of the ensuing election to be held on the _____ day
32 of _____, 19____; that I now reside at _____,
33 _____
34 _____ (give full address)
35 in the magisterial district of _____,
36 in said county; that I am a duly qualified voter entitled
37 to vote in such election; that I am registered in the
38 precinct of my residence as provided by law; that I am
39 registered as a _____;
40 _____ (state political party if ballot is for primary election)
41 and that (strike out the numbered paragraphs not appli-
42 cable and complete the numbered paragraph which is
43 applicable):

43 (1) I will be unable to vote in person at the polls on
44 election day because of _____,
45 (state particulars of physical disability, illness or injury)
46 as evidenced below by the statement of a duly licensed
47 physician or chiropractor.

48 (2) I anticipate commitment to a hospital, institution
49 or other confinement on or about the _____ day of
50 _____, 19____, for the following medical
51 reasons _____, as
52 evidenced below by the statement of a duly licensed
53 physician or chiropractor, and by reason thereof will not
54 be able to vote in person at the polls in such election.

55 (3) I expect to be absent from the aforementioned
56 county in which I am registered to vote during the entire
57 time the polls are open in such election, and I am (check
58 one applicable):

59 A member of the armed forces in the active service.

60 A spouse or dependent of a member of the armed
61 forces in active service.

62 A member of the merchant marine of the United
63 States.

64 A spouse or dependent of a member of the merchant
65 marine of the United States.

66 A citizen of the United States temporarily residing
67 outside the territorial limits of the United States and the
68 District of Columbia.

69 A spouse or dependent residing with or accompany-
70 ing a citizen of the United States temporarily residing
71 outside the territorial limits of the United States and
72 the District of Columbia.

73 (4) I am required to be absent from the aforemen-
74 tioned county in which I am registered during the entire
75 time the polls are open in such election for the reason or
76 reasons hereafter stated; I am not in any of the categories
77 referred to in paragraph (3) above; I am required to be
78 absent from said county during regular business hours of
79 the clerk of the circuit court of said county throughout
80 the period or throughout the remainder of the period of
81 voting an absent voter's ballot by personal appearance at
82 said office

83
84 (state reason or reasons for required absence from
85 county on election day)

86 (5) I have been appointed
87 (state whether an election commissioner or poll clerk)
88 in precinct No. in said election, which
89 precinct is not the precinct in which I am registered to
90 vote.

91 In consideration of the foregoing qualifications, I
92 hereby make application for an official absent voter's
93 ballot (or ballots if more than one are to be used) to be
94 voted by me at such election, and request that such ballot
95 or ballots be mailed to me at the following address:

96
97 (give full address for mailing purposes)

98 (Complete the following paragraph only if assistance
99 will be needed in voting absent voter's ballot):

100 I further declare that I will need assistance in voting
101 an absent voter's ballot for the following reasons

102

103 (specify illiteracy or exact nature of physical disability,
104 illness or injury)

105 I hereby declare under the penalties for false swearing
106 as provided in section three, article nine, chapter three
107 of the code of West Virginia, one thousand nine hundred
108 thirty-one, as amended, that the statements and decla-
109 rations contained in this application are true and correct
110 to the best of my knowledge and belief.

111

112

Signature of Applicant

113

(or in case the applicant is illiterate he
114 shall make his mark and have it witnessed
115 on the following lines):

114

115

116

117

Mark of Applicant

118

119

Signature of Witness

120 If the person applying for an absent voter's ballot by
121 mail be unable to sign his application because of illit-
122 eracy, he shall make his mark on the signature line above
123 provided for an illiterate applicant which mark shall be
124 witnessed.

125 The following declaration must be completed and signed
126 if the reason specified in the above application for being
127 unable to vote in person at such election is physical
128 disability, illness or injury, or is anticipated confinement
129 in a hospital, institution or other place for medical rea-
130 sons.

131 STATEMENT OF PHYSICIAN (CHIROPRACTOR)

132 I, _____, hereby
133 declare that I am a physician (chiropractor) duly li-
134 censed to practice in the state of _____;
135 that I last examined _____,
136 the applicant whose signature appears on the application
137 above on the _____ day of _____, 19____;
138 and that in my opinion (strike out numbered paragraph
139 not applicable and complete the numbered paragraph
140 which is applicable).

141 (1) The applicant will, because of.....
 142
 143 (state particulars of physical disability, illness or injury)
 144 be unable to go to the polls on the day of
 145, 19....., the date of the election.

146 (2) The applicant will, because of.....
 147 (state for what
 148, be confined in
 149 medical reasons) (specify hospital,
 150, on or about the.....
 151 institution or other place)
 152 day of, 19....., and will because of
 153 such reasons not be able to go to the polls on the.....
 154 day of, 19....., the date of the
 155 election.

156 (Complete the following paragraph if applicant for
 157 absent voter's ballot will need assistance in voting such
 158 ballot, based upon physical disability, illness or injury.)

159 I am of the further opinion that applicant
 160 (will)
 161, because of the aforementioned physical
 162 (will not)
 163 disability, illness or injury need assistance in voting an
 164 absent voter's ballot.

165
 166 Signature of Physician (Chiropractor)

167 In lieu of the application for an absent voter's ballot
 168 provided above, those persons specified in subdivision (2)
 169 of section one of this article may use the application for
 170 absentee ballot form recommended by and issued under
 171 authority of The Federal Voting Assistance Act of 1955,
 172 as amended, and any such federal postcard application
 173 does not have to be executed pursuant to oath or attesta-
 174 tion in the case of a voter outside the continental limits of
 175 the United States.

176 Upon receipt of a properly completed copy of such form,
 177 the clerk of the circuit court shall process it the same as
 178 he would any other application for an absent voter's
 179 ballot by mail. Any such properly completed copy may be

180 returned only to the clerk of the circuit court of the
181 county in which the applicant is a registered voter.

182 Immediately upon receipt of a completed application
183 for voting an absent voter's ballot by mail, the clerk of
184 the circuit court shall determine (1) whether the applica-
185 tion for voting such ballot has been completed as required
186 by law; (2) whether he has evidence that any of the
187 statements contained in the application are not true; and
188 (3) whether the applicant is in fact duly registered in the
189 precinct of his residence as provided by law and insofar
190 as registration is concerned would be permitted to vote
191 at the polls in such election. If the determination of the
192 clerk of the circuit court as to (1) or (3) is in the negative
193 or as to (2) is in the affirmative, the clerk shall notify
194 the applicant at the time he mails the absent voter's
195 ballot to him that he will challenge the applicant's privi-
196 lege to vote an absent voter's ballot by mail for reasons
197 which he shall indicate and, upon receipt of the appli-
198 cant's absent voter's ballot, the clerk shall challenge such
199 ballot.

200 Upon determination by the clerk of the circuit court
201 that the applicant is entitled to vote an absent voter's
202 ballot by mail or that the applicant will be permitted to
203 vote an absent voter's ballot by mail with such ballot to
204 be challenged by the clerk, the clerk shall between the
205 thirtieth day and the fourth day next prior to the election
206 in which the absent voter's ballot is to be used mail to the
207 applicant the following absentee voting supplies: *Pro-*
208 *vided*, That the clerk mail such voting supplies to an
209 applicant whose address is shown to be outside the conti-
210 nental limits of the United States on the same day the
211 application is received in the clerk's office or on the next
212 day thereafter that he has both an application and a
213 ballot:

214 (a) One official absent voter's ballot (or ballots if more
215 than one are to be used) which has been prepared in
216 accordance with law for use in such election; such ballot
217 in the case of a primary election shall be of the party of
218 the applicant's affiliation as indicated on his registration

219 card or in the case the applicant is not found to be
220 registered by the clerk but votes a ballot challenged by
221 the clerk, the clerk shall send to the applicant an absent
222 voter's ballot of the party designated by the applicant in
223 his application.

224 (b) One Absent Voter's Ballot Envelope No. 1, unsealed,
225 which shall have no writing thereon except the designa-
226 tion "Absent Voter's Ballot Envelope No. 1."

227 (c) One Absent Voter's Ballot Envelope No. 2, unsealed.

228 Upon receipt of an absent voter's ballot by mail, the
229 voter shall mark the ballot and the voter may have
230 assistance in voting his absent voter's ballot in accordance
231 with the provisions of section six of this article.

232 After the voter has voted his absent voter's ballot, he
233 shall (1) enclose the same in Absent Voter's Ballot En-
234 velope No. 1, and seal that envelope, (2) enclose sealed
235 Absent Voter's Ballot Envelope No. 1 in Absent Voter's
236 Ballot Envelope No. 2 and seal that envelope, (3) com-
237 plete and sign the forms, if any, on Absent Voter's Ballot
238 Envelope No. 2 according to the instructions thereon, and
239 (4) mail, postage prepaid, sealed Absent Voter's Ballot
240 Envelope No. 2 to the clerk of the circuit court of the
241 county in which he is registered to vote.

242 Upon receipt of such sealed envelope, the clerk shall
243 (1) enter onto the envelope such information as may be
244 required of him according to the instructions thereon; (2)
245 enter his challenge, if any, to the absent voter's ballot;
246 (3) enter the required information into a record of per-
247 sons making application for and voting an absent voter's
248 ballot by personal appearance or by mail (the form of
249 which record and the information to be entered therein
250 shall be prescribed by the secretary of state); and (4)
251 place such sealed envelope in a secure location in his
252 office, there to remain until delivered to the polling place
253 in accordance with the provisions of this article or, in case
254 of a challenged ballot, to the county commission sitting as
255 a board of canvassers.

CHAPTER 105

(S. B. 346—By Mr. Palumbo)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conducting electronic voting system elections generally; duties of election officers; deposit of ballot in ballot box.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-19. Conducting electronic voting system elections generally; duties of election officers.

- 1 (1) The election officers shall constantly and diligently
2 maintain a watch in order to see that no person votes more
3 than once and to prevent any voter from occupying the voting
4 booth for more than three minutes.
- 5 (2) In primary elections, before a voter is permitted to
6 occupy the voting booth, the election officer representing the
7 party to which the voter belongs shall direct the voter to the
8 vote recording device which will allow the voter to vote only
9 for the candidates who are seeking nomination on the ticket
10 of the party with which the voter is affiliated.
- 11 (3) The election officers shall issue to each voter when he
12 signs the pollbook a card or ticket numbered to correspond to
13 the number on the pollbook of such voter, and in the case of a
14 primary election, indicating the party affiliation of such voter,
15 which numbered card or ticket shall be presented to the
16 election officer in charge of the vote recording device.
- 17 (4) One hour before the opening of the polls the precinct
18 election officers shall arrive at the polling place and set up the
19 voting booths so that they will be in clear view of the election
20 officers, open the vote recording devices, place them in the
21 voting booths, and examine them to see that they have the

22 correct ballots or ballot labels by comparing them with the
23 sample ballots, and are in proper working order. They shall
24 open and check the ballots, ballot cards, supplies, records and
25 forms, and post the sample ballots or ballot labels and
26 instructions to voters.

27 (5) Each voter shall be instructed how to operate the vote
28 recording device before he enters the voting booth.

29 (6) Any voter who shall spoil, deface or mutilate the ballot
30 or ballot card delivered to him, on returning the same to the
31 poll clerks, shall receive another in place thereof. Every
32 person who does not vote any ballot or ballot card delivered
33 to him shall, before leaving the election room return such
34 ballot or ballot card to the poll clerks. When a spoiled or
35 defaced ballot or ballot card is returned, the poll clerks shall
36 make a minute of the fact on the pollbooks, at the time, and
37 the word "spoiled" shall be written across the face of the
38 ballot or ballot card and it shall be placed in an envelope for
39 spoiled ballots or ballot cards.

40 Immediately on closing the polls, the election
41 commissioners shall ascertain the number of spoiled ballots
42 or ballot cards during the election and the number of ballots
43 or ballot cards remaining not voted. The election
44 commissioners shall also ascertain from the pollbooks the
45 number of persons who voted and shall report, over their
46 signatures, to the clerk of the county commission, the
47 number of ballots or ballot cards cast, the number of ballots
48 or ballot cards spoiled during the election and the number of
49 ballots or ballot cards unused. All unused ballots or ballot
50 cards shall at the same time be returned to the clerk of the
51 county commission, who shall immediately destroy them by
52 fire or otherwise.

53 Each commissioner who is a member of an election board
54 which fails to account for every ballot or ballot card delivered
55 to it shall be guilty of a misdemeanor, and, upon conviction
56 thereof, shall be fined not more than one thousand dollars or
57 confined in the county jail for not more than one year, or both.

58 The board of ballot commissioners of each county, or the
59 chairman thereof, shall preserve the ballots or ballot cards
60 that are left over in their hands, after supplying the precincts
61 as provided, until the close of the polls on the day of election,

62 and such ballots or ballot cards, shall then be destroyed by
63 such board, or the chairman thereof, by fire or otherwise.

64 (7) Where ballot cards are used, the voter, after he has
65 marked his ballot card, shall, before leaving the voting booth,
66 place the ballot card inside the envelope provided for this
67 purpose, with the stub extending outside said envelope, and
68 return it to an election officer who shall remove the stub and
69 deposit the envelope with the ballot card inside in the ballot
70 box, or if manila sleeve envelopes are used, the ballot shall be
71 deposited in the ballot box in such a way that the sleeve
72 envelope remains outside the ballot box while the ballot
73 slides into the ballot box. No ballot from which the stub has
74 been detached shall be accepted by the officer in charge of
75 the ballot box, but it shall be marked "spoiled" and placed
76 with the spoiled ballots.

77 (8) The precinct election officers shall prepare a report in
78 quadruplicate of the number of voters who have voted, as
79 indicated by the pollbooks, and shall place two copies of this
80 report in the ballot box, which thereupon shall be sealed with
81 a paper seal signed by the election officers so that no
82 additional ballots may be deposited or removed from the
83 ballot box. Two election officers of different political parties
84 shall forthwith deliver the ballot box to the counting center or
85 other designated place and receive a signed numbered receipt
86 therefor, and the time of their departure from the polling
87 place shall be noted on the two remaining copies of the
88 report, which shall be immediately mailed to the clerk of the
89 county commission.

90 (9) The pollbooks, register of voters, unused ballots or
91 ballot cards, spoiled ballots or ballot cards and other records
92 and supplies shall be delivered to the clerk of the county
93 commission.

CHAPTER 106

(S. B. 343—By Mr. Palumbo)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article four-a,
chapter three of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to voting by challenged voter; recording devices that do not tabulate challenged voters as individual votes; use of printed ballots.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-24. Voting by challenged voter.

1 If the right of any person to vote be challenged in
2 accordance with provisions of article one of this chapter
3 relating to the challenging of voters, and a vote recording
4 device is used that tabulates the vote as an individual vote,
5 such person shall be permitted to cast his vote by use of the
6 vote recording device. If the voting device does not tabulate
7 the vote as an individual vote, such person shall not be
8 permitted to cast his vote by use of the vote recording device
9 but he shall be supplied by the election officer at the polling
10 place with an official printed ballot of such election. Such
11 ballot shall not be endorsed on the back by the poll clerks but,
12 when voted by the challenged voter, shall have affixed
13 thereto by the poll clerks their statement of information as to
14 the challenge on the form prescribed therefor. Such
15 challenged ballots shall be secured, handled and disposed of
16 as challenged ballots in other elections, as provided in article
17 one of this chapter.

CHAPTER 107

(H. B. 1030—By Mr. Prunty)

[Passed April 7, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to election recounts; requiring open meetings of boards of canvassers; providing that a can-

didate served with notice of recount by another candidate may demand a recount of precincts not included in the notice of recount.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-9. Canvass of returns; declaration of results; recounts; record-keeping.

1 The commissioners of the county commission shall be ex
2 officio a board of canvassers, and, as such, shall keep in a
3 well-bound book, marked "election record," a complete record
4 of all their proceedings in ascertaining and declaring the re-
5 sults of every election in their respective counties. They
6 shall convene as the canvassing board at the courthouse on the
7 fifth day (Sundays excepted) after every election held in their
8 county, or in any district thereof, and the officers in whose
9 custody the ballots, pollbooks, registration records, tally sheets
10 and certificates have been placed shall lay them before the
11 board for examination. They may, if considered necessary,
12 require the attendance of any of the commissioners, poll
13 clerks or other persons present at the election, to appear and
14 testify respecting the same, and make such other orders as
15 shall seem proper to procure correct returns and ascertain
16 the true results of the election in their county; but in this
17 case all the questions to the witnesses and all the answers
18 thereto, and evidence, shall be taken down in writing and filed
19 and preserved. All orders made shall be entered upon the
20 record. They may adjourn from time to time, but no longer
21 than absolutely necessary, and, when a majority of the com-
22 missioners are not present, their meeting shall stand ad-
23 journed until the next day, and so from day to day, until
24 a quorum is present. All meetings of the commissioners
25 sitting as a board of canvassers shall be open to the public.
26 The board shall proceed to open each sealed package of
27 ballots so laid before them, and, without unfolding them,

28 count the number in each package and enter the number upon
29 their record. The ballots shall then be again sealed up care-
30 fully in a new envelope, and each member of the board shall
31 write his name across the place where the envelope is sealed.
32 After canvassing the returns of the election, the board shall
33 publicly declare the results of the election; however, they
34 shall not enter an order certifying the election results for
35 a period of forty-eight hours after the declaration.

36 (a) Within the forty-eight hour period a candidate voted
37 for at the election may demand the board to open and examine
38 any of the sealed packages of ballots, and recount them;
39 but in such case they shall seal the ballots again, along with
40 the envelope above named, and the clerk of the county
41 commission and each member of the board shall write his
42 name across the places where it is sealed, and endorse in
43 ink, on the outside: "Ballots of the election held at precinct
44 No....., in the district of, and
45 county of, on the day of
46" In computing the forty-eight hour period
47 as used in this section, Saturdays, Sundays and legal holidays
48 shall be excluded: *Provided*, That at the end of the forty-
49 eight-hour period, an order shall be entered certifying all elec-
50 tion results except for those offices in which a recount has been
51 demanded.

52 (b) If a recount has been demanded, the board shall have
53 an additional twenty-four hours after the end of the forty-
54 eight-hour period, in which to send notice to all candidates
55 who filed for the office in which a recount has been demanded,
56 of the date, time and place where the board will convene to
57 commence the recount. The notice shall be served under the
58 provisions of subdivision (c) of this section. The recount shall
59 be set for no sooner than three days after the serving of the
60 notice: *Provided*, That after the notice is served, candidates
61 so served shall have an additional twenty-four hours in which
62 to notify the board, in writing, of their intention to preserve
63 their right to demand a recount of precincts not requested
64 to be recounted by the candidate originally requesting a re-
65 count of ballots cast: *Provided, however*, That there shall
66 be only one recount of each precinct, regardless of the number

67 of requests for a recount of any precinct. A demand for the
68 recount of ballots cast at any precinct may be made during
69 the recount proceedings only by the candidate originally re-
70 questing the recount and those candidates who notify the
71 board, pursuant to this subdivision, of their intention to
72 preserve their right to demand a recount of additional pre-
73 cincts.

74 (c) Any sheriff of the county in which the recount is to
75 occur shall deliver a copy thereof in writing to the candidate
76 in person; or if the candidate is not found, by delivering the
77 copy at the usual place of abode of the candidate, and giving
78 information of its purport, to the spouse of the candidate
79 or any other person found there who is a member of his family
80 and above the age of sixteen years; or if neither the spouse
81 of the candidate nor any other person be found there, and
82 the candidate is not found, by leaving the copy posted at the
83 front door of the place of abode. Any sheriff, thereto required,
84 shall serve a notice within his county and make return of the
85 manner and time of service; for a failure so to do, he shall
86 forfeit twenty dollars. The return shall be evidence of the
87 manner and time of service.

88 (d) Every candidate who demands a recount shall be re-
89 quired to furnish bond in a reasonable amount with good
90 sufficient surety to guarantee payment of the costs and the
91 expenses of such recount in the event the result of the
92 election is not changed by the recount; but the amount of
93 the bond shall in no case exceed three hundred dollars.

94 When they have made their certificates and declared the
95 results as hereinafter provided, they shall deposit the sealed
96 packages of ballots, absent voter ballots, registration records,
97 pollbooks, tally sheets and precinct certificates with the clerks
98 of the county commissions and circuit courts from whom they
99 were received, who shall carefully preserve them for sixty
100 days, and if there is no contest pending as to any election,
101 and their further preservation is not required by any order of
102 a court, the ballots, pollbooks, tally sheets and certificates
103 shall be destroyed by fire or otherwise, without opening the
104 sealed packages of ballots; and if there is a contest pending,
105 then they shall be so destroyed as soon as the contest is ended:

106 *Provided*, That the pollbooks shall be preserved until such
107 time as the clerk of the county commission has completed
108 the duties imposed upon him by section three, article two of
109 this chapter. If the result of the election is not changed by
110 the recount, the costs and expenses thereof shall be paid by
111 the party at whose instance the recount was made.

CHAPTER 108

(S. B. 404—By Mr. Wright)

[Passed April 9, 1981: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring county commissioners, as the board of canvassers in certain elections, to transmit copies of certificates of election of delegates, state senators and certain other state and federal officers to the secretary of state and the governor, as the case may be, within thirty days from the date of the election.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-11. Disposition of certificates.

1 The separate certificates of the board of canvassers, made
2 pursuant to section ten of this article, shall be disposed of by
3 the board of canvassers as follows: Of the certificates
4 respecting the election for delegate or delegates in the
5 Legislature, they shall transmit one to each person voted for
6 as delegate and shall transmit one to the secretary of state
7 within thirty days from the date of the election, except that in
8 the case of a recount, within thirty days from the date of the
9 completion of the recount, who shall submit the same to the
10 House of Delegates, on the first day of the next ensuing
11 session, together with a list of the persons appearing thereby

12 to be elected. Of the certificates respecting the election of
13 state senator, they shall transmit one to each person voted for
14 as state senator and shall transmit one to the secretary of state
15 within thirty days from the date of the election, except that in
16 the case of a recount, within thirty days from the date of the
17 completion of the recount, to be submitted by him to the
18 Senate, on the first day of the next ensuing session, together
19 with a list of persons appearing thereby to be elected. Of the
20 certificates respecting the election of state officers, one, as to
21 each of such officers, except justice of the supreme court of
22 appeals, shall be sealed and transmitted by such
23 commissioners to the secretary of state within thirty days
24 from the date of the election endorsed on the envelope as
25 follows: "Returns of the election for state officers." Except
26 that in the case of a recount, the certificates shall be
27 transmitted within thirty days from the date of the
28 completion of the recount. The secretary of state shall deliver
29 the same to the speaker of the House of Delegates, on the first
30 day of the next session of the Legislature; and the speaker
31 shall, immediately after the organization of the House of
32 Delegates and before proceeding to other business, open and
33 publish the same, in the presence of a majority of each house
34 of the Legislature, which bodies shall, for that purpose,
35 assemble in the hall of the House of Delegates. The person
36 having the highest number of votes for any one of such offices
37 shall be declared duly elected thereto; but if two or more
38 persons have the same and the highest number of votes for
39 the same office, the Legislature shall, by a joint vote of the
40 two houses, choose one of said persons for such office; and
41 one of each of such last-mentioned certificates shall also be
42 transmitted, under seal, to the governor, who shall
43 immediately tabulate the vote in all the counties, for each
44 office, and cause the same to be printed in some newspaper
45 published at the seat of government. Of the certificates
46 respecting the election for United States senator, member of
47 the House of Representatives in the Congress of the United
48 States, justice of the supreme court of appeals, judge of a
49 circuit court, and president and vice president of the United
50 States, respectively, the commissioners shall transmit one in
51 each case to the person voted for and one to the governor
52 within thirty days from the date of the election; except that in
53 the case of a recount, within thirty days from the date of the

54 completion of the recount; and the governor shall ascertain
55 who are elected and make proclamation thereof. Of the
56 certificates respecting the election of all county and district
57 officers, one shall be transmitted to each person for whom
58 votes were cast.

CHAPTER 109

(S. B. 35—By Mr. Steptoe)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve, thirteen, fourteen, fourteen-a, fifteen, sixteen and eighteen, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-one, all relating to condemnation proceedings generally; increasing from six percent to ten percent the interest rate heretofore applicable on sums initially payable into court prior to a condemnation award, on awards exceeding an original payment into court, and on awards in which the condemnor fails to give proper notice; providing for payment of ten percent interest on the determined amount of compensation and damages payable when a business corporation applicant takes legal entry upon or possession of property during a condemnation proceeding; providing for interest to be paid from the date of the filing of the petition; requiring the state and political subdivisions to pay into court the fair value of the property to be taken before entry; and applying the increased rate only to condemnation proceedings instituted after the effective date of this act.

Be it enacted by the Legislature of West Virginia:

That sections twelve, thirteen, fourteen, fourteen-a, fifteen, sixteen and eighteen, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-one, all to read as follows:

ARTICLE 2. PROCEDURE.

§54-2-12. Vesting of title in applicant.

§54-2-13. Entry on land on payment of compensation.

§54-2-14. Entry by state or its political subdivisions.

§54-2-14a. Alternative method for condemnation by state or its political subdivision.

§54-2-15. Alternative procedure for condemnation by business corporation; bond.

§54-2-16. Increase or decrease in award after payment into court; costs.

§54-2-18. Payment to clerk; disposition of money paid into court; determination of conflicting claims; notice to condemnee.

§54-2-21. Effective date of new percent interest rates.

§54-2-12. Vesting of title in applicant.

1 Except as otherwise provided in this article, at any time
2 within three months after the report, or the verdict of a jury, if
3 there be one, has been confirmed and ordered to be recorded,
4 the sum so ascertained with ten percent interest thereon from
5 the date of the filing of the petition until payment, may be
6 paid by the applicant into court; upon such payment, title to
7 the property, or interest or right therein, so paid for shall be
8 absolutely vested in the applicant in fee simple or to the
9 extent described in the petition: *Provided*, That in the case of
10 a public road title to the right-of-way only shall absolutely
11 vest in the applicant.

§54-2-13. Entry on land on payment of compensation.

1 After such report has once been made, whether it be set
2 aside, recommitted, or new commissioners appointed, or not,
3 or whether a trial by jury be demanded and had or not, the
4 applicant upon paying into court the sum ascertained by such
5 report, with ten percent interest thereon from the date of the
6 filing of the petition until payment, may, notwithstanding the
7 pendency of further proceedings, enter upon, take and use for
8 the purposes specified in the application, that part of the land
9 and property in respect to which such payment is made, and
10 where such payment has been made and possession taken, or
11 where payment has been made without taking such
12 possession in a pending case, it shall have the same effect as if
13 such payment were made or possession taken, or both, in a
14 case hereafter commenced; and no order shall be made or any
15 injunction awarded by any court or judge to stay it in so
16 doing, unless it be manifest that the applicant is insolvent or
17 that it or its officers, agents or servants, are transcending their
18 authority, or that such interposition is necessary to prevent

19 injury which cannot be adequately compensated in damages:
20 *Provided*, That if the applicant be other than a corporate body
21 politic, before entering upon or taking possession of such
22 property, it shall enter into bond before the court, or judge
23 thereof in vacation, in a penalty prescribed by the judge, with
24 securities approved by him, conditioned for the payment to
25 the owner of any additional sums which may be awarded
26 against it in subsequent proceedings as additional
27 compensation and damages for the property so taken.

28 And where, under authority of section ten, article one of
29 this chapter, wood, earth, gravel, shale, stone, water or other
30 material are sought to be taken, impounded or consumed, the
31 applicant, after such report has been made, whether it be set
32 aside, recommitted or new commissioners appointed, or not,
33 or whether a trial by jury be demanded and had, or not, may,
34 upon payment into court as aforesaid of the sum ascertained
35 by the report of such commissioners, notwithstanding the
36 pendency of further proceedings, take, impound or consume
37 such wood, earth, gravel, shale, stone, water or other material;
38 and all the foregoing provisions of this section as to
39 injunction and bond shall be applicable to such case.

§54-2-14. Entry by state or its political subdivisions.

1 If the applicant be the state of West Virginia, or any political
2 subdivision thereof, on filing its petition as authorized in this
3 article, and if the court or judge is satisfied that the purpose
4 for which the land or property is sought to be condemned is a
5 public use for which private property may be appropriated on
6 compensating the owner, the court or judge shall, at the
7 request of the applicant, make an order permitting the
8 applicant at once to enter upon, take possession, appropriate
9 and use the land sought to be condemned for the purposes
10 stated in the petition. The revenues applicable to the payment
11 of any damages or compensation to which the owner is
12 entitled, and which shall be awarded or assessed in his favor,
13 shall be deemed sufficient security and to have been pledged
14 for such payment, and no bond or further security shall be
15 required of the applicant.

16 If the applicant shall enter upon or take possession of
17 property under the authority of this section, and shall do any
18 work thereon and injure such land or property, it shall not be

19 entitled, without the consent of the defendant, to abandon the
20 proceedings for the condemnation thereof, but such
21 proceedings shall proceed to final award or judgment, and the
22 applicant shall pay to the owner of the land the amount of
23 compensation and damages as finally determined in such
24 proceedings, with interest at ten percent from the date of the
25 filing of the petition.

26 Before entry, taking possession, appropriation, or use, the
27 applicant shall pay into court such sum as it shall estimate to
28 be the fair value of the property, or estate, right, or interest
29 therein, sought to be condemned, including, where
30 applicable, the damages, if any, to the residue beyond the
31 benefits, if any, to such residue, by reason of the taking.

32 When, after payment into court as provided under the
33 authority of this section, the amount allowed by the report of
34 the condemnation commissioners, or the verdict of a jury, if
35 there be one, exceeds the amount which has been paid into
36 court, the excess amount, together with interest thereon at
37 ten percent from the date of the filing of the petition to the
38 date of payment of the excess amount into court, may, at any
39 time within three months after the report or verdict of a jury,
40 as the case may be, has been confirmed and ordered to be
41 recorded, be paid into court by the applicant for the persons
42 entitled thereto.

43 If the amount which has been paid into court pursuant to
44 this section exceeds the amount allowed by the report of the
45 condemnation commissioners, or the verdict of a jury, if there
46 be one, the excess shall be repaid to the applicant out of such
47 fund in court, or, if the amount remaining in the fund be
48 insufficient, then the persons to whom the fund, or any part
49 thereof, has been paid, shall reimburse the applicant, on a pro
50 rata basis, but without interest.

51 If the amount allowed by the report of the condemnation
52 commissioners, or the verdict of the jury, if there be one, does
53 not exceed the sum paid into court and it shall appear that the
54 latter amount was tendered by the applicant to the defendant
55 prior to the institution of the proceeding, the defendant shall
56 pay the costs of the proceeding in the trial court unless the
57 refusal to accept the tender was based on some ground other
58 than that of insufficiency of compensation and any damages.

§54-2-14a. Alternative method for condemnation by state or its political subdivision.

1 Prior to any report by condemnation commissioners, or
2 verdict of a jury, if the applicant be the state of West Virginia
3 or any political subdivision thereof, and be otherwise
4 authorized by law to make payment as required in this
5 section, on filing its petition as authorized in this article, and
6 if the court or judge is satisfied that the purpose for which the
7 property or interest or right therein, is sought to be
8 condemned is a public use for which private property may be
9 appropriated on compensating the owner, the applicant may
10 thereupon acquire title to, and enter upon, take possession of,
11 appropriate and use the property, or interest or right therein,
12 sought to be condemned for the purposes stated in the
13 petition by following the method provided in this section.

14 Before entry, taking possession, appropriation, or use, the
15 applicant shall pay into court such sum as it shall estimate to
16 be the fair value of the property, or estate, right, or interest
17 therein, sought to be condemned, including, where
18 applicable, the damages, if any, to the residue beyond the
19 benefits, if any, to such residue, by reason of the taking. The
20 court or judge may, at the request of any party to the
21 proceeding, require the clerk of the court to give an additional
22 bond, adequate to protect such deposit with the clerk; and if
23 such bond is required, the applicant shall pay the necessary
24 premiums.

25 Upon such payment into court, the title to the property, or
26 interest or right therein, sought to be condemned, shall be
27 vested in the applicant, and the court or judge shall, at the
28 request of the applicant, make an order permitting the
29 applicant at once to enter upon, take possession, appropriate
30 and use the property, or interest or right therein, sought to be
31 condemned for the purposes stated in the petition, but the
32 owners of such property, or interest or right therein, at the
33 time of such payment, including lienors and conflicting
34 claimants, shall have such title, interest, or right in the money
35 paid into court as they had in the property, or interest or right
36 therein, sought to be condemned, and all liens by deed of
37 trust, judgment or otherwise, upon such property, or interest
38 or right therein, shall be transferred to such fund in court,
39 subject to the provisions of this section. The title in the

40 applicant shall be defeasible until the compensation and any
41 damages are determined in the condemnation proceedings
42 and the applicant has paid any excess amount into court.

43 Upon petition to the court or judge, any person entitled
44 thereto may be paid his pro rata share of the money paid into
45 court, or a portion thereof, as ordered by the court or judge,
46 but the acceptance of such payment shall not limit the
47 amount to be allowed by the report of the condemnation
48 commissioners, or the verdict of a jury, if there be one.
49 Proceedings for the distribution of the money so paid into
50 court shall be conducted as provided in section eighteen of
51 this article to the extent that the provisions therein are
52 applicable. No party to the condemnation proceeding shall be
53 permitted to introduce evidence of such payment or of the
54 amount so paid into court, or of any amount which has been
55 accepted by any party, nor shall reference be made thereto
56 during the course of the trial.

57 If the applicant shall enter upon or take possession of the
58 property, under the authority of this section, and shall injure
59 the property, the applicant shall not be entitled, without the
60 consent of the defendant, to abandon the proceeding for the
61 condemnation thereof, but such proceeding shall proceed to
62 final award or judgment, and the amount of compensation
63 and any damages as finally determined in such proceeding
64 shall be paid in the manner provided by this section.

65 When, after payment into court as provided under the
66 authority of this section, the amount allowed by the report of
67 the condemnation commissioners, or the verdict of a jury, if
68 there be one, exceeds the amount which has been paid into
69 court, the excess amount, together with interest thereon at
70 ten percent from the date of the filing of the petition to the
71 date of payment of the excess amount into court, may, at any
72 time within three months after the report or verdict of a jury,
73 as the case may be, has been confirmed and ordered to be
74 recorded, be paid into court by the applicant for the persons
75 entitled thereto. In no other instance shall interest be allowed
76 on payments made pursuant to the provisions of this section.
77 If the amount which has been paid into court pursuant to this
78 section exceeds the amount allowed by the report of the
79 condemnation commissioners, or the verdict of a jury, if there
80 be one, the excess shall be repaid to the applicant out of such

81 fund in court, or, if the amount remaining in the fund be
82 insufficient, then the persons to whom the fund, or any part
83 thereof, has been paid, shall reimburse the applicant, on a pro
84 rata basis, but without interest. If the applicant has the right
85 to abandon the proceeding and does so, the amount which
86 has been paid into court pursuant to this section shall be
87 repaid to the applicant from such fund in court and by any
88 persons to whom the fund, or any part thereof, has been paid,
89 on a pro rata basis, but without interest.

90 If the amount allowed by the report of the condemnation
91 commissioners, or the verdict of the jury, if there be one, does
92 not exceed the sum paid into court and it shall appear that the
93 latter amount was tendered by the applicant to the defendant
94 prior to the institution of the proceeding, the defendant shall
95 pay the costs of the proceeding in the trial court unless the
96 refusal to accept the tender was based on some ground other
97 than that of insufficiency of compensation and any damages.

98 When the report of the condemnation commissioners, or
99 the verdict of a jury, if there be one, has been confirmed and
100 ordered to be recorded, and the excess amount, if any, has
101 been paid into court as provided herein, the title to the
102 property, or interest or right therein, so paid for shall be
103 absolutely and indefeasibly vested in the applicant in fee
104 simple or to the extent described in the petition: *Provided*,
105 That in the case of a public road title to the right-of-way only
106 shall absolutely vest in the applicant.

§54-2-15. Alternative procedure for condemnation by business corporation; bond.

1 Any business corporation, entitled to exercise the powers
2 of eminent domain under this chapter, may file with its
3 petition a bond for a sufficient amount with good sureties,
4 payable to the owner of the property proposed to be taken to
5 secure to such owner payment for such property and all
6 damages to which he shall be entitled for the taking thereof,
7 and if the owner being sui juris shall appear and make no
8 objection to such bond, the applicant shall be entitled to take
9 possession of the property sought to be condemned, for the
10 purposes stated in the petition. But if objection be made to
11 the form, amount of, or sureties on, such bond, or if the owner
12 cannot be found, or is not sui juris, the court or judge shall fix
13 a day for the hearing of any objections to such bond and of the

14 request of the applicant to approve the same; and at any time
15 after five days' written notice shall have been given to the
16 owner or to his guardian or committee, if he be not sui juris,
17 and if the owner cannot be found, or his guardian or
18 committee, the owner not being sui juris, then, after five days'
19 written notice posted upon the land, which notice shall state
20 the time and place for such hearing, the court or the judge
21 shall proceed to hear and determine the matters arising upon
22 such objection and request, and may require evidence as to
23 the sufficiency of the surety or sureties and as to the
24 sufficiency of the amount of the bond, and may, in its or his
25 discretion, require new and additional sureties and a bond for
26 a larger amount and in a more satisfactory form, and when
27 satisfied as to the form, amount and sufficiency of such bond
28 and sureties, and that the purpose for which the property is to
29 be appropriated is a public use for which private property
30 may be taken upon compensating the owner, the court or
31 judge shall approve the bond and make an order permitting
32 the applicant to enter upon, take possession, appropriate and
33 use the land or property sought to be condemned for the
34 purposes stated in the petition. At any time during the
35 subsequent proceedings on such petition, if it shall appear
36 necessary so to do in order to protect the owner and assure
37 unto him the payment of the compensation and damages to
38 which he may be entitled, the court or judge may require the
39 applicant to give a new and additional bond with sureties
40 satisfactory to the court or judge.

41 Any indemnity company authorized to transact business in
42 the state of West Virginia shall be deemed a good and
43 sufficient surety on any bond required under this section.

44 If the applicant shall enter upon or take possession of the
45 property under the provisions of this section, and shall do any
46 work thereon, or cause any injury or damage to such
47 property, it shall not thereafter be entitled, without the
48 consent of the defendant, to abandon the proceeding for the
49 condemnation thereof, but the same shall proceed with
50 reasonable dispatch to a finality and the applicant shall pay to
51 the owner of the land the amount of the compensation and
52 damages as finally determined in such proceedings, with
53 interest at ten percent from the date of the filing of the
54 petition.

§54-2-16. Increase or decrease in award after payment into court; costs.

1 When, after such payment into court as is mentioned in
2 section thirteen of this article a subsequent report is made
3 which is confirmed and ordered to be recorded, or the verdict
4 of a jury is found, if the sum ascertained by such subsequent
5 report or verdict exceed what was so paid, and the applicant
6 fail to pay the same, judgment shall be given against it for the
7 amount of such excess, with ten percent interest thereon
8 from the date of filing of the petition until payment; but if
9 what was so paid exceeds the sum ascertained by such
10 subsequent report or verdict, the excess shall be repaid to the
11 applicant out of the fund in court, or by the persons to whom
12 the same shall have been paid. If the sum ascertained by such
13 subsequent report or verdict does not exceed the sum
14 ascertained by the former report, the party on whose motion
15 the former report was set aside, recommitted, or other
16 commissioners appointed, or trial by jury demanded, if he be
17 a defendant therein, shall pay the costs occasioned by such
18 motion, unless such former report was set aside, recommitted
19 or other commissioners appointed on some other ground
20 than that of insufficiency of compensation.

21 If the applicant has stated in his application the sum of
22 money which he is ready to pay to the owners for any parcel
23 of land proposed to be taken, and it appear by a report
24 confirmed and ordered to be recorded, or by a verdict of a
25 jury, that he is entitled to take such parcel for the purpose
26 mentioned in his application without paying any greater
27 compensation therefor, he shall be adjudged his costs in
28 respect to such parcel, out of the compensation to be paid
29 therefor to the owners.

30 In cases not otherwise provided for, the applicant shall pay
31 the costs of the proceedings.

§54-2-18. Payment to clerk; disposition of money paid into court; determination of conflicting claims; notice to condemnee.

1 Payment of an award or judgment, or any money, under
2 any of the provisions of this chapter may be made to the clerk
3 of the court in which such proceeding is had, and such pay-

4 ment shall be deemed to be a payment into court. Within ten
5 days after the payment of an award, judgment or money into
6 court pursuant to the provisions of this chapter, the condem-
7 nor shall serve notice upon the parties of record except non-
8 residents and unknown parties whose interests the applicant
9 seeks to condemn, or upon their counsel of record. Service of
10 notice by registered or certified mail to the parties' last-
11 known addresses shall be deemed sufficient. Notwithstand-
12 ing any other provision of this chapter to the contrary, failure
13 to serve such notice shall result in the accrual of interest at
14 ten percent upon the award, judgment or money paid into
15 court from the filing of the petition until such notice is served
16 or until disbursement be made to the persons entitled thereto.
17 The clerk to whom payment is so made, together with the
18 surety on his official bond, shall be liable therefor, as for other
19 moneys collected by him by virtue of his office.

20 Upon money being paid into court, pursuant to the provi-
21 sions of this chapter, and the court or judge being satisfied
22 that the persons entitled thereto are before the court or judge,
23 it or he shall make such distribution or disposition of such
24 money as is proper, having due regard to the interest of all
25 persons therein, and in what proportions such money is
26 properly payable.

27 If it shall appear that the petition states the persons or
28 classes of persons, who, in the opinion of the applicant, are
29 vested with the superior right or claim of title in the property,
30 or interest or right therein, condemned or sought to be con-
31 demned or in the amount allowed or to be allowed by the
32 report of the condemnation commissioners, or the verdict of a
33 jury, if there be one, and it does not appear from the record or
34 otherwise that there is any denial or dispute, by any person or
35 party in interest, of such statement in the petition, the court
36 or judge may direct that the money paid into court, after
37 withholding therefrom any sum necessary for payment of any
38 taxes which are a lien upon the property, interest, or right, be
39 disbursed and distributed in accordance with the statement
40 in the petition, among the persons entitled thereto, except
41 that with respect to any persons appearing to be infants,
42 incompetents, incarcerated convicts, or under any other legal
43 disability, the court or judge shall inquire into their rights or
44 claims, independent of any statement in the petition, and any
45 order for disbursement or distribution shall conserve and

46 protect the rights or claims of such persons in and to the
47 money paid into court.

48 If it shall appear to the court or judge, from the record or
49 otherwise, that there exists a controversy among claimants to
50 the money paid into court, or to the ownership of the prop-
51 erty, or interest or right therein, condemned or sought to be
52 condemned, the court or judge shall enter an order setting a
53 time for hearing the case and determining the rights and
54 claims of all persons entitled to the money paid into court or
55 to any interest or share therein. To aid in properly disposing
56 of the money, the court or judge may appoint a commissioner
57 to take evidence of the conflicting claims. The court or judge
58 may direct publication to be made requiring all who are in-
59 terested to appear at the time set for hearing the case to
60 present their respective claims. Such costs shall be allowed to
61 the prevailing persons as the court or judge shall direct. Upon
62 a determination by the court or judge of the rights and claims
63 of the persons entitled to the money paid into court, with or
64 without a report of such commissioner, judgment shall be
65 entered directing the disbursement or distribution, after
66 withholding for taxes as provided in the next preceding
67 paragraph, to the persons entitled thereto, provided that the
68 rights or claims of persons under legal disability shall be
69 protected as provided in the next preceding paragraph.

§54-2-21. Effective date of new percent interest rates.

1 The percent interest rate provided for in sections twelve,
2 thirteen, fourteen, fourteen-a, fifteen, sixteen and eighteen of
3 this article, shall be applicable only to condemnation pro-
4 ceedings hereafter instituted. The rate of interest previously
5 applicable to proceedings under the above sections shall con-
6 tinue to be applicable to condemnation proceedings hereto-
7 fore instituted.

CHAPTER 110

(S. B. 384—By Mr. Huffman)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article two,
chapter fifty-four of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to the compensation of commissioners in eminent domain proceedings.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article two, chapter fifty-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. PROCEDURE.

§54-2-19. Compensation of commissioners and jurors.

1 Each commissioner shall receive as compensation for
2 services in each eminent domain proceeding a reasonable
3 amount to be fixed by an order entered of record in the
4 proceeding, said compensation not to exceed the sum of fifty
5 dollars per day to be taxed as a part of the costs of the
6 proceeding.

7 The jurors shall receive the same compensation fixed by
8 law for jurors in felony cases, to be taxed as a part of the costs
9 of the proceeding.

CHAPTER 111

(Com. Sub. for S. B. 399—By Mr. Huffman)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to joint tenants.

Be it enacted by the Legislature of West Virginia:

That section twenty, article one, 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 1. CREATION OF ESTATES GENERALLY.**§36-1-20. When survivorship preserved.**

1 (a) The preceding section shall not apply to any
2 estate which joint tenants have as executors or trustees,
3 nor to an estate conveyed or devised to persons in their
4 own right, when it manifestly appears from the tenor of
5 the instrument that it was intended that the part of the
6 one dying should then belong to the others. Neither shall
7 it affect the mode of proceeding on any joint judgment or
8 decree in favor of, or on any contract with, two or more,
9 one of whom dies.

10 (b) When the instrument of conveyance or ownership
11 in any estate, whether real estate or tangible or intangi-
12 ble personal property, links multiple owners together
13 with the disjunctive "or," such ownership shall be held
14 as joint tenants with the right of survivorship, unless
15 expressly stated otherwise.

CHAPTER 112

(Com. Sub. for H. B. 982—By Mr. Tompkins)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the payment of debts of a decedent and the order of priority of payment of such debts; and providing for the payment of funeral expenses of a deceased wife from the assets of her estate notwithstanding the surviving husband's ability to pay such debts.

Be it enacted by the Legislature of West Virginia:

That section twenty-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.****§44-2-21. Order in which debts of decedent to be paid.**

1 When the assets of the decedent in the hands of his personal
2 representative, after the payment of charges of administration,
3 are not sufficient for the satisfaction of all demands against
4 him, they shall be applied in the following order:

5 (a) To the payment of funeral expenses, to an amount not
6 exceeding six hundred dollars: *Provided*, That the reason-
7 able and necessary funeral and burial expenses, including
8 expenses for monuments and all other expenses of like nature,
9 incident to a deceased wife shall be payable by the personal
10 representative out of the assets of her estate irrespective
11 of any other provision of this code or of other rule of law
12 and all such expenses shall be allowed as a charge of ad-
13 ministration pursuant to the provisions of sections five and
14 six of this article, and shall likewise be allowed as deductions
15 against the assets of such estate pursuant to the provisions of
16 article eleven, chapter eleven of this code.

17 (b) To the claims of physicians, not exceeding one hundred
18 dollars, for services rendered during the last illness of the de-
19 cedent; and accounts of druggists, not exceeding the same
20 amount, for articles furnished during the same period; and
21 claims of professional nurses or other person rendering service
22 as nurse to the decedent, at his request or the request of some
23 member of his immediate family, not exceeding the same
24 amount, for services rendered during the same period; and
25 accounts of hospitals and sanitariums, not exceeding the same
26 amount, for articles furnished and services rendered during
27 the same period;

28 (c) To debts due the United States;

29 (d) To debts due this state;

30 (e) To taxes and levies assessed upon the decedent previous
31 to his death;

32 (f) To debts due as trustee for persons under disabilities,
33 as receiver or commissioner under decree of court of this state,

- 34 as personal representative, guardian, committee, or other
35 fiduciary, where the qualification was in this state;
- 36 (g) To the balances on any items listed in subdivisions (a)
37 and (b) hereof and to all other demands except those in the
38 next class;
- 39 (h) To voluntary obligations.

CHAPTER 113

(Com. Sub. for S. B. 421—By Mr. Tonkovich)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article eleven, chapter twenty-seven of said code, relating to allowing county commissions to conduct competency proceedings for the purpose of appointing guardians for mentally retarded or mentally handicapped persons; requiring county commission to comply with the hearing procedures set forth in section one, article eleven, chapter twenty-seven of the code; relating to providing for service of notice of a competency hearing outside of the county of the hearing; providing for employment of a person to record all proceedings of a county commission concerning the appointment of a committee; permitting a certified statement of a physician to be introduced into evidence; and providing for a subpoena to be issued requiring a physician to testify.

Be it enacted by the Legislature of West Virginia:

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

Chapter**44. Administration of Estates and Trusts.****27. Mentally Ill Persons.****CHAPTER 44. ADMINISTRATION OF
ESTATES AND TRUSTS.****ARTICLE 10A. GUARDIANS OF MENTALLY RETARDED PER-
SONS.****§44-10A-1. Guardianship of mentally retarded and mentally
handicapped persons generally.**

1 When it shall appear to the satisfaction of the county
2 commission that a person is a mentally retarded person
3 as defined in section three, article one, chapter twenty-
4 seven of this code, or is otherwise mentally handicapped,
5 that such condition is certified as being permanent in
6 nature by at least two physicians licensed to practice
7 medicine in this state or one such physician and one
8 licensed psychologist having qualifications to make such
9 certification, and that such person requires in his best
10 interests the appointment of a guardian, the county com-
11 mission is authorized, upon compliance with the proce-
12 dures described in section one, article eleven, chapter
13 twenty-seven of this code, to appoint a guardian and to
14 specify the powers and duties the guardian shall exercise
15 for the person of such person, the estate of such person,
16 and any moneys from any source as may be paid on be-
17 half of such person to the guardian or to another party.
18 For the purposes of this chapter, "mentally handicapped
19 person" shall mean any person with a condition medically
20 determined which results in a substantial mental impair-
21 ment of general intellectual functioning and which re-
22 sults in that person's inability to function normally in
23 society for his own best interests.

CHAPTER 27. MENTALLY ILL PERSONS.**ARTICLE 11. COMMITTEE; DISPOSITION OF PROPERTY.****§27-11-1. Committees; appointment.**

1 (a) The county commission of a person's residence may
2 appoint a committee for a person found to be incompetent.
3 Any finding of incompetency under this article shall be

4 made separately and at a different proceeding from any
5 finding of mental illness, mental retardation or addiction
6 under article ~~four~~ or five of this chapter.

7 (b) Proceedings for the appointment of a committee
8 for an alleged incompetent may be commenced by the
9 filing of a verified petition of a person setting forth the
10 facts showing the incompetency of an individual with the
11 county commission. Upon receipt of a petition, the clerk
12 of the county commission shall give notice of the hearing
13 thereon to the individual and to the individual's spouse,
14 or if the individual does not have a spouse, to the indi-
15 vidual's adult next of kin: *Provided*, That such person
16 shall not be the petitioner: *Provided, however*, That such
17 individual shall be served with notice of such hearing by
18 delivering unto such individual in person written notice
19 thereof together with a true copy of such verified petition,
20 which notice shall be served upon the individual alleged
21 to be incompetent at least ten days before the time of
22 such hearing.

23 Such individual alleged to be incompetent shall be ac-
24 corded the right to subpoena witnesses, to be confronted
25 with witnesses and the right to cross-examine witnesses
26 which may be offered against him, and the county com-
27 mission on or before the commencement of such hearing
28 shall appoint a competent attorney practicing before the
29 bar of the circuit court of the county wherein such hear-
30 ing is to be held as guardian ad litem for the purpose of
31 representing the interest of such individual throughout
32 such proceedings under this section. Notwithstanding any
33 requirement hereof to the contrary such hearing may
34 proceed without the presence of the individual alleged to
35 be incompetent if (1) proper notice has been served upon
36 the party alleged to be incompetent as required herein,
37 and (2) a duly licensed physician shall have certified in
38 writing and upon affidavit that he or she has examined
39 such individual and that such individual is physically
40 unable to appear at such hearing or that such an appear-
41 ance would likely impair or endanger the health of such
42 individual, or (3) such individual refuses to appear, and
43 (4) upon the specific written findings by such commission

44 of facts as will justify a hearing without the presence
45 of such individual as provided in this subsection.

46 (c) A record shall be made of all proceedings either by
47 the court reporter for the circuit court of that county or
48 some other person employed by the county commission
49 for the purpose. A transcript shall be made available to
50 the individual or his counsel within thirty days if the
51 same is requested for purposes of appeal. In any case
52 wherein an indigent person seeks an appeal, the circuit
53 court shall by order entered of record authorize and direct
54 the person making the record of the proceeding to fur-
55 nish a transcript of the hearing, and the cost of said trans-
56 cript shall be paid by the county commission from funds
57 appropriated for this purpose.

58 (d) Upon completion of the hearing and upon the evi-
59 dence presented therein the county commission may find
60 that (i) the individual is unable to manage his business
61 affairs, or (ii) the individual is unable to care for his phy-
62 sical well-being, or (iii) both, and is therefore incompe-
63 tent, or (iv) that the person is competent. Evidence of
64 mere poor judgment or of different life style shall not
65 be competent evidence upon which to base a finding of
66 incompetency.

67 (1) "Unable to manage one's business affairs" means
68 the inability to know and appreciate the nature and effect
69 of his business transactions, notwithstanding the fact that
70 he may display poor judgment.

71 (2) "Unable to care for one's physical well-being"
72 means the substantial risk of physical harm to himself as
73 evidenced by conduct demonstrating that he is dangerous
74 to himself, notwithstanding the fact that he may display
75 poor judgment.

76 If the county commission finds the person to be compe-
77 tent, the proceedings shall be dismissed. No appointment
78 of a committee shall be made on evidence which is un-
79 corroborated by the testimony of a medical expert or by
80 a certified statement upon affidavit as hereinafter pro-
81 vided. If the individual refuses to submit to an examina-

82 tion by a physician, the circuit court may upon petition,
83 issue a rule against the individual to show cause why the
84 individual should not submit to an examination. A copy of
85 the petition shall accompany service of the rule and such
86 rule shall be returnable at a time to be fixed by the court.
87 Any physician duly licensed to practice medicine in the
88 state who is currently treating the individual alleged to be
89 incompetent may file with the county commission his
90 certified statement upon affidavit stating that he is cur-
91 rently treating said individual and setting forth his
92 opinion of the individual's ability to (i) manage his busi-
93 ness affairs and (ii) care for his physical well-being, and
94 stating in detail the grounds for such opinion. Such state-
95 ment may be considered by the county commission as
96 evidence in the case: *Provided*, That the circuit court
97 upon the petition of the attorney or guardian ad litem for
98 the alleged incompetent shall issue a subpoena for the
99 treating physician as a witness at the proceeding.

100 (e) The extent of the committee's authority shall be
101 specified in the order of the county commission. No au-
102 thority of a committee shall extend beyond what is neces-
103 sary for the protection of the individual. A finding of in-
104 ability to care for one's physical well-being shall entitle
105 the committee to custody of the individual, except when
106 the individual is under a commitment order to a mental
107 health facility, but only to the extent as is necessary for
108 the protection of the individual.

109 (f) An individual found incompetent pursuant to sub-
110 section (d) of this section shall have the right to an appeal
111 and hearing thereon in the circuit court of the county.
112 The judge shall hear the matter on appeal as provided in
113 article three, chapter fifty-eight of this code or order a
114 hearing de novo on the matter.

115 (g) The individual or any person may apply to the
116 county commission in the manner provided by subsection
117 (b) of this section for termination of his committee at
118 any time and appeal from a determination thereon in the
119 manner provided by this section or in the alternative, the
120 individual may seek such termination by habeas corpus.

CHAPTER 114

(Com. Sub. for H. B. 1278—By Mr. Springston and Mr. McCuskey)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section seven-a, article three, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article one, chapter thirty-six of said code by adding thereto a new section, designated section twenty-a, relating to elimination of the need for a straw party in creating a joint tenancy with right of survivorship.

Be it enacted by the Legislature of West Virginia:

That section seven-a, article three, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article one, chapter thirty-six of said code be amended by adding thereto a new section, designated section twenty-a, to read as follows:

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-20a. Elimination of need for straw party in creating joint tenancy with right of survivorship.

1 Any conveyance or transfer of property, or any interest there-
 2 in, creating a joint tenancy with right of survivorship together
 3 with the person or persons conveying or transferring such
 4 property, executed by such person or persons to or in favor of
 5 another shall be valid to the same extent as a similar transfer
 6 or conveyance from a third party or by a straw party deed.

CHAPTER 115

(S. B. 43—By Mr. Steptoe)

[Passed March 4, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the admission into

evidence of handwriting for comparison with disputed writing; and eliminating the requirement that handwriting exemplars be taken under the supervision of a circuit judge.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WRITINGS AND STATEMENTS OF PRIVATE PERSONS.

§57-2-1. Handwriting analysis.

1 In any civil or criminal action or proceeding, any writing
2 proved to the satisfaction of the judge of a court of record in
3 an in-camera hearing to be in the handwriting of the person
4 who is alleged to have written it, whether or not made in the
5 ordinary course of business, may, if the court further finds
6 that its probative value outweighs its prejudicial effect, be
7 admitted into evidence for the purpose of making a
8 comparison with a disputed writing on the issue of whether
9 or not the disputed writing is genuine. The authenticity of
10 each writing shall be finally determined by the trier of fact.

CHAPTER 116

(S. B. 707-5—By Mr. Boettner)

[Passed April 11, 1981: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto ten new sections, designated sections four-a, four-b, four-c, four-d, four-e, four-f, four-g, four-h, four-i and four-j, relating to evidence and witnesses; production of writings; and use of hospital records in trials and administrative hearings.

Be it enacted by the Legislature of West Virginia:

That article five, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto ten new sections, designated sections four-a, four-b, four-c, four-d, four-e, four-f, four-g, four-h, four-i and four-j, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

- §57-5-4a. Hospital records; definitions.
- §57-5-4b. Hospital records; furnishing copies in compliance with subpoenas.
- §57-5-4c. Hospital records; sealing, identification and direction of copies.
- §57-5-4d. Hospital records; opening of sealed envelopes.
- §57-5-4e. Hospital records; custodian's affidavit; charges.
- §57-5-4f. Hospital records; admissibility of copies and affidavits.
- §57-5-4g. Hospital records; obtaining personal attendance of custodian.
- §57-5-4h. Hospital records; obtaining personal attendance of custodian and production of original record.
- §57-5-4i. Hospital records; substitution of copies after introduction of originals.
- §57-5-4j. Hospital records; evidence of reasonableness of medical expenses.

§57-5-4a. Hospital records; definitions.

1 As used in sections four-a to four-j in this article the
 2 following terms shall have the respective meanings as-
 3 cribed thereto:

4 (a) "Records" means and includes without restriction,
 5 those medical histories, records, reports, summaries,
 6 diagnoses, and prognoses, records of treatment and medi-
 7 cation ordered and given, notes, entries, X-rays, and
 8 other written or graphic data prepared, kept, made or
 9 maintained in hospitals that pertain to hospital confine-
 10 ments or hospital services rendered to patients admitted
 11 to hospitals or receiving emergency room or outpatient
 12 care. Such records shall not, however, include ordinary
 13 business records pertaining to patients' accounts or the
 14 administration of the institution.

15 (b) "Custodian" means and includes the medical record
 16 librarian and the administrator or other chief officer of a
 17 duly licensed hospital in this state and its proprietor, as
 18 well as their deputies and assistants and any other per-
 19 sons who are official custodians or depositories of rec-
 20 ords.

§57-5-4b. Hospital records; furnishing copies in compliance with subpoenas.

1 Except as hereinafter provided, when a subpoena duces

2 tecum is served upon a custodian of records of any hos-
3 pital duly licensed under the laws of this state in an
4 action or proceeding in which the hospital is neither a
5 party nor the place where any cause of action is alleged
6 to have arisen and such subpoena requires the production
7 of all or any part of the records of the hospital relating
8 to the care or treatment of a patient in such hospital, it
9 shall be sufficient compliance therewith if the custodian or
10 other officer of the hospital shall, on or before the time
11 specified in the subpoena duces tecum, file with court
12 clerk or the officer, body or tribunal conducting the hear-
13 ing, a true and correct copy (which may be a copy re-
14 produced on film or other reproducing material by
15 microfilming, photographing, photostating or other ap-
16 proximate process, or facsimile, exemplification or copy
17 of such reproduction or copy) of all records described in
18 such subpoena.

**§57-5-4c. Hospital records; sealing, identification and direction
of copies.**

1 The copy of the records shall be separately enclosed in
2 an inner-envelope or wrapper, sealed, with the style and
3 number of the action, name of witness and date of sub-
4 poena clearly inscribed thereon. The sealed envelope or
5 wrapper shall then be enclosed in an outer-envelope or
6 wrapper, sealed, and directed as follows:

7 If the subpoena directs attendance in court, to the
8 clerk of such court or to the judge thereof; if the subpoena
9 directs attendance at a deposition, to the officer be-
10 fore whom the deposition is to be taken, at the place
11 designated in the subpoena for the taking of the deposi-
12 tion or at his place of business; in other cases, to the
13 officer, body or tribunal conducting the hearing, at a like
14 address.

§57-5-4d. Hospital records; opening of sealed envelopes.

1 Unless the sealed envelope or wrapper is returned to a
2 witness who is to appear personally, the copy of the rec-
3 ords shall remain sealed and shall be opened only at the
4 time of trial, deposition, or other hearing, upon the direc-

5 tion of the judge, court, officer, body or tribunal conduct-
6 ing the proceeding, in the presence of all parties who
7 have appeared in person or by counsel at such trial,
8 deposition or hearing. Before directing that such inner-
9 envelope or wrapper be opened, the judge, court, officer,
10 body or tribunal shall first ascertain that either (1) the
11 records have been subpoenaed at the instance of the
12 patient involved or his counsel of record, or (2) the pa-
13 tient involved or someone authorized in his behalf to do
14 so for him has consented thereto and waived any privilege
15 of confidence involved. Records which are not introduced
16 in evidence or required as part of the record shall be
17 returned to the person or entity from whom received.

18 The provisions of this section shall not apply in a work-
19 men's compensation proceeding if the pertinent record is
20 the record of the claimant therein or a claimant's dece-
21 dent: *Provided*, That nothing in this section, or the pre-
22 ceding section, shall limit in any manner the availability
23 of and access to documents as provided in the rules of
24 civil procedure or elsewhere in this code by the parties
25 to any civil action and their counsel.

§57-5-4e. Hospital records; custodian's affidavit; charges.

1 The records shall be accompanied by an affidavit of a
2 custodian stating in substance: (a) That the affiant is a
3 duly authorized custodian of the records and has author-
4 ity to certify said records, (b) that the copy is a true copy
5 of all the records described in the subpoena, (c) that the
6 records were prepared by the personnel of the hospital,
7 staff physicians, or persons acting under the control of
8 either, in the ordinary course of hospital business at or
9 near the time of the act, condition or event reported
10 therein, and (d) certifying the amount of the reasonable
11 charges of the hospital for furnishing such copies of the
12 record. If the hospital has none of the records described,
13 or only part thereof, the custodian shall so state in the
14 affidavit and file the affidavit and such records as are
15 available in the manner described in sections four-b and
16 four-c. The filing of such affidavit with respect to reason-
17 able charges shall be sufficient proof of such expense,
18 which shall be taxed as costs of court.

§57-5-4f. Hospital records; admissibility of copies and affidavits.

1 The copy of the record shall be admissible in evidence
2 to the same extent as though the original thereof were
3 offered and the custodian has been present and testified to
4 the matters stated in the affidavit.

5 The affidavit shall be admissible in evidence and the
6 matters stated therein shall be presumed true in the ab-
7 sence of preponderance of evidence to the contrary. When
8 more than one person has knowledge of the facts, more
9 than one affidavit may be made.

§57-5-4g. Hospital records; obtaining personal attendance of custodian.

1 The personal attendance of the custodian shall be re-
2 quired if the subpoena duces tecum contains a clause
3 which reads:

4 "The procedure authorized pursuant to section four-b
5 of this article will not be deemed sufficient compliance
6 with this subpoena."

§57-5-4h. Hospital records; obtaining personal attendance of custodian and production of original record.

1 The personal attendance of the custodian and the pro-
2 duction of the original record shall be required if the
3 subpoena duces tecum contains a clause which reads:

4 "Original records are required, and the procedure
5 authorized pursuant to section four-b, article five, chapter
6 fifty-seven of this code, will not be deemed sufficient
7 compliance with this subpoena."

§57-5-4i. Hospital records; substitution of copies after introduction of originals.

1 In view of the property right of the hospital in its
2 records, original records may be withdrawn after intro-
3 duction into evidence and copies substituted, unless
4 otherwise directed for good cause by the court, judge,
5 officer, body, or tribunal conducting the hearing. The

6 custodian may prepare copies of original records in ad-
7 vance of testifying for the purpose of making substitu-
8 tion of the original record, and the reasonable charges for
9 making such copies shall be taxed as costs of court. If
10 copies are not prepared in advance, they can be made and
11 substituted at any time after introduction of the original
12 record, and the reasonable charges for making such
13 copies shall be taxed as costs of court.

**§57-5-4j. Hospital records; evidence of reasonableness of medi-
cal expenses.**

1 Proof that medical, hospital and doctor bills were paid
2 or incurred because of any illness, disease or injury shall
3 be prima facie evidence that such bills so paid or incurred
4 were necessary and reasonable.

CHAPTER 117

(Com. Sub. for S. B. 280—By Mr. Ash and Mr. Gilligan)

[Passed April 9, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, six, seven and eight, article two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the state geological and economic survey without the geological and economic survey commission; giving the governor power to appoint the director of the survey and allowing the director to hire employees, prepare reports and distribute or sell them.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GEODETIC AND GEOLOGICAL SURVEY.

§29-2-4. State geological and economic survey; director.

§29-2-5. Objects of survey.

§29-2-6. Reports to Legislature.

§29-2-7. Distribution of reports.

§29-2-8. Distribution of surplus materials.

§29-2-4. State geological and economic survey; director.

1 The state geological and economic survey, heretofore
2 established, shall be continued. The governor shall appoint as
3 director of the survey a geologist of established reputation.
4 The director may employ such assistants and employees as he
5 may deem necessary. He shall also determine the
6 compensation of all persons employed by the survey, and
7 may remove them at pleasure.

§29-2-5. Objects of survey.

1 The survey shall have for its objects:

2 (a) An examination of the geological formations of the
3 state, with special reference to their economic products,
4 namely: Building stones and other constructive materials and
5 resources, clays, ores and other mineral substances and fuels,
6 the prevention of their waste, and the utilization of
7 by-products;

8 (b) An examination of the physical features of the state
9 with reference to their practical bearing upon the occupations
10 of the people, the industrial development and the material
11 prosperity of the several portions of the state, having due
12 regard to their varying resources, conditions and needs;

13 (c) The preparation of special geological and economic
14 maps to illustrate the resources of the state;

15 (d) The preparation of special reports, with necessary
16 illustrations and maps, which shall embrace both a general
17 and detailed description of the geology and natural resources
18 of the state;

19 (e) The consideration of such other scientific and
20 economic questions as in the judgment of the director shall
21 be deemed of value to the people of the state. The director
22 may enter into cooperative agreements, grants and contracts
23 and establish accounts for such purposes.

§29-2-6. Reports to Legislature.

1 The director shall cause to be prepared a report to the

2 Legislature before each meeting of the same, showing the
3 progress and condition of the survey, together with such
4 other information as he may deem necessary and useful or as
5 the Legislature may require.

§29-2-7. Distribution of reports.

1 The regular and special reports of the survey, with proper
2 illustrations and maps, shall be printed as the director may
3 direct, and the reports shall be distributed or sold by the
4 director as the interests of the state, the diffusion of practical
5 information relating to the development of the state, and the
6 advancement of science, may demand. All moneys obtained
7 by the sales of the reports may be used to defray the costs of
8 publication and their distribution to the people and any
9 balance may be retained for that purpose.

§29-2-8. Distribution of surplus materials.

1 All materials collected, after having served the purpose of
2 the survey, shall be distributed by the director to the
3 educational institutions in such manner as to be of the
4 greatest advantage to the educational interests of the state. If
5 deemed advisable, all or part of such material may be put on
6 permanent exhibition or otherwise disposed of in an
7 appropriate manner.

CHAPTER 118

(H. B. 1323—By Mr. Knight)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to the establishment by the commissioner of labor of a list of six hundred hazardous chemical substances to which employees in this state may be exposed; requiring said list to be composed of hazardous chemical substances published by the secretary of labor; requiring employers of

ten employees or more to post certain notices; requiring employers to report incidents of overexposure by employees; providing for penalties; and providing exemptions for coal, agricultural and horticultural activities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-18. Hazardous chemical substances; notice to employees; reports to commissioner; penalties.

1 (a) It is declared the policy of this state to require em-
2 ployers to disclose to employees the hazards of exposure
3 in the work place to hazardous or toxic chemical substances
4 and materials. For this purpose, the commissioner of labor
5 shall establish and maintain, by rule or regulation, a list of
6 chemical substances and materials which have been deter-
7 mined or are suspected to be hazardous or toxic to the
8 health of employees who may be exposed to them in the course
9 of employment. In establishing and maintaining such list,
10 the commissioner may give consideration to any list made or
11 hereafter made by the secretary of labor of the United States
12 identifying or proposing to identify chemical substances and
13 materials as hazardous or toxic, or setting standard levels of
14 safe exposure thereto, as the same are published from time
15 to time in the federal register. The commissioner shall publish
16 and update, at least annually, such list of substances and
17 materials and shall include in the publication thereof, for
18 each listed substance or material, any standard levels of
19 safe exposure published by said secretary in the federal
20 register, giving due consideration to any changes made or
21 proposed by said secretary in the secretary's list of hazardous
22 or toxic chemical substances and materials, or in any standard
23 levels of safe exposure established or proposed from time
24 to time by said secretary, as the same are published in the
25 federal register.

26 (b) The commissioner shall make copies of such list
 27 prepared under this section available to any employer request-
 28 ing the same: *Provided*, That the commissioner shall limit such
 29 list to no more than six hundred such substances and materials
 30 to be selected from the lists included in 29 Code of Federal
 31 Regulations 1910.1000, Subpart Z, which the commissioner
 32 elects to include because of either frequency of use in the
 33 state, frequency of exposure or overexposure thereof to
 34 workers in the state, the seriousness of the effects of such
 35 exposure or other reason which the commissioner determines
 36 to be sufficient.

37 (c) Any employer of ten or more employees using or pro-
 38 ducing any such listed hazardous chemical substance or ma-
 39 terial shall conspicuously post a warning notice in the work
 40 area where any such substance or material is used, to read
 41 substantially as follows:

42 **WARNING NOTICE**

43 -----
 44 (Name of hazardous chemical substance or material)

45 is used at this work site.

46 Common symptoms of overexposure include the following:

47 -----
 48 Name of Employer

49 Any such notice required to be posted with regard to a
 50 mobile work site may be posted on the container or con-
 51 tainers of the hazardous substance or material or in some
 52 other conspicuous place.

53 The employer shall include in the notice such common
 54 symptoms of overexposure as (1) may be published with the
 55 standard levels of safe exposure, or (2) certified to the em-
 56 ployer by a physician employed for that purpose. Good faith
 57 reliance upon either such source of information shall be suf-
 58 ficient notice of such common symptoms.

59 (d) Any employer having notice of any incident of ex-
60 posure to a listed hazardous chemical substance or material
61 in excess of its standard level of safe exposure published by
62 the commissioner shall within ten days thereof report to the
63 commissioner the circumstances of such incident and provide
64 a copy of the report to the employee.

65 (e) Any person or corporation that violates the provisions
66 of this section is guilty of a misdemeanor, and, upon con-
67 viction thereof, shall be fined not less than one hundred dollars
68 nor more than one thousand dollars for each violation.

69 (f) The provisions of this section shall not apply to any
70 coal mine, coal mining or coal processing plant, and any
71 agricultural or horticultural activity, and any such mine, plant
72 or activity is hereby exempted from the provisions of this
73 section.

CHAPTER 119

(Com. Sub. for H. B. 1479—By Mr. Stephens and Mr. Riffle)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-e, relating to storage, transportation, treatment or disposal of hazardous waste and a declaration of state policy with respect thereto; providing for a short title by which the article may be known; providing for definition of certain terms used with respect thereto; designating the department of natural resources as the lead agency for this state for purposes of Subtitle C of the federal Solid Waste Disposal Act; the powers and duties of the director of natural resources with respect thereto; the powers and duties of the chief of the water resources division, and the department of highways, public service commission, the department of health, the air pollution control commission, the office of oil and gas and the shallow gas-well review board with respect thereto;

providing for the promulgation of rules and regulations by such director and chief as well as by such agencies with respect to the transportation, treatment, storage and disposal of such waste in this state; requiring written comments on rules and regulations promulgated under this article by the director of the department of natural resources to the legislative rule-making review committee; providing for certain permits for such purposes and applications therefor; the content and form of such applications; providing for hearings with respect to such applications and certain notices to be given with respect thereto and affording the right of public participation in such hearings; providing for the operation by existing facilities during the transition period applicable under this article; securing the confidentiality of certain trade secrets and other information with respect to the storage, treatment, transportation and disposal of such waste; granting unto the chief or the director or to other persons the right of entry to hazardous waste treatment or disposal sites and the right to take samples thereon; requiring certain reports and analyses with respect to such samples and the disposition of such reports; granting certain powers of subpoena and subpoena duces tecum with respect to the enforcement of this article; allowing monitoring of such sites; providing certain criminal and civil penalties for the violation of this article and of the rules and regulations promulgated pursuant thereto; providing for injunctive relief in certain instances; procedures relating to imminent and substantial hazards created by such waste and the duties of the chief in connection therewith; providing for certain duties of the attorney general and of the prosecuting attorneys with respect to the enforcement of this article; the right of the public to maintain suits and to seek damages arising from the transportation, storage, treatment or disposal of hazardous waste; requiring certain disclosures in deeds and leases; requiring the equivalence of this state's program with respect to hazardous waste with the federal program relating thereto; and providing for certain rules of construction with respect to conflicting provisions of this code.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-e, to read as follows:

ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.

- §20-5E-1. Short title.
- §20-5E-2. Declaration of policy.
- §20-5E-3. Definitions.
- §20-5E-4. Designation of department of natural resources as the state hazardous waste management lead agency.
- §20-5E-5. Powers and duties of director; integration with other acts; establishment of study of hazardous waste management.
- §20-5E-6. Promulgation of regulations by director.
- §20-5E-7. Authority and jurisdiction of other state agencies.
- §20-5E-8. Permit process; undertaking activities without a permit.
- §20-5E-9. Public participation in permit process.
- §20-5E-10. Transition program for existing facilities.
- §20-5E-11. Confidential information.
- §20-5E-12. Inspections; right of entry; sampling; reports and analyses, sub-poenas.
- §20-5E-13. Monitoring, analysis and testing.
- §20-5E-14. Enforcement orders; hearings.
- §20-5E-15. Criminal penalties.
- §20-5E-16. Civil penalties and injunctive relief.
- §20-5E-17. Imminent and substantial hazards; orders; penalties; hearings.
- §20-5E-18. Citizen suits; petitions for rule making; intervention.
- §20-5E-19. Appeal to water resources board; notice; hearings; orders.
- §20-5E-20. Disclosures required in deeds and leases.
- §20-5E-21. Appropriation of funds; hazardous waste management fund created.
- §22-5E-22. State program to be consistent with and equivalent to federal program.
- §20-5E-23. Conflicting provisions.

§20-5E-1. Short title.

- 1 This article may be known and cited as the "Hazardous
- 2 Waste Management Act."

§20-5E-2. Declaration of policy.

- 1 (a) The Legislature finds that:
- 2 (1) Continuing technological progress and increases in the
- 3 amount of manufacture and the abatement of air and water
- 4 pollution have resulted in ever increasing quantities of haz-
- 5 arduous wastes;
- 6 (2) The public health and safety and the environment are
- 7 threatened where hazardous wastes are not managed in an
- 8 environmentally sound manner;
- 9 (3) The knowledge and technology necessary for alleviat-

10 ing adverse health, environmental and aesthetic impacts re-
11 sulting from current hazardous waste management and dis-
12 posal practices are generally available;

13 (4) The manufacture, refinement, processing, treatment and
14 use of coal, raw chemicals, ores, petroleum, gas and other
15 natural and synthetic products are activities that make a sig-
16 nificant contribution to the economy of this state; and

17 (5) The problem of managing hazardous wastes has be-
18 come a matter of statewide concern.

19 (b) Therefore, it is hereby declared that the purposes of
20 this article are:

21 (1) To protect the public health and safety, and the en-
22 vironment from the effects of the improper, inadequate or
23 unsound management of hazardous wastes;

24 (2) To establish a program of regulation over the storage,
25 transportation, treatment and disposal of hazardous wastes;

26 (3) To assure the safe and adequate management of hazard-
27 ous wastes within this state; and

28 (4) To assume regulatory primacy through Subtitle C of
29 the federal Solid Waste Disposal Act, as amended.

§20-5E-3. Definitions.

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

3 (1) "Chief" means the chief of the division of water re-
4 sources of the department of natural resources;

5 (2) "Director" means the director of the department of
6 natural resources;

7 (3) "Disposal" means the discharge, deposit, injection,
8 dumping, spilling, leaking or placing of any hazardous waste
9 into or on any land or water so that such hazardous waste or
10 any constituent thereof may enter the environment or be
11 emitted into the air, or discharged into any waters, including
12 ground waters;

13 (4) "Division" means the division of water resources of
14 the department of natural resources;

15 (5) "Generation" means the act or process of producing
16 hazardous waste materials;

17 (6) "Hazardous waste" means a waste or combination of
18 wastes, which because of its quantity, concentration or physi-
19 cal, chemical or infectious characteristics, may (A) cause, or
20 significantly contribute to, an increase in mortality or an in-
21 crease in serious irreversible, or incapacitating reversible,
22 illness; or (B) pose a substantial present or potential hazard
23 to human health or the environment when improperly treated,
24 stored, transported, disposed of or otherwise managed;

25 (7) "Hazardous waste management" means the systematic
26 control of the collection, source separation, storage, trans-
27 portation, processing, treatment, recovery and disposal of
28 hazardous wastes;

29 (8) "Manifest" means the form used for identifying the
30 quantity, composition and the origin, routing and destination
31 of hazardous waste during its transportation from the point of
32 generation to the point of disposal, treatment or storage;

33 (9) "Person" means any individual, trust, firm, joint stock
34 company, public, private or government corporation, part-
35 nership, association, state or federal agency, the United States
36 government, this state or any other state, municipality, county
37 commission or any other political subdivision of a state or any
38 interstate body;

39 (10) "Storage" means the containment of hazardous waste,
40 either on a temporary basis or for a period of years, in such
41 a manner as not to constitute disposal of such hazardous
42 waste;

43 (11) "Treatment" means any method, technique or process
44 including neutralization, designed to change the physical,
45 chemical or biological character or composition of any haz-
46 ardous waste so as to neutralize such waste or so as to render
47 such waste nonhazardous, safer for transport, amenable to
48 recovery, amenable to storage or reduced in volume. Such

49 term includes any activity or processing designed to change
50 the physical form or chemical composition of hazardous waste
51 so as to render it nonhazardous;

52 (12) "Waste" means any garbage, refuse, sludge from a
53 waste treatment plant, water supply treatment plant or air
54 pollution control facility and other discarded material in-
55 cluding solid, liquid, semisolid or contained gaseous material
56 resulting from industrial, commercial, mining and agricultural
57 operations, and from community activities, but does not in-
58 clude solid or dissolved material in domestic sewage, or solid
59 or dissolved materials in irrigation return flows or industrial
60 discharges which are point sources subject to permits under
61 section 402 of the federal Water Pollution Control Act, as
62 amended, or source, special nuclear or byproduct material as
63 defined by the federal Atomic Energy Act of 1954, as amend-
64 ed.

**§20-5E-4. Designation of department of natural resources as the
state hazardous waste management lead agency.**

1 The department of natural resources is hereby designated
2 as the hazardous waste management lead agency for this state
3 for purposes of Subtitle C of the federal Solid Waste Dis-
4 posal Act as amended, and is hereby authorized to take all
5 action necessary or appropriate to secure to this state the
6 benefits of said legislation. In carrying out the purposes of
7 this article, the director is hereby authorized to cooperate
8 with the federal environmental protection agency and other
9 agencies of the federal government, this state and other states,
10 and other interested persons in all matters relating to hazardous
11 waste management.

**§20-5E-5. Powers and duties of director; integration with other acts;
establishment of study of hazardous waste manage-
ment.**

1 (a) In addition to all other powers and duties prescribed
2 in this article or otherwise by law, and unless otherwise speci-
3 fically set forth in this article, the director shall perform any
4 and all acts necessary to carry out the purposes and require-
5 ments of Subtitle C of the federal Solid Waste Disposal Act, as
6 amended as of the effective date of this article.

7 (b) The director shall integrate all provisions of this article
8 for purposes of administration and enforcement and shall
9 avoid duplication to the maximum extent practicable, with
10 the appropriate provisions of the water pollution control act,
11 article five-a of this chapter; the surface mining and recla-
12 mation act, article six of this chapter; the coal refuse disposal
13 control act, article six-c of this chapter; the air pollution con-
14 trol act, article twenty, chapter sixteen of this code; the oil
15 and gas laws of article four, chapter twenty-two of this code;
16 the public health laws, chapter sixteen of this code; the dam
17 control act, article five-d of this chapter; the pesticide use and
18 application act of 1975, article sixteen-b, chapter nineteen
19 of this code; and the pesticide act of 1961, article sixteen-a,
20 chapter nineteen of this code.

21 (c) The director may enter into any agreements, including
22 reimbursement for services rendered, contracts or cooperative
23 arrangements, under such terms and conditions as he deems
24 appropriate, with other state agencies, educational institutions
25 or other organizations and individuals as necessary to imple-
26 ment the provisions of this article.

27 (d) The director shall cooperate with and may receive and
28 expend money from the federal government and other sources.

29 (e) Within twelve months after the effective date of this
30 article, the director, or upon designation by the director, the
31 chief, shall conduct and publish a study of hazardous waste
32 management in this state which shall include, but not be
33 limited to:

34 (1) A description of the sources of hazardous waste gen-
35 eration within the state, including the types and quantities of
36 such wastes;

37 (2) A description of current hazardous waste management
38 practices and costs, including treatment, storage and disposal
39 within the state; and

40 (3) An inventory of existing and abandoned hazardous
41 waste treatment, storage and disposal sites.

42 (f) The director, or upon designation by the director, the
43 chief, in preparing the study provided for in subsection (e)

44 of this section may (1) require any owner or operator of
45 a storage, treatment or disposal facility, or site, or any trans-
46 porter or generator of hazardous wastes to furnish or permit
47 access to any and all information that may reasonably be re-
48 quired to fulfill the duty imposed upon him in subsection (e)
49 of this section, and (2) may issue subpoenas or subpoena
50 duces tecum to compel the production of information regarding
51 the location of any existing or abandoned hazardous waste
52 treatment, disposal or storage site as well as production of
53 information regarding quantity, quality and hazardous waste
54 management practices from any generator or transporter of
55 hazardous waste or any owner or operator of an existing or
56 abandoned hazardous waste treatment, storage or disposal site.

57 (g) The director, or upon designation by the director, the
58 chief, shall (1) encourage, participate in and conduct an on-
59 going investigation and analysis of methods, incentives, tech-
60 nologies of source reduction, reuse, recycling or recovery of
61 potentially hazardous waste and a strategy for encouraging the
62 utilization or reduction of hazardous waste, and (2) investi-
63 gate the feasibility of operating an information clearinghouse
64 for hazardous wastes.

65 (h) The director, or upon designation by the director, the
66 chief, shall provide for the continuing education and training
67 of appropriate department personnel in matters of hazardous
68 waste management.

§20-5E-6. Promulgation of regulations by director.

1 (a) The director has overall responsibility for the promul-
2 gation of rules and regulations under this article. Within six
3 months of the effective date of this article the director shall
4 promulgate the following rules and regulations; in consultation
5 with the department of health, the air pollution control com-
6 mission, the office of emergency services, the public service
7 commission, the state fire marshal, the department of public
8 safety, the department of highways, the department of agri-
9 culture, the water resources board and the department of mines
10 office of oil and gas. In promulgating and revising such rules
11 and regulations the director shall comply with the provisions
12 of chapter twenty-nine-a of this code, shall avoid duplication

13 to the maximum extent practicable with the appropriate pro-
14 visions of the acts and laws set out in subsection (b), section
15 five of this article and shall be consistent with the rules and
16 regulations promulgated by the federal environmental pro-
17 tection agency pursuant to the federal Solid Waste Disposal
18 Act, as amended:

19 (1) Rules and regulations establishing a plan for the safe
20 and effective management of hazardous wastes within the
21 state;

22 (2) Rules and regulations establishing criteria for identifying
23 the characteristics of hazardous waste, identifying the char-
24 acteristics of hazardous waste and listing particular hazardous
25 wastes which are subject to the provisions of this article:
26 *Provided, That:*

27 (A) Each waste listed below shall, except as provided in
28 subparagraph (B) of this subdivision, be subject only to
29 regulation under other applicable provisions of federal or
30 state law in lieu of this article until proclamation by the
31 governor finding that at least six months have elapsed since
32 the date of submission of the applicable study required to
33 be conducted under section 8002 of the federal Solid Waste
34 Disposal Act, as amended, and that regulations have been
35 promulgated with respect to such wastes in accordance with
36 section 3001 (b) (3) (C) of the federal Solid Waste Disposal
37 Act, as amended, and finding in the case of the wastes identi-
38 fied in paragraph (iv) of this subparagraph that the regula-
39 tion of such wastes have been authorized by an act of Con-
40 gress in accordance with section 3001 (b) (2) of the federal
41 Solid Waste Disposal Act, as amended:

42 (i) Fly ash waste, bottom ash waste, slag waste and flue
43 gas emission control waste generated primarily from the com-
44 bustion of coal or other fossil fuels;

45 (ii) Solid waste from the extraction, beneficiation and pro-
46 cessing of ores and minerals, including phosphate rock and
47 overburden from the mining of uranium ore;

48 (iii) Cement kiln dust waste; and

49 (iv) Drilling fluids, produced waters and other wastes asso-

50 ciated with the exploration, development or production of
51 crude oil or natural gas or geothermal energy.

52 (B) Owners and operators of disposal sites for wastes listed
53 in subparagraph (A) of this subdivision may be required by
54 the director of the department of natural resources through
55 regulation prescribed under authority of this section;

56 (i) As to disposal sites for such wastes which are to be
57 closed, to identify the locations of such sites through sur-
58 veying, platting or other measures, together with recordation
59 of such information on the public record, to assure that the
60 locations where such wastes are disposed of are known and
61 can be located in the future; and

62 (ii) To provide chemical and physical analysis and com-
63 position of such wastes, based on available information, to be
64 placed on the public record.

65 (3) Rules and regulations establishing such standards appli-
66 cable to generators of hazardous waste identified or listed
67 under this article as may be necessary to protect public health
68 and safety and the environment, which standards shall es-
69 tablish requirements respecting (A) record keeping practices
70 that accurately identify the quantities of such hazardous waste
71 generated, the constituents thereof which are significant in
72 quantity or in potential harm to human health or the environ-
73 ment and the disposition of such wastes, (B) labeling practices
74 for any containers used for the storage, transport or disposal
75 of such hazardous waste such as will identify accurately such
76 waste, (C) use of appropriate containers for such hazardous
77 waste, (D) furnishing of information on the general chemical
78 composition of such hazardous wastes to persons transporting,
79 treating, storing or disposing of such wastes, (E) use of a
80 manifest system and any other reasonable means necessary
81 to assure that all such hazardous waste generated is desig-
82 nated for treatment storage or disposal in, and arrives at treat-
83 ment, storage or disposal facilities (other than facilities on the
84 premises where the waste is generated) with respect to which
85 permits have been issued which are required (1) by this article
86 or any rule and regulation required by this article to be prom-
87 ulgated, (2) by Subtitle C of the federal Solid Waste Disposal

88 Act, as amended, (3) by the laws of any other state which has
89 an authorized hazardous waste program pursuant to section
90 3006 of the federal Solid Waste Disposal Act, as amended,
91 or (4) by title I of the federal Marine Protection, Research
92 and Sanctuaries Act and (F) the submission of reports to the
93 director at such times as the director deems necessary setting
94 out the quantities of hazardous wastes identified or listed
95 under this article that the generator has generated during a
96 particular time period, and the disposition of all such haz-
97 arduous waste;

98 (4) Rules and regulations establishing such performance
99 standards applicable to owners and operators of facilities for
100 the treatment, storage or disposal of hazardous waste identi-
101 fied or listed under this article as may be necessary to pro-
102 tect public health and safety and the environment, which
103 standards shall, where appropriate, distinguish in such stan-
104 dards between requirements appropriate for new facilities and
105 for facilities in existence on the date of promulgation of such
106 rules and regulations and shall include, but need not be limited
107 to, requirements respecting: (A) Maintaining records of all
108 hazardous wastes identified or listed under this article which
109 are treated, stored or disposed of, as the case may be, and the
110 manner in which such wastes were treated, stored or disposed
111 of; (B) satisfactory reporting, monitoring and inspection and
112 compliance with the manifest system referred to in subdivision
113 (3), subsection (a) of this section; (C) treatment, storage or
114 disposal of all such waste received by the facility pursuant to
115 such operating methods, techniques and practices as may be
116 satisfactory to the directors; (D) the location, design and
117 construction of such hazardous waste treatment, disposal or
118 storage facilities; (E) contingency plans for effective action to
119 minimize unanticipated damage from any treatment, storage
120 or disposal of any such hazardous waste; (F) the maintenance
121 of operation of such facilities and requiring such additional
122 qualifications as to ownership, continuity of operation, train-
123 ing for personnel and financial responsibility as may be neces-
124 sary or desirable; however no private entity may be precluded
125 by reason of criteria established under this subsection from
126 the ownership or operation of facilities providing hazardous
127 waste treatment, storage or disposal services where such entity

128 can provide assurances of financial responsibility and con-
129 tinuity of operation consistent with the degree and duration of
130 risks associated with the treatment, storage or disposal of
131 specified hazardous waste; and (G) compliance with the re-
132 quirements of section eight of this article respecting permits
133 for treatment, storage or disposal;

134 (5) Rules and regulations specifying the terms and condi-
135 tions under which the chief shall issue, modify, suspend,
136 revoke or deny such permits as may be required by this
137 article;

138 (6) Rules and regulations for the establishment and main-
139 tenance of records; the making of reports; the taking of sam-
140 ples and the performing of tests and analyses; the installing,
141 calibrating, operating and maintaining of monitoring equip-
142 ment or methods; and the providing of any other information
143 as may be necessary to achieve the purposes of this article;

144 (7) Rules and regulations establishing standards and pro-
145 cedures for the certification of personnel at hazardous waste
146 treatment, storage or disposal facilities or sites;

147 (8) Rules and regulations for public participation in the
148 implementation of this article;

149 (9) Rules and regulations establishing procedures and re-
150 quirements for the use of a manifest during the transport of
151 hazardous wastes;

152 (10) Rules and regulations establishing procedures and
153 requirements for the submission and approval of a plan, appli-
154 cable to owners or operators of hazardous waste storage,
155 treatment and disposal facilities, as necessary or desirable for
156 closure of the facility, post-closure monitoring and mainte-
157 nance, sudden and accidental occurrences and nonsudden and
158 accidental occurrences;

159 (11) Rules and regulations establishing a schedule of fees
160 to recover the costs of processing permit applications and
161 permit renewals; and

162 (12) Such other rules and regulations as are necessary
163 to effectuate the purposes of this article.

164 (b) The rules and regulations required by this article to
165 be promulgated shall be reviewed and where necessary, revised
166 not less frequently than every three years. Additionally, the
167 rules and regulations required to be promulgated by this
168 article shall be revised, as necessary, within six months of the
169 effective date of any amendment of the federal Solid Waste
170 Disposal Act and within six months of the effective date of
171 any adoption or revision of rules and regulations required to
172 be promulgated by the federal Solid Waste Disposal Act,
173 as amended.

174 (c) Notwithstanding any other provision in this article the
175 director shall not promulgate rules and regulations which are
176 more properly within the jurisdiction and expertise of any of
177 the agencies empowered with rule-making authority pursuant
178 to section seven of this article.

§20-5E-7. Authority and jurisdiction of other state agencies.

1 (a) The commissioner of highways, in consultation with the
2 director, and avoiding inconsistencies with and avoiding dupli-
3 cation to the maximum extent practicable with rules and regula-
4 tions required to be promulgated pursuant to this article
5 by the director or any other rule-making authority, and in
6 accordance with the provisions of chapter twenty-nine-a of
7 this code, shall promulgate, as necessary, rules and regulations
8 governing the transportation of hazardous wastes by vehicle
9 upon the roads and highways of this state. Such rules and
10 regulations shall be consistent with applicable rules and regula-
11 tions issued by the federal department of transportation and
12 consistent with this article: *Provided*. That such rules and
13 regulations shall apply to the interstate transportation of
14 hazardous wastes as well as the intrastate transportation of
15 such waste within the boundaries of this state. Such rules and
16 regulations shall be promulgated within six months of the
17 effective date of this article.

18 In lieu of those enforcement and inspection powers con-
19 ferred upon the commissioner of highways elsewhere by law
20 with respect to the transportation of hazardous waste, the
21 commissioner of highways has the same enforcement and

22 inspection powers as those granted to the chief, his authorized
23 representative or agent, or any authorized employee or agent
24 of the department of natural resources, as the case may
25 be, under sections eleven, twelve, thirteen, fourteen, fif-
26 teen, sixteen and seventeen of this article. The limitations of
27 this subsection shall not affect in any way the powers of the
28 department of highways with respect to weight enforce-
29 ment.

30 (b) The public service commission, in consultation with
31 the director, and avoiding inconsistencies with and avoid-
32 ing duplication to the maximum extent practicable with
33 rules and regulations required to be promulgated pur-
34 suant to this article by the director or any other rule-
35 making authority, and in accordance with the provisions
36 of chapter twenty-nine-a of this code, shall promulgate, as
37 necessary, rules and regulations governing the transporta-
38 tion of hazardous wastes by railroad in this state. Such
39 rules and regulations shall be consistent with applicable
40 rules and regulations issued by the federal department of
41 transportation and consistent with this article: *Provided,*
42 That such rules and regulations apply to the interstate
43 transportation of hazardous wastes as well as the intra-
44 state transportation of such wastes within the bound-
45 aries of this state. Such rules and regulations shall be
46 promulgated within six months of the effective date of this
47 article.

48 In lieu of those enforcement and inspection powers con-
49 ferred upon the public service commission elsewhere by law
50 with respect to the transportation of hazardous waste, the
51 public service commission has the same enforcement and
52 inspection powers as those granted to the chief, his authorized
53 representative or agent or any authorized employee or agent of
54 the department of natural resources, as the case may be, under
55 sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and
56 seventeen of this article.

57 (c) The rules and regulations required to be promulgated
58 pursuant to subsections (a) and (b) of this section shall
59 apply equally to those persons transporting hazardous wastes
60 generated by others and to those transporting hazardous

61 wastes they have generated themselves or combinations there-
62 of. Such rules and regulations shall establish such standards,
63 applicable to transporters of hazardous waste identified or
64 listed under this article, as may be necessary to protect
65 public health, safety and the environment. Such standards
66 shall include, but need not be limited to, requirements respect-
67 ing (A) record keeping concerning such hazardous waste trans-
68 ported, and their source and delivery points, (B) transporta-
69 tion of such waste only if properly labeled, (C) compliance
70 with the manifest system referred to in subdivision (3),
71 subsection (a), section six of this article and (D) trans-
72 portation of all such hazardous waste only to the hazardous
73 waste treatment, storage or disposal facilities which the shipper
74 designates on the manifest form to be a facility holding a per-
75 mit issued under (1) this article or any rule and regulation re-
76 quired by this article to be promulgated; (2) Subtitle C of
77 the federal Solid Waste Disposal Act, as amended; (3) the
78 laws of any other state which has an authorized hazardous
79 waste program pursuant to section 3006 of the federal Solid
80 Waste Disposal Act, as amended; or (4) Title I of the federal
81 Marine Protection, Research and Sanctuaries Act.

82 (d) The state director of health has jurisdiction over the
83 enforcement of regulations pertaining to hazardous wastes
84 with infectious characteristics and the permitting and licensing
85 of facilities that treat, store or dispose of such hazardous
86 wastes: *Provided*, That the state board of health, in con-
87 sultation with the director of the department of natural re-
88 sources and avoiding inconsistencies with, and avoiding dupli-
89 cation to the maximum extent practicable with rules and
90 regulations required to be promulgated pursuant to this article
91 by the director of the department of natural resources or any
92 other rule-making authority, shall promulgate such rules and
93 regulations as may be necessary to comply with the require-
94 ments of this article: *Provided, however*, That nothing in this
95 subsection shall be construed to diminish or alter the author-
96 ity of the air pollution control commission or its director
97 under this article or article twenty, chapter sixteen of this
98 code: *Provided further*, That such permitting or licensing
99 shall be in addition to those permits required by section eight
100 of this article. Such rules and regulations shall be consistent

101 with this article. Such rules and regulations shall be promul-
102 gated within six months of the effective date of this article.

103 Any person aggrieved or adversely affected by an order
104 of the state director of health pursuant to this article, or
105 the denial or issuance of a permit, or the failure or refusal
106 of said director to act within a reasonable time on an
107 application for a permit or the terms or conditions of a
108 permit granted under the provisions of this article, may
109 appeal to a special hearing examiner appointed to hear con-
110 tested cases in accordance with the provisions of chapter
111 twenty-nine-a of this code. All procedures for appeal
112 and conduct of hearings shall comply with rules and regula-
113 tions promulgated by the state board of health. Unless the
114 board of health directs otherwise, the appeal hearing shall be
115 held in the city of Charleston, Kanawha County.

116 In lieu of those enforcement and inspection powers con-
117 ferred upon the state director of health elsewhere by law with
118 respect to hazardous waste with infectious characteristics, the
119 state director of health shall have the same enforcement
120 and inspection powers as those granted to the chief, his
121 authorized representative or agent or any authorized em-
122 ployee or agent of the department of natural resources, as
123 the case may be, under sections eleven, twelve, thirteen, four-
124 teen, fifteen, sixteen and seventeen of this article.

125 (e) The director shall rely, to the maximum extent practi-
126 cable, on the department of health for expertise on the
127 adverse effects of toxic hazardous waste on human health.

128 (f) The air pollution control commission, in consultation
129 with the director, and avoiding inconsistencies with and avoid-
130 ing duplication to the maximum extent practicable with rules
131 and regulations required to be promulgated pursuant to this
132 article by the director or any other rule-making authority,
133 and in accordance with the provisions of article twenty, chapter
134 sixteen and chapter twenty-nine-a of this code, shall promulgate
135 such rules and regulations establishing air pollution perform-
136 ance standards and permit requirements and procedures as may
137 be necessary to comply with the requirements of this article.
138 Such permits as such regulations may require shall be in

139 addition to those permits required by section eight of this
140 article. All rules and regulations promulgated pursuant to this
141 subsection shall be consistent with this article and shall be
142 promulgated within six months of the effective date of this
143 article.

144 With respect to this article, and any rules or regulations
145 promulgated pursuant hereto, the director of the air pollu-
146 tion control commission has the same enforcement and in-
147 spection powers as those of the chief under sections eleven,
148 twelve, thirteen, fourteen, fifteen, sixteen and seventeen of
149 this article: *Provided*, That no action for penalties may be
150 initiated by the director of the air pollution control commission
151 without the approval of that commission. Any person aggrieved
152 or adversely affected by an order of the director of the air pol-
153 lution control commission made and entered in accordance with
154 the provisions of this article, or by the failure or refusal of said
155 director to act within a reasonable time on an application
156 for a permit or by the issuance or denial of or by the terms
157 and conditions of a permit granted under the provisions of
158 this article, may appeal to the air pollution control commission
159 in accordance with the procedure set forth in section six,
160 article twenty, chapter sixteen of this code, and orders made
161 and entered by said commission shall be subject to judicial
162 review in accordance with the procedures set forth in section
163 seven, article twenty, chapter sixteen of this code, except that
164 as to cases involving an order granting or denying an applica-
165 tion for a permit, revoking or suspending a permit or approving
166 or modifying the terms and conditions of a permit or the
167 failure to act within a reasonable time on an application for a
168 permit, the petition for judicial review shall be filed in the
169 circuit court of Kanawha County.

170 (g) The director of the department of natural resources
171 has exclusive responsibility for carrying out any require-
172 ment of this article with respect to coal mining wastes or
173 overburden for which a permit is issued under the Surface Coal
174 Mining and Reclamation Act of 1980, article six of this
175 chapter.

176 (h) To the extent that this article relates to activities with
177 respect to oil and gas wells, liquid injection wells and waste

178 disposal wells now regulated by articles four, four-b and seven,
179 chapter twenty-two of the code, the administrator of the office
180 of oil and gas and the shallow gas-well review board has the
181 jurisdiction with respect to the regulation of such activities and
182 shall promulgate such rules and regulations as may be neces-
183 sary to comply with the requirements of this article: *Pro-*
184 *vided*, That nothing in this subsection may be construed to
185 diminish or alter the authority and responsibility of the chief
186 or the water resources board under articles five and five-a,
187 chapter twenty of this code.

188 In lieu of those enforcement and inspection powers con-
189 ferred upon the administrator of the office of oil and gas and
190 the shallow gas-well review board elsewhere by law, with
191 respect to hazardous wastes, the administrator of the office
192 of oil and gas and the shallow gas-well review board have the
193 same enforcement and inspection powers as those granted to the
194 chief, his authorized representative or agent or any authorized
195 employee or agent of the department of natural resources, as
196 the case may be, under sections eleven, twelve, thirteen, four-
197 teen, fifteen, sixteen and seventeen of this article.

198 (i) The water resources board, within six months of the
199 effective date of this article, in consultation with the director,
200 and avoiding inconsistency with and avoiding duplication to
201 the maximum extent practicable with rules and regulations
202 required to be promulgated pursuant to this article by the
203 director or any other rule-making authority, and in accord-
204 ance with the provisions of chapter twenty-nine-a of this code,
205 shall, as necessary, promulgate rules and regulations govern-
206 ing discharges into the waters of this state of hazardous waste
207 resulting from the treatment, storage or disposal of hazardous
208 waste and rules and regulations governing the issuance, modi-
209 fication, suspension, revocation or denial of such permits re-
210 lating to such discharges from the treatment, storage or dis-
211 posal of hazardous waste, as may be required by this article.
212 Such rules and regulations shall be consistent with this article.

213 (j) All rules and regulations promulgated pursuant to this
214 section shall be consistent with rules and regulations pro-
215 mulgated by the federal environmental protection agency pur-
216 suant to the federal Solid Waste Disposal Act, as amended.

217 (k) The director shall submit his written comments to the
218 legislative rule-making review committee regarding all rules
219 and regulations promulgated pursuant to this article.

§20-5E-8. Permit process; undertaking activities without a permit.

1 (a) No person may construct, modify, operate or close
2 any facility or site for the treatment, storage or disposal
3 of hazardous waste identified or listed under this article,
4 nor shall any person store, treat or dispose of any such
5 hazardous waste without first obtaining a permit from the
6 chief for such facility, site or activity and all other permits
7 as required by law. Such permit shall be issued, after public
8 notice and opportunity for public hearing, upon such reason-
9 able terms and conditions as the chief may direct if the
10 application, together with all supporting information and data
11 and other evidence establishes that the construction modifica-
12 tion, operation or closure, as the case may be, of the hazardous
13 waste facility, site or activity will not violate any provisions
14 of this article or any of the rules and regulations promulgated
15 by the director as required by this article: *Provided*, That in
16 issuing the permits required by this subsection, the chief shall
17 not regulate those aspects of a hazardous waste treatment,
18 storage or disposal facility which are the subject of the per-
19 mitting or licensing requirements of section seven of this
20 article and which need not be regulated in order for the chief
21 to perform his duties under this article.

22 (b) The chief shall prescribe a form of application for
23 all permits issued by the chief.

24 (c) The chief may require a plan for the closure of such
25 facility or site to be submitted along with an application for
26 a permit which plan for closure shall comply in all respects
27 with the requirements of this article and any rules and
28 regulations promulgated hereunder. Such plan of closure
29 shall be subject to modification upon application by the
30 permit holder to the chief and approval of such modification
31 by the chief.

32 (d) An environmental analysis shall be submitted with the
33 permit application for all hazardous waste treatment, storage
34 or disposal facilities which are major facilities as that term may

35 be defined by rules and regulations promulgated by the direc-
36 tor: *Provided*, That facilities in existence on the nineteenth
37 day of November, one thousand nine hundred eighty, need not
38 comply with this subsection. Such environmental analysis shall
39 contain information of the type, quality and detail that will
40 permit adequate consideration of the environmental, tech-
41 nical and economic factors involved in the establishment and
42 operation of such facilities:

43 (1) The portion of the applicant's environmental analysis
44 dealing with environmental assessments shall contain, but not
45 be limited to:

46 (A) The potential impact of the method and route of
47 transportation of hazardous waste to the site and the potential
48 impact of the establishment and operation of such facilities
49 on air and water quality, existing land use, transportation and
50 natural resources in the area affected by such facilities;

51 (B) A description of the expected effect of such facilities;
52 and

53 (C) Recommendations for minimizing any adverse impact.

54 (2) The portion of the applicant's environmental analysis
55 dealing with technical and economic assessments shall contain,
56 but not be limited to:

57 (A) Detailed descriptions of the proposed site and facility,
58 including site location and boundaries and facility purpose,
59 type, size, capacity and location on the site and estimates
60 of the cost and charges to be made for material accepted, if
61 any;

62 (B) Provisions for managing the site following cessation
63 of operation of the facility; and

64 (C) Qualifications of owner and operation, including a
65 description of the applicant's prior experience in hazardous
66 waste management operations.

67 (e) Any person undertaking, without a permit, any of the
68 activities for which a permit is required under this section
69 or under section seven of this article, or any person violating
70 any term or condition under which a permit has been issued

71 pursuant to this section or pursuant to section seven of this
72 article, shall be subject to the enforcement procedures of
73 this article.

74 (f) Notwithstanding any provision to the contrary in sub-
75 sections (a) through (e) of this section or section seven of this
76 article, any surface coal mining and reclamation permit cover-
77 ing any coal mining wastes or overburden which has been issued
78 or approved under the Surface Coal Mining and Reclamation
79 Act of 1980, article six of this chapter, shall be considered to
80 have all necessary permits issued pursuant to this article with
81 respect to the treatment, storage or disposal of such wastes or
82 overburden. Rules and regulations promulgated under this ar-
83 ticle are not applicable to treatment, storage or disposal of coal
84 mining wastes and overburden which are covered by such
85 a permit.

§20-5E-9. Public participation in permit process.

1 Before the issuing of a permit to any person with re-
2 spect to any facility for the treatment, storage or disposal
3 of hazardous waste under sections seven or eight of this article,
4 the chief or other permit issuing authority shall:

5 (a) Cause to be published as a Class I-0 legal advertise-
6 ment in a newspaper of general circulation, and the pub-
7 lication area shall be the county wherein the real estate or great-
8 er portion thereof is situate, and broadcast over local radio sta-
9 tions notice of the chief's or other permit issuing authority's in-
10 tention to issue such permit; and

11 (b) Transmit written notice of the chief's or other permit
12 issuing authority's intention to issue such permit to each unit of
13 local government having jurisdiction over the area in which such
14 facility is proposed to be located and to each state agency
15 having any authority under state law with respect to the con-
16 struction or operation of such facility.

17 If within forty-five days the chief or other permit issuing
18 authority receives written notice of opposition to the chief's
19 or other permit issuing authority's intention to issue such
20 permit and a request for a hearing, or if the chief or other
21 permit issuing authority determines on his own initiative,

22 to have a hearing he shall hold an informal public hearing
23 (including an opportunity for presentation of written and oral
24 views) on whether he should issue a permit for the proposed
25 facility. Whenever possible the chief or other permit issuing
26 authority shall schedule such hearing at a location convenient
27 to the nearest population center to such proposed facility and
28 give notice in the aforementioned manner of the date, time and
29 subject matter of such hearing.

§20-5E-10. Transition program for existing facilities.

1 Any person who owns or operates a facility required to
2 have any permit under this article, which facility is in
3 existence on the effective date of this article, shall be
4 treated as having been issued such permit until such time as
5 final administrative disposition is made with respect to an
6 application for such permit: *Provided*, That on the effective
7 date of this article such facility is operating and continues
8 to operate in compliance with the interim status requirement
9 of the federal environmental protection agency established
10 pursuant to section 3005 of the federal Solid Waste Disposal
11 Act, as amended, if applicable, and in such a manner as
12 will not cause or create a substantial risk of a health hazard
13 or public nuisance or a significant adverse effect upon the
14 environment: *Provided, however*, That the owner or operator
15 of such facility shall make a timely and complete application
16 for such permit in accordance with rules and regulations
17 promulgated pursuant to this article specifying procedures and
18 requirements for obtaining such permit.

§20-5E-11. Confidential information.

1 Information obtained by any agency under this article shall
2 be available to the public unless the chief certifies such informa-
3 tion to be confidential. The chief may make such certification
4 where any person shows, to the satisfaction of the chief,
5 that the information or parts thereof, if made public, would
6 divulge methods, processes or activities entitled to protection
7 as trade secrets. Nothing in this section may be construed
8 as limiting the disclosure of information by the division to
9 any officer, employee or authorized representative of the

10 state or federal government concerned with effecting the
11 purposes of this article.

12 Any person who knowingly and willfully divulges or dis-
13 closes any information entitled to protection under this section
14 is guilty of a misdemeanor, and, upon conviction thereof,
15 shall be fined not more than five thousand dollars, or im-
16 prisoned in the county jail for not more than six months,
17 or both fined and imprisoned.

**§20-5E-12. Inspections; right of entry; sampling; reports and
analyses; subpoenas.**

1 (a) The chief or any authorized representative, employee
2 or agent of the division, upon the presentation of proper
3 credentials and at reasonable times, may enter any building,
4 property, premises, place, vehicle or permitted facility where
5 hazardous wastes are or have been generated, treated, stored,
6 transported or disposed of for the purpose of making an
7 investigation with reasonable promptness to ascertain the
8 compliance by any person with the provisions of this article
9 or the rules and regulations promulgated by the director or
10 permits issued by the chief hereunder.

11 (b) The chief or his authorized representative, employee
12 or agent shall make periodic inspections at every permitted
13 facility as necessary to effectively implement and enforce
14 the requirements of this article or the rules and regulations
15 promulgated by the director or permits issued by the chief
16 hereunder. After an inspection is made, a report shall be
17 prepared and filed with the chief and a copy of such inspec-
18 tion report shall be promptly furnished to the person in
19 charge of such building, property, premises, place, vehicle
20 or facility. Such inspection reports shall be available to the
21 public in accordance with the provisions of article one,
22 chapter twenty-nine-b of this code.

23 (c) Whenever the chief has cause to believe that any
24 person is in violation of any provision of this article, any
25 condition of a permit issued by the chief, any order or any
26 regulation promulgated by the director under this article, he
27 shall immediately order an inspection of the building, property,

28 premises, place, vehicle or permitted facility at which the
29 alleged violation is occurring.

30 (d) The chief or any authorized representative, employee
31 or agent of the division may, upon presentation of proper
32 credentials and at reasonable times, enter any establishment
33 or other place maintained by any person where hazardous
34 wastes are or have been stored, treated or disposed of to
35 inspect and take samples of wastes, soils, air, surface water
36 and ground water and samples of any containers or labelings
37 for such wastes. In taking such samples, the division may
38 utilize such sampling methods as it determines to be necessary,
39 including, but not limited to, soil borings and monitoring
40 wells. If the representative, employee or agent obtains any
41 such samples, prior to leaving the premises, he shall give
42 to the owner, operator or agent in charge a receipt describing
43 the sample obtained and, if requested, a portion of each
44 such sample equal in volume or weight to the portion retained.
45 The division shall promptly provide a copy of any analysis
46 made to the owner, operator or agent in charge.

47 (e) Upon presentation of proper credentials and at reason-
48 able times, the chief or any authorized representative, em-
49 ployee or agent of the division shall be given access to all
50 records relating to the storage, treatment or disposal of
51 hazardous waste in the possession of any person who gener-
52 ates, stores, treats, transports, disposes of, or otherwise
53 handles or has handled such waste, the chief or an autho-
54 rized representative, employee or agent shall be furnished
55 with copies of all such records or given the records for the
56 purpose of making copies. If the chief, upon inspection,
57 investigation or through other means, observes or learns of a
58 violation or probable violation of this article, he is authorized
59 to issue subpoenas and subpoenas duces tecum and to order
60 the attendance and testimony of witnesses and to compel the
61 production of any books, papers, documents, manifests and
62 other physical evidence pertinent to such investigation or
63 inspection.

§20-5E-13. Monitoring, analysis and testing.

1 (a) If the chief determines, upon receipt of any information,

2 that (1) the presence of any hazardous waste at a facility or
3 site at which hazardous waste is, or has been, stored, treated
4 or disposed of, or (2) the release of any such waste from such
5 facility or site may present a substantial hazard to human
6 health or the environment, he may issue an order requiring
7 the owner or operator of such facility or site to conduct such
8 monitoring, testing, analysis and reporting with respect to such
9 facility or site as the chief deems reasonable to ascertain the
10 nature and extent of such hazard.

11 (b) In the case of any facility or site not in operation at
12 the time a determination is made under subsection (a) of this
13 section with respect to the facility or site, if the chief finds that
14 the owner of such facility or site could not reasonably be
15 expected to have actual knowledge of the presence of hazardous
16 waste at such facility or site and of its potential for release, he
17 may issue an order requiring the most recent previous owner
18 or operator of such facility or site who could reasonably be
19 expected to have such actual knowledge to carry out the ac-
20 tions referred to in subsection (a) of this section.

21 (c) An order under subsection (a) or (b) of this section
22 shall require the person to whom such order is issued to sub-
23 mit to the chief within thirty days from the issuance of such
24 order a proposal for carrying out the required monitoring, test-
25 ing, analysis and reporting. The chief may, after providing such
26 person with an opportunity to confer with the chief respecting
27 such proposal, require such person to carry out such monitor-
28 ing, testing, analysis and reporting in accordance with such
29 proposal, and such modifications in such proposal as the
30 chief deems reasonable to ascertain the nature and extent of the
31 hazard.

32 (d) The following duties shall be carried out by the chief:

33 (1) If the chief determines that no owner or operator re-
34 ferred to in subsection (a) or (b) of this section is able to con-
35 duct monitoring, testing, analysis or reporting satisfactory to the
36 chief, if the chief deems any such action carried out by an
37 owner or operator to be unsatisfactory or if the chief cannot
38 initially determine that there is an owner or operator referred
39 to in subsection (a) or (b) of this section who is able to con-

40 duct such monitoring, testing, analysis or reporting, he may
41 conduct monitoring, testing or analysis (or any combination
42 thereof) which he deems reasonable to ascertain the nature
43 and extent of the hazard associated with the site concerned, or
44 authorize a state or local authority or other person to carry
45 out any such action, and require, by order, the owner or oper-
46 ator referred to in subsection (a) or (b) of this section to re-
47 imburse the chief or other authority or person for the costs
48 of such activity.

49 (2) No order may be issued under this subsection requiring
50 reimbursement of the costs of any action carried out by the
51 chief which confirms the results of the order issued under
52 subsection (a) or (b) of this section.

53 (e) The chief may commence a civil action against any
54 person who fails or refuses to comply with any order issued
55 under this section. Such action shall be brought in the cir-
56 cuit court in which the defendant is located, resides or is doing
57 business. Such court has jurisdiction to require compliance
58 with such order and to assess a civil penalty of not to exceed
59 five thousand dollars for each day during which such failure
60 or refusal occurs.

§20-5E-14. Enforcement orders; hearings.

1 (a) If the chief, upon inspection, investigation or through
2 other means observes, discovers or learns of a violation of the
3 provisions of this article, any permit, order or rules or regu-
4 lations issued or promulgated hereunder, he may issue an order
5 stating with reasonable specificity the nature of the violation
6 and requiring compliance immediately or within a specified
7 time. An order under this section includes, but is not limited
8 to, any or all of the following: Orders suspending, revoking or
9 modifying permits, orders requiring a person to take remedial
10 action or cease and desist orders.

11 (b) Any person issued a cease and desist order may file
12 a notice of request for reconsideration with the chief not more
13 than seven days from the issuance of such order and shall have
14 a hearing before the chief contesting the terms and conditions
15 of such order within ten days of the filing of such notice of a

16 request for reconsideration. The filing of a notice of request
17 for reconsideration shall not stay or suspend the execution or
18 enforcement of such cease and desist order.

§20-5E-15. Criminal penalties.

1 (a) If any person knowingly (1) transports any hazardous
2 waste identified or listed under this article to a facility which
3 does not have a permit required by this article, section 3005
4 of the federal Solid Waste Disposal Act, as amended, the laws
5 of any other state which has an authorized hazardous waste
6 program pursuant to section 3006 of the federal Solid Waste
7 Disposal Act, as amended, or Title I of the federal Marine
8 Protection, Research and Sanctuaries Act; (2) treats, stores
9 or disposes of any such hazardous waste either (A) without
10 having obtained a permit required by this article, or by Title
11 I of the federal Marine Protection, Research and Sanctuaries
12 Act, or by section 3005 or 3006 of the federal Solid Waste
13 Disposal Act, as amended, or (B) in knowing violation of a ma-
14 terial condition or requirement of such permit he shall be guilty
15 of a felony, and, upon conviction thereof, shall be fined not to
16 exceed fifty thousand dollars for each day of violation or con-
17 fined in the penitentiary not less than one nor more than two
18 years, or both such fine and imprisonment or, in the discre-
19 tion of the court, be confined in jail not more than one year in
20 addition to the above fine.

21 (b) If any person knowingly (1) makes any false material
22 statement or representation in any application, label, manifest,
23 record, report, permit or other document filed, maintained or
24 used for purposes of compliance with this article; or (2) gener-
25 ates, stores, treats, transports, disposes of or otherwise handles
26 any hazardous waste identified or listed under this article
27 (whether such activity took place before or takes place after the
28 effective date of this article) and who knowingly destroys, alters
29 or conceals any record required to be maintained under regula-
30 tions promulgated by the director pursuant to this article, he
31 shall be guilty of a misdemeanor, and, upon conviction thereof,
32 shall be fined not to exceed twenty-five thousand dollars.

33 (c) Any person convicted of a second or subsequent vio-
34 lation of subsections (a) and (b) of this section shall be guilty

35 of a felony, and, upon such conviction, shall be confined in the
36 penitentiary not less than one nor more than three years or
37 fined not more than fifty thousand dollars for each day of
38 violation or both such fine and imprisonment.

39 (d) Any person who knowingly transports, treats, stores or
40 disposes of any hazardous waste identified or listed pursuant
41 to this article in violation of subsection (a) of this section,
42 or having applied for a permit pursuant to sections seven and
43 eight of this article, and knowingly either (1) fails to include
44 in a permit application any material information required
45 pursuant to this article, or rules and regulations promulgated
46 hereunder, or (2) fails to comply with applicable interim status
47 requirements as provided in section ten of this article and who
48 thereby exhibits an unjustified and inexcusable disregard for
49 human life or the safety of others and he thereby places
50 another person in imminent danger of death or serious bodily
51 injury, shall be guilty of a felony, and, upon conviction thereof,
52 shall be fined not more than two hundred fifty thousand
53 dollars or imprisoned not less than one year nor more than
54 four years or both such fine and imprisonment.

55 (e) As used in subsection (d) of this section, the term
56 "serious bodily injury" means:

57 (1) Bodily injury which involves a substantial risk of death;

58 (2) Unconsciousness;

59 (3) Extreme physical pain;

60 (4) Protracted and obvious disfigurement; or

61 (5) Protracted loss or impairment of the function of a
62 bodily member, organ or mental faculty.

§20-5E-16. Civil penalties and injunctive relief.

1 Any person who violates any provision of this article,
2 any permit or any rule, regulation or order issued pursuant
3 to this article shall be subject to a civil penalty not to
4 exceed twenty-five thousand dollars for each day of such
5 violation, which penalty shall be recovered in a civil action
6 in the circuit court of the appropriate county.

7 The chief may seek an injunction, or may institute a civil
8 action against any person in violation of any provisions of
9 this article or any permit, rule, regulation or order issued
10 pursuant to this article. In seeking an injunction, it is not
11 necessary for the chief to post bond nor to allege or prove
12 at any stage of the proceeding that irreparable damage will
13 occur if the injunction is not issued or that the remedy at
14 law is inadequate. An application for injunctive relief or a
15 civil penalty action under this section may be filed and relief
16 granted notwithstanding the fact that all administrative reme-
17 dies provided for in this article have not been exhausted or
18 invoked against the person or persons against whom such relief
19 is sought.

20 Upon request of the chief, the attorney general, or the
21 prosecuting attorney of the county in which the violation
22 occurs, shall assist the chief in any civil action under this
23 section.

24 In any action brought pursuant to the provisions of this
25 section, the state, or any agency of the state which prevails,
26 may be awarded costs and reasonable attorney's fees.

**§20-5E-17. Imminent and substantial hazards; orders; penalties;
hearings.**

1 (a) Notwithstanding any provision of this article to the con-
2 trary, the chief, upon receipt of information, or upon observa-
3 tion or discovery that the handling, storage, transportation,
4 treatment or disposal of any hazardous waste may present an
5 imminent and substantial endangerment to public health, safety
6 or the environment, may:

7 (1) Request the attorney general or the appropriate prose-
8 cuting attorney to commence an action in the circuit court
9 of the county in which the hazardous condition exists to
10 immediately restrain any person contributing to such handling,
11 storage, transportation, treatment or disposal to stop such
12 handling, storage, transportation, treatment or disposal or to
13 take such other action as may be necessary; or

14 (2) Take other action under this section including, but

15 not limited to, issuing such orders as may be necessary to
16 protect public health and the environment.

17 (b) Any person who willfully violates, or fails or refuses
18 to comply with, any order of the chief under subsection (a)
19 of this section may, in an action brought in the appropriate
20 circuit court to enforce such orders, be fined not more than
21 five thousand dollars for each day in which such violation
22 occurs or such failure to comply continues.

§20-5E-18. Citizen suits; petitions for rule making; intervention.

1 (a) Any person may commence a civil action on his own
2 behalf against any person who is alleged to be in violation
3 of any provision of this article or any condition of a permit
4 issued or rules and regulations promulgated hereunder, except
5 that no action may be commenced under this section prior
6 to sixty days after the plaintiff has given notice to the appro-
7 priate enforcement, permit issuing or rule-making authority
8 and to the person against whom the action will be commenced,
9 or if the state has commenced and is diligently prosecuting a
10 civil or criminal action pursuant to this article: *Provided,*
11 That such person may commence a civil action immediately
12 upon notification in the case of an action under subsection
13 (b) of this section. Such actions may be brought in the
14 circuit court in the county in which the alleged violation occurs
15 or in the circuit court of Kanawha County.

16 (b) Any person may commence a civil action against the
17 appropriate enforcement, permit issuing or rule-making au-
18 thority where there is alleged a failure of such authority to
19 perform any nondiscretionary duty or act under this article.
20 Such actions may be brought only in the circuit court of
21 Kanawha County.

22 (c) Any person may petition the appropriate rule-making
23 authority for rule-making on an issue arising under this
24 article. The appropriate rule-making authority, if it believes
25 such issue to merit rule-making, may commence any studies
26 and investigations necessary to issue rules and regulations.
27 A decision by the appropriate rule-making authority not to
28 pursue rule-making must be set forth in writing with sub-
29 stantial reasons for refusing to do so.

30 (d) Nothing in this article may be construed to restrict
31 any rights of any person or class of persons under statute
32 or common law.

33 (e) In issuing any final order in any action brought
34 pursuant to this section any court with jurisdiction may
35 award costs of litigation, including reasonable attorney's fees
36 and expert witnesses fees, to any party whenever the court
37 determines such award to be appropriate.

38 (f) Any enforcement, permit issuing or rule-making au-
39 thority may intervene as a matter of right in any suit brought
40 under this section.

41 (g) Any person may intervene as a matter of right in any
42 civil action or administrative action instituted under this
43 article.

44 (h) Notwithstanding any provision of this article to the
45 contrary, any person may maintain an action to enjoin
46 a nuisance against any permit holder or other person sub-
47 ject to the provisions of this article and may seek damages
48 in said action, all to the same extent and for all intents and
49 purposes as if this article were not enacted, if such person
50 maintaining such action and seeking such damages would
51 otherwise have standing to maintain such action and be
52 entitled to damages by any other rule of law.

**§20-5E-19. Appeal to water resources board; notice; hearings;
orders.**

1 (a) Any person aggrieved or adversely affected by an order
2 of the chief made and entered in accordance with the pro-
3 visions of this article, or by the failure or refusal of the chief
4 to act within a reasonable time on an application for a permit
5 or by the issuance or denial of or by the terms and conditions
6 of a permit granted by the chief under the provisions of this
7 article, may appeal to the water resources board for an order
8 vacating or modifying such order, or for such order, action or
9 terms and conditions as such person believes that the chief
10 should have entered, taken or imposed. The person so appeal-
11 ing shall be known as the appellant and the chief shall be
12 known as the appellee.

13 (b) An appeal shall be perfected by filing a notice of ap-
14 peal, on the form prescribed by the water resources board for
15 such purpose, with such board within thirty days after date
16 upon which the appellant received the copy of such order or
17 received such permit, as the case may be. The filing of the
18 notice of appeal shall not stay or suspend the execution of
19 the order appealed from. If it appears to the water resources
20 board that an unjust hardship to the appellant will result from
21 the execution of the chief's order pending determination of the
22 appeal, the chief or such board may grant a suspension of such
23 order and fix its terms. The notice of appeal shall set forth
24 the order, action or terms and conditions complained of, the
25 grounds upon which the appeal is based and the action sought
26 by the appellant. A copy of the notice of appeal shall be
27 filed by the water resources board with the chief within three
28 days after the notice of appeal is filed with such board.

29 (c) Within seven days after receipt of his copy of the
30 notice of appeal, the chief shall prepare and certify to the
31 water resources board a complete record of the proceedings out
32 of which the appeal arises, including all documents and cor-
33 respondence in the possession of the chief relating to the mat-
34 ter in question. With the consent of such board and upon such
35 terms and conditions as such board may prescribe, any per-
36 sons affected by any such activity may by petition intervene
37 as a party appellant or appellee. The board shall hear the
38 appeal de novo and evidence may be offered on behalf of the
39 appellant, the appellee and by any intervenors.

40 (d) All of the pertinent provisions of article five, chapter
41 twenty-nine-a of this code apply to and govern the hearing on
42 appeal authorized by this section and the administrative pro-
43 cedures in connection with and following such hearing, with like
44 effect as if the provisions of article five were set forth in ex-
45 tenso in this section, with the following modifications or ex-
46 ceptions:

47 (1) Unless the board directs otherwise, the appeal hearing
48 shall be held in the city of Charleston, Kanawha County;
49 and

50 (2) In accordance with the provisions of section one, article

51 five of said chapter twenty-nine-a, all of the testimony at any
52 such hearing shall be recorded by stenographic notes and
53 characters or by mechanical means. Such reported testimony
54 in every appeal hearing under this article shall be transcribed.

55 (e) Any such appeal hearing shall be conducted by a quorum
56 of the board but the parties by stipulation may agree to take
57 evidence before a hearing examiner employed by the board.
58 For the purpose of conducting such appeal hearing, any mem-
59 ber of the board and the secretary thereof may issue sub-
60 poenas and subpoenas duces tecum in the name of the board,
61 in accordance with the provisions of section one, article five,
62 chapter twenty-nine-a of this code. All subpoenas and sub-
63 poenas duces tecum shall be issued and served within the time
64 and for the fees and shall be enforced as specified in section
65 one, article five of chapter twenty-nine-a and all of the pro-
66 visions of section one dealing with subpoenas and subpoenas
67 duces tecum shall apply to subpoenas and subpoenas duces
68 tecum issued for the purpose of an appeal hearing hereunder.

69 (f) Any such hearing shall be held within twenty days after
70 the date upon which the board received the notice of appeal
71 unless there is a postponement or continuance. The board may
72 postpone or continue any hearing upon its own motion or upon
73 application of the appellant, the appellee or any intervenors for
74 good cause shown. The chief shall be represented at any such
75 hearing by the attorney general or his assistants, or the chief,
76 with the written approval of the attorney general, may em-
77 ploy counsel to represent him. At any such hearing the appel-
78 lant and any intervenor may represent himself or be represented
79 by an attorney-at-law admitted to practice before any circuit
80 court of this state.

81 (g) After such hearing and consideration of all the testi-
82 mony, evidence and record in the case, the board shall make
83 and enter an order affirming, modifying or vacating the order
84 of the chief, or shall make and enter such order as the chief
85 should have entered, or shall make and enter an order ap-
86 proving or modifying the terms and conditions of any permit
87 issued or shall make and enter an order taking such action as
88 the chief should have taken.

89 (h) Such order shall be accompanied by findings of fact
90 and conclusions of law as specified in section three, article
91 five, chapter twenty-nine-a of this code, and a copy of such
92 order and accompanying findings and conclusions shall be
93 served upon the appellant, the appellee, any intervenors and
94 their respective attorneys of record, if any, in person or by
95 registered or certified mail.

96 (i) The board shall also cause a notice to be served with
97 the copy of such order, which notice shall advise the appellant,
98 the appellee and any intervenors of their right to judicial re-
99 view. The order of the board is final unless vacated or modi-
100 fied upon judicial review thereof.

§20-5E-20. Disclosures required in deeds and leases.

1 (a) The grantor in any deed or other instrument of
2 conveyance or any lessor in any lease or other instrument
3 whereby any real property is let for a period of time shall
4 disclose in such deed, lease or other instrument the fact
5 that such property or the subsurface of such property, (whether
6 or not the grantor or lessor is at the time of such con-
7 veyance or lease the owner of such subsurface) was used
8 for the storage, treatment or disposal of hazardous waste.
9 The provisions of this subsection shall only apply to those
10 grantors or lessors who owned or had an interest in the real
11 property when the same or the subsurface thereof was used for
12 the purpose of storage, treatment or disposal of hazardous
13 waste or who have actual knowledge that such real property or
14 the subsurface thereof was used for such purpose or purposes
15 at any time prior thereto.

16 (b) Any grantee of real estate or of any substrata under-
17 lying said real estate or any lessee for a term who intends
18 to use the real estate conveyed or let or any substrata under-
19 lying the same for the purpose of storing, treating or disposing
20 of hazardous waste shall disclose in writing at the time of such
21 conveyance or lease or within thirty days prior thereto such
22 fact to the grantor or lessor of such real estate or substrata.
23 Such disclosure shall describe the proposed location upon said
24 property of the site to be used for the storage, treatment or
25 disposal of hazardous waste, the identity of such waste, the

26 proposed method of storage, treatment or disposal to be used
27 with respect to such waste and any and all other information
28 required by rules and regulations of the director.

§20-5E-21. Appropriation of funds; hazardous waste management fund created.

1 The net proceeds of all fines, penalties and bond forfeitures
2 collected under this article shall be appropriated as directed
3 by Article XII, Section 5 of the Constitution of West Virginia.
4 For the purposes of this section the net proceeds of such
5 fines, penalties and forfeitures shall be deemed the proceeds
6 remaining after deducting therefrom those sums appropriated
7 by the Legislature for defraying the cost of administering
8 this article. All permit application fees collected under this
9 article shall be paid into the state treasury into a special
10 fund designated "The Hazardous Waste Management Fund."
11 In making the appropriation for defraying the cost of ad-
12 ministering this article, the Legislature shall first take into
13 account the sums included in such special fund prior to de-
14 ducting such additional sums as may be needed from the fines,
15 penalties and forfeitures collected pursuant to this article.

§20-5E-22. State program to be consistent with and equivalent to federal program.

1 The program for the management of hazardous waste pur-
2 suant to this article shall be equivalent to and consistent with
3 the federal program established pursuant to Subtitle C of the
4 federal Solid Waste Disposal Act, as amended.

§20-5E-23. Conflicting provisions.

1 This article is intended to supplement existing law and
2 it is not the intention of the Legislature in enacting this
3 article to repeal, expressly or by implication, any other pro-
4 vision of this code. In the event that some provision herein
5 is inconsistent with any other provisions of the code, making
6 it impossible to comply with both, the provisions of this
7 article shall control: *Provided*, That no enforcement proceed-
8 ing brought pursuant to this article may be duplicated by an
9 enforcement proceeding subsequently commenced under some
10 other article of this code with respect to the same transac-

11 tion or event unless such subsequent proceeding involves the
12 violation of a permit or permitting requirement of such other
13 article.

CHAPTER 120

(Com. Sub. for H. B. 774—By Mr. Polan and Mr. Farley)

[Passed April 9, 1981; in effect January 1, 1982. Approved by the Governor.]

AN ACT to amend article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen-a, relating to establishing a separate account in the state treasury for fees received from all sources, including the United States government, the state government or third-party payers, by facilities owned and operated by the state health department; requiring development of a five-year plan by the director; permitting the director to make expenditures from the separate account for purposes of developing the five-year plan, improving health services or obtaining certification; requiring recommendations of the director as to capital projects, priorities and cost to be prior made and processed through the budget process for legislative appropriation; providing effective date; and requiring an annual report to be made to the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-15a. Hospital services revenue account; health facilities long-range plans.

1 On and after the first day of January, one thousand nine
2 hundred eighty-two, and subject to the provisions set forth in
3 section two, article two, chapter twelve of this code, there is

4 established in the state treasury a separate account which shall
5 be designated the "hospital services revenue account." The
6 director of health shall deposit promptly into the account any
7 fees received by a facility owned and operated by the state
8 health department from whatever source including the federal
9 government, state government or other third-party payer or
10 personal payment.

11 A five-year health facilities long-range plan shall be de-
12 veloped by the director and shall be adopted by the state
13 board of health as regulation in accordance with chapters six-
14 teen and twenty-nine-a of this code. The health facilities long-
15 range plan shall be updated and revised at least every two years.

16 The director is authorized to expend the moneys deposited
17 in the hospital services revenue account in accordance with
18 federal laws and regulations and with the laws of this state
19 as is necessary for the development of the five-year health fa-
20 cilities long-range plan and subsequent revisions.

21 The director is authorized to expend the moneys deposited
22 in the hospital services revenue account as provided for in
23 the health facilities long-range plan at such times and in such
24 amounts as the director determines to be necessary for the
25 purpose of improving the delivery of health and mental health
26 services at state health and mental health facilities or for the
27 purpose of maintaining or obtaining certification at a state
28 health or mental health facility: *Provided*, That during any
29 fiscal year in which the director anticipates spending any
30 money from such account, he shall submit to the executive
31 department during the budget preparation period prior to the
32 Legislature convening, before that fiscal year for inclusion in
33 the executive budget document and budget bill, his recom-
34 mended capital investments, recommended priorities and es-
35 timated costs, as well as requests of appropriations for the
36 purpose of improving the delivery of health and mental health
37 services or for the purpose of maintaining or obtaining certi-
38 fication at a state health or mental health facility in such
39 amounts as the director determines to be necessary for the
40 development of, and as provided for in, the five-year health
41 facilities long-range plan and subsequent revisions.

42 The director shall make an annual report to the Legislature
43 on the status of the health services revenue account, including
44 the previous year's expenditures and projected expenditures
45 for the next year.

CHAPTER 121

(Com. Sub. for H. B. 1729—By Mr. Damron, 13th Dist., and Mr. Simpkins)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article two-a of said chapter, relating to granting county health officers the authority to determine when corrections have been made sufficient to warrant removal of any limitation or restriction placed by an employee under his supervision.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Local Health Officers.

2A. Alternative Method of Organizing Local Health Agencies.

ARTICLE 2. LOCAL HEALTH OFFICERS.

§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 county
3 commission of the county, to appoint in each county of this
4 state a legally qualified physician, who shall be known as the
5 county health officer. It shall also be the duty of such director,
6 upon the recommendation of the municipal council or other

7 governing body of any municipality, to appoint in such muni-
8 cipality a legally qualified physician, who shall be known as
9 the municipal health officer: *Provided*, That no municipality
10 organized and existing without a special charter from the
11 Legislature and located within a county which maintains a full-
12 time county health officer, shall appoint a part-time municipal
13 health officer. The county and municipal health officers in
14 office on the date this section becomes effective shall, unless
15 sooner removed, continue to serve until their respective terms
16 expire, and until their successors have been appointed and have
17 qualified. Beginning on the first day of July, one thousand nine
18 hundred thirty-three, and on the first day of July of each fourth
19 year thereafter, a county health officer shall be appointed as
20 aforesaid to serve for a term of four years, unless sooner re-
21 moved by the said county commission or by the West Virginia
22 director of health. Beginning on the first day of July, one thou-
23 sand nine hundred thirty-one, and on the first day of July of
24 each alternate year thereafter, a municipal health officer shall
25 be appointed as aforesaid to serve for a term of two years, un-
26 less sooner removed by the said municipality or by the West
27 Virginia director of health. If the West Virginia director of
28 health fails to confirm the nomination of the person recom-
29 mended as county or municipal health officer, or if the West
30 Virginia director of health or the county or municipal authority
31 removes any such officer, another nomination shall at once
32 be made to the West Virginia director of health by the nomi-
33 nating authority.

34 The county health officer shall receive an official salary of
35 not less than three hundred dollars per annum and such other
36 amount as the county commission may add for additional ser-
37 vices and actual necessary traveling expenses, unless for work
38 specially done under orders of the state department of health.
39 The salary of the county health officer shall be paid out of the
40 treasury of the county. It shall be the duty of every practicing
41 physician to report to the municipal or county health officer,
42 where there is such official, immediately on diagnosis, those
43 diseases or conditions for which a report is required by the
44 state board of health and in the manner specified by the state
45 health director which may arise or come under the physician's
46 treatment. The health officer receiving such reports shall make

47 to the state health department a weekly report in a manner
48 specified by the director of health.

49 The county health officer together with the president of the
50 county commission and the prosecuting attorney shall consti-
51 tute the county board of health, of which the county health
52 officer shall be the executive officer. The county board of
53 health shall exercise all the powers and enforce all the rules
54 and regulations of the West Virginia board of health, so far
55 as applicable to such county. In a county which has a full-
56 time county health officer, the jurisdiction of the county board
57 of health and of the county health officer shall be coextensive
58 with the county and shall include every city, town and village
59 therein which does not have a full-time health officer of its
60 own, but shall not include any city, town or village therein
61 which has such full-time health officer. In a county which has
62 a part-time health officer only, the jurisdiction of the county
63 board of health and of such part-time health officer shall not
64 extend to any city, town or village therein having a full-time or
65 part-time health officer of its own. All county and municipal
66 boards of health and health officers shall be secondary to the
67 West Virginia board of health and the director of the West
68 Virginia department of health and subject to all orders of the
69 director of the West Virginia department of health who may, if
70 deemed expedient, act through the county and municipal
71 boards. The county health officer or his designated representa-
72 tive shall determine when corrections have been made suffi-
73 cient to warrant removal of any restriction or limitation placed
74 by an employee under his supervision.

75 Any failure to comply with any of the provisions of this
76 section is a misdemeanor, and, upon conviction thereof, the
77 offender shall be fined not more than one hundred dollars.

**ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL
HEALTH AGENCIES.**

**§16-2A-5. Powers and duties of county or municipal health offi-
cers; required reporting of diseases.**

1 The county or municipal health officer appointed by any
2 local board of health created pursuant to the provisions of this
3 article shall be the executive officer of such board of health.
4 Under the supervision of the board, he shall administer the

5 provisions of this article, all other laws of this state relating to
6 public health and applicable to his county or municipality,
7 and the rules, regulations and orders of such county or muni-
8 cipal board of health and of the state board of health, so far
9 as such rules, regulations and orders are applicable to his
10 county or municipality.

11 Such health officer shall attend, but not vote, at all meetings
12 of his county or municipal board of health. He shall act as
13 secretary of such board and shall be in charge of its offices.
14 He shall supervise and direct the activities of county or muni-
15 cipal health services, employees and facilities, except that the
16 duties of such health officer shall not include the rendering of
17 medical or surgical services on an individual basis to wards of
18 the county or municipality or to inmates of any public insti-
19 tution operated or maintained by any county commission or
20 municipality. The county health officer or his designated repre-
21 sentative shall determine when corrections have been made
22 sufficient to warrant removal of any restriction or limitation
23 placed by an employee under his supervision.

24 It shall be the duty of every practicing physician to report
25 to the municipal or county health officer, where there is such
26 official, immediately on diagnosis, those diseases or condi-
27 tions for which a report is required by the state board of health
28 and in the manner specified by the state health director which
29 may arise or come under the physician's treatment. Any health
30 officer receiving such reports shall make to the state director of
31 health a weekly report in a manner specified by the director of
32 health.

CHAPTER 122

(H. B. 1789—By Mrs. Hartman)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating

to public health and requiring a certificate of need prior to the acquiring, offering or development of all new institutional health services within this state; defining terms; requiring institutional health services to be subject to review; providing for exemptions; permitting the state health planning and development agency to administer the certificate of need program; providing for cooperation with the statewide health coordinating council and other persons; strengthening competition and allocating supply of health services; enumerating criteria for certificate of need program; providing for procedure for conducting a certificate of need review; providing for reconsideration hearings; providing for rules and regulations to be used in administering the certificate of need program; granting authority to promulgate additional regulations; providing for adoption of review data; giving power to render a final decision; authorizing power to issue a certificate of need where appropriate; requiring written findings; providing for a capital expenditure maximum; providing for appeals of certificate of need decisions; providing for the length of time a certificate of need is valid; providing for nontransference, compliance and withdrawal of certificates of need; providing for denial of license; providing for injunction relief and civil action; and providing for a civil penalty.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen, article two-d, chapter sixteen of the code of the West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

- §16-2D-2. Definitions.
- §16-2D-3. Certificate of need.
- §16-2D-4. Exemptions from certificate of need program.
- §16-2D-5. Powers and duties of state health planning and development agency.
- §16-2D-6. Minimum criteria for certificate of need reviews.
- §16-2D-7. Procedures for certificate of need reviews.
- §16-2D-8. Agency to promulgate additional rules and regulations.
- §16-2D-9. Agency to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.
- §16-2D-10. Appeal of certificate of need decisions.

§16-2D-11. Nontransference, time period compliance and withdrawal of certificate of need.

§16-2D-12. Denial or revocation of license for operating without certificate.

§16-2D-13. Injunctive relief; civil penalty.

§16-2D-2. Definitions.

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

3 (a) "Affected person" means:

4 (1) The applicant;

5 (2) The applicable health systems agency;

6 (3) Health systems agencies serving the contiguous health
7 service areas or located within the same standard metropoli-
8 tan statistical area;

9 (4) Any individual residing within the geographic area
10 served or to be served by the applicant;

11 (5) Any individual who regularly uses the health care fa-
12 cilities within that geographic area;

13 (6) The health care facilities located in the applicable
14 health service area which provide services similar to the
15 services of the facility under review;

16 (7) The health care facilities which, prior to receipt by
17 the state agency of the proposal being reviewed, have form-
18 ally indicated an intention to provide similar services in the
19 future;

20 (8) Third party payers who reimburse any health care
21 facilities for services in the applicable health service area;

22 (9) Any agency which establishes rates for the health care
23 facilities located in the applicable health service area; or

24 (10) Organizations representing health care providers.

25 (b) "Ambulatory health care facility" means a facility
26 which is freestanding and not physically attached to a health
27 care facility and which provides health care to noninstitution-

28 alized and nonhomebound persons on an outpatient basis.
29 This definition does not include the legally authorized prac-
30 tice of medicine by any one or more persons in the private
31 offices of any health care providers: *Provided*, That this defi-
32 nition does not include the legally authorized provision of
33 health care services by any one or more health professionals
34 licensed to practice in this state pursuant to the provisions of
35 chapter thirty of this code.

36 (c) "Ambulatory surgical facility" means a facility which
37 is freestanding and not physically attached to a health care
38 facility and which provides surgical treatment to patients not
39 requiring hospitalization. This definition does not include
40 the legally authorized practice of surgery by any one or more
41 persons in the private offices of any health care providers.

42 (d) "Annual implementation plan" means a plan establish-
43 ed, annually reviewed and amended as necessary by a health
44 systems agency in conformance with section 1513 (b) (3) of
45 the public health service act, as amended, Title 42 United States
46 Code section 3001-2(b) (3), which describes objectives which
47 will achieve the goals of the health systems plan, or, if those
48 goals are amended by the statewide health coordinating coun-
49 cil when included in the state health plan, as so amended, and
50 priorities among the objectives.

51 (e) "Applicable health service area" means a health ser-
52 vice area, as defined in this section, in which a new institutional
53 health service is proposed to be located.

54 (f) "Applicable health systems agency" means a health
55 systems agency for a health service area in which a proposed
56 new institutional health service is to be located.

57 (g) "Applicant" means: (1) The governing body or the
58 person proposing a new institutional health service who is, or
59 will be, the health care facility licensee wherein the new
60 institutional health service is proposed to be located, and (2)
61 in the case of a proposed new institutional health service not
62 to be located in a licensed health care facility, the governing
63 body or the person proposing to provide such new institutional
64 health service. Incorporators or promoters who will not con-

65 stitute the governing body or persons responsible for the new
66 institutional health service may not be an applicant.

67 (h) "Bed capacity" means the number of beds for which a
68 license is issued to a health care facility, or, if a facility is
69 unlicensed, the number of adult and pediatric beds perma-
70 nently staffed and maintained for immediate use by inpatients
71 in patient rooms or wards.

72 (i) "Capital expenditure" means an expenditure:

73 (1) Made by or on behalf of a health care facility; and

74 (2) (A) Which (i) under generally accepted accounting
75 principles is not properly chargeable as an expense of opera-
76 tion and maintenance, or (ii) is made to obtain either by
77 lease or comparable arrangement any facility or part thereof
78 or any equipment for a facility or part; and (B) which (i)
79 exceeds the expenditure minimum, or (ii) is a substantial
80 change to the bed capacity of the facility with respect to
81 which the expenditure is made, or (iii) is a substantial change
82 to the services of such facility. For purposes of part (i), sub-
83 paragraph (B), subdivision (2) of this definition, the cost of any
84 studies, surveys, designs, plans, working drawings, specifi-
85 cations, and other activities, including staff effort and con-
86 sulting and other services, essential to the acquisition, improve-
87 ment, expansion, or replacement of any plant or equipment
88 with respect to which an expenditure described in subparagraph
89 (B), subdivision (2) of this definition is made shall be in-
90 cluded in determining if such expenditure exceeds the ex-
91 penditure minimum. Donations of equipment or facilities
92 to a health care facility which if acquired directly by such
93 facility would be subject to review shall be considered capi-
94 tal expenditures, and a transfer of equipment or facilities for
95 less than fair market value shall be considered a capital ex-
96 penditure for purposes of such subdivisions if a transfer
97 of the equipment or facilities at fair market value would be
98 subject to review. A series of expenditures, each less than the
99 expenditure minimum, which when taken together are in
100 excess of the expenditure minimum, may be determined by the
101 state agency to be a single capital expenditure subject to
102 review. In making its determination, the state agency shall

103 consider: Whether the expenditures are for components of a
104 system which is required to accomplish a single purpose;
105 whether the expenditures are to be made over a two-year
106 period and are directed towards the accomplishment of a
107 single goal within the health care facility's long range plan;
108 or, whether the expenditures are to be made within a two-
109 year period within a single department such that they will
110 constitute a significant modernization of the department.

111 (j) "Expenditure minimum" means one hundred fifty thou-
112 sand dollars for the twelve-month period beginning the first
113 day of October, one thousand nine hundred seventy-nine. For
114 each twelve-month period thereafter, the state agency may,
115 by regulations adopted pursuant to section eight of this article,
116 adjust the expenditure minimum to reflect the impact of
117 inflation.

118 (k) "Health," used as a term, includes physical and mental
119 health.

120 (l) "Health care facility" is defined as including
121 hospitals, skilled nursing facilities, kidney disease treat-
122 ment centers, including freestanding hemodialysis units, inter-
123 mediate care facilities, ambulatory health care facilities,
124 ambulatory surgical facilities, home health agencies, re-
125 habilitation facilities, and health maintenance organiza-
126 tions, whether under public or private ownership, or as
127 a profit or nonprofit organization and whether or not
128 licensed or required to be licensed in whole or in part by
129 the state.

130 (m) "Health care provider" means a person, partnership,
131 corporation, facility or institution licensed or certified or
132 authorized by law to provide professional health care service
133 in this state to an individual during that individual's medical
134 care, treatment or confinement.

135 (n) "Health maintenance organization" means a public or
136 private organization, organized under the laws of this state,
137 which:

138 (1) Is a qualified health maintenance organization under
139 section 1310(d) of the public health service act, as amended,
140 Title 42 United States Code section 300e-9(d); or

141 (2) (A) Provides or otherwise makes available to enrolled
142 participants health care services, including substantially the
143 following basic health care services: Usual physician services,
144 hospitalization, laboratory, X-ray, emergency and preventive
145 services and out-of-area coverage; and

146 (B) Is compensated except for copayments for the pro-
147 vision of the basic health care services listed in subparagraph
148 (2) (A), subdivision (n) of this definition to enrolled partici-
149 pants on a predetermined periodic rate basis without regard to
150 the date the health care services are provided and which is fixed
151 without regard to the frequency, extent, or kind of health
152 service actually provided; and

153 (C) Provides physicians' services primarily (i) directly
154 through physicians who are either employees or partners of
155 such organization, or (ii) through arrangements with indi-
156 vidual physicians or one or more groups of physicians organ-
157 ized on a group practice or individual practice basis.

158 (o) "Health service area" means a geographic area des-
159 igned by the federal secretary of health & human services
160 pursuant to section 1511 of the public health service act, as
161 amended, Title 42 United States Code section 3001, with
162 respect to which health systems agencies shall be designated
163 under section 1515 of such act, as amended, Title 42 United
164 States Code section 3001-4.

165 (p) "Health services" means clinically related preventive,
166 diagnostic, treatment or rehabilitative services, including al-
167cohol, drug abuse and mental health services.

168 (q) "Health systems agency" means an entity which is con-
169 ditionally or fully designated as such by the federal secre-
170 tary of health & human services pursuant to section 1515
171 of the public health service act, as amended, Title 42 United
172 States Code section 3001-4.

173 (r) "Health systems plan" means a plan established by a
174 health systems agency, under section 1513 (b)(2) of the pub-
175 lic health service act, as amended, Title 42 United States
176 Code section 3001-2 (b) (2), which is a detailed statement of
177 goals describing a healthful environment and health systems of

178 an area which, when developed, will assure that quality health
179 services will be available and accessible in a manner which
180 assures continuity of care, at reasonable cost, for all resi-
181 dents of that area; which are responsive to the unique needs
182 and resources of that area; and which take into account and
183 are consistent with the national guidelines for health planning
184 policy issued by the federal secretary of health & human
185 services with respect to supply, distribution and organization
186 of health resources and services.

187 (s) "Home health agency" is an organization primarily en-
188 gaged in providing directly or through contract arrangements,
189 professional nursing services, home health aide services, and
190 other therapeutic and related services including, but not limit-
191 ed to, physical, speech and occupational therapy and nutritional
192 and medical social services, to persons in their place of resi-
193 dence on a part-time or intermittent basis.

194 (t) "Hospital" means an institution which is primarily en-
195 gaged in providing to inpatients, by or under the supervision
196 of physicians, diagnostic and therapeutic services for medical
197 diagnosis, treatment, and care of injured, disabled or sick
198 persons, or rehabilitation services for the rehabilitation of in-
199 jured, disabled or sick persons. This term also includes psy-
200 chiatric and tuberculosis hospitals.

201 (u) "Intermediate care facility" means an institution which
202 provides, on a regular basis, health-related care and services
203 to individuals who do not require the degree of care and treat-
204 ment which a hospital or skilled nursing facility is designed to
205 provide, but who because of their mental or physical condition
206 require health related care and services above the level of
207 room and board.

208 (v) "Long-range plan" means a document formally adopted
209 by the legally constituted governing body of an existing
210 health care facility or by a person proposing a new institu-
211 tional health service. Each long-range plan shall consist of
212 the information required by the state agency in regulations
213 adopted pursuant to section eight of this article.

214 (w) "Major medical equipment" means a single unit of
215 medical equipment or a single system of components with

216 related functions which is used for the provision of medical
217 and other health services and which costs in excess of one
218 hundred fifty thousand dollars, except that such term does
219 not include medical equipment acquired by or on behalf of a
220 clinical laboratory to provide clinical laboratory services
221 if the clinical laboratory is independent of a physician's
222 office and a hospital and it has been determined under Title
223 XVIII of the social security act to meet the requirements of
224 paragraphs ten and eleven of section 1861 (s) of such act,
225 Title 42 United States Code sections 1395x (10) and (11).
226 In determining whether medical equipment costs more than one
227 hundred fifty thousand dollars, the cost of studies, surveys,
228 designs, plans, working drawings, specifications, and other
229 activities essential to the acquisition of such equipment shall
230 be included. If the equipment is acquired for less than fair
231 market value, the term "cost" includes the fair market value.

232 (x) "Medically underserved population" means the popu-
233 lation of an urban or rural area designated by the state agency
234 as an area with a shortage of personal health services or a
235 population having a shortage of such services, after taking
236 into account unusual local conditions which are a barrier to
237 accessibility or availability of such services. Such designation
238 shall be in regulations adopted by the state agency pursuant to
239 section eight of this article, and the population so designated
240 may include the state's medically underserved population
241 designated by the federal secretary of health and human ser-
242 vices under section 330(b) (3) of the public health service act,
243 as amended, Title 42 United States Code section 254(b) (3).

244 (y) "New institutional health service" means such service
245 as described in section three of this article.

246 (z) "Offer" when used in connection with health services,
247 means that the health care facility or health maintenance
248 organization holds itself out as capable of providing, or as
249 having the means for the provision of, specified health services.

250 (aa) "Person" means an individual, trust, estate, partner-
251 ship, committee, corporation, association and other organi-
252 zations such as joint-stock companies and insurance companies,

253 a state or a political subdivision or instrumentality thereof or
254 any legal entity recognized by the state.

255 (bb) "Physician" means a doctor of medicine or osteopathy
256 legally authorized to practice medicine and surgery by the
257 state.

258 (cc) "Proposed new institutional health service" means
259 such service as described in section three of this article.

260 (dd) "Psychiatric hospital" means an institution which pri-
261 marily provides to inpatients, by or under the supervision of a
262 physician, specialized services for the diagnosis, treatment
263 and rehabilitation of mentally ill and emotionally disturbed
264 persons.

265 (ee) "Rehabilitation facility" means an inpatient facility
266 which is operated for the primary purpose of assisting in the
267 rehabilitation of disabled persons through an integrated pro-
268 gram of medical and other services which are provided under
269 competent professional supervision.

270 (ff) "Review agency" means an agency of the state desig-
271 nated by the governor as the agency for the review of state
272 agency decisions.

273 (gg) "Skilled nursing facility" means an institution or a
274 distinct part of an institution which is primarily engaged in
275 providing to inpatients skilled nursing care and related services
276 for patients who require medical or nursing care, or rehabili-
277 tation services for the rehabilitation of injured, disabled or
278 sick persons.

279 (hh) "State agency" means that agency of state government
280 selected by the governor and designated as the state health
281 planning and development agency in an agreement entered in-
282 to pursuant to section 1521 of the public health service act, as
283 amended, Title 42 United States Code section 300m.

284 (ii) "State health plan" means the document approved by
285 the governor after preparation by the statewide health co-
286 ordinating council pursuant to section 1524 (c) (2) of the pub-
287 lic health service act, as amended, Title 42 United States
288 Code section 300m-3 (c) (2).

289 (jj) "Statewide health coordinating council" means the body
290 established pursuant to section 1524 of the public health
291 service act, as amended, Title 42 United States Code section
292 300m-3, to advise the state agency.

293 (kk) "Substantial change to the bed capacity" of a health
294 care facility means a change, with which a capital expenditure
295 is associated, in any two-year period of ten or more beds or
296 more than ten percent, whichever is less, of the bed capacity
297 of such facility that increases or decreases the bed capacity,
298 redistributes beds among various categories, or relocates beds
299 from one physical facility or site to another. A series of
300 changes to the bed capacity of a health care facility in any
301 two-year period, each less than ten beds or ten percent of the
302 bed capacity of such facility, but which when taken together
303 comprise ten or more beds or more than ten percent of the
304 bed capacity of such facility, whichever is less, is a substantial
305 change to the bed capacity.

306 (ll) "Substantial change to the health services" of a health
307 care facility means the addition of a health service which is
308 offered by or on behalf of the health care facility and which
309 was not offered by or on behalf of the facility within the
310 twelve-month period before the month in which the service is
311 first offered, or the termination of a health service which was
312 offered by or on behalf of the facility.

313 (mm) "To develop," when used in connection with health ser-
314 vices, means to undertake those activities which upon their
315 completion will result in the offer of a new institutional health
316 service or the incurring of a financial obligation, in relation
317 to the offering of such a service.

318 (nn) "Tuberculosis hospital" means an institution which
319 is primarily engaged in providing to inpatients, by or under
320 the supervision of a physician, medical services for the diagnosis
321 and treatment of tuberculosis.

§16-2D-3. Certificate of need.

1 Except as provided in section four of this article, any new
2 institutional health service may not be acquired, offered or
3 developed within this state except upon application for and

4 receipt of a certificate of need as provided by this article.
5 Whenever a new institutional health service for which a certifi-
6 cate of need is required by this article is proposed for a
7 health care facility for which, pursuant to section four of this
8 article, no certificate of need is or was required, a certificate of
9 need shall be issued before the new institutional health service
10 is offered or developed. No person may knowingly charge or
11 bill for any health services associated with any new institu-
12 tional health service that is knowingly acquired, offered or
13 developed in violation of this article, and any bill made in
14 violation of this sentence is legally unenforceable. For purposes
15 of this article, a proposed "new institutional health service"
16 includes:

17 (a) The construction, development, acquisition or other
18 establishment of a new health care facility or health main-
19 tenance organization;

20 (b) The partial or total closure of a health care facility or
21 health maintenance organization with which a capital ex-
22 penditure is associated;

23 (c) Any obligation for a capital expenditure incurred by or
24 on behalf of a health care facility, except as exempted in
25 section four of this article or health maintenance organization
26 in excess of the expenditure minimum or any obligation for
27 a capital expenditure incurred by any person to acquire a
28 health care facility. An obligation for a capital expenditure
29 is considered to be incurred by or on behalf of a health care
30 facility:

31 (1) When a contract, enforceable under state law, is enter-
32 ed into by or on behalf of the health care facility for the con-
33 struction, acquisition, lease or financing of a capital asset; or

34 (2) When the governing board of the health care facility
35 takes formal action to commit its own funds for a construction
36 project undertaken by the health care facility as its own con-
37 tractor; or

38 (3) In the case of donated property, on the date on which
39 the gift is completed under state law.

40 (d) A substantial change to the bed capacity of a health
41 care facility with which a capital expenditure is associated;

42 (e) The addition of health services which are offered by or
43 on behalf of a health care facility or health maintenance organi-
44 zation and which were not offered on a regular basis by or on
45 behalf of such health care facility or health maintenance or-
46 ganization within the twelve-month period prior to the time
47 such services would be offered;

48 (f) The deletion of one or more health services, previously
49 offered on a regular basis by or on behalf of a health care
50 facility or health maintenance organization which deletion is
51 associated with a capital expenditure;

52 (g) A substantial change to the bed capacity or health
53 services offered by or on behalf of a health care facility,
54 whether or not the change is associated with a proposed capital
55 expenditure, if the change is associated with a previous capi-
56 tal expenditure for which a certificate of need was issued and
57 if the change will occur within two years after the date the
58 activity which was associated with the previously approved
59 capital expenditure was undertaken;

60 (h) The acquisition of major medical equipment which
61 will be owned by or located in a health care facility;

62 (i) (1) The acquisition of major medical equipment which
63 will not be owned by or located in a health care facility unless:

64 (A) At least thirty days before any person enters into a
65 contractual arrangement to acquire major medical equipment
66 which will not be owned by or located in a health care fa-
67 cility, such person provides written notice to the state agency of
68 such person's intent to acquire such equipment and of the
69 use that will be made of the equipment; and

70 (B) Within thirty days after the date the state agency re-
71 ceives such notice, the state agency finds that the equipment
72 will not be used to provide services for inpatients of a hospital.

73 (2) The notice provided for in part (A), subparagraph (1),
74 subdivision (i) of this section shall contain all information the

75 state agency requires in accordance with subsections (e) and
76 (u), section seven of this article.

77 (3) For purposes of subdivision (i) of this section, dona-
78 tions and leases of major medical equipment shall be con-
79 sidered acquisitions of such equipment, and an acquisition of
80 medical equipment through a transfer of it for less than fair
81 market value shall be considered an acquisition of major
82 medical equipment if its fair market value is at least one
83 hundred fifty thousand dollars.

84 (4) If major medical equipment not located in a health
85 care facility is acquired without a certificate of need pursuant
86 to section four of this article and at any time it is proposed to
87 use that equipment to serve inpatients of a hospital, a certifi-
88 cate of need shall be issued before such equipment is so used,
89 unless the use is one described in subparagraph (5), sub-
90 division (i) of this section.

91 (5) For purposes of subdivision (i) of this section, an ac-
92 quisition of major medical equipment is not required to be re-
93 viewed if its proposed use is to provide services to inpatients
94 of a hospital only on a temporary basis in the case of a natural
95 disaster, a major accident, or equipment failure. The state
96 agency may, by regulations adopted pursuant to section eight
97 of this article, specify additional circumstances under which
98 acquisitions of major medical equipment which will not be
99 owned or located in a health care facility are not required to
100 be reviewed: *Provided*, That such additional circumstances are
101 acceptable to the federal secretary of health and human ser-
102 vices.

103 (6) The state agency may not make any requirement in
104 addition to this subdivision for a certificate of need for an
105 acquisition of major medical equipment which will not be
106 owned or located in a health care facility;

107 (j) A substantial change in an approved new institutional
108 health service for which a certificate of need is in effect. For
109 purposes of this subdivision "substantial change" shall be
110 defined by the state agency in regulations adopted pursuant
111 to section eight of this article.

§16-2D-4. Exemptions from certificate of need program.

1 (a) Except as provided in subdivision (i), section three
2 of this article, nothing in this article or the rules and regula-
3 tions adopted pursuant to the provisions of this article may
4 be construed to authorize the licensure, supervision, regulation
5 or control in any manner of: (1) Private offices of physicians,
6 private clinics of physicians, dentists or other practitioners of
7 the healing arts; (2) dispensaries and first aid stations located
8 within business or industrial establishments maintained solely
9 for the use of employees: *Provided*, That such facility does not
10 contain inpatient or resident beds for patients or employees
11 who generally remain in the facility for more than twenty-four
12 hours; (3) establishments, such as motels, hotels and boarding-
13 houses which provide medical, nursing personnel and health
14 related services; and (4) the remedial care or treatment of
15 residents or patients in any home or institution conducted only
16 for those who rely solely upon treatment by prayer or spiritual
17 means in accordance with the creed or tenets of any recognized
18 church or religious denomination.

19 (b) (1) A certificate of need is not required for the offer-
20 ing of an inpatient institutional health service or the acquisition
21 of major medical equipment for the provision of an inpatient
22 institutional health service or the obligation of a capital ex-
23 penditure for the provisions of an inpatient institutional health
24 service, if with respect to such offering, acquisition or obliga-
25 tion, the state agency has, upon application under subdivision
26 (2), subsection (b) of this section, granted an exemption to:

27 (A) A health maintenance organization or a combination
28 of health maintenance organizations if (i) the organization
29 or combination of organizations has, in the service area of the
30 organization or the service areas of the organizations in the
31 combination, an enrollment of at least fifty thousand individ-
32 uals, (ii) the facility in which the service will be provided is or
33 will be geographically located so that the service will be reason-
34 ably accessible to such enrolled individuals, and (iii) at least
35 seventy-five percent of the patients who can reasonably be ex-
36 pected to receive the institutional health service will be in-
37 dividuals enrolled with such organization or organizations in
38 the combination; or

39 (B) A health care facility if (i) the facility primarily pro-
40 vides or will provide inpatient health services, (ii) the facility is
41 or will be controlled, directly or indirectly, by a health mainten-
42 ance organization or a combination of health maintenance or-
43 ganizations which has, in the service area of the organization or
44 service areas of the organizations in the combination, an enroll-
45 ment of at least fifty thousand individuals, (iii) the facility is or
46 will be geographically located so that the service will be reason-
47 ably accessible to such enrolled individuals, and (iv) at least
48 seventy-five percent of the patients who can reasonably be ex-
49 pected to receive the institutional health service will be individ-
50 uals enrolled with such organization or organizations in the
51 combination; or

52 (C) A health care facility, or portion thereof, if (i) the fa-
53 cility is or will be leased by a health maintenance organization
54 or combination of health maintenance organizations which has,
55 in the service area of the organization or the service areas of the
56 organizations in the combination, an enrollment of at least fifty
57 thousand individuals and on the date the application is sub-
58 mitted under subdivision (2), subsection (b) of this section, at
59 least fifteen years remain in the term of the lease, (ii) the fa-
60 cility is or will be geographically located so that the service will
61 be reasonably accessible to such enrolled individuals, and (iii)
62 at least seventy-five percent of the patients who can reasonably
63 be expected to receive the new institutional health service will
64 be individuals enrolled with such organization.

65 (2) (A) A health maintenance organization, combination of
66 health maintenance organizations, or other health care facility
67 is not exempt under subdivision (1), subsection (b) of this
68 section from obtaining a certificate of need unless:

69 (i) It has submitted, at such time and in such form and
70 manner as the state agency shall prescribe, an application for
71 such exemption to the state agency and the appropriate health
72 systems agency;

73 (ii) The application contains such information respecting
74 the organization, combination, or facility and the proposed
75 offering, acquisition, or obligation as the state agency may
76 require to determine if the organization or combination meets

77 the requirements of subdivision (1), subsection (b) of this
78 section or the facility meets or will meet such requirements;
79 and

80 (iii) The state agency approves such application.

81 (B) The state agency shall approve an application sub-
82 mitted under subparagraph (A), subdivision (2), subsection
83 (b) of this section if it determines that the applicable require-
84 ments of subdivision (1), subsection (b) of this section are met
85 or will be met on the date the proposed activity for which
86 an exemption was requested will be undertaken.

87 (3) A health care facility, or any part thereof, or medical
88 equipment with respect to which an exemption was granted
89 under subdivision (1), subsection (b) of this section may not
90 be sold or leased and a controlling interest in such facility
91 or equipment or in a lease of such facility or equipment may
92 not be acquired and a health care facility described in sub-
93 paragraph (C), subdivision (1), subsection (b) of this section
94 which was granted an exemption under subdivision (1), sub-
95 section (b) of this section may not be used by any person other
96 than the lessee described in subparagraph (C), subdivision (1),
97 subsection (b) of this section unless:

98 (A) The state agency issues a certificate of need approving
99 the sale, lease, acquisition, or use; or

100 (B) The state agency determines, upon application, that
101 the entity to which the facility or equipment is proposed to
102 be sold or leased, which intends to acquire the controlling
103 interest in or to use the facility is:

104 (i) A health maintenance organization or a combination of
105 health maintenance organizations which meets the enroll-
106 ment requirements of part (i), subparagraph (A), subdivision
107 (1), subsection (b) of this section, and with respect to such
108 facility or equipment, the entity meets the accessibility and
109 patient enrollment requirements of parts (ii) and (iii), sub-
110 paragraph (A), subdivision (1), subsection (b) of this section;
111 or

112 (ii) A health care facility which meets the inpatient, en-
113 rollment, and accessibility requirements of parts (i), (ii) and

114 (iii), subparagraph (B), subdivision (1), subsection (b) of this
115 section and with respect to its patients meets the enrollment
116 requirements of part (iv), subparagraph (B), subdivision (1),
117 subsection (b) of this section.

118 (4) In the case of a health maintenance organization or
119 an ambulatory care facility or health care facility which
120 ambulatory or health care facility is controlled, directly
121 or indirectly, by a health maintenance organization or a
122 combination of health maintenance organizations, the cer-
123 tificate of need requirements apply only to the offering
124 of inpatient institutional health services, the acquisition
125 of major medical equipment, and the obligation of capital
126 expenditures for the offering of inpatient institutional health
127 services and then only to the extent that such offering, ac-
128 quisition, or obligation is not exempt under subdivision (1),
129 subsection (b) of this section.

130 (5) The state agency shall establish the period within
131 which approval or disapproval by the state agency of applica-
132 tions for exemptions under subdivision (1), subsection (b) of
133 this section shall be made.

134 (c) (1) A health care facility is not required to obtain
135 a certificate of need for the acquisition of major medical
136 equipment to be used solely for research, the addition of
137 health services to be offered solely for research, or the
138 obligation of a capital expenditure to be made solely for
139 research if the health care facility provides the notice re-
140 quired in subdivision (2), subsection (c) of this section and
141 the state agency does not find, within sixty days after it
142 receives such notice, that the acquisition, offering or obliga-
143 tion will, or will have the effect to:

144 (A) Affect the charges of the facility for the provision
145 of medical or other patient care services other than the services
146 which are included in the research;

147 (B) Result in a substantial change to the bed capacity of
148 the facility; or

149 (C) Result in a substantial change to the health services of
150 the facility.

151 (2) Before a health care facility acquires major medical
152 equipment to be used solely for research, offers a health
153 service solely for research, or obligates a capital expenditure
154 solely for research, such health care facility shall notify in
155 writing the state agency of such facility's intent and the use
156 to be made of such medical equipment, health service, or
157 capital expenditure.

158 (3) If major medical equipment is acquired, a health service
159 is offered, or a capital expenditure is obligated and a
160 certificate of need is not required for such acquisition, offer-
161 ing, or obligation as provided in subdivision (1), subsection
162 (c) of this section, such equipment or service or equipment
163 or facilities acquired through the obligation of such capital
164 expenditure may not be used in such a manner as to have
165 the effect or to make a change described in subparagraphs (A),
166 (B) and (C), subdivision (1), subsection (c) of this section
167 unless the state agency issues a certificate of need approving
168 such use.

169 (4) For purposes of this subsection, the term "solely for
170 research" includes patient care provided on an occasional and
171 irregular basis and not as part of a research program.

172 (d) (1) The state agency may adopt regulations pursuant to
173 section eight of this article to specify the circumstances under
174 which a certificate of need may not be required for the obliga-
175 tion of a capital expenditure to acquire, either by purchase or
176 under lease or comparable arrangement, an existing health
177 care facility: *Provided*, That a certificate of need shall be
178 required for the obligation of a capital expenditure to
179 acquire, either by purchase or under lease or comparable ar-
180 rangement, an existing health care facility if:

181 (A) The notice required by subdivision (2), subsection
182 (d) of this section is not filed in accordance with that sub-
183 division with respect to such acquisition; or (B) the state
184 agency finds, within thirty days after the date it receives a
185 notice in accordance with subdivision (2), subsection (d)
186 of this section with respect to such acquisition, that the
187 services or bed capacity of the facility will be changed by
188 reason of said acquisition.

189 (2) Before any person enters into a contractual arrange-
190 ment to acquire an existing health care facility, such person
191 shall notify the state agency of his intent to acquire the facility
192 and of the services to be offered in the facility and its bed
193 capacity. Such notice shall be made in writing and shall be
194 made at least thirty days before contractual arrangements are
195 entered into to acquire the facility with respect to which
196 the notice is given. The notice shall contain all information
197 the state agency requires in accordance with subsections (e)
198 and (u), section seven of this article.

199 (e) The state agency shall adopt regulations, pursuant
200 to section eight of this article, wherein criteria are established
201 to exempt from review the addition of certain health services,
202 not associated with a capital expenditure, that are projected
203 to entail annual operating costs of less than the expenditure
204 minimum for annual operating costs. For purposes of this
205 subsection, "expenditure minimum for annual operating costs"
206 means seventy-five thousand dollars for the twelve-month
207 period beginning the first day of October, one thousand nine
208 hundred seventy-nine, and for each twelve-month period
209 thereafter, the state agency may, by regulations adopted
210 pursuant to section eight of this article, adjust the expendi-
211 ture minimum for annual operating costs to reflect the impact
212 of inflation.

**§16-2D-5. Powers and duties of state health planning and develop-
ment agency.**

1 (a) The state agency is hereby empowered to administer
2 the certificate of need program as provided by this article.

3 (b) The state agency shall cooperate with the statewide
4 health coordinating council and the designated health systems
5 agencies for health service areas located in whole or in part
6 within the state in developing rules and regulations for the
7 certificate of need program to the extent appropriate for the
8 achievement of efficiency in their reviews and consistency
9 in criteria for such reviews.

10 (c) The state agency may seek the advice and assistance

11 of other persons, organizations, and other state agencies in
12 the performance of the state agency's responsibilities under this
13 article.

14 (d) For health services for which competition appropriately
15 allocates supply consistent with health systems plans and the
16 state health plan, the state agency shall, in the performance
17 of its functions under this article, give priority, where ap-
18 propriate to advance the purposes of quality assurance, cost
19 effectiveness, and access, to actions which would strengthen
20 the effect of competition on the supply of such services.

21 (e) For health services for which competition does not
22 or will not appropriately allocate supply consistent with
23 health systems plans and the state health plan, the state
24 agency shall, in the exercise of its functions under this
25 article, take actions, where appropriate to advance the pur-
26 poses of quality assurance, cost effectiveness, and access and
27 the other purposes of this article, to allocate the supply of such
28 services.

§16-2D-6. Minimum criteria for certificate of need reviews.

1 (a) Except as provided in subsections (f) and (g) of
2 section nine of this article, in making its determination as
3 to whether a certificate of need shall be issued, the state
4 agency shall, at a minimum, consider all of the following
5 criteria that are applicable, but in the case of a health
6 maintenance organization or an ambulatory care facility or
7 health care facility controlled, directly or indirectly, by
8 a health maintenance organization or combination of health
9 maintenance organizations, the criteria considered shall be
10 only those set forth in subdivision (12) of this subsection:

11 (1) The recommendation of the designated health systems
12 agency for the health service area in which the proposed
13 new institutional health service is to be located;

14 (2) The relationship of the health services being reviewed
15 to the state health plan and to the applicable health systems
16 plan and annual implementation plan adopted by the designated

17 health systems agency for the health service area in which
18 the proposed new institutional health service is to be located;

19 (3) The relationship of services reviewed to the long-
20 range development plan of the person providing or proposing
21 such services;

22 (4) The need that the population served or to be served
23 by such services has for such services proposed to be offered
24 or expanded, and the extent to which all residents of the
25 area, and in particular low income persons, racial and ethnic
26 minorities, women, handicapped persons, other medically
27 underserved population, and the elderly, are likely to have
28 access to those services;

29 (5) The availability of less costly or more effective al-
30 ternative methods of providing such services to be offered,
31 expanded, reduced, relocated or eliminated;

32 (6) The immediate and long-term financial feasibility
33 of the proposal as well as the probable impact of the pro-
34 posal on the costs of and charges for providing health services
35 by the person proposing the new institutional health service;

36 (7) The relationship of the services proposed to the
37 existing health care system of the area in which such services
38 are proposed to be provided;

39 (8) In the case of health services proposed to be provided,
40 the availability of resources, including health care providers,
41 management personnel, and funds for capital and operating
42 needs, for the provision of the services proposed to be pro-
43 vided and the need for alternative uses of these resources as
44 identified by the state health plan, applicable health systems
45 plan and annual implementation plan;

46 (9) The appropriate and nondiscriminatory utilization
47 of existing and available health care providers;

48 (10) The relationship, including the organizational rela-
49 tionship, of the health services proposed to be provided to
50 ancillary or support services;

51 (11) Special needs and circumstances of those entities
52 which provide a substantial portion of their services or re-

53 sources, or both, to individuals not residing in the health service
54 areas in which the entities are located or in adjacent health
55 service areas. Such entities may include medical and other
56 health professional schools, multidisciplinary clinics and spe-
57 cialty centers.

58 (12) To the extent not precluded by subdivision (1),
59 subsection (f), section nine of this article, the special needs and
60 circumstances of health maintenance organizations. These
61 needs and circumstances shall be limited to:

62 (A) The needs of enrolled members and reasonably
63 anticipated new members of the health maintenance or-
64 ganization for the health services proposed to be provided
65 by the organization; and

66 (B) The availability of the new health services from
67 nonhealth maintenance organization providers or other health
68 maintenance organizations in a reasonable and cost-effective
69 manner which is consistent with the basic method of opera-
70 tion of the health maintenance organization. In assessing the
71 availability of these health services from these providers,
72 the agency shall consider only whether the services from these
73 providers:

74 (i) Would be available under a contract of at least five
75 years duration;

76 (ii) Would be available and conveniently accessible
77 through physicians and other health professionals associated
78 with the health maintenance organization;

79 (iii) Would cost no more than if the services were pro-
80 vided by the health maintenance organization; and

81 (iv) Would be available in a manner which is administra-
82 tively feasible to the health maintenance organization;

83 (13) The special needs and circumstances of biomedical
84 and behavioral research projects which are designed to meet
85 a national need and for which local conditions offer special
86 advantages;

87 (14) In the case of a reduction or elimination of a service,
88 including the relocation of a facility or a service, the need that

89 the population presently served has for the service, the extent
90 to which that need will be met adequately by the proposed
91 relocation or by alternative arrangements, and the effect of the
92 reduction, elimination or relocation of the service on the
93 ability of low income persons, racial and ethnic minorities,
94 women, handicapped persons, other medically underserved
95 population, and the elderly, to obtain needed health care;

96 (15) In the case of a construction project: (A) The
97 cost and methods of the proposed construction, including
98 the costs and methods of energy provision and (B) the
99 probable impact of the construction project reviewed on the
100 costs of providing health services by the person proposing
101 such construction project and on the costs and charges to
102 the public of providing health services by other persons;

103 (16) In the case of health services proposed to be pro-
104 vided, the effect of the means proposed for the delivery
105 of proposed health services on the clinical needs of health
106 professional training programs in the area in which such
107 services are to be provided;

108 (17) In the case of health services proposed to be pro-
109 vided, if such services are to be available in a limited number
110 of facilities, the extent to which the schools in the area for
111 health professions will have access to the services for training
112 purposes;

113 (18) In the case of health services proposed to be pro-
114 vided, the extent to which such proposed services will be
115 accessible to all the residents of the area to be served by such
116 services;

117 (19) In accordance with section five of this article, the
118 factors influencing the effect of competition on the supply
119 of the health services being reviewed;

120 (20) Improvements or innovations in the financing and
121 delivery of health services which foster competition, in ac-
122 cordance with section five of this article, and serve to pro-
123 mote quality assurance and cost effectiveness;

124 (21) In the case of health services or facilities proposed
125 to be provided, the efficiency and appropriateness of the

126 use of existing services and facilities similar to those pro-
127 posed;

128 (22) In the case of existing services or facilities, the
129 quality of care provided by such services or facilities in
130 the past;

131 (23) In the case where an application is made by an
132 osteopathic or allopathic facility for a certificate of need
133 to construct, expand, or modernize a health care facility,
134 acquire major medical equipment, or add services, the need
135 for that construction, expansion, modernization, acquisition
136 of equipment, or addition of services shall be considered on
137 the basis of the need for and the availability in the com-
138 munity of services and facilities for osteopathic and allopathic
139 physicians and their patients. The state agency shall con-
140 sider the application in terms of its impact on existing and
141 proposed institutional training programs for doctors of osteop-
142 athy and medicine at the student, internship, and residency
143 training levels;

144 (24) The special circumstances of health care facilities
145 with respect to the need for conserving energy;

146 (25) The contribution of the proposed service in meeting
147 the health related needs of members of medically underserved
148 populations which have traditionally experienced difficulties
149 in obtaining equal access to health services, particularly those
150 needs identified in the state health plan, applicable health
151 systems plan and annual implementation plan, as deserving of
152 priority. For the purpose of determining the extent to which
153 the proposed service will be accessible, the state agency
154 shall consider:

155 (A) The extent to which medically underserved popula-
156 tions currently use the applicant's services in comparison to
157 the percentage of the population in the applicant's service area
158 which is medically underserved, and the extent to which
159 medically underserved populations are expected to use the
160 proposed services if approved;

161 (B) The performance of the applicant in meeting its
162 obligation, if any, under any applicable federal regulations

163 requiring provision of uncompensated care, community service,
164 or access by minorities and handicapped persons to programs
165 receiving federal financial assistance, including the existence
166 of any civil rights access complaints against the appli-
167 cant;

168 (C) The extent to which medicare, medicaid and medically
169 indigent patients are served by the applicant; and

170 (D) The extent to which the applicant offers a range of
171 means by which a person will have access to its services, in-
172 cluding, but not limited to, outpatient services, admission by
173 house staff and admission by personal physician.

174 (26) The existence of a mechanism for soliciting con-
175 sumer input into the health care facility's decision making
176 process.

177 (b) The state agency may include additional criteria
178 which it prescribes by regulations adopted pursuant to section
179 eight of this article.

180 (c) Criteria for reviews may vary according to the pur-
181 pose for which a particular review is being conducted or the
182 types of health services being reviewed.

183 (d) An application for a certificate of need may not be
184 made subject to any criterion not contained in this article
185 or not contained in regulations adopted pursuant to section
186 eight of this article.

187 (e) In the case of any proposed new institutional health
188 service, the state agency may not grant a certificate of need
189 under its certificate of need program unless, after considera-
190 tion of the appropriateness of the use of existing facilities
191 providing services similar to those being proposed, the state
192 agency makes, in addition to findings required in section
193 nine of this article, each of the following findings in writing:
194 (1) That superior alternatives to such services in terms of
195 cost, efficiency and appropriateness do not exist and the
196 development of such alternatives is not practicable; (2) that
197 existing facilities providing services similar to those proposed
198 are being used in an appropriate and efficient manner; (3)
199 that in the case of new construction, alternatives to new con-

200 struction, such as modernization or sharing arrangements,
201 have been considered and have been implemented to the
202 maximum extent practicable; (4) that patients will experience
203 serious problems in obtaining care of the type proposed in the
204 absence of the proposed new service; and (5) that in the
205 case of a proposal for the addition of beds for the provision of
206 skilled nursing or intermediate care services, the addition
207 will be consistent with the plans of other agencies of the state
208 responsible for the provision and financing of long-term
209 care facilities or services including home health services.

§16-2D-7. Procedures for certificate of need reviews.

1 (a) Prior to submission of an application for a certificate
2 of need, the state agency shall require the submission of long-
3 range plans by health care facilities with respect to the
4 development of proposals subject to review under this article.
5 The plans shall be in such form and contain such information
6 as the state agency shall require.

7 (b) An application for a certificate of need shall be
8 submitted to the state agency prior to the offering or develop-
9 ment of all new institutional services within this state. Per-
10 sons proposing new institutional health services shall submit
11 letters of intent not less than fifteen days prior to submitting
12 an application. The letters of intent shall be of such detail
13 as specified by the state agency.

14 (c) The state agency may adopt regulations pursuant to
15 section eight of this article for:

16 (1) Provision for applications, and recommendations from
17 the health systems agencies, to be submitted in accordance
18 with a timetable established by the state agency;

19 (2) Provision for such reviews to be undertaken in a timely
20 fashion; and

21 (3) Except for proposed new institutional health services
22 which meet the requirements for consideration under sub-
23 section (g), section nine of this article with regard to the
24 elimination or prevention of certain imminent safety hazards
25 or to comply with certain licensure or accreditation standards,
26 provision for all completed applications pertaining to similar

27 types of services, facilities or equipment to be considered
28 in relation to each other, at least twice a year.

29 (d) An application for a certificate of need shall specify
30 the time the applicant will require to make such service or
31 equipment available or to obligate such expenditure and a
32 timetable for making such service or equipment available or
33 obligating such expenditure.

34 (e) The application shall be in such form and contain
35 such information as the state agency shall establish by rule
36 or regulation, but requests for information shall be limited
37 to only that information which is necessary for the state
38 agency to perform the review.

39 (f) Within fifteen days of receipt of application, the state
40 agency shall determine if the application is complete. The
41 state agency shall seek the advice of the designated health
42 systems agency for the area in which the proposed new insti-
43 tutional health service will be located to determine if the
44 application is complete and the state agency may request addi-
45 tional information from the applicant.

46 (g) The state agency shall provide timely written notice to
47 the applicant and to all affected persons of the beginning of
48 the review, and to any person who has asked the state agency
49 to place the person's name on a mailing list maintained by
50 the state agency. Notification shall include the proposed
51 schedule for review, the period within which a public hearing
52 during the course of the review may be requested by affected
53 persons, which period may not be less than thirty days from
54 the date of the written notification of the beginning of the
55 review required by this section, and the manner in which
56 notification will be provided of the time and place of any
57 public hearing so requested. For the purposes of this sub-
58 section, the date of notification is the date on which the notice
59 is sent or the date on which the notice appears in a newspaper
60 of general circulation, whichever is later.

61 (h) Written notification to members of the public and
62 third-party payers may be provided through newspapers of
63 general circulation in the applicable health service area and
64 public information channels; notification to all other affected

65 persons shall be by mail which may be as part of a news-
66 letter.

67 (i) If, after a review has begun, the state agency or the
68 health systems agency requires the person subject to the
69 review to submit additional information respecting the sub-
70 ject of the review, such person shall be provided at least
71 fifteen days to submit the information and the state agency
72 shall, at the request of such person, extend the review
73 period by fifteen days. This extension applies to all other
74 applications which have been considered in relation to the
75 application for which additional information is required.

76 (j) The state agency shall seek the recommendation of
77 the designated health systems agency for the health service
78 area in which the proposed new institutional health service
79 is to be located as to whether a certificate of need should
80 be issued. The state agency shall assist the designated health
81 systems agency in the review of applications by supplying
82 information and data on those proposed new institutional
83 services which have statewide implications.

84 (k) The state agency shall adopt schedules for reviews
85 which provide that no review may, to the extent practicable,
86 take longer than ninety days from the date that notification,
87 as described under subsection (g) of this section, is sent to
88 the applicant to the date of the final decision of the state
89 agency, and in the case of expedited applications, may by
90 regulations adopted pursuant to section eight of this article
91 provide for a shortened review period.

92 (l) The state agency shall adopt criteria for determining
93 when it would not be practicable to complete a review within
94 ninety days.

95 (m) The schedule shall set forth the period within which
96 the health systems agency shall complete its review and
97 provide its recommendation with respect to such new in-
98 stitutional health service to the state agency: *Provided*, That
99 the period allotted by the state agency to a health systems
100 agency for completion of its review and submission of its
101 recommendations may not be less than sixty days, except with
102 the written consent of the health systems agency.

103 (n) The state agency shall provide a public hearing in the
104 course of agency review if requested by any affected person
105 and the state agency may on its own initiate such a public
106 hearing:

107 (1) The state agency shall, prior to such hearing, provide
108 notice of such hearing and shall conduct such hearing in
109 accordance with administrative hearing requirements in sec-
110 tion five, article three, chapter twenty-nine-a of this code and
111 its procedure adopted pursuant to this section.

112 (2) In a hearing any person has the right to be represented
113 by counsel and to present oral or written arguments and
114 evidence relevant to the matter which is the subject of the
115 hearing. Any person affected by the matter which is the
116 subject of the hearing may conduct reasonable questioning
117 of persons who make factual allegations relevant to such
118 matter.

119 (3) The state agency shall maintain a verbatim record of
120 the hearing.

121 (4) After the commencement of a hearing on the applicant's
122 application and before a decision is made with respect to it,
123 there may be no ex parte contracts between (a) the applicant
124 for the certificate of need, any person acting on behalf of
125 the applicant or holder of a certificate of need, or any person
126 opposed to the issuance of a certificate for the applicant and
127 (b) any person in the state agency who exercises any responsi-
128 bility respecting the application.

129 (5) The state agency may not impose fees for such a
130 public hearing.

131 (o) If a public hearing is not conducted during the review
132 of a new institutional health service, the state agency may,
133 by regulations adopted pursuant to section eight of this article,
134 provide for a file closing date during the review period
135 after which date no other factual information or evidence
136 may be considered in the determination of the application
137 for the certificate of need, except that the file closing date
138 shall not be set prior to the date the state agency receives
139 the recommendation of the applicable health systems agency

140 with respect to the proposed new institutional health service
141 if the state agency receives such recommendation before the
142 sixty-first day for the review. A detailed itemization of
143 documents in the state agency file on a proposed new insti-
144 tutional health service shall, on request, be made available by
145 the state agency at any time before the file closing date.

146 (p) The extent of additional information received by the
147 state agency from the applicant for a certificate of need
148 after a review has begun on the applicant's proposed new
149 institutional health service, with respect to the impact on
150 such new institutional health service and additional informa-
151 tion which is received by the state agency from the applicant
152 after the state agency has received the applicable health systems
153 agency's recommendation, may be cause for the state agency
154 to determine the application to be a new proposal, subject
155 to a new review cycle.

156 (q) The state agency shall in timely fashion notify, upon
157 request, providers of health services and other persons subject
158 to review under this article of the status of the state agency
159 review of new institutional health services subject to review,
160 findings made in the course of such review, and other appro-
161 priate information respecting such review.

162 (r) The state agency shall prepare and publish, at least
163 annually, reports of reviews completed and being conducted,
164 with general statements about the status of each review still
165 in progress and the findings and rationale for each completed
166 review since the publication of the last report.

167 (s) The state agency shall provide for access by the
168 general public to all applications reviewed by the state agency
169 and to all other pertinent written materials essential to agency
179 review.

180 (t) (1) Any person may request in writing a public hearing
181 for purposes of reconsideration of a state agency decision.
182 No fees may be imposed by the state agency for the hearing.
183 For purposes of this section, a request for a public hearing
184 for purposes of reconsideration shall be deemed to have
185 shown good cause if, in a detailed statement, it:

186 (A) Presents significant, relevant information not previously
187 considered by the state agency, and demonstrates that with
188 reasonable diligence the information could not have been
189 presented before the state agency made its decision;

190 (B) Demonstrates that there have been significant changes
191 in factors or circumstances relied upon by the state agency
192 in reaching its decision;

193 (C) Demonstrates that the state agency has materially
194 failed to follow its adopted procedures in reaching its decision;
195 or

196 (D) Provides such other bases for a public hearing as
197 the state agency determines constitutes good cause.

198 (2) To be effective a request for such a hearing shall be
199 received within thirty days after the date upon which all
200 parties received notice of the state agency decision, and
201 the hearing shall commence within thirty days of receipt of the
202 request.

203 (3) Notification of such public hearing shall be sent,
204 prior to the date of the hearing, to the person requesting the
205 hearing, the person proposing the new institutional health
206 service, and the health systems agency for the health service
207 area in which the new institutional health service is proposed
208 to be offered or developed, and shall be sent to others upon
209 request.

210 (4) The state agency shall hold public reconsideration
211 hearings in accordance with the provisions for administrative
212 hearings contained in:

213 (A) Its adopted procedures;

214 (B) Ex parte contact provisions of subdivision (4), sub-
215 section (n) of this section; and

216 (C) The administrative procedures for contested cases con-
217 tained in article five, chapter twenty-nine-a of this code.

218 (5) The state agency shall make written findings which
219 state the basis for its decision within forty-five days after
220 the conclusion of such hearing.

221 (6) A decision of the state agency following a reconsideration
222 hearing shall be considered a decision of the state agency
223 for purposes of sections nine and ten of this article and for
224 purposes of the notification of the status of review, findings
225 and annual report provisions of subsections (q) and (r) of
226 this section.

227 (u) The state agency may adopt regulations pursuant to
228 section eight of this article for reviews and such regulations
229 may vary according to the purpose for which a particular
230 review is being conducted or the type of health services
231 being reviewed.

232 (v) Notwithstanding other provisions of this article, the
233 state agency shall adopt rules and regulations for determining
234 when there is an application which warrants expedited review.
235 If procedures adopted by the state agency to handle expedited
236 applications do not conform to the provisions of this article,
237 such procedures shall be approved by the federal secretary
238 of health and human services and shall be adopted as regula-
239 tions pursuant to section eight of this article.

§16-2D-8. Agency to promulgate additional rules and regulations.

1 (a) The state agency is hereby empowered to promulgate
2 additional rules and regulations:

3 (1) To carry out the provisions of this article; and

4 (2) To assure hospitals' compliance with requests for in-
5 formation concerning rates charged for each of the twenty-five
6 most frequently used hospital services in the state including the
7 average semiprivate and private room rates.

8 (b) All rules and regulations shall be promulgated pursuant
9 to chapter twenty-nine-a of this code and as described herein.
10 In addition, before adopting proposed rules and regulations
11 the state agency shall give interested persons an opportunity to
12 offer written comments on the rules and regulations, or any
13 revisions thereof, which it proposes to adopt, as follows:

14 (1) The state agency shall distribute copies of its proposed
15 review rules and regulations, and proposed revisions thereof.
16 to statewide health agencies and organizations, the statewide

17 health coordinating council, and each health systems agency
18 for a health service area located in whole or in part within
19 the state and any agency which establishes rates for health
20 care facilities in the state;

21 (2) The state agency shall publish, in at least one news-
22 paper in each planning and development region in this state,
23 a notice stating that rules and regulations for review of certifi-
24 cate of need applications or any revisions thereof, have been
25 proposed for adoption and are available at specified addresses
26 for inspection and copying by interested persons. In addition,
27 notice may be given through other public information channels;
28 and

29 (3) The state agency shall distribute copies of its adopted
30 review rules and regulations, and any revisions thereof, to the
31 agencies and organizations specified in this section and to the
32 secretary of health & human services, and shall provide
33 such copies to other persons upon request.

**§16-2D-9. Agency to render final decision; issue certificate of
need; write findings; specify capital expenditure
maximum.**

1 (a) Only the state agency, or the appropriate administra-
2 tive or judicial review body, may issue, deny or withdraw
3 certificates of need, grant exemptions from certificate of need
4 reviews, or determine that certificate of need reviews are not
5 required.

6 (b) Except as provided in subsection (f) of this section, a
7 certificate of need may only be issued if the proposed new in-
8 stitutional health service is:

9 (1) Found to be needed; and

10 (2) Except in emergency circumstances that pose a threat
11 to public health, consistent with the state health plan: *Pro-*
12 *vided*, That if a health care facility which is controlled, direct-
13 ly or indirectly, by a health maintenance organization applies
14 for a certificate of need for a proposed new institutional health
15 service, the state agency may not disapprove the application
16 solely because such an institutional health service is not dis-
17 cussed in the state health plan, applicable health systems plan,
18 or annual implementation plan.

19 (c) The state agency shall render a final decision on every
20 application for a certificate of need or application for exemp-
21 tion in the form of an approval, a denial, or an approval with
22 conditions. Any decision of the state agency with respect to a
23 certificate of need, or exemption, shall be based solely on:

24 (1) The review of the state agency conducted in accordance
25 with procedures and criteria in this article and in regulations
26 adopted pursuant to section eight of this article; and

27 (2) The record established in administrative proceedings
28 held with respect to the certificate of need or exemption.

29 (d) Approval with conditions does not give the state agency
30 authority to mandate new institutional health services not
31 proposed by the health care facility or health maintenance
32 organization. Issuance of a certificate of need or exemption
33 may not be made subject to any condition unless the con-
34 dition directly relates to criteria in this article or in rules and
35 regulations adopted pursuant to section eight of this article.

36 (e) (1) For each proposed new institutional health service
37 it approves, the state agency shall, in addition to the written
38 findings required in subsection (e), section six of this article,
39 make a written finding, which shall take into account the
40 current accessibility of the facility as a whole, on the extent
41 to which the new institutional health service will meet the
42 criteria in subdivisions (4), (14), and (25), subsection (a),
43 section six of this article regarding the needs of medically
44 underserved population, except in the following cases:

45 (A) Where the proposed new institutional health service
46 is one described in subsection (g) of this section to eliminate
47 or prevent certain imminent safety hazards or to comply with
48 certain licensure or accreditation standards; or

49 (B) Where the new institutional health service is a proposed
50 capital expenditure not directly related to the provision of
51 health services or to beds or major medical equipment; or

52 (C) Where the new institutional health service is proposed
53 by or on behalf of a health care facility which is controlled,
54 directly or indirectly, by a health maintenance organization.

55 (2) If the state agency disapproves a proposed new insti-
56 tutional health service for failure to meet the needs of medi-
57 cally underserved populations, it shall so state in a written
58 finding.

59 (f) (1) Notwithstanding review criteria in subdivision (12),
60 subsection (a), section six of this article, if a health care fa-
61 cility which is controlled, directly or indirectly, by a health
62 maintenance organization applies for a certificate of need,
63 such application shall be approved by the state agency if the
64 state agency finds, in accordance with criteria prescribed by
65 the state agency by regulations adopted pursuant to section
66 eight of this article, that:

67 (A) Approval of such application is required to meet the
68 needs of the members of the health maintenance organization
69 and of the new members which such organization can reason-
70 ably be expected to enroll; and

71 (B) The health maintenance organization is unable to pro-
72 vide, through services or facilities which can reasonably be ex-
73 pected to be available to the organization, its institutional
74 health services in a reasonable and cost-effective manner which
75 is consistent with the basic method of operation of the organi-
76 zation and which makes such services available on a long-
77 term basis through physicians and other health professionals
78 associated with it.

79 (2) Except as provided in subdivision (1), subsection (b),
80 section four of this article, a health care facility, or any part
81 thereof, or medical equipment with respect to which a certifi-
82 cate of need was issued under this subsection may not be sold
83 or leased and a controlling interest in such facility or equip-
84 ment or in a lease of such facility or equipment may not be
85 acquired unless the state agency issues a certificate of need
86 approving the sale, acquisition or lease.

87 (g) (1) Notwithstanding review criteria in section six of this
88 article, an application for a certificate of need shall be ap-
89 proved, if the state agency finds that the facility or service with
90 respect to which such capital expenditure is proposed to be
91 made is needed and that the obligation of such capital ex-

92 penditure is consistent with the state health plan, for a capital
93 expenditure which is required:

94 (A) To eliminate or prevent imminent safety hazards as
95 defined by federal, state or local fire, building or life safety
96 codes or regulations; or

97 (B) To comply with state licensure standards; or

98 (C) To comply with accreditation or certification stan-
99 dards, compliance with which is required to receive reimburse-
100 ments under Title XVIII of the social security act or pay-
101 ments under the state plan for medical assistance approved
102 under Title XIX of such act.

103 (2) An application for a certificate of need approved un-
104 der this subsection shall be approved only to the extent that
105 the capital expenditure is required to eliminate or prevent the
106 hazards described in subparagraph (A), subdivision (1), sub-
107 section (g) or to comply with the standards described in
108 either subparagraph (B) or (C), subdivision (1), subsection
109 (g) of this section.

110 (h) (1) The state agency shall send its decision along with
111 written findings to the person proposing the new institutional
112 health service or exemption and to the health systems agency
113 for the health service area in which the new service is pro-
114 posed to be offered or developed and shall make it available
115 to others upon request.

116 (2) In the case of a new institutional health service pro-
117 posed by an health maintenance organization, the state agency
118 shall send the written findings to the appropriate regional
119 office of the federal department of health and human ser-
120 vices at the time they are sent to the applicant.

121 (3) In any decision where the state agency finds that a
122 proposed new institutional health service does not satisfy the
123 criteria in subdivision (4), (14) and (25), subsection (a), sec-
124 tion six of this article regarding the needs of medically uner-
125 served population, it shall so notify in writing the applicant
126 and the appropriate regional office of the federal department
127 of health & human services.

128 (i) In the case of a final decision to approve or approve
129 with conditions a proposal for a new institutional health service,
130 the state agency shall issue a certificate of need to the person
131 proposing the new institutional health service.

132 (j) The state agency shall specify in the certificate the
133 maximum amount of capital expenditures which may be ob-
134 ligated under such certificate. The state agency shall prescribe
135 the method used to determine capital expenditure maximums
136 and shall adopt regulations pursuant to section eight of this
137 article for the review of approved new institutional health ser-
138 vices for which the capital expenditure maximum is exceeded
139 or is expected to be exceeded.

140 (k) If the state agency makes a decision regarding a pro-
141 posed new institutional health service which is inconsistent
142 with a recommendation made with respect thereto by the ap-
143 plicable health systems agency or is inconsistent with the goals
144 of the applicable health systems plan or the priorities of the
145 applicable annual implementation plan, the state agency shall,
146 if its decision does not include a written, detailed statement
147 of the reasons for the inconsistency, provide such a statement
148 to such health systems agency.

149 (l) If the state agency fails to make a decision within the
150 time period specified for the review, the applicant may, within
151 one year following the expiration of such period, bring an
152 action, at the election of the applicant, in either the circuit
153 court of Kanawha County, or with the judge thereof in vaca-
154 tion, or in the circuit court of the county in which the applicant
155 or any one of the applicants resides or does business, or with
156 the judge thereof in vacation to require the state agency to ap-
157 prove or disapprove the application. An application for a pro-
158 posed new institutional health service or exemption may not be
159 approved or denied by the circuit court solely because the
160 state agency failed to reach a decision.

§16-2D-10. Appeal of certificate of need decisions.

1 (a) A final decision of the state agency, including a state
2 agency decision issued after a reconsideration, if such recon-
3 sideration was requested and granted under subsection (t),

4 section seven of this article, and the record upon which it
5 was made, shall, upon request of any affected person, or the
6 applicable health systems agency if the decision is inconsistent
7 with a recommendation made by the applicable health systems
8 agency to the state agency with respect to the certificate of
9 need, be reviewed by an agency of the state (other than the
10 state agency) designated by the governor. To be effective, such
11 request shall be received within thirty days after the date
12 upon which all parties received notice of the state agency de-
13 cision, and the hearing shall commence within thirty days of
14 receipt of the request.

15 (b) To the extent not inconsistent with this section, for the
16 purpose of administrative reviews of state agency decisions, the
17 review agency shall conduct its proceedings in conformance
18 with the West Virginia rules of civil procedure for trial courts
19 of record and the local rules for use in the civil courts of
20 Kanawha County and shall review appeals in accordance with
21 the provisions governing the judicial review of contested ad-
22 ministrative cases in section (4), article five, chapter twenty-
23 nine-a of this code, notwithstanding the exceptions of section
24 five, article five, chapter twenty-nine-a of this code.

25 (c) The decision of the reviewing agency shall be made
26 in writing within forty-five days after the conclusion of such
27 hearing.

28 (d) The written findings of the review agency shall be sent
29 to the person who requested the review, to the person proposing
30 the new institutional health service, to the health systems
31 agency requesting a review and to the state agency, and shall
32 be made available by the state agency to others upon request.

33 (e) The decision of the reviewing agency shall be considered
34 the final decision of the state agency; however, the reviewing
35 agency may remand the matter to the state agency for further
36 action or consideration.

37 (f) Upon the entry of a final decision by the reviewing
38 agency the designated health system agency, if the decision re-
39 specting the certificate of need is inconsistent with a recom-
40 mendation made by that health systems agency to the state
41 agency with respect to the certificate of need, and any other

42 “person adversely affected by the review” have standing in and
43 may within thirty days after the date upon which all parties
44 received notice of the decision of the review agency take an
45 appeal at the election of the petitioner, in either the circuit court
46 of Kanawha County, or in the circuit court of the county in
47 which the petitioner or any of the petitioners resides or does
48 business, from any decision of the state agency granting, with
49 or without conditions, denying or withdrawing a certificate
50 of need or exemption. The decision of the review agency shall
51 be reviewed by such circuit court in accordance with the pro-
52 visions for the judicial review of administrative decisions con-
53 tained in section four, article five, chapter twenty-nine-a of this
54 code. For the purposes of this subsection, “person adversely
55 affected by the review” includes the state agency, any person
56 who meets the definition of affected person in section two of
57 this article, and any person who participated in the proceeding
58 before the state agency.

**§16-2D-11. Nontransference, time period compliance and with-
drawal of certificate of need.**

1 (a) A certificate of need is nontransferable and shall be
2 valid for a maximum of one year from the date of issuance.
3 Upon the expiration of the certificate or during the certifica-
4 tion period the person proposing the new institutional health
5 service shall provide the state agency such information on
6 the development of the project as the state agency may request.
7 The state agency shall periodically monitor capital expendi-
8 tures obligated under certificates, determine whether suf-
9 ficient progress is being made in meeting the timetable
10 specified in the approved application for the certificate
11 and whether there has been compliance with the application
12 and any conditions of certification. The state agency shall
13 take into account recommendations made by the health systems
14 agency in making its determination. The certificate of need
15 may be extended by the state agency for additional periods
16 of time as are reasonably necessary to expeditiously com-
17 plete the project. A certificate of need may no longer be
18 in effect, and may no longer be required, after written
19 notice of substantial compliance with the approved application
20 and any conditions of certification is issued to the applicant,

21 after the activity is undertaken for which the certificate
22 of need was issued, and after the state agency is provided
23 written notice of such undertaking. The person proposing
24 a new institutional health service may not be issued a license
25 therefor until the state agency has issued a written notice of
26 substantial compliance with the approved application and
27 any conditions of certification, nor may a new institutional
28 health service be used until such person has received such
29 notice. A new institutional health service may not be found
30 to be in substantial compliance with the approved application
31 and any conditions of certification if there is a substantial
32 change, as defined in regulations adopted pursuant to sub-
33 section (j), section three of this article, in the approved new
34 institutional health service for which change a certificate
35 of need has not been issued.

36 (b) (1) The certificate of need may be withdrawn by the
37 state agency for:

38 (A) Insufficient progress in meeting the timetable specified
39 in the approved application for the certificate and for not
40 making a good faith effort to meet it in developing the pro-
41 ject; or

42 (B) Noncompliance with any conditions of certification; or

43 (C) A substantial change, as defined in regulations adopted
44 pursuant to subsection (j), section three of this article, in an
45 approved new institutional health service for which change a
46 certificate of need has not been issued; or

47 (D) Material misrepresentation by an applicant upon which
48 the state agency relied in making its decision; or

49 (E) Other reasons that may be established by the state
50 agency in regulations adopted pursuant to section eight of
51 this article.

52 (2) Any decision of the state agency to withdraw a cer-
53 tificate of need shall be based solely on:

54 (A) The provisions of this article and on regulations adopted
55 in accordance with section eight of this article; and

56 (B) The record established in administrative proceedings
57 held with respect to the state agency's proposal to withdraw
58 the certificate.

59 (3) In the case of a proposed withdrawal of a certificate
60 of need:

61 (A) After commencement of a hearing on the state agency's
62 proposal to withdraw a certificate of need and before a
63 decision is made on withdrawal, there may be no ex parte
64 contacts between (i) the holder of the certificate of need,
65 any person acting on behalf of the holder, or any person
66 in favor of the withdrawal and (ii) any person in the state
67 agency who exercises responsibility respecting withdrawal of
68 the certificate;

69 (B) The state agency shall follow the notification of review
70 provisions of subsections (g) and (h), the public hearing
71 provisions of subsection (n), the notification of the status of
72 review and findings provisions of subsection (g), the annual
73 report provisions of subsection (r), and the reconsideration
74 provisions of subsection (t), all of section seven of this article,
75 and the conditional decision provisions of subsection (d), the
76 notification of decision and findings provisions of subsection
77 (h), and the statement to the applicable health systems agency
78 provisions of subsection (k), all of section nine of this article;
79 and

80 (C) Appeals of withdrawals of certificates of need shall
81 be made pursuant to section ten of this article.

82 (4) A new institutional health service may not be ac-
83 quired, offered, or developed within this state if a certificate
84 of need authorizing that new institutional health service
85 has been withdrawn by the state agency and the acquisition,
86 offering, or development of the new institutional health service
87 is subject to review under this article.

§16-2D-12. Denial or revocation of license for operating without certificate.

1 Any person acquiring, offering or developing any new

2 institutional health service for which a certificate of need
3 is required under this article without first obtaining a certificate
4 of need therefor as herein provided, or who violates any of
5 the provisions of this article is subject to denial or revoca-
6 tion of a license, in whole or in part, to operate such in-
7 stitutional health service or facility. Upon a showing to the
8 state agency that any person is offering or developing any
9 new institutional 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 otherwise
12 in violation of the provisions of this article, the state agency
13 shall provide such person with written notice which notice shall
14 state the nature of the violation and the time and place at which
15 such person shall appear to show good cause why its license
16 should not be revoked or denied, at which time and place such
17 person shall be afforded a reasonable opportunity to present
18 testimony and other evidence in support of its position. If,
19 thereafter, the state agency determines that such person's
20 license to operate such institutional health service or facility
21 should be revoked or denied, the state agency shall issue an
22 order, in writing, to the appropriate responsible licensing
23 agency of the state, requiring that such person's license to
24 operate such institutional health service or facility be revoked
25 or denied, which order shall be binding upon such licensing
26 agency.

§16-2D-13. Injunctive relief; civil penalty.

1 (a) In addition to all other remedies, and aside from
2 various penalties provided by law, if any person acquires,
3 offers or develops any new institutional health service for
4 which a certificate of need is required under this article
5 without first having a certificate of need therefor as herein
6 provided, or violates any other provision of this article
7 or any lawful rule or regulation promulgated thereunder, af-
8 fected persons, as defined in section two of this article, and the
9 applicable health systems agency may maintain and the state
10 agency shall request that the attorney general maintain a civil
11 action in the circuit court of the county wherein such viola-
12 tion has occurred, or wherein such person may be found, to

13 enjoin, restrain or prevent such violation. No injunction bond
14 shall be required to be filed in any such proceeding.

15 (b) The state agency may assess a civil penalty for viola-
16 tion of this article. Upon the state agency determining that
17 there is probable cause to believe that any person is knowingly
18 offering, developing, or has acquired any new institutional
19 health service subject to certificate of need review without
20 having first obtained a certificate of need therefor or that any
21 person is otherwise in violation of the provisions of this article,
22 or any lawful rule or regulation promulgated thereunder, the
23 state agency shall provide such person with written notice
24 which shall state the nature of the alleged violation and the
25 time and place at which such person shall appear to show
26 good cause why a civil penalty should not be imposed, at
27 which time and place such person shall be afforded an op-
28 portunity to cross-examine the state agency's witnesses and af-
29 farded an opportunity to present testimony and other evidence
30 in support of his position. The hearing shall be conducted
31 in accordance with the administrative hearing provisions of
32 section four, article five, chapter twenty-nine-a of this code.
33 If, after reviewing the record of such hearing, the state
34 agency director determines that such person is in violation of
35 the certificate of need law, the state agency shall assess a
36 civil penalty of not less than five hundred dollars nor more than
37 twenty-five thousand dollars. In determining the amount of
38 the penalty, the state agency shall consider the degree and
39 extent of harm caused by the violation and the cost of
40 rectifying the damage. Any person assessed shall be notified
41 of the assessment in writing, and the notice shall specify the
42 reasons for the assessment. If the person assessed fails to pay
43 the amount of the assessment to the state agency within thirty
44 days, the attorney general may institute a civil ac-
45 tion in the circuit court of the county wherein such
46 violation has occurred, or wherein such person may be found
47 to recover the amount of the assessment. In any such civil
48 action, the scope of the court's review of the state agency's
49 action, which shall include a review of the amount of the
50 assessment, shall be as provided in section four, article five,
51 chapter twenty-nine-a of this code for the judicial review of
52 contested administrative cases.

CHAPTER 123

(S. B. 489—By Mr. Wise)

[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten and eleven, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to removing the requirement that a solution of silver nitrate be placed in the eyes of the newborn babe; providing that other appropriate medications may be placed in the eyes of the newborn; providing that the director of the health department shall establish and distribute to appropriate health care facilities a list of such appropriate medications; and further providing that each county clerk shall certify to the county prosecuting attorney birth reports failing to show installation of such appropriate medication in the eyes of newborns.

Be it enacted by the Legislature of West Virginia:

That sections ten and eleven, article three, 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 3. PREVENTION AND CONTROL OF COMMUNICABLE, AND OTHER INFECTIOUS DISEASES.

§16-3-10. Inflammation of eyes of newborn—Use of an appropriate medication as prophylactic.

§16-3-11. Same—Duty of clerk of county commission.

§16-3-10. Inflammation of eyes of newborn—Use of an appropriate medication as prophylactic.

1 It shall be unlawful for any physician, nurse-midwife or
2 midwife, practicing midwifery, or other health care
3 professional to neglect or otherwise fail to instill or have
4 instilled, immediately upon its birth, in the eyes of the
5 newborn babe, the contents of a single-use tube of an
6 ophthalmic ointment containing one percent tetracycline or
7 one half of one percent erythromycin or the equivalent
8 dosage of such medications or other appropriate medication
9 approved by the director for prevention of inflammation of
10 the eyes of the newborn. Every physician, nurse-midwife or
11 midwife or other health care professional shall, in making a

12 report of a birth, state the name of the appropriate medication
13 which was instilled into the eyes of said infant. The director
14 shall establish a list of appropriate medications for
15 prevention of inflammation of the eyes of the newborn. The
16 list shall be kept current and distributed to appropriate health
17 care facilities and such other sources as the director may
18 determine to be necessary.

§16-3-11. Same—Duty of clerk of county commission.

1 It shall be the duty of the clerk of the county commission of
2 each county, on or before the fifteenth day of each month, to
3 certify to the prosecuting attorney of his county all reports of
4 births filed during the preceding calendar month which fail to
5 show that an appropriate medication for prevention of
6 inflammation of the eyes of the newborn hereinbefore
7 provided for was instilled.

CHAPTER 124

(Com. Sub. for S. B. 95—By Mr. Susman and Mr. Harman)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, three-a, four, five, six, seven, eight, nine, ten, eleven, twelve, eighteen-a, twenty-four and twenty-five, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain revisions to the public service district laws; requiring that the metes and bounds of any proposed public service district be included in any order or petition for the creation of such district; changing the number of residents within the limits of a proposed public service district required to petition for the creation of such district from one hundred voters to twenty-five percent of the registered voters who reside within the limits of such proposed public service district; removing the requirement that the boundaries of any public service district follow magisterial district lines; encouraging the expansion or merger of existing public service districts; providing for the dissolution of any inactive public service district by petition or by an order of the county commission in the same manner as required for its

creation; providing that applicable provisions pertaining to referendum shall not apply if results of referendum could adversely affect existing financial indebtedness of district; requiring that county commissions file with the secretary of state a list of all public service districts and their current board members; requiring certain qualifications for public service district board members; removing the requirement that a municipal corporation must have a population of at least three thousand in order to appoint a board member; requiring any board member vacancy to be filled for the unexpired term within thirty days; requiring the board to organize within thirty days following the first appointments; requiring a record of all board proceedings, including the minutes of all board meetings, to be filed with the county commission; requiring the board to meet at least monthly; providing that the number of signatures required on any petition for the removal of any member of the board shall be twenty-five percent of the registered voters who reside within the limits of the proposed public service district; requiring that ten days' notice of a hearing be given to any board member subject to removal; salaries of board members; qualifications; maximum salary permitted of board member; providing board members be reimbursed for expenses; providing for proper public notice of any board meeting; clarifying that the general manager of the board be an employee of the board; providing that a general manager may serve more than one public service district or municipal water system, or both; requiring that the board have supervision and control of all public service properties donated to the district; providing that contracts entered into by the public service district for emergency construction work or purchase of equipment may be entered without notice and publication requirements; requiring the approval of the public service commission whenever any district acquires, constructs, establishes, improves or extends any public service properties of the same kind as, and located within, any municipal corporation within the limits of such district; allowing the board to make, enact and enforce all rules and regulations in connection with the administration of public service district properties owned or controlled by such district; removing the requirement that the board or any municipal corporation located within the district of such board shut off and discontinue sewer services to all delinquent users of such

services; permitting the public service commission to promulgate rules and regulations regarding the discontinuance of water and gas services for delinquent payment; authorizing any district furnishing sewer facilities to require connection with such facilities under certain circumstances; authorizing the public service district to pay under certain circumstances the costs incurred by the property owner for changes in plumbing; providing certain costs to be reflected in the users' charge for approval of public service commission; providing for payment of rates and charges for sewer services after thirty-days notice of service availability; requiring the inclusion of payments to capital replacement accounts and bond payment schedules in the tentative budget prepared by the general manager and submitted to the board; requiring a copy of the budget, as adopted by the board, to be forwarded to the county commission; requiring a copy of an audit to be forwarded to the county commission and the public service commission; requiring the treasurer of a public service district to be responsible for maintaining financial records, including the duty to transfer such records to his successor; requiring that any order for the disbursement of district funds be reflected in the minutes of the board; providing for sale, lease or rental of water systems by district; authorizing a public service district to accept loans, grants or temporary advances to pay costs of construction or acquisition of water, sewer or gas facilities and for other authorized purposes from the United States, any federal or public agency, or any private party, and to enter into necessary contracts and agreements therewith; authorizing payment of loans, temporary advances, and interest thereon from bond proceeds, revenues of said systems and grants from said agencies and parties or combinations thereof; provides consent and approval of public service commission before public service district borrows money or issues revenue bonds; requirements of form for residents to file in opposition to public service district borrowing money or issuing revenue bonds; qualifications for public service commission consenting or approving public service district request to borrow money or issue revenue bonds.

Be it enacted by the Legislature of West Virginia:

That sections two, three, three-a, four, five, six, seven, eight, nine,

ten, eleven, twelve, eighteen-a, twenty-four and twenty-five, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

- §16-13A-2. Creation of districts by county commission; enlarging, reducing or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.
- §16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.
- §16-13A-3a. Removal of members of public service board.
- §16-13A-4. Board chairman; members' compensation; procedure; district name.
- §16-13A-5. General manager of board.
- §16-13A-6. Employees of board.
- §16-13A-7. Acquisition and operation of district properties.
- §16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.
- 16-13A-9. Rules and regulations; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
- §16-13A-10. Budget.
- §16-13A-11. Accounts; audit.
- §16-13A-12. Disbursement of district funds.
- §16-13A-18a. Sale, lease or rental of water system by district; distribution of proceeds.
- §16-13A-24. Acceptance of loans, grants or temporary advances.
- §16-13A-25. Borrowing and bond issuance—Procedure.

§16-13A-2. Creation of districts by county commission; enlarging, reducing or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.

- 1 The county commission of any county may on its own
- 2 motion by order duly adopted propose the creation of such
- 3 public service district within such county, setting forth in
- 4 such order a description, including metes and bounds,
- 5 sufficient to identify the territory to be embraced therein and
- 6 the name of such proposed district, or twenty-five percent of
- 7 the registered voters who reside within the limits of such
- 8 proposed public service district within one or more counties
- 9 may petition for the creation thereof, which petition shall
- 10 contain a description, including metes and bounds, sufficient

11 to identify the territory to be embraced therein and the name
12 of such proposed district. Any territory may be included
13 regardless of whether or not such territory includes one or
14 more cities, incorporated towns or other municipal
15 corporations which own and operate any public service
16 properties and regardless of whether or not it includes one or
17 more cities, incorporated towns or other municipal
18 corporations being served by privately owned public service
19 properties: *Provided*, That the same territory shall not be
20 included within the boundaries of more than one public
21 service district except where such territory or part thereof is
22 included within the boundaries of a separate public service
23 district organized to supply water, sewerage services or gas
24 facilities not being furnished within such territory or part
25 thereof: *Provided, however*, That no city, incorporated town
26 or other municipal corporation shall be included within the
27 boundaries of such proposed district except upon the
28 adoption of a resolution of the governing body of such city,
29 incorporated town or other municipal corporation
30 consenting.

31 Such petition shall be filed in the office of the clerk of the
32 county commission of the county in which the territory to
33 constitute the proposed district is situated, and if such
34 territory is situated in more than one county, then such
35 petition shall be filed in the office of the clerk of the county
36 commission of the county in which the major portion of such
37 territory extends, and a copy thereof (omitting signatures)
38 shall be filed with each of the clerks of the county
39 commission of the other county or counties into which the
40 territory extends. The clerk of the county commission
41 receiving such petition shall present it to the county
42 commission of such county at the first regular meeting after
43 such filing or at a special meeting called for the consideration
44 thereof.

45 When the county commission of any county enters an order
46 on its own motion proposing the creation of a public service
47 district, as aforesaid, or when a petition for such creation is
48 presented, as aforesaid, the county commission shall at the
49 same session fix a date of hearing in such county on the
50 creation of the proposed public service district, which date so
51 fixed shall be not more than forty days nor less than twenty

52 days from the date of such action. If the territory proposed to
53 be included is situated in more than one county, the county
54 commission, when fixing a date of hearing, shall provide for
55 notifying the county commission and clerk thereof of each of
56 the other counties into which the territory extends of the date
57 so fixed. The clerk of the county commission of each county
58 in which any territory in the proposed public service district
59 is located shall cause notice of such hearing and the time and
60 place thereof, and setting forth a description of all of the
61 territory proposed to be included therein to be given by
62 publication as a Class I legal advertisement in compliance
63 with the provisions of article three, chapter fifty-nine of this
64 code, and the publication area for such publication shall be
65 each county in which any territory in the proposed public
66 service district is located. The publication shall be at least ten
67 days prior to such hearing. In all cases where proceedings for
68 the creation of such public service districts are initiated by
69 petition as aforesaid the person filing the petition shall
70 advance or satisfactorily indemnify the payment of the cost
71 and expenses of publishing the hearing notice, and otherwise
72 the costs and expenses of such notice shall be paid in the first
73 instance by the county commission out of contingent funds
74 or any other funds available or made available for that
75 purpose. In addition to the notice required herein to be
76 published, there shall also be posted in at least five
77 conspicuous places in the proposed public service district, a
78 notice containing the same information as is contained in the
79 published notice. The posted notices shall be posted not less
80 than ten days before the hearing.

81 All persons residing in or owning or having any interest in
82 property in such proposed public service district shall have
83 an opportunity to be heard for and against its creation. At
84 such hearing the county commission before which the
85 hearing is conducted shall consider and determine the
86 feasibility of the creation of the proposed district. If the
87 county commission determines that the construction or
88 acquisition by purchase or otherwise and maintenance,
89 operation, improvement and extension of public service
90 properties by such public service district will be conducive to
91 the preservation of public health, comfort and convenience of
92 such area, the county commission shall by order create such
93 public service district and such order is conclusive and final

94 in that regard. If the commission, after due consideration,
95 determines that the proposed district will not be conducive to
96 the preservation of public health, comfort or convenience of
97 such area or that the creation of the proposed district as set
98 forth and described in the petition or order is not feasible, it
99 may refuse to enter an order creating the district or it may
100 enter an order amending the description of the proposed
101 district and create the district as amended. If the county
102 commission determines that any other public service district
103 or districts can adequately serve the area of the proposed
104 public service district, whether by expansion, merger or other
105 means, it shall refuse to enter an order creating the proposed
106 district: *Provided*, That prior to refusing to enter such order,
107 evidence must be presented to the satisfaction of the county
108 commission that such expansion, merger or other procedure
109 necessary to provide service to the area of the proposed
110 district will be forthcoming: *Provided, however*, That no
111 expansion of a public service district may occur if the present
112 or proposed physical facilities of the public service district
113 are determined by the appropriate county commission to be
114 inadequate to provide such expanded service. The clerk of
115 the county commission of each county into which any part of
116 such district extends shall retain in his office an authentic
117 copy of the order creating the district: *Provided*, That if at
118 such hearing written protest is filed by thirty percent or more
119 of the qualified voters registered and residing within said
120 district, then the county commission shall not take any
121 further action in creating such district unless the creation of
122 such district is approved by a majority vote of the qualified
123 registered voters voting at a referendum to be called by the
124 county commission for such purpose. Such referendum shall
125 be called and held in the manner provided in the general
126 election laws of the state of West Virginia applicable thereto
127 and the funds therefor shall be supplied from any county
128 funds available for such purpose or from funds supplied from
129 the persons who petitioned for the creation of such district. If
130 a majority of the qualified registered voters participating in
131 the referendum vote against the creation of the district, then
132 such district shall not be created. If, however, a majority of
133 the qualified registered voters participating in such
134 referendum vote in favor of the creation of such district, then
135 the county commission shall duly enter its order creating
136 such district.

137 After the creation of such district the county commission
138 may, if in its discretion it deems it necessary, feasible and
139 proper, enlarge the district to include additional areas, reduce
140 the area of the district, where facilities, equipment, service or
141 materials have not been extended, or dissolve the district if
142 inactive or establish or consolidate two or more such
143 districts: *Provided*, That where the county commission
144 determines on its own motion by order entered of record, or
145 there is a petition, to enlarge the district, reduce the area of
146 the district or dissolve the district if inactive all of the
147 applicable provisions of this article providing for hearing,
148 notice of hearing and protest shall apply with like effect as if a
149 district were being created: *Provided, however*, That no
150 expansion of a public service district may occur if the
151 physical facilities of the public service district are determined
152 by the appropriate county commission to be inadequate to
153 provide such expanded service. The commission shall at all
154 times attempt to bring about the expansion or merger of
155 existing public service districts in order to provide increased
156 services and to eliminate the need for creation of new public
157 service districts in those areas which are not currently
158 serviced by a public service district: *Provided further*, That
159 the applicable provisions pertaining to referendum shall not
160 apply if the results of a referendum could adversely affect the
161 existing financial indebtedness of the district. The districts
162 may not enter into any agreement, contract or covenant that
163 infringes upon, impairs, abridges or usurps the duties, rights
164 or powers of the county commission, as set forth in this
165 article, or conflicts with any provision of this article. A list of
166 all districts and their current board members shall be filed by
167 the county commission with the secretary of state.

**§16-13A-3. District to be a public corporation and political
subdivision; powers thereof; public service
boards.**

1 From and after the date of the adoption of the order
2 creating any such public service district, it shall thereafter be
3 a public corporation and political subdivision of the state, but
4 without any power to levy or collect ad valorem taxes. Each
5 such district may acquire, own and hold property, both real
6 and personal, in its corporate name, and may sue, may be
7 sued, may adopt an official seal and may enter into contracts

8 necessary or incidental to its purposes, including contracts
9 with any city, incorporated town or other municipal
10 corporation located within or without its boundaries for
11 furnishing wholesale supply of water for the distribution
12 system of such city, town or other municipal corporation, and
13 contract for the operation, maintenance, servicing, repair and
14 extension of any properties owned by it or for the operation
15 and improvement or extension by such district of all or any
16 part of the existing municipally owned public service
17 properties of any city, incorporated town or other municipal
18 corporation included within such district: *Provided*, That no
19 such contract shall extend beyond a maximum of forty years,
20 but provisions may be included therein for a renewal or
21 successive renewals thereof and shall conform to and comply
22 with the rights of the holders of any outstanding bonds issued
23 by such municipalities for such public service properties.

24 The powers of each such public service district shall be
25 vested in and exercised by a public service board consisting
26 of not less than three members, who shall be persons residing
27 within the district who have successfully completed a
28 training program to be established and administered by the
29 public service commission in conjunction with the
30 department of natural resources and the department of
31 health. Such members shall be appointed in the following
32 manner:

33 Each city, incorporated town or other municipal
34 corporation shall be entitled to appoint one member of such
35 board, and each such city, incorporated town or other
36 municipal corporation having a population in excess of
37 eighteen thousand shall be entitled to appoint one additional
38 member of such board for each additional eighteen thousand
39 population. The members of the board representing such
40 cities, incorporated towns or other municipal corporations
41 shall be residents thereof and shall be appointed by a
42 resolution of the governing bodies thereof and upon the filing
43 of a certified copy or copies of such resolution or resolutions
44 in the office of the clerk of the county commission which
45 entered the order creating such district, such persons so
46 appointed shall thereby become members of the board
47 without any further act or proceedings. If the number of
48 members of the board so appointed by the governing bodies

49 of cities, incorporated towns or other municipal corporations
50 included in the district shall equal or exceed three, then no
51 further members shall be appointed to such board and such
52 members shall be and constitute the board of said district.

53 If no city, incorporated town or other municipal
54 corporation is included within the district, then the county
55 commission which entered the order creating the district
56 shall appoint three members of the board, who are persons
57 residing within the district, which three members shall
58 become members of and constitute the board of said district
59 without any further act or proceedings.

60 If the number of members of the board appointed by the
61 governing bodies of cities, incorporated towns or other
62 municipal corporations included within the district is less
63 than three, then the county commission which entered the
64 order creating the district shall appoint such additional
65 member or members of the board, who are persons residing
66 within the district, as is necessary to make the number of
67 members of the board equal three, and the additional
68 member or members shall thereupon become members of
69 such board; and the member or members appointed by the
70 governing bodies of the cities, incorporated towns or other
71 municipal corporations included within the district and the
72 additional member or members appointed by such county
73 commission as aforesaid, shall be and constitute the board of
74 the district. A person may serve as a member of the board in
75 one or more public service districts.

76 The population of any city, incorporated town or other
77 municipal corporation, for the purpose of determining the
78 number of members of such board, if any, to be appointed by
79 the governing body or bodies thereof, shall be conclusively
80 deemed to be the population stated for such city,
81 incorporated town or other municipal corporation in the last
82 official federal census.

83 The respective terms of office of the members of the first
84 board shall be fixed by the county commission and shall be as
85 equally divided as may be, that is approximately one third of
86 the members for a term of two years, a like number for a term
87 of four, and the term of the remaining member or members
88 for six years, from the first day of the month during which

89 such appointments are made. The first members of the board
90 appointed as aforesaid shall meet at the office of the clerk of
91 the county commission which entered the order creating the
92 district as soon as practicable after such appointments and
93 shall qualify by taking an oath of office: *Provided*, That any
94 member or members of the board may be removed from their
95 respective office as provided in section three-a of this article.

96 Any vacancy shall be filled for the unexpired term within
97 thirty days, otherwise successor members of the board shall
98 be appointed for terms of six years and the terms of office
99 shall continue until successors have been appointed and
100 qualified. All successor members shall be appointed in the
101 same manner as the member succeeded was appointed.

102 The board shall organize within thirty days following the
103 first appointments and annually thereafter at its first meeting
104 after January one of each year by selecting one of its
105 members to serve as chairman and by appointing a secretary
106 and a treasurer who need not be members of such board. The
107 secretary shall keep a record of all proceedings of the board
108 which shall be available for inspection as other public
109 records. Duplicate records shall be filed with the county
110 commission and shall include the minutes of all board
111 meetings. The treasurer is lawful custodian of all funds of the
112 public service district and shall pay same out on orders
113 authorized or approved by the board. The secretary and
114 treasurer shall perform such other duties appertaining to the
115 affairs of the district and shall receive such salaries as shall be
116 prescribed by the board. The treasurer shall furnish bond in
117 an amount to be fixed by the board for the use and benefit of
118 the district.

119 The members of the board, and the chairman, secretary and
120 treasurer thereof, shall make available to the county
121 commission, at all times, all of its books and records
122 pertaining to the district's operation, finances and affairs, for
123 inspection and audit. The board shall meet at least monthly.

§16-13A-3a. Removal of members of public service board.

1 The county commission or any other appointive body
2 creating or establishing a public service district under the
3 provisions of this article may remove any member of the
4 governing board thereof for consistent violations of any

5 provisions of this article, for reasonable cause which
6 includes, but is not limited to, a continued failure to attend
7 meetings of the board, failure to diligently pursue the
8 objectives for which the district was created or failure to
9 perform any other duty prescribed by law or for any
10 misconduct in office, or upon written petition signed by
11 twenty-five percent of the registered voters who reside within
12 the limits of such proposed public service district: *Provided*,
13 That such appointee shall be removed only after a full hearing
14 of any complaint presented against him and after a ten-day
15 notice of such hearing.

**§16-13A-4. Board chairman; members' compensation;
procedure; district name.**

1 The chairman shall preside at all meetings of the board and
2 may vote as any other members of the board but if he should
3 be absent from any meeting, the remaining members may
4 select a temporary chairman and if the member selected as
5 chairman resigns as such or ceases for any reason to be a
6 member of the board, the board shall select one of its
7 members as chairman to serve until the next annual
8 organization meeting. Salaries of each of its members shall be
9 fifty dollars per attendance at regular monthly meetings and
10 thirty dollars per attendance at additional special meetings,
11 total salary not to exceed seven hundred fifty dollars per
12 annum. Board members may be reimbursed for all
13 reasonable and necessary expenses actually incurred in the
14 performance of their duties as provided for by the rules and
15 regulations of the board. The board shall by resolution
16 determine its own rules of procedure, fix the time and place
17 of its meetings and the manner in which special meetings
18 may be called. Public notice of meetings shall be given in
19 accordance with section three, article nine-a, chapter six of
20 this code. Emergency meetings may be called as provided by
21 section three, article nine-a, chapter six of this code. A
22 majority of the members constituting the board also
23 constitute a quorum to do business. The members of the
24 board are not personally liable or responsible for any
25 obligations of the district or the board but are answerable
26 only for willful misconduct in the performance of their duties.
27 At any time prior to the issuance of bonds as hereinafter
28 provided the board may by resolution change the official or

29 corporate name of the public service district and such change
30 shall be effective from and after filing an authenticated copy
31 of such resolution with the clerk of the county commission of
32 each county in which the territory embraced within such
33 district or any part thereof is located. The official name of any
34 district created under the provisions of this article may
35 contain the name or names of any city, incorporated town or
36 other municipal corporation included therein or the name of
37 any county or counties in which it is located.

§16-13A-5. General manager of board.

1 The board may employ a general manager to serve a term of
2 not more than five years and until his successor is employed,
3 and his compensation shall be fixed by resolution of the
4 board. Such general manager shall devote all or the required
5 portion of his time to the affairs of the district and may
6 employ, discharge and fix the compensation of all employees
7 of the district, except as in this article otherwise provided,
8 and he shall perform and exercise such other powers and
9 duties as may be conferred upon him by the board.

10 Such general manager shall be chosen without regard to his
11 political affiliations and upon the sole basis of his
12 administrative and technical qualifications to manage public
13 service properties and affairs of the district and he may be
14 discharged only upon the affirmative vote of two thirds of the
15 board. Such general manager need not be a resident of the
16 district at the time he is chosen. Such general manager may
17 not be a member of the board but shall be an employee of the
18 board.

19 The board of any public service district which purchases
20 water service from a municipal water system or another
21 public service district may, as an alternative to hiring its own
22 general manager, elect to permit the general manager of the
23 municipal water system or public service district from which
24 such water service is purchased provide professional
25 management to the district, if the appropriate municipality or
26 public service board agrees to provide such assistance. The
27 general manager shall receive reasonable compensation for
28 such service.

§16-13A-6. Employees of board.

1 The board may in its discretion from time to time by

2 resolution passed by a majority vote provide for the
3 employment of an attorney, fiscal agent, one or more
4 engineers and such other employees as the board may
5 determine necessary and expedient. The board shall in and
6 by such resolution fix the term of employment and
7 compensation and prescribe the duties to be performed by
8 such employees.

§16-13A-7. Acquisition and operation of district properties.

1 The board of such districts shall have the supervision and
2 control of all public service properties acquired, donated to or
3 constructed by the district and shall maintain, operate,
4 extend and improve the same: *Provided*, That no extension of
5 a public service district may occur if the present or proposed
6 physical facilities of the public service district are determined
7 by the appropriate county commission to be inadequate to
8 provide such expanded service. All contracts involving the
9 expenditure by the district of more than two thousand dollars
10 for construction work or for the purchase of equipment and
11 improvements, extensions or replacements, shall be entered
12 into only after notice inviting bids shall have been published
13 as a Class I legal advertisement in compliance with the
14 provisions of article three, chapter fifty-nine of this code and
15 the publication area for such publication shall be the district.
16 The publication shall not be less than ten days prior to the
17 making of any such contract. If the public service
18 commission determines an emergency situation exists within
19 the public service district, all contracts involving the
20 expenditure by the district of more than two thousand dollars
21 for emergency construction work or for the emergency
22 purchase of equipment and improvements, extensions or
23 replacements, may be entered without compliance to notice
24 inviting bids and publication requirements. Any obligations
25 incurred of any kind or character shall not in any event
26 constitute or be deemed an indebtedness within the meaning
27 of any of the provisions or limitations of the constitution but
28 all such obligations shall be payable solely and only out of
29 revenues derived from the operation of the public service
30 properties of the district or from proceeds of bonds issued as
31 hereinafter provided. No continuing contract for the
32 purchase of materials or supplies or for furnishing the district
33 with electrical energy or power shall be entered into for a
34 longer period than fifteen years.

§16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.

1 The board may acquire any publicly or privately owned
2 public service properties located within the boundaries of the
3 district regardless of whether or not all or any part of such
4 properties are located within the corporate limits of any city,
5 incorporated town or other municipal corporation included
6 within the district and may purchase and acquire all rights
7 and franchises and any and all property within or outside the
8 district necessary or incidental to the purpose of the district.

9 The board may construct any public service properties
10 within or outside the district necessary or incidental to its
11 purposes and each such district may acquire, construct,
12 maintain and operate any such public service properties
13 within the corporate limits of any city, incorporated town or
14 other municipal corporation included within the district or in
15 any unincorporated territory within ten miles of the territorial
16 boundaries of the district: *Provided*, That if any incorporated
17 city, town or other municipal corporation included within the
18 district owns and operates either water facilities, sewer
19 facilities or gas facilities or all of these, then the district may
20 not acquire, construct, establish, improve or extend any
21 public service properties of the same kind within such city,
22 incorporated towns or other municipal corporations or the
23 adjacent unincorporated territory served by such cities,
24 incorporated towns or other municipal corporations, except
25 upon the approval of the public service commission, the
26 consent of such cities, incorporated towns or other municipal
27 corporations and in conformity and compliance with the
28 rights of the holders of any revenue bonds or obligations
29 theretofore issued by such cities, incorporated towns or other
30 municipal corporations then outstanding and in accordance
31 with the ordinance, resolution or other proceedings which
32 authorize the issuance of such revenue bonds or obligations.

33 Whenever such district has constructed, acquired or
34 established water facilities, sewer facilities or gas facilities for
35 water, sewer or gas services within any city, incorporated
36 town or other municipal corporation included within a
37 district, then such city, incorporated town or other municipal
38 corporation may not thereafter construct, acquire or establish

39 any facilities of the same kind within such city, incorporated
40 town or other municipal corporation without the consent of
41 such district.

42 For the purpose of acquiring any public service properties
43 or lands, rights or easements deemed necessary or incidental
44 for the purposes of the district, each such district has the right
45 of eminent domain to the same extent and to be exercised in
46 the same manner as now or hereafter provided by law for
47 such right of eminent domain by cities, incorporated towns
48 and other municipal corporations: *Provided*, That such board
49 may not acquire all or any substantial part of a privately
50 owned waterworks system unless and until authorized so to
51 do by the public service commission of West Virginia, and
52 that this section shall not be construed to authorize any
53 district to acquire through condemnation proceedings either
54 in whole or substantial part an existing privately owned
55 waterworks plant or system or gas facilities located in or
56 furnishing water or gas service within such district or
57 extensions made or to be made by it in territory contiguous to
58 such existing plant or system, nor may any such board
59 construct or extend its public service properties to supply its
60 services into areas served by or in competition with existing
61 waterworks or gas facilities or extensions made or to be made
62 in territory contiguous to such existing plant or system by the
63 owner thereof.

**§16-13A-9. Rules and regulations; service rates and charges;
discontinuance of service; required water and
sewer connections; lien for delinquent fees.**

1 The board may make, enact and enforce all needful rules
2 and regulations in connection with the acquisition,
3 construction, improvement, extension, management,
4 maintenance, operation, care, protection and the use of any
5 public service properties owned or controlled by the district,
6 and the board shall establish rates and charges for the
7 services and facilities it furnishes, which shall be sufficient at
8 all times, notwithstanding the provisions of any other law or
9 laws, to pay the cost of maintenance, operation and
10 depreciation of such public service properties and principal
11 of and interest on all bonds issued, other obligations incurred
12 under the provisions of this article and all reserve or other
13 payments provided for in the proceedings which authorized

14 the issuance of any bonds hereunder. The schedule of such
15 rates and charges may be based upon either (a) the
16 consumption of water or gas on premises connected with
17 such facilities, taking into consideration domestic,
18 commercial, industrial and public use of water and gas; or (b)
19 the number and kind of fixtures connected with such
20 facilities located on the various premises; or (c) the number of
21 persons served by such facilities; or (d) any combination
22 thereof; or (e) may be determined on any other basis or
23 classification which the board may determine to be fair and
24 reasonable, taking into consideration the location of the
25 premises served and the nature and extent of the services and
26 facilities furnished. Where water, sewer and gas services are
27 all furnished to any premises the schedule of charges may be
28 billed as a single amount for the aggregate thereof. Whenever
29 any rates, rentals or charges for services or facilities furnished
30 remain unpaid for a period of thirty days after the same
31 become due and payable, the property and the owner thereof,
32 as well as the user of the services and facilities shall be
33 delinquent until such time as all such rates and charges are
34 fully paid. The board may, under reasonable rules and
35 regulations promulgated by the public service commission,
36 shut off and discontinue water or gas services to all
37 delinquent users of either water or gas facilities, or both.

38 In the event that any city, incorporated town or other
39 municipal corporation included within the district owns and
40 operates separately either water facilities or gas facilities, and
41 the district owns and operates within such city, incorporated
42 town or other municipal corporation the other kind of
43 facilities, either water or gas facilities, as the case may be,
44 then the district and such city, incorporated town or other
45 municipal corporation may covenant and contract with each
46 other to shut off and discontinue the supplying of the kind of
47 facilities furnished by the district or such city, incorporated
48 town or other municipal corporation, as the case may be, for
49 the nonpayment of fees and charges for the other kind of
50 facilities furnished by the district or city, incorporated town
51 or other municipal corporation, as the case may be.

52 Any district furnishing sewer facilities within the district
53 may require all owners, tenants or occupants of any houses,
54 dwellings and buildings located near any such sewer

55 facilities, where sewage will flow by gravity or be transported
56 by such other methods approved by the department of health
57 from such houses, dwellings or buildings into such sewer
58 facilities, to connect with and use such sewer facilities, and to
59 cease the use of all other means for the collection, treatment
60 and disposal of sewage and waste matters from such houses,
61 dwellings and buildings where there is such gravity flow or
62 transportation by such other methods approved by the
63 department of health and such houses, dwellings and
64 buildings can be adequately served by the sewer facilities of
65 the district, and it is hereby found, determined and declared
66 that the mandatory use of such sewer facilities provided for in
67 this paragraph is necessary and essential for the health and
68 welfare of the inhabitants and residents of such districts and
69 of the state.

70 If the property owner must connect with the sewer facilities
71 even when sewage from such dwellings may not flow to the
72 main line by gravity and the property owner must incur costs
73 for any changes in the existing dwelling plumbing in order to
74 connect to the main sewer line, the public service district
75 board shall authorize the district to pay all reasonable costs
76 for such changes in the plumbing, including, but not limited
77 to, installation, operation, maintenance and purchase of a
78 pump, or any other method approved by the department of
79 health; maintenance and operation costs for such extra
80 installation should be reflected in the users charge for
81 approval of the public service commission.

82 Whenever any district has made available sewer facilities to
83 any owner, tenant or occupant of any house, dwelling or
84 building located near such sewer facility, and the engineer for
85 the district has certified that such sewer facilities are
86 available to and are adequate to serve such owner, tenant or
87 occupant, and sewage will flow by gravity or be transported
88 by such other methods approved by the department of health
89 from such house, dwelling or building into such sewer
90 facilities, the district may charge, and such owner, tenant or
91 occupant shall pay the rates and charges for services
92 established under this article only after thirty-day notice of
93 the availability of the facilities has been received by the
94 owner.

95 All delinquent fees, rates and charges of the district for

96 either water facilities, sewer facilities or gas facilities are liens
97 on the premises served of equal dignity, rank and priority
98 with the lien on such premises of state, county, school and
99 municipal taxes. When such fees, rates and charges have been
100 delinquent for thirty days, the district may forthwith
101 foreclose the lien on the premises served in the same manner
102 now provided in the laws of the state of West Virginia for the
103 foreclosure of mortgages on real property.

104 Anything in this section to the contrary notwithstanding,
105 any establishment, as defined in section two, article five-a,
106 chapter twenty, now or hereafter operating its own sewage
107 disposal system, pursuant to a permit issued by the
108 department of natural resources, as prescribed by section
109 seven, article five-a, chapter twenty of this code, is exempt
110 from the provisions of this section.

§16-13A-10. Budget.

1 The board shall establish the beginning and ending of its
2 fiscal year, which period shall constitute its budget year, and
3 at least thirty days prior to the beginning of the first full fiscal
4 year after the creation of the district and annually thereafter
5 the general manager shall prepare and submit to the board a
6 tentative budget which shall include all operation and
7 maintenance expenses, payments to a capital replacement
8 account and bond payment schedules for the ensuing fiscal
9 year. Such tentative budget shall be considered by the board,
10 and, subject to any revisions or amendments that may be
11 determined by the board, shall be adopted as the budget for
12 the ensuing fiscal year. Upon adoption of the budget, a copy
13 of the budget shall be forwarded to the county commission.
14 No expenditures for operation and maintenance expenses in
15 excess of the budget shall be made during such fiscal year
16 unless unanimously authorized and directed by the board.

§16-13A-11. Accounts; audit.

1 The general manager, under direction of the board, shall
2 install and maintain a proper system of accounts showing
3 receipts from operation and application of the same, and the
4 board shall at least once a year cause such accounts to be
5 properly audited by an independent public accountant. A
6 copy of the audit shall be forwarded within thirty days of

7 completion to the county commission and to the public
8 service commission.

9 The treasurer of each public service district shall keep and
10 preserve all financial records of the public service district,
11 and shall at all times have such records readily available for
12 public inspection. At the end of his term of office, the
13 treasurer of each public service district shall promptly deliver
14 all financial records of the public service district to his
15 successor in office. Any treasurer of a public service district
16 who knowingly or willfully violates any provision of this
17 section is guilty of a misdemeanor and shall be fined not less
18 than one hundred dollars nor more than five hundred dollars
19 or imprisoned in the county jail not more than ten days, or
20 both.

§16-13A-12. Disbursement of district funds.

1 No money may be paid out by a district except upon an
2 order signed by the chairman and secretary of such board, or
3 such other person or persons authorized by the chairman or
4 secretary, as the case may be, to sign such orders on their
5 behalf. Each order for the payment of money shall specify the
6 purposes for which the amount thereof is to be paid, with
7 sufficient clearness to indicate the purpose for which the
8 order is issued, and there shall be endorsed thereon the name
9 of the particular fund out of which it is payable and it shall be
10 payable from the fund constituted for such purpose, and no
11 other. All such orders shall be reflected in the minutes of the
12 next meeting of the board.

**§16-13A-18a. Sale, lease or rental of water system by district;
distribution of proceeds.**

1 In any case where a public service district owns a water
2 system, and all the members of the public service board
3 thereof deem it for the best interests of the district to sell,
4 lease or rent such water system to any municipality or
5 privately owned water system, or to any water system owned
6 by an adjacent public service district, the board may so sell,
7 lease or rent such water system upon such terms and
8 conditions as said board, in its discretion, considers in the
9 best interests of the district: *Provided*, That such sale, leasing
10 or rental may be made only upon approval by the public
11 service commission of West Virginia.

12 In the event of any such sale, the proceeds thereof, if any,
13 remaining after payment of all outstanding bonds and other
14 obligations of the district shall be ratably distributed to any
15 persons who have made contributions in aid of construction
16 of such water system, such distribution not to exceed the
17 actual amount of any such contribution, without interest, and
18 any balance of funds thereafter remaining shall be paid to the
19 county commission of the county in which the major portion
20 of such water system is located to be placed in the general
21 funds of such county commission.

§16-13A-24. Acceptance of loans, grants or temporary advances.

1 Any public service district created pursuant to the
2 provisions of this article is authorized and empowered to
3 accept loans or grants and procure loans or temporary
4 advances evidenced by notes or other negotiable instruments
5 issued in the manner, and subject to the privileges and
6 limitations, set forth with respect to bonds authorized to be
7 issued under the provisions of this article, for the purpose of
8 paying part or all of the cost of construction or acquisition of
9 water systems, sewage systems or gas facilities, or all of these,
10 and the other purposes herein authorized, from any
11 authorized agency or from the United States of America or
12 any federal or public agency or department of the United
13 States or any private agency, corporation or individual, which
14 loans or temporary advances, including the interest thereon,
15 may be repaid out of the proceeds of the bonds authorized to
16 be issued under the provisions of this article, the revenues of
17 the said water system, sewage system or gas facilities or
18 grants to the public service district from any authorized
19 agency or from the United States of America or any federal or
20 public agency or department of the United States or from any
21 private agency, corporation or individual or from any
22 combination of such sources of payment, and to enter into the
23 necessary contracts and agreements to carry out the purposes
24 hereof with any authorized agency or the United States of
25 America or any federal or public agency or department of the
26 United States, or with any private agency, corporation or
27 individual.

§16-13A-25. Borrowing and bond issuance—Procedure.

1 Notwithstanding any other provisions of this article to the
2 contrary, a public service district shall not borrow money or

3 issue or contract to issue revenue bonds or exercise any of the
4 powers conferred by the provisions of section thirteen,
5 twenty or twenty-four of this article without the prior consent
6 and approval of the public service commission.
7 Notwithstanding any other provision of this code, when a
8 public service district is seeking to borrow money for the
9 acquisition or construction of public service properties, or
10 contract to issue revenue bonds to commence the
11 construction or acquisition of public service properties, the
12 public service district shall publish a Class II legal
13 advertisement in a newspaper of general circulation within
14 the district, which legal advertisement shall state:

15 (1) The amount of money to be borrowed, or the amount of
16 revenue bonds to be issued;

17 (2) The interest rate and terms of the loan or bonds;

18 (3) The public service properties to be acquired or
19 constructed, and the cost of same;

20 (4) The anticipated rates which will be charged by the
21 district; and

22 (5) The fact that a form is available in the county clerk's
23 office and at the office of the public service district for
24 residents of that portion of the public service district which
25 will be served by the public service property to be acquired or
26 constructed to sign indicating their opposition to the public
27 service district borrowing money or issuing revenue bonds.
28 In addition, the public service district shall cause to be posted
29 in conspicuous places throughout that portion of the public
30 service district which will be served by the public service
31 property to be acquired or constructed signs measuring not
32 less than eight and one-half inches in width and eleven inches
33 in length which include the same information as required in
34 the Class II legal advertisement.

35 For a period of thirty days beginning with the first
36 publication of the legal advertisement, the county clerk shall
37 maintain within the courthouse of the county containing the
38 public service district and the public service district shall
39 maintain at its office a form provided by the public service
40 district to be signed by any registered voter who is a resident
41 of that portion of the public service district which will be

42 served by the public service property to be acquired or
43 constructed, and who is opposed to the public service district
44 borrowing money or issuing revenue bonds upon the terms or
45 for the purpose stated in the legal advertisement. The form
46 available in the county clerk's office and in the office of the
47 public service district shall state:

48 (1) The amount of money to be borrowed, or the amount of
49 revenue bonds to be issued;

50 (2) The interest rate and terms of the loan or bonds;

51 (3) The public service properties to be acquired or
52 constructed, and the cost of same; and

53 (4) The anticipated rates which will be charged by the
54 district. The form shall be arranged in a manner that permits
55 every registered voter who is opposed to sign his name and
56 list his address. The commission shall not grant its consent
57 and approval if more than fifty percent of the registered
58 voters who are residents of that portion of the public service
59 district which will be served by the public service property to
60 be acquired or constructed sign the form indicating their
61 opposition. The commission may grant its consent and
62 approval subject to such terms and conditions as may be
63 necessary for the protection of the public interest, pursuant to
64 the provisions of chapter twenty-four of this code, or may
65 withhold such consent and approval for the protection of the
66 public interest.

67 In the event of disapproval, the reasons therefor shall be
68 assigned in writing by the commission. If written disapproval
69 has not been given by the commission within sixty days after
70 receipt of the application by the commission, it may be
71 deemed by the applicant that approval has in fact been given.

CHAPTER 125

(S. B. 186—By Mr. Palumbo)

[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article fifteen,
chapter sixteen of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to public health; state housing law; bonds authorized by resolution; interest rate and life; forms; denominations; redemption; how payable; sale; signatures of commissioners or officers ceasing to be such before delivery; presumptions in suit, etc., involving validity; increasing maximum allowable interest rates on housing authority bonds from seven percent to twelve percent.

Be it enacted by the Legislature of West Virginia:

That section twenty, article fifteen, 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 15. STATE HOUSING LAW.

§16-15-20. Bonds authorized by resolution; interest rate and life; forms; denominations; redemption; how payable; sale; signatures of commissioners or officers ceasing to be such before delivery; presumptions in suit, etc., involving validity.

1 Bonds of an authority shall be authorized by its reso-
2 lution and may be issued in one or more series and shall
3 bear such date or dates, mature at such time or times,
4 bear interest at such rate or rates, not exceeding twelve
5 percent per annum, be in such denomination or denomi-
6 nations, be in such form, either coupon or registered,
7 carry such conversion or registration privileges, have
8 such rank or priority, be executed in such manner, be
9 payable in such medium of payment, at such place or
10 places, and be subject to such terms of redemption (with
11 or without premium) as such resolution, its trust inden-
12 ture or mortgage may provide.

13 The bonds shall be sold at not less than par at public
14 sale held after notice published as a Class I legal adver-
15 tisement in compliance with the provisions of article
16 three, chapter fifty-nine of this code, and the publication
17 area for such publication shall be the city or county, as
18 the case may be. The notice shall be published at least
19 five days prior to such sale. The notice shall also be
20 published in a financial newspaper published in the city

21 of New York, New York: *Provided, however,* That such
22 bonds may be sold to the federal government at private
23 sale at not less than par and, in the event less than all of
24 the bonds authorized in connection with any project or
25 projects are sold to the federal government, the balance
26 of such bonds may be sold at private sale at not less than
27 par at an interest cost to the authority of not to exceed
28 the interest cost to the authority of the portion of the
29 bonds sold to the federal government.

30 In case any of the commissioners or officers of the
31 authority whose signatures appear on any bonds or cou-
32 pons shall cease to be such commissioners or officers
33 before the delivery of such bonds, such signatures shall,
34 nevertheless, be valid and sufficient for all purposes, the
35 same as if they had remained in office until such delivery.
36 Any provisions of any law to the contrary notwithstand-
37 ing, any bonds issued pursuant to this article shall be
38 negotiable.

39 In any suit, action or proceedings involving the validity
40 or enforceability of any bond of an authority or the se-
41 curity therefor, any such bond reciting in substance that
42 it has been issued by the authority to aid in financing a
43 housing project to provide dwelling accommodations for
44 persons of low income shall be conclusively deemed to
45 have been issued for a housing project of such character,
46 and said project shall be conclusively deemed to have
47 been planned, located and constructed in accordance with
48 the purposes and provisions of this article.

CHAPTER 126

(S. B. 475—By Mrs. Spears and Mr. Wise)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-four, relating to

the establishment and maintenance of a state program for the care, treatment and assistance of all persons in the state suffering from hemophilia; defining hemophilia; stating the purpose and goal of said program; prescribing certain general program requirements and basic principles; relating to program coverage, minimum standards and guidelines; providing for a certain advisory committee on hemophilia, its function and meetings and reimbursement of members; providing for enrollment in said program and requiring a certain consent therefor; providing for when certain payments to hemophiliacs may be made; and giving the state director of health broad general powers, duties and responsibilities with respect to all the foregoing.

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-four, to read as follows:

ARTICLE 24. STATE HEMOPHILIA PROGRAM.

§16-24-1. Definition.

§16-24-2. State hemophilia program established.

§16-24-3. Purpose of article; goal of program.

§16-24-4. General program requirements and basic principles.

§16-24-5. General powers, duties and responsibilities of director; program coverage.

§16-24-6. Advisory committee on hemophilia.

§16-24-7. Enrollment in program; consent of private physician required.

§16-24-8. When payments for care and treatment of hemophiliacs may be made by director.

§16-24-1. Definition.

1 As used in this article, "hemophilia" means a person's
2 bleeding tendency resulting from a genetically determined
3 deficiency of a clotting factor in the blood.

§16-24-2. State hemophilia program established.

1 The state director of health shall establish and maintain a
2 state hemophilia program for the care, treatment and other
3 assistance of all persons in this state suffering from
4 hemophilia. Such program shall assist such persons who
5 require continuing treatment of blood and blood derivatives
6 to avoid crippling, extensive hospitalization and other effects
7 associated with such condition and shall provide medical

8 care and assistance for hemophiliacs who are unable to pay
9 for their medical expenses despite the existence of various
10 types of private and public insurance programs, government
11 assistance programs or private charitable assistance
12 programs. The director shall establish and maintain
13 standards to determine the eligibility of persons for care,
14 treatment and assistance under the program and for the
15 supervision of all such care, treatment and assistance
16 provided.

§16-24-3. Purpose of article; goal of program.

1 The purpose of this article and the goal of the program
2 established by this article is to increase the availability,
3 accessibility, efficiency and quality of health delivery
4 services for hemophiliacs in West Virginia and to normalize
5 their life-style to the fullest extent possible.

§16-24-4. General program requirements and basic principles.

1 The director shall organize and maintain the program
2 established by this article according to the following
3 requirements:

4 (1) The objectives of the program must be realistic and
5 obtainable and must promote increased quality of life for as
6 many hemophiliacs in this state as funds permit.

7 (2) Priority must be given to activities designed to prevent
8 crippling, reduce the need for hospitalization and normalize
9 to the maximum extent practicable the life-style of as many
10 hemophiliacs as possible.

11 (3) The program must make provision for review by the
12 director of the quality of treatment being given. Review must
13 allow consideration of new medical knowledge, changes in
14 federal and state legislation, rules and regulations and
15 possible alternative sources of funding to ensure full
16 representation and protection of the hemophiliacs.

17 (4) Cooperative linkages among providers of services
18 must be sought and developed. Health care programs must be
19 publicized and promoted.

20 (5) Patients and their families must have the freedom of
21 choice in the type of treatment and the place of delivery.

§16-24-5. General powers, duties and responsibilities of director; program coverage.

1 In carrying out the program established by this article, the
2 director has the power, duty and responsibility to:

3 (1) Establish and maintain a roster of persons with
4 hemophilia;

5 (2) Establish and maintain minimum standards for
6 determining eligibility for care and treatment under the
7 program, which must require that any resident hemophiliac
8 may register and participate in the program even if he
9 chooses to pay the entire cost of blood and blood products
10 himself;

11 (3) Identify hemophilia centers in this state that are
12 interested in creating or expanding a home care program.
13 Such centers must provide comprehensive services for
14 periodic, at least annual, review of registered hemophiliacs;

15 (4) Provide blood products for home care programs,
16 monitor their usefulness and determine costs of available
17 blood products and secure such products at the least possible
18 cost to each patient;

19 (5) Develop a registry of resources for hemophiliacs in
20 West Virginia and disseminate information thereupon to
21 patients and the public through educational programs; and

22 (6) Do all other things, not inconsistent with the
23 provisions of this article, reasonable and necessary or
24 convenient to carry out the purpose of this article and achieve
25 the goal of the state hemophilia program.

§16-24-6. Advisory committee on hemophilia.

1 The director shall appoint an advisory committee on
2 hemophilia composed of knowledgeable physicians,
3 representatives of the state chapter of the national
4 hemophilia foundation, if any such chapter is established,
5 patients, parents of patients and representatives of provider
6 agencies to advise the director as to the contents and
7 concerns of the program established by this article and all
8 other pertinent matters of mutual concern.

9 Such committee shall meet at such times and places as the

10 director considers necessary or convenient. Each member of
11 the committee shall be reimbursed for all reasonable and
12 necessary expenses actually incurred in carrying out his
13 duties pursuant to this section.

§16-24-7. Enrollment in program; consent of private physician required.

21 Any person meeting the minimum standards for eligibility
2 prescribed by the director may register in the program
3 established by this article. A person may be enrolled in the
4 program only with the consent of his private physician.

§16-24-8. When payments for care and treatment of hemophiliacs may be made by director.

1 All resources reasonably available to the hemophiliac such
2 as private insurance, medicaid payments, aid from other state
3 agency programs and private agency fundings must be used
4 for payment of medical care for the hemophiliac before any
5 funds provided pursuant to the state hemophilia program
6 established by this article are used. Approved participating
7 treatment centers may be reimbursed for services according
8 to rates established by the director for that portion of
9 approved care for the hemophiliac not covered by other
10 insurance or assistance programs. Where such insurance or
11 other assistance funds are available, approved treatment
12 centers shall be required by the director to submit grant
13 requests for such funds. Any center receiving any moneys
14 from the director under the program established by this
15 article must accept and comply with the director's standards
16 hereunder for home care and ongoing patient evaluation.

CHAPTER 127

(S. B. 300—By Mr. McGraw, Mr. President)

[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article eighteen, chapter 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; and increasing said limit from seven hundred million dollars to nine hundred million dollars.

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
2 by the housing development fund shall not exceed nine
3 hundred million dollars outstanding at any one time:
4 *Provided*, That in computing the total amount of bonds and
5 notes which may at any one time be outstanding, the
6 principal amount of any outstanding bonds or notes refunded
7 or to be refunded either by application of the proceeds of the
8 sale of any refunding bonds or notes of the housing
9 development fund or by exchange for any such refunding
10 bonds or notes, shall be excluded.

CHAPTER 128

(Revised Com. Sub. for S. B. 388—By Mr. Jones, Mr. Palumbo and Mr. Holliday)

[Passed April 7, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, eight, nine, thirteen and sixteen, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring that all citizens be provided equal opportunities and rights in employment, public accommodations and housing accommodations regardless of handicap.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, eight, nine, thirteen and sixteen, 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

§5-11-3. Definitions.

§5-11-4. Human rights commission continued; status, powers and objects.

§5-11-8. Commission powers; functions; services.

§5-11-9. Unlawful discriminatory practices.

§5-11-13. Exclusiveness of remedy.

§5-11-16. Certain records exempt.

§5-11-2. Declaration of policy.

1 It is the public policy of the state of West Virginia to provide
2 all of its citizens equal opportunity for employment, equal
3 access to places of public accommodations, and equal
4 opportunity in the sale, purchase, lease, rental and financing
5 of housing accommodations or real property. Equal
6 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, color,
9 national origin, ancestry, sex, age, blindness or handicap.
10 Equal opportunity in housing accommodations or real
11 property is hereby declared to be a human right or civil right
12 of all persons without regard to race, religion, color, national
13 origin, ancestry, sex, blindness or handicap.

14 The denial of these rights to properly qualified persons by
15 reason of race, religion, color, national origin, ancestry, sex,
16 age, blindness or handicap is contrary to the principles of
17 freedom and equality of opportunity and is destructive to a
18 free and democratic society.

§5-11-3. Definitions.

1 When used in this article:

2 (a) The term "person" means one or more individuals,
3 partnerships, associations, organizations, corporations, labor
4 organizations, cooperatives, legal representatives, trustees,
5 trustees in bankruptcy, receivers and other organized groups
6 of persons;

7 (b) The term "commission" means the West Virginia
8 human rights commission;

9 (c) The term "director" means the executive director of
10 the commission;

11 (d) The term "employer" means the state, or any political
12 subdivision thereof, and any person employing twelve or
13 more persons within the state: *Provided*, That such term shall

14 not be taken, understood or construed to include a private
15 club;

16 (e) The term "employee" shall not include any individual
17 employed by his parents, spouse or child, or in the domestic
18 service of any person;

19 (f) The term "labor organization" includes any
20 organization which exists for the purpose, in whole or in part,
21 for collective bargaining or for dealing with employers
22 concerning grievances, terms or conditions of employment,
23 or for other mutual aid or protection in relation to
24 employment;

25 (g) The term "employment agency" includes any person
26 undertaking with or without compensation to procure,
27 recruit, refer or place employees. A newspaper engaged in the
28 activity of advertising in the normal course of its business
29 shall not be deemed to be an employment agency;

30 (h) The term "discriminate" or "discrimination" means to
31 exclude from, or fail or refuse to extend to, a person equal
32 opportunities because of race, religion, color, national origin,
33 ancestry, sex, age, blindness or handicap and includes to
34 separate or segregate;

35 (i) The term "unlawful discriminatory practices" includes
36 only those practices specified in section nine of this article;

37 (j) The term "place of public accommodations" means any
38 establishment or person, as defined herein, including the
39 state, or any political or civil subdivision thereof, which offers
40 its services, goods, facilities or accommodations to the
41 general public, but shall not include any accommodations
42 which are in their nature private;

43 (k) The term "housing accommodations" means any
44 building or portion thereof, which is used or intended for use
45 as the residence or sleeping place of one or more persons.
46 Nothing contained in this definition or this article shall apply
47 to the rental of a room or rooms in a rooming house occupied
48 by the owner as a place of residence and containing no more
49 than four rented rooms, or rooms to be rented;

50 (l) The term "real property" includes real estate, lands,
51 leaseholds, commercial or industrial buildings and any

52 vacant land offered for sale or rent on which the construction
53 of a housing accommodation, commercial or industrial
54 building is intended, and any land operated as a trailer camp
55 or rented or leased for the use, parking or storage of mobile
56 homes or house trailers;

57 (m) The term "real estate broker" includes any person,
58 firm or corporation who, for a fee, commission or other
59 valuable consideration, or by reason of a promise or
60 reasonable expectation thereof, lists for sale, sells, exchanges,
61 buys or rents, or offers or attempts to negotiate a sale,
62 exchange, purchase, or rental of real estate or an interest
63 therein, or collects or offers or attempts to collect rent for the
64 use of real estate or solicits for prospective purchaser or
65 assists or directs in the procuring of prospects or the
66 negotiation or closing of any transaction which does or is
67 contemplated to result in the sale, exchange, leasing, renting
68 or auctioning of any real estate or negotiates, offers or
69 attempts or agrees to negotiate a loan secured or to be secured
70 by mortgage or other encumbrance upon transfer of any real
71 estate for others, or any person who, for pecuniary gain or
72 expectation of pecuniary gain, conducts a public or private
73 competitive sale of lands or any interest in lands. In the sale of
74 lots, the term "real estate broker" shall also include any
75 person, partnership, association or corporation employed by
76 or on behalf of the owner or owners of lots or other parcels of
77 real estate, at a stated salary, or upon a commission, or upon a
78 salary and commission, or otherwise to sell such real estate,
79 or any parts thereof, in lots or other parcels, and who shall sell
80 or exchange, or offer or attempt or agree to negotiate the sale
81 or exchange, of any such lot or parcel of real estate. A
82 newspaper engaged in the activity of advertising in the
83 normal course of its business shall not be deemed to be a real
84 estate broker;

85 (n) The term "real estate salesman" includes any person
86 who, for compensation, valuable consideration or
87 commission, or other thing of value, or by reason of a promise
88 or reasonable expectation thereof, is employed by and
89 operates under the supervision of a real estate broker to sell,
90 buy or offer to buy or negotiate the purchase, sale or
91 exchange of real estate, offers or attempts to negotiate a loan
92 secured or to be secured by a mortgage or other encumbrance

93 upon or transfer of real estate for others, or to collect rents for
94 the use of real estate, or to solicit for prospective purchasers
95 or lessees of real estate, or who is employed by a licensed real
96 estate broker to sell or offer to sell lots or other parcels of real
97 estate, at a stated salary, or upon a commission, or upon a
98 salary and commission, or otherwise to sell real estate, or any
99 parts thereof, in lots or other parcels;

100 (o) The term "purchaser" includes any occupant,
101 prospective occupant, lessee, prospective lessee, renter,
102 prospective renter, buyer or prospective buyer;

103 (p) The term "owner" shall include the owner, lessee,
104 sublessee, assignee, manager, agents, or other person, firm or
105 corporation having the right to sell, rent or lease any housing
106 accommodation or real property within the state of West
107 Virginia or any agent of any of these;

108 (q) The term "age" means ages forty through sixty-five,
109 both inclusive;

110 (r) The term "rooming house" means a house or building
111 where there are one or more bedrooms which the proprietor
112 can spare for the purpose of giving lodgings to such persons
113 as he chooses to receive;

114 (s) For the purpose of this article, a person shall be
115 considered to be blind only if his central visual acuity does
116 not exceed twenty/two hundred in the better eye with
117 correcting lenses, or if his visual acuity is greater than
118 twenty/two hundred but is occasioned by a limitation in the
119 fields of vision such that the widest diameter of the visual
120 field subtends an angle no greater than twenty degrees;

121 (t) The term "handicap" means any physical or mental
122 impairment which substantially limits one or more of an
123 individual's major life activities.

§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
5 provided by law. The commission shall encourage and

6 endeavor to bring about mutual understanding and respect
7 among all racial, religious and ethnic groups within the state
8 and shall strive to eliminate all discrimination in employment
9 and places of public accommodations by virtue of race,
10 religion, color, national origin, ancestry, sex, age, blindness or
11 handicap and shall strive to eliminate all discrimination in the
12 sale, purchase, lease, rental or financing of housing and other
13 real property by virtue of race, religion, color, national origin,
14 ancestry, sex, blindness or handicap.

§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
4 promotion and attainment of more harmonious
5 understanding and greater equality of rights between and
6 among all racial, 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
9 labor organizations and other identifiable groups of the state
10 in programs and campaigns devoted to the advancement of
11 tolerance, understanding and the equal protection of the laws
12 of all groups and peoples;

13 (c) To receive, investigate and pass upon complaints
14 alleging discrimination in employment or places of public
15 accommodations, because of race, religion, color, national
16 origin, ancestry, sex, age, blindness or handicap, and
17 complaints alleging discrimination in the sale, purchase,
18 lease, rental and financing of housing accommodations or
19 real property because of race, religion, color, national origin,
20 ancestry, sex, blindness or handicap and to initiate its own
21 consideration of any situations, circumstances or problems,
22 including therein any racial, religious or ethnic group
23 tensions, prejudice, disorder or discrimination reported or
24 existing within the state relating to employment, places of
25 public accommodations, housing accommodations and real
26 property;

27 (d) To hold and conduct public and private hearings at
28 such times and places around the state as may be practical on
29 complaints, matters and questions before the commission

30 and, in connection therewith, relating to discrimination in
31 employment, or places of public accommodations, housing
32 accommodations or real property and during the
33 investigation of any formal complaint before the commission
34 relating to employment, places of public accommodations,
35 housing accommodations or real property to:

36 (1) Issue subpoenas and subpoenas duces tecum upon the
37 concurrence of at least five members of the commission,
38 administer oaths, take the testimony of any person under
39 oath, and make reimbursement for travel and other
40 reasonable and necessary expenses in connection with such
41 attendance;

42 (2) Furnish copies of public hearing records to parties
43 involved therein upon their payment of the reasonable costs
44 thereof to the commission;

45 (3) Delegate to a panel of one commission member
46 appointed by the chairman and a hearing examiner who shall
47 be an attorney, duly licensed to practice law in West Virginia,
48 the power and authority to hold and conduct the hearings, as
49 herein provided, but all decisions and actions growing out of
50 or upon any such hearings shall be reserved for
51 determination by the commission;

52 (4) To enter into conciliation agreements and consent
53 orders;

54 (5) To apply to the circuit court of the county where the
55 respondent resides or transacts business for enforcement of
56 any conciliation agreement or consent order by seeking
57 specific performance of such agreement or consent order;

58 (6) To issue cease and desist orders against any person
59 found, after a public hearing, to have violated the provisions
60 of this article or the rules and regulations of the commission;

61 (7) To apply to the circuit court of the county where the
62 respondent resides or transacts business for an order
63 enforcing any lawful cease and desist order issued by the
64 commission;

65 (e) To recommend to the governor and Legislature
66 policies, procedures, practices and legislation in matters and
67 questions affecting human rights;

68 (f) To delegate to its executive director such powers,
69 duties and functions as may be necessary and expedient in
70 carrying out the objectives and purposes of this article;

71 (g) To prepare a written report on its work, functions and
72 services for each year ending on the thirtieth day of June and
73 to deliver copies thereof to the governor on or before the first
74 day of December next thereafter;

75 (h) To do all other acts and deeds necessary and proper to
76 carry out and accomplish effectively the objects, functions
77 and services contemplated by the provisions of this article,
78 including the promulgation of rules and regulations in
79 accordance with the provisions of article three, chapter
80 twenty-nine-a of this code, implementing the powers and
81 authority hereby vested in the commission;

82 (i) To create such advisory agencies and conciliation
83 councils, local, regional or statewide, as in its judgment will
84 aid in effectuating the purposes of this article, to study the
85 problems of discrimination in all or specific fields or
86 instances of discrimination because of race, religion, color,
87 national origin, ancestry, sex, age, blindness or handicap; to
88 foster, through community effort or otherwise, goodwill,
89 cooperation and conciliation among the groups and elements
90 of the population of this state, and to make recommendations
91 to the commission for the development of policies and
92 procedures, and for programs of formal and informal
93 education, which the commission may recommend to the
94 appropriate state agency. Such advisory agencies and
95 conciliation councils shall be composed of representative
96 citizens serving without pay. The commission may itself
97 make the studies and perform the acts authorized by this
98 subdivision. It may, by voluntary conferences with parties in
99 interest, endeavor by conciliation and persuasion to eliminate
100 discrimination in all the stated fields and to foster goodwill
101 and cooperation among all elements of the population of the
102 state;

103 (j) To accept contributions from any person to assist in the
104 effectuation of the purposes of this section and to seek and
105 enlist the cooperation of private, charitable, religious, labor,
106 civic and benevolent organizations for the purposes of this
107 section;

108 (k) To issue such publications and such results of
109 investigation and research as in its judgment will tend to
110 promote goodwill and minimize or eliminate discrimination:
111 *Provided*, That the identity of the parties involved shall not
112 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 individual
7 with respect to compensation, hire, tenure, terms, conditions
8 or privileges of employment if the individual is able and
9 competent to perform the services required even if such
10 individual is blind or handicapped: *Provided*, That it shall not
11 be unlawful discriminatory practice for an employer to
12 observe the provisions of any bona fide pension, retirement,
13 group or employee insurance, or welfare benefit plan or
14 system not adopted as a subterfuge to evade the provisions of
15 this subdivision;

16 (b) For any employer, employment agency or labor
17 organization, prior to the employment or admission to
18 membership, to (1) elicit any information or make or keep a
19 record of or use any form of application or application blank
20 containing questions or entries concerning the race, religion,
21 color, national origin, ancestry, sex or age of any applicant for
22 employment or membership; (2) print or publish or cause to
23 be printed or published any notice or advertisement relating
24 to employment or membership indicating any preference,
25 limitation, specifications or discrimination based upon race,
26 religion, color, national origin, ancestry, sex or age; or (3)
27 deny or limit, through a quota system, employment or
28 membership because of race, religion, color, national origin,
29 ancestry, sex, age, blindness or handicap;

30 (c) For any labor organization because of race, religion,
31 color, national origin, ancestry, sex, age, blindness or
32 handicap of any individual to deny full and equal
33 membership rights to any individual or otherwise to
34 discriminate against such individual with respect to hire,

35 tenure, terms, conditions or privileges of employment or any
36 other matter, directly or 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,
46 an apprenticeship training program, on-the-job training
47 program, or other occupational training or retraining
48 program;

49 (3) Discriminate against any individual in his pursuit of
50 such programs or to discriminate against such a person in the
51 terms, conditions or privileges of such programs;

52 (4) Print or circulate or cause to be printed or circulated
53 any statement, advertisement or publication, or to use any
54 form of application for such programs or to make any inquiry
55 in connection with such program which expresses, directly or
56 indirectly, discrimination or any intent to discriminate,
57 unless based upon a bona fide occupational qualification;

58 (e) For any employment agency to fail or refuse to classify
59 properly, refer for employment or otherwise to discriminate
60 against any individual because of his race, religion, color,
61 national origin, ancestry, sex, age, blindness or handicap;

62 (f) For any person being the owner, lessee, proprietor,
63 manager, superintendent, agent or employee of any place of
64 public accommodations to:

65 (1) Refuse, withhold from or deny to any individual
66 because of his race, religion, color, national origin, ancestry,
67 sex, age, blindness or handicap, either directly or indirectly,
68 any of the accommodations, advantages, facilities, privileges
69 or services of such place of public accommodations;

70 (2) Publish, circulate, issue, display, post or mail, either
71 directly or indirectly, any written or printed communication,
72 notice or advertisement to the effect that any of the

73 accommodations, advantages, facilities, privileges or services
74 of any such place shall be refused, withheld from or denied to
75 any individual on account of race, religion, color, national
76 origin, ancestry, sex, age, blindness or handicap, or that the
77 patronage or custom thereat of any individual, belonging to
78 or purporting to be of any particular race, religion, color,
79 national origin, ancestry, sex or age or who is blind or
80 handicapped, is unwelcome, objectionable, not acceptable,
81 undesired or not solicited;

82 (g) For the owner, lessee, sublessee, assignee or managing
83 agent of, or other person having the right of ownership or
84 possession of or the right to sell, rent, lease, assign or sublease
85 any housing accommodations or real property or part or
86 portion thereof, or any agent, or employee of any of them; or
87 for any real estate broker, real estate salesman, or employee
88 or agent thereof:

89 (1) To refuse to sell, rent, lease, assign or sublease or
90 otherwise to deny to or withhold from any person or group of
91 persons any housing accommodations or real property, or
92 part or portion thereof, because of race, religion, color,
93 national origin, ancestry, sex, blindness or handicap of such
94 person or group of persons: *Provided*, That this provision
95 shall not require any person named herein to rent, lease,
96 assign or sublease any housing accommodations or real
97 property, or any portion thereof to both sexes where the
98 facilities of such housing accommodations or real property,
99 or any portion thereof, are suitable for only one sex;

100 (2) To discriminate against any person or group of persons
101 because of the race, religion, color, national origin, ancestry,
102 sex, blindness or handicap of such person or group of persons
103 in the terms, conditions or privileges of the sale, rental or
104 lease of any housing accommodations or real property, or part
105 or portion thereof, or in the furnishing of facilities or services
106 in connection therewith;

107 (3) To print, publish, circulate, issue, display, post or mail,
108 or cause to be printed, published, circulated, issued,
109 displayed, posted or mailed any statement, advertisement,
110 publication, or sign or to use any form of application for the
111 purchase, rental, lease, assignment or sublease of any housing
112 accommodations or real property, or part or portion thereof,
113 or to make any record or inquiry in connection with the

114 prospective purchase, rental, lease, assignment or sublease of
115 any housing accommodations or real property or part or
116 portion thereof, which expresses, directly or indirectly, any
117 discrimination as to race, religion, color, national origin,
118 ancestry, sex, blindness or handicap or any intent to make
119 any such discrimination and the production of any statement,
120 advertisement, publicity, sign, form of application, record or
121 inquiry purporting to be made by any such person shall be
122 prima facie evidence in any action that the same was
123 authorized by such person: *Provided*, That with respect to
124 sex discrimination, this provision shall not apply to any
125 person named herein whose housing accommodations or real
126 property, or any portion thereof, have facilities which are
127 suitable for only one sex;

128 (h) For any person or financial institution or lender to
129 whom application is made for financial assistance for the
130 purchase, acquisition, construction, rehabilitation, repair or
131 maintenance of any housing accommodations or real
132 property, or part or portion thereof, or any agent or employee
133 thereof to:

134 (1) Discriminate against any person or group of persons
135 because of race, religion, color, national origin, ancestry, sex,
136 blindness or handicap of such person or group of persons or
137 of the prospective occupants or tenants of such housing
138 accommodation or real property, or part or portion thereof, in
139 the granting, withholding, extending, modifying or renewing,
140 or in the fixing of the rates, terms, conditions or provisions of
141 any such financial assistance or in the extension of services in
142 connection therewith;

143 (2) Use any form of application for such financial
144 assistance or to make any record of inquiry in connection
145 with applications for such financial assistance which
146 expresses, directly or indirectly, any discrimination as to
147 race, religion, color, national origin, ancestry, sex, blindness
148 or handicap or any intent to make any such discrimination;

149 (i) For any person, employer, employment agency, labor
150 organization, owner, real estate broker, real estate salesman
151 or financial institution to:

152 (1) Engage in any form of threats or reprisal, or to engage
153 in, or hire, or conspire with others to commit acts or activities

154 of any nature, the purpose of which is to harass, degrade,
155 embarrass, or cause physical harm or economic loss or to aid,
156 abet, incite, compel or coerce any person to engage in any of
157 the unlawful discriminatory practices defined in this section;

158 (2) Willfully obstruct or prevent any person from
159 complying with the provisions of this article, or to resist,
160 prevent, impede or interfere with the commission or any of its
161 members or representatives in the performance of duty under
162 this article;

163 (3) Engage in any form of reprisal or otherwise
164 discriminate against any person because he has opposed any
165 practices or acts forbidden under this article or because he
166 has filed a complaint, testified or assisted in any proceeding
167 under this article;

168 (4) Induce or attempt to induce for profit any person to sell
169 or rent or to not sell or rent any housing accommodations or
170 real property by representations regarding the entry or
171 prospective entry into the neighborhood of a person or
172 persons who are blind or handicapped or who are of a
173 particular race, religion, color, national origin, ancestry or
174 sex: *Provided*, That for the purposes of this article it shall not
175 be an unlawful discriminatory practice for any person,
176 employer or owner to refuse to make any unreasonable
177 capital expenditure to accommodate the physical or mental
178 impairment of any handicapped person.

§5-11-13. Exclusiveness of remedy.

1 Nothing contained in this article shall be deemed to repeal
2 or supersede any of the provisions of any existing or hereafter
3 adopted municipal ordinance, municipal charter or of any law
4 of this state relating to discrimination because of race,
5 religion, color, national origin, ancestry, sex, age, blindness or
6 handicap, but as to acts declared unlawful by section nine of
7 this article the procedure herein provided shall, when
8 invoked, be exclusive and the final determination therein
9 shall exclude any other action, civil or criminal, based on the
10 same grievance of the complainant concerned. If such
11 complainant institutes any action based on such grievance
12 without resorting to the procedure provided in this article, he
13 may not subsequently resort to the procedure herein. In the
14 event of a conflict between the interpretation of a provision of

15 this article and the interpretation of a similar provision
 16 contained in any municipal ordinance authorized by charter,
 17 the interpretation of the provision in this article shall apply to
 18 such municipal ordinance.

§5-11-16. Certain records exempt.

1 Notwithstanding any other provisions of this article, it shall
 2 not be an unlawful discriminatory practice for the
 3 department of employment security to ascertain and record
 4 the age, sex, race, religion, color, national origin, ancestry,
 5 blindness or handicap of any individual for the purpose of
 6 making such reports as may from time to time be required by
 7 agencies of the federal government or be necessary to show
 8 compliance with any rule or regulation issued by any such
 9 agency. Said records may be made and kept in the manner
 10 required by the federal government: *Provided*, That such
 11 recording of the age, sex, race, religion, color, national origin,
 12 ancestry, blindness or handicap of any individual shall not be
 13 used to discriminate, within the meaning of this article,
 14 directly or indirectly, against any such individual as
 15 prohibited by all other sections of this article.

CHAPTER 129

(Com. Sub. for H. B. 990—By Mr. Tompkins and Mr. Martin, 35th Dist.)

[Passed April 10, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one hundred nine, article three, chapter forty-six-a of said code, relating to kinds of insurance; providing a definition of loss of income insurance; relating to additional charges and insurance with respect to consumer loans and consumer sales; and providing certain restrictions on the right of creditors to provide loss of income insurance.

Be it enacted by the Legislature of West Virginia:

That section ten, article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended and reenacted; and that section one hundred nine, article three, chapter forty-six-a of said code be amended and reenacted, all to read as follows:

CHAPTER 33. INSURANCE.

Article

1. Definitions.
3. Finance Charges and Related Provisions.

ARTICLE 1. DEFINITIONS.

§33-1-10. Kinds of insurance defined.

1 The following definitions of kinds of insurance are not
2 mutually exclusive and, if reasonably adaptable thereto, a
3 particular coverage may be included under one or more of such
4 definitions:

5 (a) Life insurance—Life insurance is insurance on human
6 lives including endowment benefits, additional benefits in the
7 event of death or dismemberment by accident or accidental
8 means, additional benefits for disability and annuities.

9 (b) Accident and sickness—Accident and sickness insurance
10 is insurance against bodily injury, disability or death by
11 accident or accidental means, or the expense thereof, or against
12 disability or expense resulting from sickness, and insurance
13 relating thereto.

14 (c) Fire—Fire insurance is insurance on real or personal
15 property of every kind and interest therein, against loss or
16 damage from any or all hazard or cause, and against loss con-
17 sequential upon such loss or damage, other than noncontractual
18 liability for any such loss or damage. Fire insurance shall
19 also include miscellaneous insurance as defined in paragraph
20 (e) (11) of this section.

21 (d) Marine—Marine insurance is insurance:

22 (1) Against any and all kinds of loss or damage to vessels,
23 craft, aircraft, cars, automobiles and vehicles of every kind,
24 as well as all goods, freight, cargoes, merchandise, effects,
25 disbursements, profits, moneys, bullion, precious stones, se-
26 curities, choses in action, evidences of debt, valuable papers,
27 bottomry and respondentia interests and all other kinds of

28 property and interests therein, in respect to, appertaining to
29 or in connection with any and all risks or perils of naviga-
30 tion, transit or transportation, including war risks, on or
31 under any seas or other waters, on land (above or below
32 ground), or in the air, or while being assembled, packed,
33 crated, baled, compressed or similarly prepared for shipment
34 or while awaiting the same or during any delays, storage,
35 transshipment or reshipment incident thereto, including ma-
36 rine builders' risks and all personal property floater risks;

37 (2) Against any and all kinds of loss or damage to person
38 or to property in connection with or appertaining to a marine,
39 inland marine, transit or transportation insurance, including
40 liability for loss of or damage to either, arising out of or in
41 connection with the construction, repair, operation, main-
42 tenance or use of the subject matter of such insurance (but
43 not including life insurance or surety bonds nor insurance
44 against loss by reason of bodily injury to the person arising
45 out of the ownership, maintenance or use of automobiles);

46 (3) Against any and all kinds of loss or damage to precious
47 stones, jewels, jewelry, gold, silver and other precious metals,
48 whether used in business or trade or otherwise and whether
49 the same be in course of transportation or otherwise;

50 (4) Against any and all kinds of loss or damage to bridges,
51 tunnels and other instrumentalities of transportation and com-
52 munication (excluding buildings, their furniture and furnish-
53 ings, fixed contents and supplies held in storage) unless fire,
54 windstorm, sprinkler leakage, hail, explosion, earthquake,
55 riot or civil commotion or any or all of them are the only
56 hazards to be covered;

57 (5) Against any and all kinds of loss or damage to piers,
58 wharves, docks and ships, excluding the risks of fire, wind-
59 storm, sprinkler leakage, hail, explosion, earthquake, riot and
60 civil commotion and each of them;

61 (6) Against any and all kinds of loss or damage to other
62 aids to navigation and transportation, including dry docks and
63 marine railways, dams and appurtenant facilities for control
64 of waterways;

65 (7) Marine protection and indemnity insurance, which is
66 insurance against, or against legal liability of the insured
67 for, loss, damage or expense arising out of, or incident to,
68 the ownership, operation, chartering, maintenance, use, repair
69 or construction of any vessel, craft or instrumentality in use
70 in ocean or inland waterways, including liability of the insured
71 for personal injury, illness or death or for loss of or damage
72 to the property of another person.

73 (e) Casualty—Casualty insurance includes:

74 (1) Vehicle insurance, which is insurance against loss of
75 or damage to any land vehicle or aircraft or any draft or
76 riding animal or to property while contained therein or thereon
77 or being loaded therein or therefrom, from any hazard or
78 cause, and against any loss, liability or expense resulting from
79 or incident to ownership, maintenance or use of any such
80 vehicle, aircraft or animal; together with insurance against
81 accidental death or accidental injury to individuals, including
82 the named insured, while in, entering, alighting from, adjusting,
83 repairing or cranking, or caused by being struck by any
84 vehicle, aircraft or draft or riding animal, if such insurance
85 is issued as a part of insurance on the vehicle, aircraft or
86 draft or riding animal.

87 (2) Liability insurance, which is insurance against legal
88 liability for the death, injury or disability of any human
89 being, or for damage to property; and provision for medical,
90 hospital, surgical, disability benefits to injured persons and
91 funeral and death benefits to dependents, beneficiaries or
92 personal representatives of persons killed, irrespective of
93 legal liability of the insured, when issued as an incidental
94 coverage with or supplemental to liability insurance.

95 (3) Burglary and theft insurance, which is insurance
96 against loss or damage by burglary, theft, larceny, robbery,
97 forgery, fraud, vandalism, malicious mischief, confiscation, or
98 wrongful conversion, disposal or concealment, or from any
99 attempt at any of the foregoing, including supplemental cover-
100 ages for medical, hospital, surgical and funeral benefits sus-
101 sustained by the named insured or other person as a result of
102 bodily injury during the commission of a burglary, robbery or

103 theft by another; also insurance against loss of or damage to
104 moneys, coins, bullion, securities, notes, drafts, acceptances,
105 or any other valuable papers and documents, resulting from any
106 cause.

107 (4) Personal property floater insurance, which is insurance
108 upon personal effects against loss or damage from any cause.

109 (5) Glass insurance, which is insurance against loss or
110 damage to glass, including its lettering, ornamentation and
111 fittings.

112 (6) Boiler and machinery insurance, which is insurance
113 against any liability and loss or damage to property or interest
114 resulting from accidents to or explosion of boilers, pipes,
115 pressure containers, machinery or apparatus, and to make
116 inspection of and issue certificates of inspection upon boilers,
117 machinery and apparatus of any kind, whether or not insured.

118 (7) Leakage and fire extinguishing equipment insurance,
119 which is insurance against loss or damage to any property or
120 interest caused by the breakage or leakage of sprinklers,
121 hoses, pumps and other fire extinguishing equipment or ap-
122 paratus, water mains, pipes and containers, or by water
123 entering through leaks or openings in buildings, and insurance
124 against loss or damage to such sprinklers, hoses, pumps and
125 other fire extinguishing equipment or apparatus.

126 (8) Credit insurance, which is insurance against loss or
127 damage resulting from failure of debtors to pay their obligations
128 to the insured. Credit insurance shall include loss of income
129 insurance which is insurance against the failure of a debtor to
130 pay his or her monthly obligation due to involuntary loss of
131 employment. For the purpose of this definition, involuntary
132 loss of employment means unemployment which has occurred
133 as a result of, but not limited to, individual or mass layoffs,
134 general strikes or lockouts.

135 (9) Malpractice insurance, which is insurance against legal
136 liability of the insured, and against loss, damage or expense
137 incidental to a claim of such liability, and including medical,
138 hospital, surgical and funeral benefits to injured persons,
139 irrespective of legal liability of the insured arising out of

140 the death, injury or disablement of any person, or arising
141 out of damage to the economic interest of any person, as
142 the result of negligence in rendering expert, fiduciary or
143 professional service.

144 (10) Entertainment insurance, which is insurance indemnify-
145 ing the producer of any motion picture, television, radio,
146 theatrical, sport, spectacle, entertainment or similar produc-
147 tion, event or exhibition against loss from interruption, post-
148 ponement or cancellation thereof due to death, accidental
149 injury or sickness of performers, participants, directors or
150 other principals.

151 (11) Miscellaneous insurance, which is insurance against
152 any other kind of loss, damage or liability properly a subject
153 of insurance and not within any other kind of insurance as
154 defined in this chapter, if such insurance is not disapproved
155 by the commissioner as being contrary to law or public policy.

156 (f) Surety—Surety insurance includes:

157 (1) Fidelity insurance, which is insurance guaranteeing
158 the fidelity of persons holding positions of public or private
159 trust.

160 (2) Insurance guaranteeing the performance of contracts,
161 other than insurance policies, and guaranteeing and executing
162 bonds, undertakings and contracts of suretyship.

163 (3) Insurance indemnifying banks, bankers, brokers, finan-
164 cial or moneyed corporations or associations against loss,
165 resulting from any cause, of bills of exchange, notes, bonds,
166 securities, evidences of debt, deeds, mortgages, warehouse
167 receipts or other valuable papers, documents, money, precious
168 metals and articles made therefrom, jewelry, watches, neck-
169 laces, bracelets, gems, precious and semiprecious stones,
170 including any loss while they are being transported in armored
171 motor vehicles or by messenger, but not including any other
172 risks of transportation or navigation, and also insurance
173 against loss or damage to such an insured's premises or to his
174 furnishings, fixtures, equipment, safes and vaults therein,
175 caused by burglary, robbery, theft, vandalism or malicious
176 mischief, or any attempt to commit such crimes.

177 (4) Title insurance, which is insurance of owners of prop-
178 erty or others having an interest therein, or liens or encum-
179 brances thereon, against loss by encumbrance, defective title,
180 invalidity or adverse claim to title.

CHAPTER 46A.
WEST VIRGINIA CONSUMER CREDIT AND
PROTECTION ACT.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-109. Additional charges; insurance.

1 (1) In addition to the sales finance charge or loan finance
2 charge permitted by this chapter, a creditor may contract for
3 and receive the following additional charges in connection with
4 a consumer credit sale or a consumer loan:

5 (a) Official fees and taxes;

6 (b) Charges for insurance as described in subsection (2):
7 *Provided*, That nothing contained in this section with respect
8 to insurance shall be construed as in any way limiting the power
9 and jurisdiction of the insurance commissioner of this state in
10 the premises;

11 (c) Annual charges, payable in advance, for the privilege
12 of using a lender credit card or similar arrangement which en-
13 titles the user to purchase goods or services from at least
14 one hundred persons not related to the issuer of the lender
15 credit card or similar arrangement, under an arrangement pur-
16 suant to which the debts resulting from the purchases are pay-
17 able to the issuer;

18 (d) Charges for other benefits, including insurance, con-
19 ferred on the consumer, if the benefits are of value to him and
20 if the charges are reasonable in relation to the benefits, are
21 of a type which is not for credit, and are excluded as per-
22 missible additional charges from the sales finance charge
23 or loan finance charge by rule adopted by the commissioner:
24 *Provided*, That as to insurance, the policy as distinguished
25 from a certificate of coverage thereunder must be issued by an
26 individual licensed under the laws of this state to sell such
27 insurance and the determination of whether the charges there-

28 for are reasonable in relation to the benefits shall be deter-
29 mined by the insurance commissioner of this state; and

30 (e) Reasonable closing costs with respect to a debt secured
31 by an interest in land.

32 (2) A creditor may take, obtain or provide reasonable
33 insurance on the life and earning capacity of any consumer
34 obligated on the consumer credit sale or consumer loan, reason-
35 able insurance on any real or personal property offered as
36 security subject to the provisions of this subsection, and
37 vendor's or creditor's single interest insurance with respect
38 to which the insurer has no right of subrogation. Only one
39 policy of life insurance and/or one policy of health and acci-
40 dent insurance and/or one policy of accident insurance
41 and/or one policy of loss of income insurance on any one con-
42 sumer may be in force with respect to any one contract or
43 agreement at any one time, but one policy may cover both a
44 consumer and his spouse:

45 (a) The amount, terms and conditions of property insur-
46 ance shall have a reasonable relation to the existing hazards or
47 risk of loss, damage or destruction and be reasonable in
48 relation to the character and value of the property insured or
49 to be insured; and the term of such insurance shall be rea-
50 sonable in relation to the terms of credit: *Provided*, That
51 nothing shall be deemed to prohibit the consumer from ob-
52 taining, at his option, greater coverages for longer periods of
53 time if he so desires;

54 (b) Life insurance shall be in an initial amount not to
55 exceed the total amount repayable under the consumer credit
56 agreement, and where a consumer credit sale or consumer
57 loan is repayable in installments, such insurance shall at no
58 time exceed the scheduled or actual amount of unpaid indebted-
59 ness, whichever is greater. Life insurance authorized by this
60 subdivision shall provide that the benefits shall be paid to the
61 creditor to reduce or extinguish the unpaid indebtedness:
62 *Provided*, That if a separate charge is made for such insurance
63 and the amount of insurance exceeds the unpaid indebtedness,
64 where not prohibited, then such excess shall be payable to the
65 estate of the consumer. The initial term of such life insurance
66 in connection with a consumer credit sale, other than a sale

67 pursuant to a revolving charge account, or in connection with a
68 consumer loan, other than a loan pursuant to a revolving loan
69 account, shall not exceed the scheduled term of the consumer
70 credit agreement by more than fifteen days. The aggregate
71 amount of periodic benefits payable by credit accident and
72 health insurance in the event of disability, as defined in the
73 policy, and loss of income insurance in the event of involun-
74 tary loss of employment, as defined in the policy, shall not
75 exceed the unpaid amount of such indebtedness; periodic bene-
76 fits payable in connection with a consumer credit sale pursuant
77 to a revolving charge account or of a consumer loan pursuant
78 to a revolving loan account may be based upon the authorized
79 credit limit;

80 (c) When the insurance is obtained or provided by or
81 through a creditor, the creditor may collect from the consumer
82 or include as a part of the cash price of a consumer credit
83 sale or as part of the principal of a consumer loan, or deduct
84 from the proceeds of any consumer loan the premium, or in the
85 case of group insurance, the identifiable charge. The premium
86 or identifiable charge for such insurance required or obtained
87 by a creditor may equal, but shall not exceed the premium rate
88 filed by the insurer with the insurance commissioner. In any
89 case, when the creditor collects the entire premium for such
90 insurance in advance, such premium shall be remitted by such
91 creditor to the insurer or the insurance agent, as specified by
92 the insurer, within ten days from or after the end of the month
93 in which such collection was made;

94 (d) With respect to insurance against loss of or damage
95 to property, or against liability, the creditor shall furnish a
96 clear and specific statement in writing to the debtor, setting
97 forth the cost of the insurance if obtained from or through the
98 creditor, and stating that the debtor may choose the person
99 through whom the insurance is to be obtained; and

100 (e) With respect to consumer credit insurance providing
101 life, accident, health or loss of income coverage, no creditor
102 shall require a consumer to purchase such insurance or to pur-
103 chase such insurance from such creditor or any particular
104 agent, broker or insurance company as a condition precedent
105 to extending credit to or on behalf of such consumer.

CHAPTER 130

H. B. 1364—By Mr. Shingleton and Mr. Shiflet)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article fourteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to group life insurance; and increasing the amount of dependent coverage permitted under group life insurance.

Be it enacted by the Legislature of West Virginia:

That section seven, article fourteen, 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 14. GROUP LIFE INSURANCE.

§33-14-7. Dependent coverage.

1 Any policy issued pursuant to sections two, four and five
2 of this article may be extended to insure the employees or
3 members against loss due to the death of their spouses and
4 minor children, or any class or classes thereof, subject to the
5 following requirements:

6 (a) The premium for the insurance shall be paid by the
7 policyholder, either from the employer's or union's funds or
8 funds contributed by the employer or union, or from funds
9 contributed by the insured employees or members, or from
10 both. If any part of the premium is to be derived from funds
11 contributed by the insured employees or members, the insur-
12 ance with respect to spouses and children may be placed in
13 force only if at least seventy-five percent of the then eligible
14 employees or members, excluding any as to whose family
15 members evidence of insurability is not satisfactory to the
16 insurer, elect to make the required contribution. If no part of
17 the premium is to be derived from funds contributed by the
18 employees or members, all eligible employees or members,
19 excluding any as to whose family members evidence of insur-
20 ability is not satisfactory to the insurer, must be insured with
21 respect to their spouses and children.

22 (b) The amounts of insurance must be based upon some
 23 plan precluding individual selection either by the employees
 24 or members or by the policyholder, employer or union, and
 25 shall not exceed, with respect to any spouse or child, the
 26 amount shown in the following schedule:

27	Age of Family member	Maximum Amount
28	at Death	of Insurance
29	Under 6 months	\$ 500.00
30	6 months to 18 years	1,000.00
31	Spouse	5,000.00

32 (c) Upon termination of the insurance with respect to the
 33 members of the family of any employee or member by reason
 34 of the employee's or member's termination of employment,
 35 termination of membership in the class or classes eligible for
 36 coverage under the policy, or death, the spouse shall be en-
 37 titled to have issued by the insurer, without evidence of in-
 38 surability, an individual policy of life insurance without dis-
 39 ability or other supplementary benefits, providing application
 40 for the individual policy shall be made, and the first premium
 41 paid to the insurer, within thirty-one days after such termi-
 42 nation, subject to the requirements of paragraphs (a), (b) and
 43 (c), section sixteen of this article. If the group policy termi-
 44 nates or is amended so as to terminate the insurance of any
 45 class of employees or members and the employee or member
 46 is entitled to have issued an individual policy under section
 47 seventeen of this article, the spouse shall also be entitled to
 48 have issued by the insurer an individual policy, subject to the
 49 conditions and limitations provided above. If the spouse dies
 50 within the period during which he would have been entitled to
 51 have an individual policy issued in accordance with this pro-
 52 vision the amount of life insurance which he would have
 53 been entitled to have issued under such individual policy shall
 54 be payable as a claim under the group policy, whether or not
 55 application for the individual policy or the payment of the
 56 first premium therefor has been made.

57 (d) Notwithstanding section fifteen of this article, only one
 58 certificate need be issued for delivery to an insured person if
 59 a statement concerning any dependent's coverage is included
 60 in such certificate.

CHAPTER 131

(Com. Sub. for S. B. 269—By Mr. Nelson and Mr. Harman)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections three-c and three-d; to amend and reenact section four, article twenty-four of said chapter thirty-three; and to amend article twenty-eight of said chapter thirty-three by adding thereto a new section, designated section five-b, all relating to provisions required in policies of group accident and sickness; coverage for alcoholic treatment; medical supplement insurance; hospital, medical and dental service corporations; minimum policy standards.

Be it enacted by the Legislature of West Virginia:

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

Article

16. Group Accident and Sickness Insurance.

24. Hospital Service Corporations, Medical Service Corporations and Dental Service Corporations.

28. Individual Accident and Sickness Insurance Minimum Standards.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3c. Coverage for alcoholic treatment.

§33-16-3d. Medicare supplement insurance.

§33-16-3c. Coverage for alcoholic treatment.

- 1 No group, blanket, franchise or association accident and
- 2 sickness insurance policy providing coverage on an expense
- 3 incurred basis, nor group, blanket, franchise or association
- 4 service or indemnity type contract issued by a service
- 5 corporation pursuant to the provisions of section one, article

6 twenty-four, chapter thirty-three of this code shall be issued,
7 delivered, executed or renewed in this state unless such
8 policy or contract, at the option of the policyholder or
9 sponsor, provides the level of benefits specified herein to any
10 insured, subscriber or other person covered under the policy
11 or contract for expenses incurred in connection with the
12 treatment of alcoholism, when such treatment is prescribed
13 by a duly licensed physician, subject to the right of the
14 policyholder or sponsor to select any alternative level of
15 benefits as may be offered by the insurer or service
16 corporation. For purposes of this section, alcoholism is
17 hereby defined as a chronic disorder or illness in which the
18 individual is unable, for psychological or physical reasons, or
19 both, to refrain from the frequent consumption of alcohol in
20 quantities sufficient to produce intoxication and, ultimately,
21 injury to health and effective functioning. Benefits provided
22 under this section shall include a minimum of thirty days of
23 inpatient confinement as defined in the policy of contract. If
24 inpatient hospital benefits are provided beyond thirty days of
25 confinement, the durational limits, dollar limits, deductibles
26 and co-insurance factors applicable thereto need not be the
27 same as applicable to physical illness generally. As to
28 outpatient benefits, the co-insurance factor may not exceed
29 fifty percent or the co-insurance factor applicable for physical
30 illness generally, whichever is greater, and the maximum
31 benefit for alcoholism in the aggregate during any applicable
32 benefit period may be limited to not less than seven hundred
33 fifty dollars. Maximum lifetime benefits may, as to
34 alcoholism in the aggregate, be no less than an amount equal
35 to the lesser of ten thousand dollars or twenty-five percent of
36 the lifetime policy limit. "Inpatient hospital benefits" means
37 only those payable for charges made by a hospital, as defined
38 in the policy or contract, for the necessary care and treatment
39 of alcoholism furnished to a covered person while confined as
40 a hospital inpatient; and with respect to major medical
41 policies or contracts, also those payable for charges made by a
42 physician, as defined in the policy or contract, for the
43 necessary care and treatment of alcoholism furnished to a
44 covered person while confined as a hospital inpatient.
45 "Outpatient benefits" means only those payable for (1)
46 charges made by a hospital for the necessary care and
47 treatment of alcoholism furnished to a covered person while

48 not confined as a hospital inpatient, (2) charges for services
49 rendered or prescribed by a physician for the necessary care
50 and treatment for alcoholism furnished to a covered person
51 while not confined as a hospital inpatient, and, (3) charges
52 made by an alcoholism treatment center, as defined herein,
53 for the necessary care and treatment of a covered person
54 provided in such treatment center. "Alcoholism Treatment
55 Center" means a treatment facility which provides a program
56 for the treatment of alcoholism pursuant to a written
57 treatment plan approved and monitored by a physician, and
58 which facility is also: (1) affiliated with a hospital under a
59 contractual agreement with an established system for patient
60 referral, or (2) licensed, certified or approved as an alcoholism
61 treatment center by the state. This section shall not apply to
62 blanket, short-term travel, accident only, limited or specified
63 disease, individual conversion policies or contracts, nor to
64 policies or contracts designed for issuance to persons eligible
65 for coverage under Title XVIII of the Social Security Act,
66 known as medicare, or any other similar coverage under state
67 or federal governmental plan.

§33-16-3d. Medicare supplement insurance.

1 (a) *Definitions.*

2 (1) "Applicant" means, in the case of a group medicare
3 supplement policy or subscriber contract, the proposed
4 certificate holder.

5 (2) "Certificate" means, for the purposes of this section,
6 any certificate issued under a group medicare supplement
7 policy, which policy has been delivered or issued for delivery
8 in this state.

9 (3) "Medicare supplement policy" means a group policy of
10 accident and sickness insurance or a subscriber contract (of
11 hospital and medical service associations) which is
12 advertised, marketed or designed primarily as a supplement
13 to reimbursements under medicare for the hospital, medical
14 or surgical expenses of persons eligible for medicare by
15 reason of age. Such term does not include:

16 (A) A policy or contract of one or more employers or labor
17 organizations, or of the trustees of a fund established by one
18 or more employers or labor organizations, or a combination

19 thereof, for employees or former employees, or combination
20 thereof, or for members or former members, or combination
21 thereof, of the labor organizations, or

22 (B) A policy or contract of any professional, trade or
23 occupational association for its members or former or retired
24 members, or combination thereof, if such association is
25 composed of individuals all of whom are actively engaged in
26 the same profession, trade or occupation; has been
27 maintained in good faith for purposes other than obtaining
28 insurance; and has been in existence for at least two years
29 prior to the date of its initial offering of such policy or plan to
30 its members.

31 (C) Individual policies or contracts issued pursuant to a
32 conversion privilege under a policy or contract of group or
33 individual insurance when such group or individual policy or
34 contract includes provisions which are inconsistent with the
35 requirements of this section.

36 (4) "Medicare" means the Health Insurance for the Aged
37 Act, Title XVIII of the Social Security Amendments of 1965,
38 as then constituted or later amended.

39 (b) *Standards for policy provisions.*

40 (1) The commissioner shall issue reasonable regulations to
41 establish specific standards for policy provisions of medicare
42 supplement policies. Such standards shall be in addition to
43 and in accordance with the applicable laws of this state and
44 may cover, but shall not be limited to:

- 45 (A) Terms of renewability;
- 46 (B) Initial and subsequent conditions of eligibility;
- 47 (C) Nonduplication of coverage;
- 48 (D) Probationary period;
- 49 (E) Benefit limitations, exceptions and reductions;
- 50 (F) Elimination period;
- 51 (G) Requirements for replacement;
- 52 (H) Recurrent conditions; and
- 53 (I) Definitions of terms.

54 (2) The commissioner may issue reasonable regulations
55 that specify prohibited policy provisions not otherwise
56 specifically authorized by statute which, in the opinion of the
57 commissioner, are unjust, unfair or unfairly discriminatory to

58 any person insured or proposed for coverage under a
59 medicare supplement policy.

60 (3) Notwithstanding any other provisions of the law, a
61 medicare supplement policy may not deny a claim for losses
62 incurred more than six months from the effective date of
63 coverage for a preexisting condition. The policy may not
64 define a preexisting condition more restrictively than a
65 condition for which medical advice was given or treatment
66 was recommended by or received from a physician within six
67 months before the effective date of coverage.

68 (c) *Minimum standards for benefits.*

69 The commissioner shall issue reasonable regulations to
70 establish minimum standards for benefits under medicare
71 supplement policies.

72 (d) *Loss ratio standards.*

73 Medicare supplement policies shall be expected to return to
74 policyholders benefits which are reasonable in relation to the
75 premium charge. The commissioner shall issue reasonable
76 regulations to establish minimum standards for loss ratios
77 and medicare supplement policies on the basis of incurred
78 claims experience and earned premiums for the entire period
79 for which rates are computed to provide coverage and in
80 accordance with accepted actuarial principles and practices.
81 For purposes of regulations issued pursuant to this
82 paragraph, medicare supplement policies issued as a result of
83 solicitations of individuals through the mail or mass media
84 advertising, including both print and broadcast advertising,
85 shall be treated as individual policies.

86 (e) *Disclosure standards.*

87 (1) In order to provide for full and fair disclosure in the
88 sale of accident and sickness policies, to persons eligible for
89 medicare by reason of age, the commissioner may require by
90 regulation that no policy of accident and sickness insurance
91 may be issued for delivery in this state and no certificate may
92 be delivered pursuant to such a policy unless an outline of
93 coverage is delivered to the applicant at the time application
94 is made.

95 (2) The commissioner shall prescribe the format and

96 content of the outline of coverage required by paragraph one.
97 For purposes of this paragraph, "format" means style,
98 arrangements and overall appearance, including such items
99 as size, color and prominence of type and the arrangement of
100 text and captions. Such outline of coverage shall include:

101 (A) A description of the principal benefits and coverage
102 provided in the policy;

103 (B) A statement of the exceptions, reductions and
104 limitations contained in the policy;

105 (C) A statement of the renewal provisions including any
106 reservation by the insurer of the right to change premiums;

107 (D) A statement that the outline of coverage is a summary
108 of the policy issued or applied for and that the policy should
109 be consulted to determine governing contractual provisions.

110 (3) The commissioner may prescribe by regulation a
111 standard form and the contents of an informational brochure
112 for persons eligible for medicare by reasons of age, which is
113 intended to improve the buyer's ability to select the most
114 appropriate coverage and improve the buyer's understanding
115 of medicare. Except in the case of direct response insurance
116 policies, the commissioner may require by regulation that the
117 information brochure be provided to any prospective
118 insureds eligible for medicare concurrently with delivery of
119 the outline of coverage. With respect to direct response
120 insurance policies, the commissioner may require by
121 regulation that the prescribed brochure be provided upon
122 request to any prospective insureds eligible for medicare by
123 reason of age, but in no event later than the time of policy
124 delivery.

125 (4) The commissioner may further promulgate reasonable
126 regulations to govern the full and fair disclosure of the
127 information in connection with the replacement of accident
128 and sickness policies, subscriber contracts or certificates by
129 persons eligible for medicare by reason of age.

130 (f) *Notice of free examination.*

131 Medicare supplement policies or certificates, other than
132 those issued pursuant to direct response solicitation, shall
133 have a notice prominently printed on the first page of the

134 policy or attached thereto stating in substance that the
135 applicant shall have the right to return the policy of certificate
136 within ten days from its delivery and have the premium
137 refunded if, after examination of the policy or certificate, the
138 applicant is not satisfied for any reason. Medicare
139 supplement policies or certificates issued pursuant to a direct
140 response solicitation to persons eligible for medicare by
141 reason of age shall have a notice prominently printed on the
142 first page or attached thereto stating in substance that the
143 applicant shall have the right to return the policy or
144 certificate within thirty days of its delivery and to have the
145 premium refunded if, after examination, the applicant is not
146 satisfied for any reason.

147 (g) *Administrative procedures.*

148 Regulations promulgated pursuant to this section shall be
149 subject to the provisions of chapter twenty-nine-a (West
150 Virginia Administrative Procedures Act).

151 (h) *Separability.*

152 If any provision of this section or the application thereof to
153 any person or circumstance is for any reason held to be
154 invalid, the remainder of the section and the application of
155 such provision to other persons or circumstances shall not be
156 affected thereby.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE
CORPORATIONS AND DENTAL SERVICE CORPORATIONS.**

§33-24-4. Exemptions; applicability of other laws.

1 Every such corporation is hereby declared to be a scientific,
2 nonprofit institution and as such exempt from the payment of
3 all property and other taxes. Every such corporation, to the
4 same extent such provisions are applicable to insurers
5 transacting similar kinds of insurance and not inconsistent
6 with the provisions of this article, shall be governed by and be
7 subject to the provisions, as hereinbelow indicated, of the
8 following articles of this chapter: Article two (insurance
9 commissioner) except that under section nine of article two
10 examinations shall be conducted at least once every four
11 years, article four (general provisions) except that section
12 sixteen of article four shall not be applicable thereto, article
13 ten (rehabilitation and liquidation), article eleven (unfair

14 practices and frauds), article twelve (agents, brokers and
15 solicitors) except that the agent's license fee shall be one
16 dollar, section three-c, article sixteen (group accident and
17 sickness insurance), section three-d, article sixteen (medicare
18 supplement), and article twenty-eight (individual accident
19 and sickness insurance minimum standards); and no other
20 provision of this chapter shall apply to such corporations
21 unless specifically made applicable by the provisions of this
22 article. If, however, any such corporation shall be converted
23 into a corporation organized for a pecuniary profit, or if it
24 shall transact business without having obtained a license as
25 required by section five of this article, it shall thereupon
26 forfeit its right to these exemptions.

**ARTICLE 28. INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE
MINIMUM STANDARDS.**

§33-28-5b. Medicare supplement insurance.

1 (a) *Definitions.*

2 (1) "Applicant" means, in the case of an individual
3 medicare supplement policy or subscriber contract, the
4 person who seeks to contract for insurance benefits.

5 (2) "Medicare supplement policy" means an individual
6 policy of accident and sickness insurance or a subscriber
7 contract (of hospital and medical service associations) which
8 is advertised, marketed or designed primarily as a
9 supplement to reimbursements under medicare for the
10 hospital, medical or surgical expenses of persons eligible for
11 medicare by reason of age. Such term does not include:

12 (A) A policy or contract of one or more employers or labor
13 organizations, or of the trustees of a fund established by one
14 or more employers or labor organizations, or a combination
15 thereof, for employees or former employees, or combination
16 thereof, or for members or former members, or combination
17 thereof, of the labor organizations, or

18 (B) A policy or contract of any professional, trade or
19 occupational association for its members or former or retired
20 members, or combination thereof, if such association is
21 composed of individuals all of whom are actively engaged in
22 the same profession, trade or occupation; has been
23 maintained in good faith for purposes other than obtaining

24 insurance; and has been in existence for at least two years
25 prior to the date of its initial offering of such policy or plan to
26 its members.

27 (C) Individual policies or contracts issued pursuant to a
28 conversion privilege under a policy or contract of group or
29 individual insurance when such group or individual policy or
30 contract includes provisions which are inconsistent with the
31 requirements of this section.

32 (3) "Medicare" means the Health Insurance for the Aged
33 Act, Title XVIII of the Social Security Amendments of 1965,
34 as then constituted or later amended.

35 (b) *Standards for policy provisions.*

36 (1) The commissioner shall issue reasonable regulations to
37 establish specific standards for policy provisions of medicare
38 supplement policies. Such standards shall be in addition to
39 and in accordance with the applicable laws of this state and
40 may cover, but shall not be limited to:

- 41 (A) Terms of renewability;
- 42 (B) Initial and subsequent conditions of eligibility;
- 43 (C) Nonduplication of coverage;
- 44 (D) Probationary period;
- 45 (E) Benefit limitations, exceptions and reductions;
- 46 (F) Elimination period;
- 47 (G) Requirements for replacement;
- 48 (H) Recurrent conditions; and
- 49 (I) Definitions of terms.

50 (2) The commissioner may issue reasonable regulations
51 that specify prohibited policy provisions not otherwise
52 specifically authorized by statute which, in the opinion of the
53 commissioner, are unjust, unfair or unfairly discriminatory to
54 any person insured or proposed for coverage under a
55 medicare supplement policy.

56 (3) Notwithstanding any other provisions of the law, a
57 medicare supplement policy may not deny a claim for losses
58 incurred more than six months from the effective date of
59 coverage for a preexisting condition. The policy may not
60 define a preexisting condition more restrictively than a
61 condition for which medical advice was given or treatment
62 was recommended by or received from a physician within six
63 months before the effective date of coverage.

64 (c) *Minimum standards for benefits.*

65 The commissioner shall issue reasonable regulations to
66 establish minimum standards for benefits under medicare
67 supplement policies.

68 (d) *Loss ratio standards.*

69 Medicare supplement policies shall be expected to return to
70 policyholders benefits which are reasonable in relation to the
71 premium charge. The commissioner shall issue reasonable
72 regulations to establish minimum standards for loss ratios
73 and medicare supplement policies on the basis of incurred
74 claims experience and earned premiums for the entire period
75 for which rates are computed to provide coverage and in
76 accordance with accepted actuarial principles and practices.
77 For purposes of regulations issued pursuant to this
78 paragraph, medicare supplement policies issued as a result of
79 solicitations of individuals through the mail or mass media
80 advertising, including both print and broadcast advertising,
81 shall be treated as individual policies.

82 (e) *Disclosure standards.*

83 (1) In order to provide for full and fair disclosure in the
84 sale of accident and sickness policies, to persons eligible for
85 medicare by reason of age, the commissioner may require by
86 regulation that no policy of accident and sickness insurance
87 may be issued for delivery in this state and no certificate may
88 be delivered pursuant to such a policy unless an outline of
89 coverage is delivered to the applicant at the time application
90 is made.

91 (2) The commissioner shall prescribe the format and
92 content of the outline of coverage required by paragraph one.
93 For purposes of this paragraph, "format" means style,
94 arrangements and overall appearance, including such items
95 as size, color and prominence of type and the arrangement of
96 text and captions. Such outline of coverage shall include:

97 (A) A description of the principal benefits and coverage
98 provided in the policy;

99 (B) A statement of the exceptions, reductions and
100 limitations contained in the policy;

101 (C) A statement of the renewal provisions including any
102 reservation by the insurer of the right to change premiums;

103 (D) A statement that the outline of coverage is a summary
104 of the policy issued or applied for and that the policy should
105 be consulted to determine governing contractual provisions.

106 (3) The commissioner may prescribe by regulation a
107 standard form and the contents of an informational brochure
108 for persons eligible for medicare by reasons of age, which is
109 intended to improve the buyer's ability to select the most
110 appropriate coverage and improve the buyer's understanding
111 of medicare. Except in the case of direct response insurance
112 policies, the commissioner may require by regulation that the
113 information brochure be provided to any prospective
114 insureds eligible for medicare concurrently with delivery of
115 the outline of coverage. With respect to direct response
116 insurance policies, the commissioner may require by
117 regulation that the prescribed brochure be provided upon
118 request to any prospective insureds eligible for medicare by
119 reason of age, but in no event later than the time of policy
120 delivery.

121 (4) The commissioner may further promulgate reasonable
122 regulations to govern the full and fair disclosure of the
123 information in connection with the replacement of accident
124 and sickness policies, subscriber contracts or certificates by
125 persons eligible for medicare by reason of age.

126 (f) *Notice of free examination.*

127 Medicare supplement policies or certificates, other than
128 those issued pursuant to direct response solicitation, shall
129 have a notice prominently printed on the first page of the
130 policy or attached thereto stating in substance that the
131 applicant shall have the right to return the policy or certificate
132 within ten days from its delivery and have the premium
133 refunded if, after examination of the policy or certificate, the
134 applicant is not satisfied for any reason. Medicare
135 supplement policies or certificates issued pursuant to a direct
136 response solicitation to persons eligible for medicare by
137 reason of age shall have a notice prominently printed on the
138 first page or attached thereto stating in substance that the
139 applicant shall have the right to return the policy or

140 certificate within thirty days of its delivery and to have the
 141 premium refunded if, after examination, the applicant is not
 142 satisfied for any reason.

143 (g) *Administrative procedures.*

144 Regulations promulgated pursuant to this section shall be
 145 subject to the provisions of chapter twenty-nine-a (West
 146 Virginia Administrative Procedures Act).

147 (h) *Separability.*

148 If any provision of this section or the application thereof to
 149 any person or circumstance is for any reason held to be
 150 invalid, the remainder of the section and the application of
 151 such provision to other persons or circumstances shall not be
 152 affected thereby.

CHAPTER 132

(Com. Sub. for S. B. 196—By Mrs. Spears)

[Passed March 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eighteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to casualty insurance coverage provisions for volunteer fire departments; permitting volunteer fire departments to associate in securing casualty insurance.

Be it enacted by the Legislature of West Virginia:

That section one, article eighteen, 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 18. CASUALTY INSURANCE.

§33-18-1. Association of volunteer fire departments to obtain casualty insurance.

1 Any state volunteer fire department may join with other
 2 volunteer fire departments in this state in order to obtain
 3 casualty insurance coverage as defined in subdivision (e),

4 section ten, article one of this chapter and the state insurance
5 commissioner and his staff may assist any such volunteer fire
6 departments in negotiating for, securing and adopting a
7 policy or policies of insurance written by a carrier or carriers
8 chartered under the laws of any state and duly licensed to do
9 business in this state.

CHAPTER 133

(Com. Sub. for S. B. 448—By Mr. Tonkovich, Mr. Moreland, Mr. Wise,
Mr. Galperin and Mr. Heck)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to composition of the board of directors of hospitals and dental service corporations.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-four, 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 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS AND DENTAL SERVICE CORPORATIONS.

§33-24-2. Definitions.

1 For the purpose of this article:

2 (a) "Corporation" shall mean either a hospital service
3 corporation, a medical service corporation or a dental
4 service corporation.

5 (b) "Hospital service corporation" shall mean a non-
6 profit, nonstock corporation, organized in accordance
7 with the provisions of article one, chapter thirty-one of
8 this code, for the sole purpose of contracting with the
9 public and with hospitals and other health agencies for

10 hospital or other health services to be furnished to sub-
11 scribers under terms of their contract with the corpora-
12 tion, and controlled by a board of directors, not more
13 than twenty percent of whom, or whose spouse, parent,
14 child, brother or sister by blood or marriage, are engaged
15 in the providing of health care and at least eighty per-
16 cent of whom shall be chosen as representatives of the
17 interests of consumers, elderly persons, organized labor
18 and business subscribers.

19 (c) "Hospital service" shall mean only such hospital or
20 other health care, to be provided by hospitals or other
21 health agencies, or such payment therefor, as may be
22 specified in the contract made by the subscriber with the
23 corporation.

24 (d) "Medical service corporation" shall mean a non-
25 profit, nonstock corporation, organized in accordance with
26 the provisions of article one, chapter thirty-one of
27 this code, for the sole purpose of contracting with the
28 public and with duly licensed physicians, duly licensed
29 dentists and duly licensed podiatrists for medical or
30 surgical services and with duly licensed chiropractors
31 and other health agencies for other health services to be
32 furnished to subscribers under terms of their contract
33 with the corporation, and controlled by a board of
34 directors, not more than twenty percent of whom, or
35 whose spouse, parent, child, brother or sister by blood or
36 marriage, are engaged in the providing of health care
37 and at least eighty percent of whom shall be chosen as
38 representatives of the interests of consumers, elderly
39 persons, organized labor and business subscribers.

40 (e) "Medical service" shall mean only such medical,
41 surgical, or other health care, to be provided by duly
42 licensed physicians, duly licensed dentists, duly licensed
43 podiatrists or other health agencies and only such health
44 care, to be provided by duly licensed chiropractors, or
45 such payment therefor, as may be specified in the contract
46 made by the subscriber with the corporation.

47 (f) "Dental service corporation" shall mean a non-
48 profit, nonstock corporation, organized in accordance with

49 the provisions of article one, chapter thirty-one of this
 50 code, for the sole purpose of contracting with the public
 51 and with duly licensed dentists for dental services to be
 52 furnished to subscribers under terms of their contracts
 53 with the corporations, and controlled by a board of di-
 54 rectors, not more than twenty percent of whom or whose
 55 spouse, parent, child, brother or sister by blood or mar-
 56 riage, are engaged in the providing of health care and
 57 at least eighty percent of whom shall be chosen as rep-
 58 resentatives of the interests of consumers, elderly persons,
 59 organized labor and business subscribers.

60 (g) "Dental service" shall mean only such dental care,
 61 to be provided by duly licensed dentists, duly licensed
 62 physicians, or such payment therefor, as may be specified
 63 in the contract made by the subscriber with the corpora-
 64 tion.

65 (h) "Service" shall mean such hospital, medical, dental
 66 or other health service as shall be provided under the
 67 terms of the contracts issued by the corporation to sub-
 68 scribers.

69 (i) "Commissioner" shall mean the insurance commis-
 70 sioner of West Virginia.



CHAPTER 134

(Com. Sub. for S. B. 361—By Mr. Nelson and Mr. Susman)

[Passed April 11, 1981; 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-nine; and to amend article six, chapter forty-six-a of said code, by adding thereto a new section, designated section one hundred nine, all relating to guidelines for the use of simplified language in life and accident and sickness insurance policies; construction; approval of forms; authority of insurance commissioner with respect thereto; the use of plain language in consumer

transactions; and providing for actions for reforming consumer transaction agreements and awarding of costs including reasonable attorney fees in such actions.

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-nine; and to amend article six, chapter forty-six-a of said code, by adding thereto a new section, designated section one hundred nine, all to read as follows:

Chapter

33. Insurance.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 33. INSURANCE.

ARTICLE 29. LIFE AND ACCIDENT AND SICKNESS INSURANCE POLICY LANGUAGE SIMPLIFICATION ACT.

§33-29-1. Title.

§33-29-2. Purpose.

§33-29-3. Definitions.

§33-29-4. Applicability and scope.

§33-29-5. Minimum policy language simplification standards.

§33-29-6. Construction.

§33-29-7. Powers of the commissioner.

§33-29-8. Approval of forms.

§33-29-9. Effective dates.

§33-29-1. Title.

- 1 This article may be cited as the Life and Accident and
- 2 Sickness Insurance Policy Language Simplification Act.

§33-29-2. Purpose.

- 1 The purpose of this article is to establish minimum
- 2 standards for language used in policies, contracts and
- 3 certificates of life insurance, accident and sickness insurance,
- 4 credit life insurance and credit accident and sickness
- 5 insurance delivered or issued for delivery in this state to
- 6 facilitate ease of reading by insureds.

7 This article is not intended to increase the risk assumed by
8 insurance companies or other entities subject to this article or
9 to supersede their obligation to comply with the substance of
10 other insurance legislation applicable to life, accident and
11 sickness, credit life or credit accident and sickness insurance
12 policies. This article is not intended to impede flexibility and
13 innovation in the development of policy forms or content or
14 to lead to the standardization of policy forms or content.

§33-29-3. Definitions.

1 (a) "Policy" or "policy form" means any policy, contract,
2 plan or agreement of life or accident and sickness insurance,
3 including credit life insurance and credit accident and
4 sickness insurance, delivered or issued for delivery in this
5 state by any company subject to this article; any certificate,
6 contract or policy issued by a fraternal benefit society; and
7 any certificate issued pursuant to a group insurance policy
8 delivered or issued for delivery in this state.

9 (b) "Company" or "insurer" means any life or accident
10 and sickness insurance company, fraternal benefit society,
11 nonprofit health service corporation, nonprofit hospital
12 service corporation, nonprofit medical service corporation,
13 prepaid health plan, dental care plan, vision care plan,
14 pharmaceutical plan, health maintenance organization, and
15 all similar type organizations.

§33-29-4. Applicability and scope.

1 (a) This article shall apply to all policies delivered or
2 issued for delivery in this state by any company on or after
3 the date such forms must be approved under this article, but
4 nothing in this article shall apply to:

5 (1) Any policy which is a security subject to federal
6 jurisdiction;

7 (2) Any group policy covering a group of one thousand or
8 more lives at date of issue, other than a group credit life
9 insurance policy or a group credit accident and sickness
10 insurance policy; however, this shall not exempt any
11 certificate issued pursuant to a group policy delivered or
12 issued for delivery in this state;

13 (3) Any group annuity contract which serves as a funding

14 vehicle for pension, profit sharing, or deferred compensation
15 plans;

16 (4) Any form used in connection with, as a conversion
17 from, as an addition to, or in exchange pursuant to a
18 contractual provision for, a policy delivered or issued for
19 delivery on a form approved or permitted to be issued prior to
20 the dates such forms must be approved under this article; or

21 (5) The renewal of a policy delivered or issued for delivery
22 prior to the dates such forms must be approved under this
23 article.

24 (b) No other statute of this state setting language
25 simplification standards shall apply to any policy forms.

§33-29-5. Minimum policy language simplification standards.

1 (a) In addition to any other requirements of law, no policy
2 forms, except as stated in section four of this article, shall be
3 delivered or issued for delivery in this state on or after the
4 dates such forms must be approved under this article unless:

5 (1) The text achieves a minimum score of forty on the
6 Flesch reading ease test or an equivalent score on any other
7 comparable test as provided in subsection (c) of this section;

8 (2) It is printed, except for specification pages, schedules
9 and tables, in not less than ten point type, one point leaded;

10 (3) The style, arrangement and overall appearance of the
11 policy give no undue prominence to any portion of the text of
12 the policy or to any endorsements or riders; and

13 (4) It contains a table of contents or an index of the
14 principal sections of the policy, if the policy has more than
15 three thousand words printed on three or fewer pages of text,
16 or if the policy has more than three pages regardless of the
17 number of words.

18 (b) For the purposes of this section, a Flesch reading ease
19 test score shall be measured by the following method:

20 (1) For policy forms containing ten thousand words or less
21 of text, the entire form shall be analyzed. For policy forms
22 containing more than ten thousand words, the readability of
23 two two-hundred word samples per page may be analyzed

24 instead of the entire form. The samples shall be separated by
25 at least twenty printed lines;

26 (2) The number of words and sentences in the text shall be
27 counted and the total number of words divided by the total
28 number of sentences. The figure obtained shall be multiplied
29 by a factor of one and fifteen one-thousandths;

30 (3) The total number of syllables shall be counted and
31 divided by the total number of words. The figure obtained
32 shall be multiplied by a factor of eighty-four and six-tenths;

33 (4) The sum of the figures computed under subdivisions
34 (2) and (3), subsection (b) of this section, subtracted from two
35 hundred six and eight hundred thirty-five one-thousandths
36 equals the Flesch reading ease score for the policy form;

37 (5) For purposes of subdivisions (2), (3) and (4), subsection
38 (b) of this section, the following procedures shall be used:

39 (A) A contraction, hyphenated word, or numbers and
40 letters, when separated by spaces, shall be counted as one
41 word;

42 (B) A unit of words ending with a period, semicolon or
43 colon, but excluding headings and captions, shall be counted
44 as a sentence; and

45 (C) A syllable means a unit of spoken language consisting
46 of one or more letters of a word as defined by an accepted
47 dictionary. Where the dictionary shows two or more equally
48 acceptable pronunciations of a word, the pronunciation
49 containing fewer syllables may be used.

50 (6) The term "text" as used in this section shall include all
51 printed matter except the following:

52 (A) The name and address of the insurer; the name,
53 number or title of the policy; the table of contents or index;
54 captions and subcaptions; specification pages, schedules or
55 tables; and

56 (B) Any policy language which is drafted to conform to
57 the requirements of any federal law, regulation or agency
58 interpretation; any policy language required by any
59 collectively bargained agreement; any medical terminology;
60 any words which are defined in the policy; and any policy
61 language required by law or regulation: *Provided*, That the

62 insurer identifies the language or terminology excepted by
63 this paragraph and certifies, in writing, that the language or
64 terminology is entitled to be excepted by this paragraph.

65 (c) Any other reading test may be approved by the
66 commissioner for use as an alternative to the Flesch reading
67 ease test if it is comparable in result to the Flesch reading ease
68 test.

69 (d) Filings subject to this section shall be accompanied by
70 a certificate signed by an officer of the insurer stating that it
71 meets the minimum reading ease score on the test used or
72 stating that the score is lower than the minimum required but
73 should be approved in accordance with section seven of this
74 article. To confirm the accuracy of any certification, the
75 commissioner may require the submission of further
76 information to verify the certification in question.

77 (e) At the option of the insurer, riders, endorsements,
78 applications, and other forms made a part of the policy may
79 be scored as separate forms or as part of the policy with which
80 they may be used.

§33-29-6. Construction.

1 Nothing in this article shall be construed to negate any law
2 of this state permitting the issuance of any policy form after it
3 has been on file for the time period specified.

§33-29-7. Powers of the commissioner.

1 The commissioner may authorize a lower score than the
2 Flesch reading ease score required in subdivision (1),
3 subsection (a), section five of this article whenever, in his sole
4 discretion, he finds that a lower score: (a) will provide a more
5 accurate reflection of the readability of a policy form; (b) is
6 warranted by the nature of a particular policy form or type or
7 class of policy forms; or (c) is caused by certain policy
8 language which is drafted to conform to the requirements of
9 any state law, regulation or agency interpretation.

§33-29-8. Approval of forms.

1 A policy form meeting the requirements of subsection (a),
2 section five of this article shall be approved notwithstanding
3 the provisions of any other laws which specify the content of
4 policies, if the policy form provides the policyholders and

- 5 claimants protection not less favorable than they would be
6 entitled to under such laws.

§33-29-9. Effective dates.

1 (a) Except as provided in section four, this article applies
2 to all policy forms filed on or after the first day of July, one
3 thousand nine hundred eighty-three. No policy form shall be
4 delivered or issued for delivery in this state on or after the
5 first day of July, one thousand nine hundred eighty-six,
6 unless approved by the commissioner or permitted to be
7 issued under this article. Any policy form which has been
8 approved or permitted to be issued prior to the first day of
9 July, one thousand nine hundred eighty-six, and which meets
10 the standards set by this article need not be refiled for
11 approval, but may continue to be lawfully delivered or issued
12 for delivery in this state upon the filing with the
13 commissioner of a list of such forms identified by form
14 number and accompanied by a certificate as to each such
15 form in the manner provided in subsection (d), section five of
16 this article.

17 (b) The commissioner, may, at his discretion and after
18 notice of hearing, extend the dates in subsection (a) of this
19 section.

**CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT.**

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-109. The use of plain language in consumer transactions.

1 (a) Every written agreement entered into by a consumer
2 after the first day of April, one thousand nine hundred
3 eighty-two, for the purchase or lease of goods or services in
4 consumer transactions, whether for the rental of space to be
5 occupied for residential purposes or for the sale of goods or
6 services for personal, family, household or agricultural
7 purposes, must: (1) Be written in a clear and coherent
8 manner, using words with common and everyday meanings;
9 (2) use type of an easily readable size and ink which
10 adequately contrasts with the paper; and (3) be appropriately
11 organized and captioned by its various sections to be easily
12 understood.

13 (b) A violation of the provisions of this section shall not
14 render any agreement void or voidable: *Provided*, That if a
15 consumer at the time of entering into a consumer transaction
16 or anytime thereafter, requests of the other party thereto that
17 the agreement evidencing the consumer transaction be
18 changed or written in a manner to conform with this section,
19 and that request is refused, then a consumer shall have a
20 cause of action to require a consumer agreement not in
21 conformity with the provisions of this section to be reformed.
22 This section shall not be construed to prohibit the use of
23 words or phrases specifically required or specifically
24 permitted by state or federal law, rule or regulation. This
25 section shall not be construed to preclude a consumer from
26 asserting a claim or defense which would have been available
27 to the consumer if this provision were not in effect. A
28 consumer may not waive the rights provided by this section,
29 and any attempted waiver shall be void.

CHAPTER 135

(S. B. 574—By Mr. Harman and Mr. Nelson)

[Passed April 10, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, section two, article two, section nine, article four, and sections two and ten, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; relating to depositories for demand deposits, itemized record of moneys received for deposit, absence of auditor or treasurer, definitions in the "Investment Management Law" and restrictions on investments.

Be it enacted by the Legislature of West Virginia:

That section two, article one, section two, article two, section nine, article four, and sections two and ten, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended as follows:

Article

1. **State Depositories.**
2. **Payment and Deposit of Taxes and Other Amounts Due the State or any Political Subdivision.**
4. **Accounts, Reports and General Provisions.**
6. **West Virginia State Board of Investments.**

ARTICLE 1. STATE DEPOSITORIES.**§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by treasurer.**

1 The state board of investments shall designate the state and
2 national banks in this state which shall serve as depositories
3 for all state funds placed in demand deposits. Any such state
4 or national bank shall, upon request to such board, be
5 designated as a state depository for such deposits, if such
6 bank meets the requirements set forth in this chapter.

7 Demand deposit accounts shall consist of receipt,
8 disbursement and investment accounts. Receipt accounts
9 shall be those accounts in which are deposited moneys
10 belonging to or due the state of West Virginia or any official,
11 department, board, commission or agency thereof.

12 Disbursement accounts shall be those accounts from which
13 are paid moneys due from the state of West Virginia or any
14 official, department, board, commission, political subdivision
15 or agency thereof to any political subdivision, person, firm or
16 corporation except moneys paid from investment accounts.

17 Investment accounts shall be those accounts established by
18 the treasurer or board of investments for the buying and
19 selling of securities for investment for the state of West
20 Virginia or any official, department, board, commission or
21 agency thereof or to meet obligations to paying agents or for
22 paying charges incurred for the custody, safekeeping and
23 management of such securities pursuant to the provisions of
24 section five, article five of this chapter, or for paying the
25 charges of any bank or trust company acting as paying agent
26 or copaying agent for a bond issue of the state pursuant to the
27 provisions of section seven-a, article one, chapter fifty-seven
28 of this code.

29 The board of investments shall promulgate rules and
30 regulations, in accordance with the provisions of chapter

31 twenty-nine-a of the code of West Virginia, as amended,
32 concerning depositories for receipt accounts and investment
33 accounts prescribing the selection criteria, procedures,
34 compensation and such other contractual terms as it
35 considers to be in the best interests of the state giving due
36 consideration to: (1) The activity of the various accounts
37 maintained therein; (2) the reasonable value of the banking
38 services rendered or to be rendered the state by such
39 depositories; and (3) the value and importance of such
40 deposits to the economy of the communities and the various
41 areas of the state affected thereby.

42 The board of investments shall select depositories for
43 disbursement accounts through competitive bidding by
44 eligible banks in this state: *Provided*, That funds in
45 disbursement accounts shall be proportionately distributed
46 among the following categories of such depositories, based
47 upon the total assets of such depository: (a) Depositories
48 whose total assets are not greater than twenty-five million
49 dollars; (b) depositories whose total assets are greater than
50 twenty-five million dollars but not greater than fifty million
51 dollars; or (c) depositories whose total assets are greater than
52 fifty million dollars. The board shall promulgate rules and
53 regulations, in accordance with the provisions of chapter
54 twenty-nine-a of the code of West Virginia, as amended,
55 prescribing the procedures and criteria for such bidding and
56 selection. It shall, in its invitations for bids, specify the
57 approximate amounts of deposits, the duration of contracts to
58 be awarded and such other contractual terms as it considers
59 to be in the best interests of the state, consistent with
60 obtaining the most efficient service at the lowest cost:
61 *Provided, however*, That the depositories for such
62 disbursement accounts shall be determined by the board
63 through competitive bidding separately for each category of
64 depositories created in this section.

65 The amount of money needed for current operation
66 purposes of the state government, as determined by the state
67 treasurer, shall be maintained at all times in the state
68 treasury, in cash or in disbursement accounts with banks
69 designated as depositories in accordance with the provisions
70 of this section. No state officer or employee shall make or
71 cause to be made any deposits of state funds in banks not so
72 designated.

**ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS
DUE THE STATE OR ANY POLITICAL SUBDIVISION.**

**§12-2-2. Itemized record of moneys received for deposit;
regulations governing deposits; credit to state fund;
exceptions.**

1 All officials and employees of the state authorized by
2 statute to accept moneys due the state of West Virginia shall
3 keep a daily itemized record of such moneys so received for
4 deposit in the state treasury and shall deposit within
5 twenty-four hours with the state treasurer all moneys
6 received or collected by them for or on behalf of the state for
7 any purpose whatsoever. The treasurer shall promulgate
8 rules and regulations, in accordance with the provisions of
9 chapter twenty-nine-a of the code of West Virginia, as
10 amended, governing the procedure for such deposits. When
11 so paid, such moneys shall be credited to the state fund and
12 treated by the auditor and treasurer as part of the general
13 revenue of the state, and shall not be used for any purpose
14 whatsoever unless and until authorized and directed by the
15 Legislature, except the following funds:

16 (a) All moneys received out of appropriations made by the
17 Congress of the United States;

18 (b) All funds derived from the sale of farm and dairy
19 products from farms operated by any agency of state
20 government other than the farm management commission;

21 (c) All endowment funds, bequests, donations, executive
22 emergency funds, and death and disability funds;

23 (d) All fees and funds collected at state educational
24 institutions for student activities;

25 (e) All funds derived from collections from dormitories,
26 boardinghouses, cafeterias and road camps;

27 (f) All moneys received from counties by institutions for
28 the deaf and blind on account of clothing for indigent pupils;

29 (g) All insurance collected on account of losses by fire and
30 refunds;

31 (h) All funds derived from bookstores and sales of blank
32 paper and stationery; and collections by the chief inspector of
33 public offices;

34 (i) All moneys collected and belonging to the capitol
35 building fund, state road fund, state road sinking funds,
36 general school fund, school fund, state fund (moneys
37 belonging to counties, districts and municipalities), state
38 interest and sinking funds, state compensation funds, the
39 fund maintained by the public service commission for the
40 investigation and supervision of applications and licenses
41 under article nine, chapter thirty-one of this code, and all
42 funds and moneys payable to or received by the natural
43 resources commission of West Virginia;

44 (j) All moneys collected or received under any act of the
45 Legislature providing that funds collected or received
46 thereunder shall be used for specific purposes.

47 All moneys, excepted as aforesaid, shall be paid into the
48 state treasury in the same manner as collections not so
49 excepted, and shall be carried in separate accounts to be used
50 and expended only for the purposes for which the same are
51 authorized to be collected by law. The gross amount collected
52 in all cases shall be paid into the state treasury, and
53 commissions, costs and expenses of collection authorized by
54 general law to be paid out of the gross collection are hereby
55 authorized to be paid out of the moneys collected and paid
56 into the state treasury in the same manner as other payments
57 are made from the state treasury.

58 The official or employee making such deposits in the state
59 treasury shall prepare such deposit lists in such manner and
60 upon such report forms as may be prescribed by the
61 treasurer. The original of this report shall accompany the
62 deposit to the treasurer's office. Certified or receipted copies
63 shall be immediately forwarded by the state treasurer to the
64 state auditor and to the commissioner of finance and
65 administration, and a copy shall be kept by the official or
66 employee making the report and shall become a part of his
67 permanent record.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-9. Absence of auditor or treasurer.

1 When it is necessary for either of the said officers to be
2 absent, the other shall be informed thereof. During such
3 absence, the duties of the officer so absent may be performed

4 by the chief clerk in his office. But if such absence be for
5 more than a day at any one time, the governor may appoint a
6 proper person to discharge the duties of such officer during
7 his absence. In either case, the absent officer and his sureties
8 shall be liable for any misconduct or neglect of the chief clerk
9 or person so acting in his place. Notwithstanding restrictions
10 which may otherwise be provided by law concerning
11 membership on any board, agency or commission, the
12 auditor and treasurer each may designate a representative
13 who is authorized to act for and on their behalf in any and all
14 matters relating to such memberships.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-2. Definitions.

§12-6-10. Restrictions on investments.

***§12-6-2. Definitions.**

1 As used in this article, unless a different meaning clearly
2 appears from the context:

3 (1) "Board" means the West Virginia state board of
4 investments;

5 (2) "Consolidated fund" means the investment fund
6 managed by the board and established pursuant to
7 subsection (b), section eight of this article;

8 (3) "Consolidated pension fund" means the investment
9 fund managed by the board and established pursuant to
10 subsection (a), section eight of this article;

11 (4) "Local government account" means the account
12 within the consolidated fund established pursuant to
13 subsection (b), section eight of this article;

14 (5) "Local government funds" means the moneys of a
15 political subdivision transferred to the board for deposit in
16 the local government account;

17 (6) "Pension funds" means and includes the workmen's
18 compensation fund; the state teachers retirement system
19 funds; the death, disability and retirement fund for members
20 of the department of public safety; the public employees
21 retirement system funds; the judges retirement fund; and

*Clerk's Note. This section was also amended by Com. Sub. for H. B. 1679, now Chapter 167, which was passed on April 9, 1981.

22 such other retirement or pension funds and systems as may
23 be hereafter established on behalf of public employees of the
24 state or of its political subdivisions and administered by the
25 state;

26 (7) "Political subdivision" means and includes a county,
27 municipality, or any agency, authority, board, commission or
28 instrumentality of a county or municipality, and regional
29 councils created pursuant to the provisions of section five,
30 article twenty-five, chapter eight of this code;

31 (8) "Securities" means all bonds, notes, debentures or
32 other evidences of indebtedness, and shall not mean
33 corporate stock;

34 (9) "State account" means the account within the
35 consolidated fund established pursuant to subsection (b),
36 section eight of this article; and

37 (10) "State funds" means all moneys of the state which
38 may be lawfully invested except (a) the pension funds (as
39 defined in subdivision (6) of this section) and (b) the "school
40 fund" established by section four, article XII of the state
41 constitution.

§12-6-10. Restrictions on investments.

1 Moneys on deposit in the consolidated fund and the
2 consolidated pension fund shall be invested as permitted by
3 section nine of this article subject to the restrictions and
4 conditions contained in this section:

5 (1) At no time shall more than seventy-five percent of the
6 portfolio of either fund be invested in securities described in
7 subdivision (g) of said section nine;

8 (2) At no time shall more than twenty percent of the
9 portfolio of either fund be invested in securities described in
10 said subdivision (g) which mature within one year from the
11 date of issuance thereof;

12 (3) At no time shall more than three percent of the
13 portfolio of either fund be invested in securities issued by a
14 single private corporation or association.

15 For the purpose of making the computations required by
16 this section, securities shall be valued in accordance with
17 generally accepted accounting principles.

CHAPTER 136

(Com. Sub. for H. B. 858—By Mr. Tucker)

[Passed April 8, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article one, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to payment of compensation to jurors; directing the clerk of any court upon which juries are in attendance to submit to the sheriff a copy of orders making allowances to jurors; directing the sheriff, upon receipt of such an order, to issue a check payable to the juror; providing for contempt proceedings against any sheriff who fails to pay such allowances; providing for reimbursement out of the state treasury for amounts paid by the sheriff.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PETIT JURIES.

§52-1-24. Payment of compensation.

1 It shall be the duty of the clerk, as soon as practicable
2 after the adjournment of the court, or before the adjourn-
3 ment of the court at such time as the court may direct, to de-
4 liver to the sheriff of such county certified copies of all orders
5 under the preceding section making allowances to jurors
6 payable out of the state treasury. The sheriff shall, upon re-
7 ceipt of such order or orders, issue a check payable to the
8 juror for the amount allowed to him; and the sheriff shall de-
9 liver such check to the clerk, who shall deliver it to the
10 juror. If any sheriff fail to pay any such allowance as re-
11 quired by law, he may be proceeded against as for a con-
12 tempt of court.

13 Any allowance paid by the sheriff under the provisions of
14 this section shall be repaid to the sheriff out of the state
15 treasury, upon the production of satisfactory proof that the

16 same has actually been paid by him. Proof of payment
17 shall be in the form of a complete itemized statement, in-
18 dicating the total amount eligible for reimbursement.

CHAPTER 137

(H. B. 1183—By Mr. Burdette and Miss Shuman)

[Passed April 3, 1981: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to continuing and reestablishing the department of labor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF LABOR.

§21-1-5. Reestablishment of department; findings.

1 After having conducted a performance and fiscal audit
2 through its joint committee on government operations, pursuant
3 to section nine, article ten, chapter four of this code, the
4 Legislature hereby finds and declares that the department of
5 labor should be continued and reestablished. Accordingly,
6 notwithstanding the provisions of section four, article ten,
7 chapter four of this code, the department of labor shall con-
8 tinue to exist until the first day of July, one thousand nine
9 hundred eighty-seven.

CHAPTER 138

(Com. Sub. for H. B. 720—By Mr. Karras and Mr. Farley)

[Passed April 8, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a; and to amend article five, chapter thirty of said code by adding thereto a new section, designated section sixteen-a, all relating to the manufacture, prescription and use of amygdalin (laetrile) under certain circumstances; requiring informed consent of the patient; allowing the parent or guardian of a minor child to consent to the use of amygdalin (laetrile); forwarding copy of the written informed request to state registrar of vital statistics; providing for the regulation, inspection and licensing of persons or facilities producing, manufacturing, delivering or selling amygdalin (laetrile); and providing for certain immunities for physicians, pharmacists, chemists and hospitals acting in compliance with this statute.

Be it enacted by the Legislature of West Virginia:

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

Chapter

16. Public Health.

30. Professions and Occupations.

CHAPTER 16. PUBLIC HEALTH.

Article

5A. Cancer Control.

5. Pharmacists, Assistant Pharmacists and Drugstores.

ARTICLE 5A. CANCER CONTROL.

§16-5A-9a. Laetrile use; informed consent.

1 A hospital or other health care facility may not interfere

2 with the physician-patient relationship by restricting or for-
3 bidding the intravenous use of amygdalin (laetrile) as certified
4 in accordance with section sixteen-a, article five, chapter
5 thirty of this code, as an adjunct to recognized, customary or
6 accepted modes of therapy in the treatment of any malignancy
7 for terminally ill cancer patients when it is prescribed or ad-
8 ministered by a physician holding an unlimited license for the
9 practice of medicine in the state of West Virginia and the
10 patient has signed the "written informed request" therefor as set
11 forth in this section: *Provided*, That a parent or guardian may
12 sign the "written informed request" on a minor's behalf.

13 In the event that no recognized, customary or accepted
14 mode of therapy is available for the treatment of any mal-
15 ignancy for a terminally ill cancer patient, the physician may
16 prescribe or administer intravenous amygdalin (laetrile), as
17 certified in accordance with section sixteen-a, article five,
18 chapter thirty of this code, as the sole mode of therapy, pro-
19 viding further that said patient executed the "written informed
20 request" as set forth in this section.

21 Any physician, hospital or other health care facility partici-
22 pating in any act permitted or required by this section is
23 immune from any civil or criminal liability that otherwise
24 might result by reason of such actions. A physician may not
25 be subjected to disciplinary action by the state board of
26 medicine of West Virginia for prescribing or administering in-
27 travenous amygdalin (laetrile), in compliance with the pro-
28 visions of this section.

29 Nothing in this section shall be construed as constituting an
30 endorsement of amygdalin (laetrile), as certified in accordance
31 with section sixteen-a, article five, chapter thirty of this code,
32 for the treatment of any malignancy, disease, illness or physical
33 condition.

34 The "written informed request" referred to in this section
35 shall be on a form prepared by and obtained from the state
36 department of health and shall be in substance as follows:

37 "WRITTEN INFORMED REQUEST"
38 FOR PRESCRIPTION OF INTRAVENOUS AMYGDALIN
39 (LAETRILE) FOR MEDICAL TREATMENT

40 Patient's name:

41 Address

42 Age Sex

43 Name and address of prescribing physician:

44

45 Nature of malignancy diagnosed for medical treatment by
46 amygdalin (laetrile):

47

48

49

50 My physician has explained to me:

51 (a) That the manufacture and distribution of amygdalin
52 (laetrile) has not been approved by the Federal Food and
53 Drug Administration.

54 (b) That neither the American Cancer Society, the Ameri-
55 can Medical Association nor the West Virginia State
56 Medical Association recommends use of amygdalin
57 (laetrile) in the treatment of any malignancy, disease,
58 illness or physical condition.

59 (c) That there are alternative recognized treatments for the
60 malignancy, disease, illness or physical condition from
61 which I suffer which he has offered to provide for me
62 including:

63 (here describe) (state "none" if applicable)

64

65

66 (d) That I have the right to refuse or terminate the intraven-
67 ous use of laetrile at any time.

68 I understand that physicians, hospitals or health care facilities
69 are immune from civil and criminal liability for prescribing or
70 administering amygdalin (laetrile) in compliance with state
71 statutes.

72 That notwithstanding the foregoing, I hereby request pre-
73 scription and use of intravenous amygdalin (laetrile) in the

74 medical treatment of the malignancy from which I suffer.

75 -----

76 Patient or person signing for patient

77 Date of execution of request -----

78 ATTEST: -----

79 -----

80 Prescribing physician

81 The prescribing physician shall forward a copy of the written
82 informed request to the state registrar of vital statistics within
83 ten days of the execution of such request and shall retain a
84 copy of the request in the patient's medical file.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-16a. Manufacture of laetrile.

1 The manufacture, distribution, delivery, possession, sale and
2 use of amygdalin (laetrile) is lawful under specified conditions
3 within the state of West Virginia unless the United States food
4 and drug administration shall make a formal finding that the
5 substance is harmful: *Provided*, That no person shall manu-
6 facture, distribute, sell or deliver amygdalin (laetrile) for the
7 purpose of transporting such substance to any other state,
8 district or territory beyond the borders of West Virginia.

9 The director of the state department of health and the state
10 board of pharmacy shall regulate the manufacture, distribu-
11 tion and sale of amygdalin (laetrile) for use within the state
12 to ensure that the substance is not adulterated in accordance
13 with the provisions of article seven, chapter sixteen of this
14 code: *Provided*, That amygdalin (laetrile) manufactured under
15 the provisions of this section shall be certified as to com-
16 position and purity by the director of the state department of
17 health or a qualified testing laboratory approved to make
18 such certification by the director of the state department of
19 health. The board of pharmacy shall have all necessary
20 authority for the regulation, inspection and licensing of any

21 person or facility producing, manufacturing, delivering or
22 selling any amygdalin (laetrile) in this state in accordance with
23 the provisions of this article and shall promulgate and adopt
24 rules and regulations outlining minimum standards for manu-
25 facturers in preparing, packaging, processing and compounding
26 amygdalin (laetrile) and for the enforcement of such standards:
27 *Provided, however,* That application for a permit to manu-
28 facture amygdalin (laetrile) shall be accompanied by the per-
29 mit fee of five thousand dollars and by a bond of the applicant
30 in the surety sum of one million dollars with a corporate
31 surety authorized to transact business in the state of West
32 Virginia, which bond shall be conditioned on the payment of
33 all fees herein prescribed and on the faithful performance of
34 and compliance with the provisions of this section and of
35 the regulations issued hereunder by the board of pharmacy.

36 Any physician, pharmacist or chemist is immune from civil
37 or criminal liability and from disciplinary actions for activities
38 which comply with the provisions of this section or regulations
39 promulgated pursuant thereto.

CHAPTER 139

(H. B. 1598—By Mr. Speaker, Mr. See)

[Passed April 8, 1981: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, correcting a code reference to the commission on special investigations in a provision relating to interim meetings and duties of legislative committees and commissions.

Be it enacted by the Legislature of West Virginia:

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

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

§4-1-1. Interim committee and subcommittee meetings.

1 (a) Either house of the Legislature may, by resolution,
2 direct any select committee unique to that house or any
3 standing committee of that house and created by it by rule,
4 motion or resolution to meet between regular sessions of the
5 Legislature. The presiding officer of such house may designate
6 subcommittees of such standing or select committees and shall
7 designate the chairman and membership thereof. Such com-
8 mittees or subcommittees shall function according to the rules
9 for committees of the house creating them.

10 Members of such committees or subcommittees under this
11 subsection, performing duties as members thereof, shall re-
12 ceive travel expense reimbursement as provided in section
13 six, article two-a, chapter four and interim expense reim-
14 bursement as provided in section eight, article two-a, chapter
15 four. However, to be eligible to receive travel expense reim-
16 bursement and interim expense reimbursement, meetings of
17 these select committees and subcommittees thereof must be
18 authorized by the rules committee of such house. Expenses
19 shall be paid from any appropriation to the use and benefit
20 of the house adopting the resolution.

21 Such committees or subcommittees shall have such staff
22 as may be directed by the presiding officer of that house
23 from which its membership is drawn, which may be paid for
24 from appropriations to the use and benefit of such house, as
25 designated by the rules committee thereof.

26 (b) From the date of adjournment sine die of any regular
27 session of the Legislature until the first day of the next
28 succeeding regular session of the Legislature, the Legislature
29 by concurrent resolution, or the joint committee on govern-
30 ment and finance on its own motion, may appoint a joint
31 standing committee or a joint select committee, or any joint

32 subcommittee of such standing or select committee, to func-
33 tion under the supervision of the joint committee on govern-
34 ment and finance. Any such committee or subcommittee
35 shall be composed of the standing or select committees of
36 the respective houses having similar titles or jurisdiction,
37 and similarly constituted, and the membership thereof shall
38 be composed of members of the respective standing or select
39 committees of each house, or subcommittees thereof, or be
40 designated by the presiding officer of each house: *Provided*,
41 That the membership of such joint committee or subcom-
42 mittee may be drawn from more than one such standing or
43 select committee.

44 (c) Members of the Legislature performing interim duties
45 as members of the joint committee on government and finance,
46 the commission on interstate cooperation, the joint com-
47 mittee on government operations, the legislative commission
48 on pensions and retirement, the legislative rule-making re-
49 view committee, the commission on special investigations,
50 standing committees of the Senate and of the House of
51 Delegates, and authorized subcommittees of each of the above
52 committees and commissions are authorized to meet between
53 regular sessions of the Legislature, subject to the direction
54 of the joint committee on government and finance. Mem-
55 bers of the Legislature performing interim duties as a mem-
56 ber of said committees or commissions, or subcommittees
57 thereof, under this subsection, shall receive interim com-
58 pensation as provided in section five, article two-a, chapter
59 four; travel expense reimbursement as provided in section
60 six, article two-a, chapter four; and interim expense reim-
61 bursement as provided in section eight, article two-a, chapter
62 four. However, to be eligible to receive the interim com-
63 pensation, travel expense reimbursement and interim expense
64 reimbursement, payment must be authorized by the joint com-
65 mittee on government and finance.

66 The joint committee on government and finance shall co-
67 ordinate meetings, of said committees and commissions, and
68 subcommittees thereof, between regular sessions of the Legis-
69 lature.

CHAPTER 140

(Com. Sub. for S. B. 588—By Mr. Boettner)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to attachment; filing of affidavit; and providing for a pre-judgment hearing to ascertain sufficient facts in an action for any claim arising out of a contract or for damages for any wrong prior to seizure of property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ATTACHMENT.

§38-7-1. Filing of affidavit; prejudgment hearing; seizure of property.

1 In any civil action for the recovery of any claim or debt
2 arising out of contract, or to recover damages for any
3 wrong, the plaintiff, after service of the summons upon
4 the defendant, or at any time thereafter and before judg-
5 ment may have an order of attachment against the prop-
6 erty of the defendant, on filing with the clerk of the court
7 in which such action, proceeding or suit is about to be or
8 is brought, his own affidavit or that of some credible
9 person, stating the nature of the plaintiff's claim and the
10 amount, at the least, which the affiant believes the plain-
11 tiff is justly entitled to recover in the action, proceeding
12 or suit, and also that the affiant believes that some one or
13 more of the grounds mentioned in the next following
14 section of this article exist for such attachment:
15 *Provided*, That in any action where the plaintiff shall
16 give bond for the purpose of having the officer take pos-
17 session of the personal property levied upon, as provided
18 in section eight of this article, such officer may not take
19 possession of the personal property attached under sec-

20 tion eight of this article unless and until a prejudgment
21 hearing shall have been held, for which proper notice
22 shall be given the defendant and which shall be held in
23 not less than five days nor more than ten days after the
24 filing of the affidavit; which hearing shall be held to
25 ascertain specific facts as to the nature of the obligation
26 under which the plaintiff claims a right to possession, and
27 to establish facts justifying the seizure, under one or more
28 of the grounds set forth in section two of this article.

CHAPTER 141

(S. B. 150—By Mr. Steptoe)

[Passed March 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section seventeen, article eleven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, five, six, eight, fourteen, fifteen and sixteen of said article, all relating to revising the state law on miscellaneous liens and pledges to provide for due process of law with respect to personal property retained by lienors and pledgees; stating the rights of lienors for the retention of said property; relating to improver's, storer's and transporter's liens on personal property and animals and liens for lodging and board; relating to liens of humane officers and liens for certain services of male animals; providing a specific remedy and method for the enforcement of said miscellaneous liens and pledges; providing for notices and court proceedings; providing for the sale or disposition of perishable or hazardous goods; and allowing certain other remedies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. MISCELLANEOUS LIENS AND PLEDGES.

- §38-11-3. Improver's, storer's or transporter's lien on personal property and animals.
- §38-11-5. Lien for lodging and board.
- §38-11-6. Lien of humane officer.
- §38-11-8. Lien for service of male animals.
- §38-11-14. Enforcement of lien or pledge.
- §38-11-15. Sale or disposition of perishable or hazardous goods by lienor or pledgee.
- §38-11-16. Other remedies of lienor or pledgee.

§38-11-3. Improver's, storer's or transporter's lien on personal property and animals.

1 A person who, while in possession thereof, makes,
 2 alters, repairs, stores, transports, or in any way enhances
 3 the value of an article of personal property, or boards,
 4 pastures, feeds, trains, improves or transports any animal,
 5 shall have a lien upon such article or animal while law-
 6 fully in the possession thereof, for the charges agreed
 7 upon, or, if no charges be agreed upon, then for his just
 8 and reasonable charges for the work done or the board or
 9 storage or transportation furnished, to the extent and in
 10 the manner provided for in section fourteen of this article,
 11 and may retain possession thereof until such charges are
 12 paid. Such lien shall be good against the person who de-
 13 posited the property with the lienor, and against any
 14 other person by whose authority or with whose consent
 15 the property was deposited. If two or more articles of
 16 personal property are made, altered, repaired, stored,
 17 transported or enhanced in value as aforesaid, or two or
 18 more animals are boarded, pastured, fed, trained, im-
 19 proved or transported as aforesaid, under one contract or
 20 agreement, any one or more of such articles or animals
 21 may be held under the lien, hereinbefore mentioned, for
 22 all of the charges upon all such articles included in such
 23 contract or agreement.

§38-11-5. Lien for lodging and board.

1 The owner or keeper of any hotel, inn, lodginghouse,
 2 restaurant, eating house or boardinghouse shall have a
 3 lien upon and, to the extent and in the manner provided
 4 for in section fourteen of this article, may retain posses-

5 sion of the baggage, luggage or other personal property of
6 any kind, brought to such hotel, inn, lodginghouse, restau-
7 rant, eating house or boardinghouse by, or with the con-
8 sent of, the owner thereof, for the amount of his lawful
9 claim for lodging, board or other accommodations or
10 facilities furnished by him at that time to such person
11 bringing the same, or to any other person for whose
12 charges the person so bringing such property is liable.

§38-11-6. Lien of humane officer.

1 When any humane officer shall provide any neglected or
2 abandoned animal with proper food, shelter and care, he
3 shall have a lien upon such animal for the expense there-
4 of, and such expense shall be charged against the owner
5 of such animal. Until the humane officer shall take pos-
6 session of the animal or place the animal in the possession
7 of some person other than the owner, to the extent and in
8 the manner provided for in section fourteen of this article,
9 such lien shall not be good against a purchaser of the
10 animal from the owner, for value, and without notice of
11 the facts creating the lien.

§38-11-8. Lien for service of male animals.

1 The owner of any stallion, jack or bull, that is duly
2 registered under the laws of the state of West Virginia,
3 shall have a lien upon the foal or calf thereof, whenever
4 the service of such stallion, jack or bull was had by
5 contract with the owner, or agent of the owner, of the dam
6 or cow of such foal or calf, at the time of such service.
7 Such lien shall cease unless the person desiring to avail
8 himself thereof shall, within six months from the birth of
9 such foal or calf, file before some magistrate in the county
10 in which such foal or calf may be, his own affidavit, or
11 that of some credible person, stating the amount of his
12 lien against such foal or calf and that such amount is due
13 by contract, also a description of the foal or calf upon
14 which such lien is claimed. Such affidavit shall be filed
15 and preserved by such magistrate, for which service he
16 shall receive any fee provided by law. Upon the filing of
17 such affidavit, such proceedings shall be had for the en-

18 enforcement of such lien as are provided in section fourteen
19 of this article.

§38-11-14. Enforcement of lien or pledge.

1 Any person holding personal property in his pos-
2 session under a lien or pledge may satisfy such lien in any
3 manner agreed upon between the owner and the lienor or,
4 if there be no such agreement, in the following manner:

5 The lienor or pledgee shall give a written notice to the
6 person on whose account the goods are held and to any
7 other person known by the lienor to claim an interest in
8 the goods. Such notice shall be given by delivery in per-
9 son or by registered letter addressed to the last-known
10 place of business or abode of the person to be notified.
11 The notice shall contain:

12 (a) An itemized statement of the lienor's or pledgee's
13 claim, showing the sum due at the time of the notice and
14 the date or dates when it became due;

15 (b) A brief description of the goods against which the
16 lien or pledge exists;

17 (c) A demand that the amount of the claim as stated in
18 the notice, and of such further claim as shall accrue, shall
19 be paid on or before a day mentioned, not less than
20 seven days from the delivery of the notice. If delivery
21 of notice is made by mail instead of personal delivery,
22 such delivery shall be by registered or certified mail,
23 return receipt requested, and such delivery shall be com-
24 plete when such notice is deposited in the United States
25 mail, postage prepaid, addressed to the debtor at his last-
26 known address; and

27 (d) A statement that unless the claim is paid within the
28 time specified the goods will remain in the possession and
29 control of the lienor or pledgee and he will assert in a
30 court of competent jurisdiction his legal right to hold and
31 sell the property for the amount of the debt and to other-
32 wise proceed for payment of the debt.

33 If the debt has not been fully satisfied by the day fol-
34 lowing the date specified for payment in the notice herein-
35 above provided for, the lienor or pledgee shall either

36 release the property to its owner or other appropriate
37 custodian or continue to retain the property and sue upon
38 the debt and the right of possession in a court of compe-
39 tent jurisdiction. Any such suit shall proceed expedi-
40 tiously toward judgment in manner and form prescribed
41 by law for other civil actions.

42 Unless a suit to enforce any lien authorized by this
43 article be brought in a court of competent jurisdiction
44 within thirty days after the delivery of the notice here-
45 inabove provided for, such lien shall be discharged.

46 At any time before judgment in any such suit, any per-
47 son claiming a right of property or possession in the
48 property at issue may pay the lienor or pledgee the
49 amount necessary to satisfy his lien or pledge and the
50 reasonable expenses and liabilities, including all court
51 costs, incurred in protecting and proceeding upon the lien
52 or pledge up to the time of such payment or such person
53 may execute a bond with good security, conditioned to
54 pay the lienor who may be damaged by the release of
55 property under the lien, to be approved by the court, in
56 a penalty not to exceed the lesser of the amount of the
57 lien with reasonable court costs thereupon or the value
58 of the property in the possession of the lienor. The lienor
59 or pledgee shall deliver the goods to the person making
60 such payment or posting such bond, if he is a person en-
61 titled to the possession of the goods or payment of charges
62 thereon. Otherwise the lienor or pledgee shall retain
63 possession of the goods according to the terms of the
64 original contract of deposit and shall proceed upon the
65 suit.

**§38-11-15. Sale or disposition of perishable or hazardous goods
by lienor or pledgee.**

1 If goods which are subject to a lien or pledge under this
2 article are such that they are perishable or threaten to
3 decline in value speedily, or are of a hazardous nature,
4 the lienor or pledgee may give such notice to the owner,
5 or to the person in whose name the goods are stored, as
6 is commercially reasonable under the circumstances, to
7 satisfy the lien or pledge upon such goods and to remove

8 them, and in the event of the failure of such person to
 9 satisfy the lien or pledge and to remove the goods within
 10 the time specified within the notice, the lienor may sell
 11 the goods at public or private sale. If the lienor after a
 12 reasonable effort is unable to sell such goods, he may
 13 dispose of them in any lawful manner, and shall incur no
 14 liability by reason thereof.

§38-11-16. Other remedies of lienor or pledgee.

1 The remedy for enforcing a lien or pledge provided
 2 for in this article does not preclude any other remedies
 3 allowed by law for the enforcement of a lien or pledge
 4 against personal property nor bar the right to recover
 5 so much of the lienor's or pledgee's claim as shall not be
 6 recovered under the provisions of this article.

CHAPTER 142

(S. B. 649—By Mr. Steptoe)

[Passed April 10, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the use of certain net proceeds from certain fines and forfeitures for the operation of regional correctional facilities.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article five, 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 5. FISCAL AFFAIRS.

§7-5-15. Auditing and payment of claims of magistrates, justices of the peace and constables; annual statement of sheriff of fines and costs received from justices and magistrates; payment into state treasury.

1 All claims by justices and constables for fees due them

2 in misdemeanor proceedings in the county, instituted
3 before them on and after the effective date of this section,
4 shall be audited and examined by the county commission,
5 and if found correct and if submitted, as provided in the
6 heretofore existing section fourteen, article seventeen,
7 chapter fifty of this code, the county commission shall
8 cause orders to be issued therefor on the sheriff to be
9 paid out of the general school fund or out of the general
10 county fund, as the commission may direct. The sheriff
11 shall annually, during the month of January, render under
12 oath to the auditor a true statement of the account of
13 all fines and costs collected by magistrates and trans-
14 mitted to him and pay into the treasury of the state, the
15 net proceeds of such fines and costs as exhibited by
16 such account, to be appropriated as directed by the fifth
17 section of article twelve of the constitution of this state.
18 Failure to do so shall be deemed a breach of his official
19 duty. For the purposes of this section, the net proceeds
20 of such fines and costs shall be deemed to be the proceeds
21 remaining after deducting therefrom the lawful fees of
22 constables and justices of the peace; the cost of auditing
23 the accounts of justices of the peace, constables and
24 magistrates by the chief inspector's office; the expenses
25 for operation and maintenance of the county jail or a
26 regional correctional facility operated jointly with one or
27 more other county or counties; the costs of constructing,
28 reconstructing and renovating any jail facility used for
29 county prisoners; and periodic payments, if any, for the
30 establishment of a jail improvement fund in the manner
31 provided by section nine, article one of this chapter for
32 constructing, reconstructing or renovating any jail facility
33 used for county prisoners.

CHAPTER 143

(H. B. 1186—By Mr. Hutchinson)

[Passed March 17, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

by adding thereto a new section, designated section nine-b, relating to the salaries of magistrate court clerks, magistrate assistants and magistrate court deputy clerks in the Counties of Putnam and Raleigh; establishing such salaries effective the first day of January, one thousand nine hundred eighty-one, and declaring legislative findings and intent with respect thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND THEIR OFFICERS.

§50-1-9b. Putnam and Raleigh counties—Salaries of clerks, deputy clerks, magistrate assistants.

1 (a) The Legislature finds and declares:

2 (1) That during the regular session of the Legislature, one
3 thousand nine hundred eighty, it adopted certain amendments
4 to sections two, three, eight, nine and eleven of this article in
5 an act designated chapter eighty, acts of the Legislature,
6 regular session, one thousand nine hundred eighty;

7 (2) That included within the provisions of that act were
8 provisions specifically increasing the number of magistrates
9 for the Counties of Putnam and Raleigh whereby the Legis-
10 lature provided for the election of three magistrates for the
11 County of Putnam and five magistrates for the County of
12 Raleigh;

13 (3) That it has come to the attention of the Legislature
14 that the fact of increasing the number of magistrates in the
15 Counties of Putnam and Raleigh has been interpreted as
16 necessitating a decrease in the respective salaries of the magis-
17 trate court clerks, magistrate assistants and magistrate court
18 deputy clerks, in those counties effective the first day of
19 January, one thousand nine hundred eighty-one; and

20 (4) That it was not the intent of the Legislature in enacting

21 the provisions of chapter eighty, acts of the Legislature, regular
22 session, one thousand nine hundred eighty, to reduce the
23 salaries of magistrate court clerks, magistrate assistants and
24 magistrate court deputy clerks in the Counties of Putnam and
25 Raleigh.

26 Therefore, in view of the foregoing findings, it is the intent
27 of the Legislature in enacting this section to restore the respec-
28 tive salaries of the magistrate court clerks, magistrate assis-
29 tants and magistrate court deputy clerks in the Counties of
30 Putnam and Raleigh to those sums which were applicable to
31 those various positions prior to the first day of January, one
32 thousand nine hundred eighty-one, retroactively to that date.

33 (b) In view of the foregoing findings and purposes, effec-
34 tive the first day of January, one thousand nine hundred eighty-
35 one, the respective salaries for magistrate court clerks, magis-
36 trate assistants and magistrate court deputy clerks in the
37 Counties of Putnam and Raleigh shall be as follows:

38 (1) The salary for the magistrate court clerk in the County
39 of Putnam shall be up to one thousand twenty-six dollars per
40 month;

41 (2) The salary for the magistrate court clerk in the County
42 of Raleigh shall be up to one thousand two hundred fifty-
43 four dollars per month;

44 (3) The salary for each magistrate assistant in the County
45 of Putnam shall be up to seven hundred forty-one dollars per
46 month;

47 (4) The salary for each magistrate assistant in the County
48 of Raleigh shall be up to eight hundred fifty-five dollars per
49 month; and

50 (5) The salaries of the various magistrate court deputy
51 clerks for the Counties of Putnam and Raleigh shall be in
52 amounts up to and not exceeding the amounts paid to the
53 magistrate assistants in those respective counties.

CHAPTER 144

(Com. Sub. for H. B. 1559—By Mr. Frazier)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections three, eight and nine, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, providing increased compensation for magistrates, magistrate court clerks, magistrate assistants and magistrate court deputy clerks; and providing for salaries and maximum salary levels to be paid on a population basis.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.

§50-1-3. Salary of magistrates.

§50-1-8. Magistrate court clerks; duties; duties of circuit clerk.

§50-1-9. Magistrate assistants; salary; duties.

§50-1-3. Salary of magistrates.

1 The salary of each magistrate shall be paid by the state.
2 Beginning on the first day of July, one thousand nine hundred
3 eighty-one, magistrates who serve less than ten thousand in
4 population shall be paid annual salaries of fifteen thousand
5 seven hundred fifty dollars; magistrates who serve ten thousand
6 or more in population but less than fifteen thousand in popula-
7 tion shall be paid annual salaries of nineteen thousand one
8 hundred twenty-five dollars: *Provided*, That magistrates in
9 the County of Putnam shall be paid annual salaries of nineteen
10 thousand one hundred twenty-five dollars. Magistrates who
11 serve fifteen thousand or more in population shall be paid an-
12 nual salaries of twenty-three thousand six hundred twenty-
13 five dollars: *Provided, however*, That magistrates in the
14 County of Raleigh shall be paid annual salaries of twenty-three
15 thousand six hundred twenty-five dollars. For the purpose

16 of determining the population served by each magistrate, the
17 number of magistrates authorized for each county shall be
18 divided into the population of each county. Magistrates shall
19 be paid once a month.

§50-1-8. Magistrate court clerks; duties; duties of circuit clerk.

1 In each county having three or more magistrates the judge of
2 the circuit court, or the chief judge thereof if there is more
3 than one judge of the circuit court, shall appoint a magistrate
4 court clerk. In all other counties such judge may appoint a
5 magistrate court clerk or may by rule require the duties of the
6 magistrate court clerk to be performed by the clerk of the
7 circuit court, in which even said circuit court clerk shall be
8 entitled to additional compensation in the amount of two thou-
9 sand five hundred dollars per year. In any county a magistrate
10 court clerk may be appointed prior to the first day of January,
11 one thousand nine hundred seventy-seven. The magistrate court
12 clerk shall serve at the will and pleasure of such circuit judge.

13 Magistrate court clerks shall be paid a monthly salary by
14 the state. Beginning on the first day of July, one thousand nine
15 hundred eighty-one, magistrate court clerks serving magistrates
16 who serve five thousand or less in population shall be paid up
17 to six hundred ninety-eight dollars per month; magistrate
18 court clerks serving magistrates who serve more than five
19 thousand in population but less than ten thousand in popula-
20 tion shall be paid up to eight hundred ninety-eight dollars per
21 month; magistrate court clerks serving magistrates who serve
22 more than ten thousand in population but less than fifteen
23 thousand in population shall be paid up to one thousand one
24 hundred fifty-four dollars per month: *Provided, however,* That
25 the magistrate court clerk in the County of Putnam shall be
26 paid up to one thousand one hundred fifty-four dollars per
27 month; and magistrate court clerks serving magistrates who
28 serve fifteen thousand or more in population shall be paid
29 up to one thousand four hundred ten dollars per month:
30 *Provided, however,* That the magistrate court clerk in the
31 County of Raleigh shall be paid up to one thousand four hun-
32 dred ten dollars per month. For the purpose of determining
33 the population served by each magistrate, the number of

34 magistrates authorized for each county shall be divided into
35 the population of each county. The salary of the magistrate
36 court clerk shall be established by the judge of the circuit court,
37 or the chief judge thereof if there is more than one judge of the
38 circuit court, within the limits set forth in this section.

39 In addition to other duties as may be imposed by the provi-
40 sions of this chapter or by the rules of the supreme court of
41 appeals or the judge of the circuit court, or the chief judge
42 thereof if there is more than one judge of the circuit court, it
43 shall be the duty of the magistrate court clerk to establish and
44 maintain appropriate dockets and records in a centralized sys-
45 tem for the magistrate court, to assist in the preparation of
46 such reports as may be required of the court and to carry out
47 on behalf of the magistrates, or chief magistrate if a chief
48 magistrate is appointed, the administrative duties of the court.

49 The magistrate court clerk or, if there is no magistrate
50 court clerk in the county, the clerk of the circuit court shall
51 have the authority to issue all manner of civil process and to
52 require the enforcement of subpoenas and subpoenas duces
53 tecum in magistrate court.

§50-1-9. Magistrate assistants; salary; duties.

1 In each county there shall be one magistrate assistant for
2 each magistrate. Each magistrate assistant shall be appointed
3 by the magistrate under whose authority and supervision and
4 at whose will and pleasure he shall serve. Such assistant shall
5 not be a member of the immediate family of any magistrate
6 and shall not have been convicted of a felony or any misde-
7 meanor involving moral turpitude and shall reside in the coun-
8 ty where appointed. For the purpose of this section, immediate
9 family shall mean the relationships of mother, father, sister,
10 brother, child or spouse.

11 A magistrate assistant shall have such duties, clerical or
12 otherwise as may be assigned by the magistrate and as may be
13 prescribed by the rules of the supreme court of appeals or
14 the judge of the circuit court, or the chief judge thereof if
15 there is more than one judge of the circuit court. In addition
16 to these duties, magistrate assistants shall perform and be

17 accountable to the magistrate court clerks with respect to the
18 following duties:

19 (1) The preparation of summons in civil actions;

20 (2) The assignment of civil actions to the various magis-
21 trates;

22 (3) The collection of all costs, fees, fines, forfeitures and
23 penalties which may be payable to the court;

24 (4) The submission of such moneys, along with an account-
25 ing thereof to appropriate authorities as provided by law;

26 (5) The daily disposition of closed files which are to be
27 located in the magistrate clerk's office;

28 (6) All duties related to the gathering of information and
29 documents necessary for the preparation of administrative re-
30 ports and documents required by the rules of the supreme court
31 of appeals or the judge of the circuit court, or the chief judge
32 thereof if there is more than one judge of the circuit court;

33 (7) All duties relating to the notification, certification and
34 payment of jurors serving pursuant to the terms of this chap-
35 ter;

36 (8) All other duties or responsibilities whereby the magis-
37 trate assistant shall be accountable to the magistrate court
38 clerk as the magistrate shall determine.

39 Magistrate assistants shall be paid a monthly salary by the
40 state. Beginning on the first day of July, one thousand nine
41 hundred eighty-one, magistrate assistants serving magistrates
42 who serve five thousand or less in population shall be paid
43 up to five hundred sixty-seven dollars per month; magistrate
44 assistants serving magistrates who serve more than five thou-
45 sand in population but less than ten thousand in population
46 shall be paid up to seven hundred five dollars per month;
47 magistrate assistants serving magistrates who serve more than
48 ten thousand in population but less than fifteen thousand in
49 population shall be paid up to eight hundred thirty-four dollars
50 per month: *Provided*, That magistrate assistants in the County
51 of Putnam shall be paid up to eight hundred thirty-four dollars;

52 and magistrate assistants serving magistrates who serve fifteen
53 thousand or more in population shall be paid up to nine hun-
54 dred sixty-two dollars per month: *Provided, however,* That
55 magistrate assistants in the County of Raleigh shall be paid up
56 to nine hundred sixty-two dollars per month. For the purpose
57 of determining the population served by each magistrate, the
58 number of magistrates authorized for each county shall be
59 divided into the population of each county. The salary of the
60 magistrate assistant shall be established by the magistrate with-
61 in the limits set forth in this section.

CHAPTER 145

(Com. Sub. for H. B. 955—By Mr. Steptoe)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections thirteen and seventeen, article two, chapter sixty-two of said code, all relating to criminal procedures generally and the authority of magistrates to admit persons to bail in certain cases, including cases where persons are held pursuant to *capias*; clarifying those cases in which magistrates may admit to bail; the issuance of *capias* or summons in criminal cases and the delivery of persons arrested under *capias* to court, magistrate or jailer; the conditions for the admission of such persons to bail by a magistrate; and the authority of magistrates to admit to bail in all criminal cases except cases involving murder in the first degree.

Be it enacted by the Legislature of West Virginia:

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

Chapter**50. Magistrate Courts.****62. Criminal Procedure.****CHAPTER 50. MAGISTRATE COURTS.****ARTICLE 2. JURISDICTION AND AUTHORITY.****§50-2-3. Criminal jurisdiction.**

1 In addition to jurisdiction granted elsewhere to magistrate
2 courts or a justice of the peace, magistrate courts shall have
3 jurisdiction of all misdemeanor offenses committed in the
4 county and to conduct preliminary examinations on warrants
5 charging felonies committed within the county. A magistrate
6 shall have the authority to issue arrest warrants in all criminal
7 matters, to issue warrants for search and seizure and, except
8 in cases involving murder in the first degree, to set and admit
9 to bail.

10 Magistrate courts shall have the jurisdiction of violations
11 of subsection (c), section four hundred one, article four,
12 chapter sixty-a of this code under the provisions of section
13 four hundred seven of such article, and may discharge the
14 defendant under the provisions of section four hundred seven
15 of said article four. The exercise of such jurisdiction shall not
16 preclude the right of the accused to petition the circuit court
17 of the county for probation under the provisions of section
18 four, article twelve, chapter sixty-two of this code.

CHAPTER 62. CRIMINAL PROCEDURE.**ARTICLE 2. PRESENTMENTS AND INDICTMENTS.**

§62-2-13. Process, capias and summons in criminal cases.

§62-2-17. Delivery of prisoner to court, magistrate or jailer.

§62-2-13. Process, capias and summons in criminal cases.

1 When an indictment or presentment is found or made, the
2 court shall award process against the accused to answer to the
3 same, if he be not in custody. Such process, if for a felony,
4 may be a capias or a summons, at the discretion of the court;
5 in all misdemeanor cases, it shall be, in the first instance,
6 a summons, but if a summons be returned executed, or be

7 returned not found, and the defendant does not appear, the
8 court may award a *capias*.

§62-2-17. Delivery of prisoner to court, magistrate or jailer.

1 An officer who, under a *capias* from a court, arrests a per-
2 son accused of an offense other than murder in the first degree
3 shall deliver the accused to such court, if sitting, and if such
4 court is not sitting, the officer shall deliver the accused to a
5 magistrate who may admit the accused to bail: *Provided*, That
6 any such bail granted by a magistrate shall be conditioned upon
7 the appearance by the accused before the court on the date
8 provided in the *capias* for such appearance, or, if no such date
9 is provided in the *capias*, then such bail shall be conditioned
10 upon the appearance of the accused on the next day on which
11 such court is sitting. No magistrate shall admit to bail any
12 person arrested under an *alias capias*. Bail set by a magistrate
13 may be made and posted before the magistrate court clerk and
14 the recognizance and record thereof, together with any money
15 received therefor, shall be forthwith delivered to the clerk of
16 the circuit court.

17 An officer who, under a *capias* from a court, arrests a per-
18 son accused of an offense not bailable, or for which bail is not
19 given, shall deliver the accused to such court, if sitting, or
20 to the jailer thereof, who shall receive and imprison him.

CHAPTER 146

(S. B. 592—By Mr. Boettner)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting a party in any trial in magistrate court involving the possession, use or control of rental property to plead, prove and obtain judgment for rent due and owing.

Be it enacted by the Legislature of West Virginia:

That section five, article four, chapter fifty of the code of West

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

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-5. Return date in civil action; setting of trial date; failure to appear or notify.

1 Except in matters involving unlawful entry and detainer,
2 each summons in a civil action shall notify the defendant that
3 he must appear within twenty days after service of the
4 summons upon him or that he must otherwise notify the
5 magistrate court by that time that he wishes to contest the
6 matter. In matters involving unlawful entry and detainer such
7 appearance or notification shall be required within five days
8 after service of the summons.

9 If the magistrate court is notified by the defendant that he
10 wishes to contest the matter a trial date shall be set and all
11 parties notified thereof. Such trial date shall be at least five
12 days from notification thereof unless all parties consent
13 otherwise thereto.

14 If no appearance or other notification is made within
15 twenty days after the service of the summons on the
16 defendant, or, in matters involving unlawful entry and
17 detainer within five days after service of summons, judgment
18 by default may be entered in accordance with the provisions
19 of section ten of this article.

20 At any trial in any matter involving unlawful entry and
21 detainer and in the trial of any case in any way involving the
22 possession, use or control of rental property, it is permissible
23 for a party to plead, prove and obtain judgment for all rent
24 due and owing the party.

CHAPTER 147

(S. B. 576—By Mr. Boettner)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter fifty of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to authorizing magistrate court clerks, deputy clerks and assistants to proceed upon certain suggestions of salary and wages on an intercounty basis.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. ENFORCEMENT OF CIVIL JUDGMENTS.

§50-6-1. Enforcement of judgments.

1 (a) The provisions of articles three, four, five, five-a, five-b
2 and six, chapter thirty-eight of this code, except as the same
3 are in conflict with the provisions of this chapter or are clearly
4 applicable only to courts of record, shall apply to the
5 enforcement of judgments rendered in magistrate court and
6 process therefor shall issue from magistrate court. Process
7 issued in violation of such provisions shall be void. The form
8 of such process shall be in accord with the rules of the
9 supreme court of appeals. No such process shall issue until
10 after ten days after the judgment is rendered or, if a motion to
11 set aside such judgment is then pending, until after ten days
12 after the determination of such motion.

13 (b) A magistrate court clerk, deputy clerk or magistrate
14 assistant before whom a suggestion of salary and wages is
15 instituted pursuant to the provisions of articles five-a and
16 five-b, chapter thirty-eight of this code shall, in the event it
17 would be more appropriate for such suggestion to be
18 conducted in another county, forward all fees collected
19 together with the appropriate papers to the magistrate court
20 of the appropriate county, and the clerk, deputy clerk or
21 magistrate assistant receiving such papers and fees shall
22 proceed with the suggestion the same as if it were actually
23 instituted before him.

CHAPTER 148

(S. B. 585—By Mr. Staggers and Mr. Boettner)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to general environmental protection performance standards for surface mining; variances; revegetation of reclaimed areas.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article six, 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 6. SURFACE MINING AND RECLAMATION.

§20-6-13. General environmental protection performance standards for surface mining; variances.

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

7 (b) The following general performance standards shall be
8 applicable to all surface mines and shall require the operation
9 as a minimum to:

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

13 (2) Restore the land affected to a condition capable of
14 supporting the uses which it was capable of supporting prior
15 to any mining, or higher or better uses of which there is
16 reasonable likelihood so long as such use or uses do not
17 present any actual or probable hazard to public health or
18 safety or pose any actual or probable threat of water
19 diminution or pollution, and the permit applicants' declared
20 proposed land use following reclamation is not deemed to be

21 impractical or unreasonable, inconsistent with applicable
22 land use policies and plans, involves unreasonable delay in
23 implementation, or is violative of federal, state or local law;

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

63 or highwall elimination and where adequate material is not
64 available from surface-mining operations permitted after the
65 effective date of this article for (A) underground mining
66 operations existing prior to the third day of August, one
67 thousand nine hundred seventy-seven, or (B) for areas upon
68 which surface mining prior to the first day of July, one
69 thousand nine hundred seventy-seven, created highwalls;

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

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

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

89 (7) Ensure that all prime farm lands are mined and
90 reclaimed in accordance with the specifications for soil
91 removal, storage, replacement and reconstruction established
92 by the United States secretary of agriculture and the soil
93 conservation service pertaining thereto. The operator, as a
94 minimum, shall be required to: (A) Segregate the A horizon of
95 the natural soil, except where it can be shown that other
96 available soil materials will create a final soil having a greater
97 productive capacity, and if not utilized immediately,
98 stockpile this material separately from other spoil, and
99 provide needed protection from wind and water erosion or
100 contamination by other acid or toxic material; (B) segregate
101 the B horizon of the natural soil, or underlying C horizons or
102 other strata, or a combination of such horizons or other strata

103 that are shown to be both texturally and chemically suitable
104 for plant growth and that can be shown to be equally or more
105 favorable for plant growth than the B horizon, in sufficient
106 quantities to create in the regraded final soil a root zone of
107 comparable depth and quality to that which existed in the
108 natural soil, and if not utilized immediately, stockpile this
109 material separately from other spoil and provide needed
110 protection from wind and water erosion or contamination by
111 other acid or toxic material; (C) replace and regrade the root
112 zone material described in subparagraph (B) above with
113 proper compaction and uniform depth over the regraded
114 spoil material; and (D) redistribute and grade in a uniform
115 manner the surface soil horizon described in subparagraph
116 (A) above;

117 (8) Create, if authorized in the approved surface-mining
118 and reclamation plan and permit, permanent impoundments
119 of water on mining sites as part of reclamation activities in
120 accordance with regulations promulgated by the reclamation
121 commission;

122 (9) Where augering is the method of recovery, seal all
123 auger holes with an impervious and noncombustible material
124 in order to prevent drainage except where the director
125 determines that the resulting impoundment of water in such
126 auger holes may create a hazard to the environment or the
127 public welfare and safety: *Provided*, That the director may
128 prohibit augering if necessary to maximize the utilization,
129 recoverability or conservation of the mineral resources or to
130 protect against adverse water quality impacts;

131 (10) Minimize the disturbances to the prevailing
132 hydrologic balance at the mine site and in associated off-site
133 areas and to the quality and quantity of water in surface and
134 ground water systems both during and after surface-mining
135 operations and during reclamation by: (A) Avoiding acid or
136 other toxic mine drainage; (B) conducting surface-mining
137 operations so as to prevent to the extent possible, using the
138 best technology currently available, additional contributions
139 of suspended solids to streamflow or runoff outside the
140 permit area, but in no event shall contributions be in excess
141 of requirements set by applicable state law; (C) constructing
142 an approved drainage system pursuant to subparagraph (B)

143 of this subdivision prior to commencement of surface-mining
144 operations, such system to be certified by a person approved
145 by the director to be constructed as designed and as approved
146 in the reclamation plan; (D) avoiding channel deepening or
147 enlargement in operations requiring the discharge of water
148 from mines; (E) unless otherwise authorized by the director,
149 cleaning out and removing temporary or large settling ponds
150 or other siltation structures after disturbed areas are
151 revegetated and stabilized, and depositing the silt and debris
152 at a site and in a manner approved by the director; (F)
153 restoring recharge capacity of the mined area to approximate
154 premining conditions; and (G) such other actions as the
155 reclamation commission may prescribe;

156 (11) With respect to surface disposal of mine wastes,
157 tailings, coal processing wastes and other wastes in areas
158 other than the mine working excavations, stabilize all waste
159 piles in designated areas through construction in compacted
160 layers, including the use of noncombustible and impervious
161 materials if necessary, and assure the final contour of the
162 waste pile will be compatible with natural surroundings and
163 that the site will be stabilized and revegetated according to
164 the provisions of this article;

165 (12) Design, locate, construct, operate, maintain, enlarge,
166 modify and remove or abandon, in accordance with the
167 standards and criteria developed pursuant to subsection (f) of
168 this section, all existing and new coal mine waste piles
169 consisting of mine wastes, tailings, coal processing wastes or
170 other liquid and solid wastes, and used either temporarily or
171 permanently as dams or embankments;

172 (13) Refrain from surface mining within five hundred feet
173 of any active and abandoned underground mines in order to
174 prevent breakthroughs and to protect health or safety of
175 miners: *Provided*, That the director shall permit an operator
176 to mine near, through or partially through an abandoned
177 underground mine or closer to an active underground mine
178 if: (A) The nature, timing and sequencing of the approximate
179 coincidence of specific surface mine activities with specific
180 underground mine activities are coordinated jointly by the
181 operators involved and approved by the director of the
182 department of mines, and (B) such operations will result in
183 improved resource recovery, abatement of water pollution or

184 elimination of hazards to the health and safety of the public:
185 *Provided*, That any breakthrough which does occur shall be
186 sealed;

187 (14) Ensure that all debris, acid-forming materials, toxic
188 materials or materials constituting a fire hazard are treated or
189 buried and compacted or otherwise disposed of in a manner
190 designed to prevent contamination of ground or surface
191 waters and that contingency plans are developed to prevent
192 sustained combustion: *Provided*, That the operator shall
193 remove or bury all metal, lumber, equipment and other debris
194 resulting from the operation before grading release;

195 (15) Ensure that explosives are used only in accordance
196 with existing state and federal law and the regulations
197 promulgated by the reclamation commission, which shall
198 include provisions to: (A) Provide adequate advance written
199 notice to local governments and residents who might be
200 affected by the use of such explosives by publication of the
201 planned blasting schedule in a newspaper of general
202 circulation in the locality and by mailing a copy of the
203 proposed blasting schedule to every resident living within
204 one-half mile of the proposed permit area excluding drainage
205 structures, haulroads and access roads unless there will be
206 blasting on or near such structures or roads: *Provided*, That
207 this notice shall suffice as daily notice to residents or
208 occupants of such areas; (B) maintain for a period of at least
209 three years and make available for public inspection, upon
210 written request a log detailing the location of the blasts, the
211 pattern and depth of the drill holes, the amount of explosives
212 used per hole and the order and length of delay in the blasts;
213 (C) limit the type of explosives and detonating equipment, the
214 size, the timing and frequency of blasts based upon the
215 physical conditions of the site so as to prevent (i) injury to
216 persons; (ii) damage to public and private property outside
217 the permit area; (iii) adverse impacts on any underground
218 mine; and (iv) change in the course, channel or availability of
219 ground or surface water outside the permit area; (D) require
220 that all blasting operations be conducted by persons certified
221 by the director of the department of mines; and (E) provide
222 that upon written request of a resident or owner of a
223 man-made dwelling or structure within one-half mile of any
224 portion of the area identified in subparagraph (A) of this

225 subdivision, the applicant or permittee shall conduct a
226 preblasting survey or other appropriate investigation of such
227 structures and submit the results to the director and a copy to
228 the resident or owner making the request. The area of the
229 survey shall be determined by the director in accordance with
230 regulations promulgated by the reclamation commission;

231 (16) Ensure that all reclamation efforts proceed in an
232 environmentally sound manner and as contemporaneously as
233 practicable with the surface-mining operations. Time limits
234 shall be established by the reclamation commission requiring
235 backfilling, grading and planting to be kept current:
236 *Provided*, That where surface-mining operations and
237 underground mining operations are proposed on the same
238 area, which operations must be conducted under separate
239 permits, the director may grant a variance from the
240 requirement that reclamation efforts proceed as
241 contemporaneously as practicable to permit underground
242 mining operations prior to reclamation:

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

244 (i) The applicant has presented, as part of the permit
245 application, specific, feasible plans for the proposed
246 underground mining operations;

247 (ii) The proposed underground mining operations are
248 necessary or desirable to assure maximum practical recovery
249 of the mineral resource and will avoid multiple disturbance of
250 the surface;

251 (iii) The applicant has satisfactorily demonstrated that the
252 plan for the underground mining operations conforms to
253 requirements for underground mining in the jurisdiction and
254 that permits necessary for the underground mining
255 operations have been issued by the appropriate authority;

256 (iv) The areas proposed for the variance have been shown
257 by the applicant to be necessary for the implementing of the
258 proposed underground mining operations;

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

262 (vi) Provisions for the off-site storage of spoil will comply

263 with subdivision (22), subsection (b), section thirteen of this
264 article;

265 (B) If the reclamation commission has promulgated
266 specific regulations to govern the granting of such variances
267 in accordance with the provisions of this subparagraph and
268 has imposed such additional requirements as he deems
269 necessary;

270 (C) If variances granted under the provisions of this sub-
271 section are to be reviewed by the director not more than three
272 years from the date of issuance of the permit; and

273 (D) If liability under the bond filed by the applicant with
274 the director pursuant to subsection (b), section twelve of this
275 article shall be for the duration of the underground mining
276 operations and until the requirements of subsection (g), sec-
277 tion twelve and section twenty-six of this article, have been
278 fully complied with;

279 (17) Ensure that the construction, maintenance and post-
280 mining conditions of access and haulroads into and across the
281 site of operations will control or prevent erosion and siltation,
282 pollution of water, damage to fish or wildlife or their habitat,
283 or public or private property: *Provided*, That access roads
284 constructed for and used to provide infrequent service to
285 surface facilities, such as ventilators or monitoring devices,
286 shall be exempt from specific construction criteria provided
287 adequate stabilization to control erosion is achieved through
288 alternative measures;

289 (18) Refrain from the construction of roads or other access
290 ways up a stream bed or drainage channel or in such proxim-
291 ity to such channel so as to significantly alter the normal flow
292 of water;

293 (19) Establish on the regraded areas, and all other lands
294 affected, a diverse, effective and permanent vegetative cover
295 of the same seasonal variety native to the area of land to be
296 affected or of a fruit, grape or berry producing variety suitable
297 for human consumption and capable of self-regeneration and
298 plant succession at least equal in extent of cover to the
299 natural vegetation of the area, except that introduced species
300 may be used in the revegetation process where desirable or
301 when necessary to achieve the approved postmining land use
302 plan;

303 (20) Assume the responsibility for successful revegetation,
304 as required by subdivision (19) of this subsection, for a period
305 of not less than five growing seasons, as defined by the direc-
306 tor, after the last year of augmented seeding, fertilizing, irriga-
307 tion or other work in order to assure compliance with sub-
308 division (19) of this subsection: *Provided*, That when the di-
309 rector issues a written finding approving a long-term agricul-
310 tural postmining land use as a part of the mining and reclama-
311 tion plan, the director may grant exception to the provisions
312 of subdivision (19) of this subsection: *Provided, however*,
313 That when the director approves an agricultural postmining
314 land use, the applicable five growing seasons of responsibility
315 for revegetation shall commence at the date of initial planting
316 for such agricultural postmining and use;

317 (21) Protect off-site areas from slides or damage occurring
318 during surface-mining operations and not deposit spoil mate-
319 rial or locate any part of the operations or waste accumula-
320 tions outside the permit area: *Provided, however*, That spoil
321 material may be placed outside the permit area, if approved
322 by the director, after a finding that environmental benefits
323 will result from such;

324 (22) Place all excess spoil material resulting from surface
325 mining activities in such a manner that: (A) Spoil is trans-
326 ported and placed in a controlled manner in position for con-
327 current compaction and in such a way to assure mass stability
328 and to prevent mass movement; (B) the areas of disposal are
329 within the bonded permit areas and all organic matter shall
330 be removed immediately prior to spoil placements; (C) ap-
331 propriate surface and internal drainage system or diversion
332 ditches are used to prevent spoil erosion and movement; (D)
333 the disposal area does not contain springs, natural water
334 courses or wet weather seeps, unless lateral drains are con-
335 structed from the wet areas to the main underdrains in a
336 manner that filtration of the water into the spoil pile will be
337 prevented; (E) if placed on a slope, the spoil is placed upon
338 the most moderate slope among those upon which, in the
339 judgment of the director, the spoil could be placed in com-
340 pliance with all the requirements of this article, and shall be
341 placed, where possible, upon, or above, a natural terrace,
342 bench or berm, if such placement provides additional stabil-
343 ity and prevents mass movement; (F) where the toe of the

344 spoil rests on a downslope, a rock toe buttress, of sufficient
345 size to prevent mass movement, is constructed; (G) the final
346 configuration is compatible with the natural drainage pattern
347 and surroundings and suitable for intended uses; (H) design
348 of the spoil disposal area is certified by a qualified registered
349 professional engineer in conformance with professional stan-
350 dards; and (I) all other provisions of this article are met:
351 *Provided*, That where the excess spoil material consists of at
352 least eighty percent, by volume, sandstone, limestone, or
353 other rocks that do not slake in water, the director may ap-
354 prove alternate methods for disposal of excess spoil material,
355 including fill placement by dumping in a single lift, on a site
356 specific basis: *Provided, however*, That the services of a qual-
357 ified registered professional engineer experienced in the de-
358 sign and construction of earth and rockfill embankment are
359 utilized: *Provided further*, That such approval shall not be
360 unreasonably withheld if the site is suitable;

361 (23) Meet such other criteria as are necessary to achieve
362 reclamation in accordance with the purposes of this article,
363 taking into consideration the physical, climatological and
364 other characteristics of the site;

365 (24) To the extent possible, using the best technology cur-
366 rently available, minimize disturbances and adverse impacts
367 of the operation on fish, wildlife and related environmental
368 values, and achieve enhancement of such resources where
369 practicable; and

370 (25) Retain a natural barrier to inhibit slides and erosion
371 on permit areas where outcrop barriers are required: *Pro-*
372 *vided*, That constructed barriers may be allowed where (A)
373 natural barriers do not provide adequate stability, (B) natural
374 barriers would result in potential future water quality de-
375 terioration, and (C) natural barriers would conflict with the
376 goal of maximum utilization of the mineral resource: *Pro-*
377 *vided, however*, That at a minimum, the constructed barrier
378 must be of sufficient width and height to provide adequate
379 stability and the stability factor must equal or exceed that of
380 the natural outcrop barrier: *Provided further*, That where
381 water quality is paramount, the constructed barrier must be
382 composed of impervious material with controlled discharge
383 points.

384 (c) (1) The reclamation commission may prescribe proce-
385 dures pursuant to which the director may permit surface-
386 mining operations for the purposes set forth in subdivision (3)
387 of this subsection.

388 (2) Where an applicant meets the requirements of subdivi-
389 sions (3) and (4) of this subsection, a permit without regard to
390 the requirement to restore to approximate original contour
391 set forth in subsection (b) or (d) of this section may be granted
392 for the surface mining of coal where the mining operation will
393 remove an entire coal seam or seams running through the
394 upper fraction of a mountain, ridge or hill, except as provided
395 in subparagraph (A), subdivision (4) of this subsection, by
396 removing all of the overburden and creating a level plateau or
397 a gently rolling contour with no highwalls remaining, and
398 capable of supporting postmining uses in accordance with
399 the requirements of this subsection.

400 (3) In cases where an industrial, commercial, woodland,
401 agricultural, residential or public use is proposed for the
402 postmining use of the affected land, the director may grant a
403 permit for a surface-mining operation of the nature described
404 in subdivision (2) of this subsection where: (A) The proposed
405 postmining land use is deemed to constitute an equal or
406 better use of the affected land, as compared with premining
407 use; (B) the applicant presents specific plans for the proposed
408 postmining land use and appropriate assurances that such
409 use will be: (i) Compatible with adjacent land uses; (ii)
410 practicable with respect to achieving the proposed use; (iii)
411 supported by commitments from public agencies where
412 appropriate; (iv) practicable with respect to private financial
413 capability for completion of the proposed use; (v) planned
414 pursuant to a schedule attached to the reclamation plan so as
415 to integrate the mining operation and reclamation with the
416 postmining land use; and (vi) designed by a person approved
417 by the director in conformance with standards established to
418 assure the stability, drainage and configuration necessary for
419 the intended use of the site; (C) the proposed use would be
420 compatible with adjacent land uses, and existing state and
421 local land use plans and programs; (D) the director provides
422 the county commission of the county in which the land is
423 located and any state or federal agency which the director, in
424 his discretion, determines to have an interest in the proposed

425 use, an opportunity of not more than sixty days to review and
426 comment on the proposed use; and (E) all other requirements
427 of this article will be met.

428 (4) In granting any permit pursuant to this subsection, the
429 director shall require that: (A) A natural barrier be retained to
430 inhibit slides and erosion on permit areas where outcrop
431 barriers are required: *Provided*, That constructed barriers
432 may be allowed where (i) natural barriers do not provide
433 adequate stability, (ii) natural barriers would result in
434 potential future water quality deterioration, and (iii) natural
435 barriers would conflict with the goal of maximum utilization
436 of the mineral resource: *Provided, however*, That at a
437 minimum, the constructed barrier must be of sufficient width
438 and height to provide adequate stability and the stability
439 factor must equal or exceed that of the natural outcrop
440 barrier: *Provided further*, That where water quality is
441 paramount, the constructed barrier must be composed of
442 impervious material with controlled discharge points; (B) the
443 reclaimed area is stable; (C) the resulting plateau or rolling
444 contour drains inward from the outslopes except at specific
445 points; (D) no damage will be done to natural watercourses;
446 (E) spoil will be placed on the mountaintop bench as is
447 necessary to achieve the planned postmining land use:
448 *Provided*, That all excess spoil material not retained on the
449 mountaintop shall be placed in accordance with the
450 provisions of subdivision (22), subsection (b) of this section;
451 and (F) ensure stability of the spoil retained on the
452 mountaintop and meet the other requirements of this article.

453 (5) All permits granted under the provisions of this
454 subsection shall be reviewed not more than three years from
455 the date of issuance of the permit, unless the applicant
456 affirmatively demonstrates that the proposed development is
457 proceeding in accordance with the terms of the approved
458 schedule and reclamation plan.

459 (d) In addition to those general performance standards
460 required by this section, when surface mining occurs on
461 slopes of twenty degrees or greater, or on such lesser slopes as
462 may be defined by regulation after consideration of soil and
463 climate, no debris, abandoned or disabled equipment, spoil
464 material or waste mineral matter will be placed on the natural
465 downslope below the initial bench or mining cut: *Provided*,

466 That soil or spoil material from the initial cut of earth in a new
467 surface-mining operation may be placed on a limited
468 specified area of the downslope below the initial cut if the
469 permittee can establish to the satisfaction of the director that
470 the soil or spoil will not slide and that the order requirements
471 of this section can still be met.

472 (e) The reclamation commission may promulgate
473 regulations pursuant to which the director may permit
474 variances from the requirements of this section: *Provided,*
475 That the watershed control of the area is improved: *Provided,*
476 *however,* That complete backfilling with spoil material shall
477 be required to completely cover the highwall, which material
478 will maintain stability following mining and reclamation.

479 (f) The reclamation commission shall promulgate
480 regulations for the design, location, construction,
481 maintenance, operation, enlargement, modification, removal
482 and abandonment of new and existing coal mine waste piles.
483 In addition to engineering and other technical specifications,
484 the standards and criteria developed pursuant to this
485 subsection must include provisions for review and approval
486 of plans and specifications prior to construction,
487 enlargement, modification, removal or abandonment;
488 performance of periodic inspections during construction;
489 issuance of certificates of approval upon completion of
490 construction; performance of periodic safety inspections; and
491 issuance of notices and orders for required remedial or
492 maintenance work or affirmative action: *Provided,* That
493 whenever the director finds that any coal processing waste
494 pile constitutes an imminent danger to human life, he may, in
495 addition to all other remedies and without the necessity of
496 obtaining the permission of any person prior or present who
497 operated or operates the pile or the landowners involved,
498 enter upon the premises where any such coal processing
499 waste pile exists and may take or order to be taken such
500 remedial action as may be necessary or expedient to secure
501 such coal processing waste pile and to abate the conditions
502 which cause the danger to human life: *Provided, however,*
503 That the cost reasonably incurred in any remedial action
504 taken by the director under this subsection may be paid for
505 initially by funds appropriated to the department of natural
506 resources for such purposes, and such sums so expended

507 shall be recovered from any responsible operator or
508 landowner, individually or jointly, by suit initiated by the
509 attorney general at the request of the director. For purposes
510 of this subsection "operates" or "operated" means to enter
511 upon a coal processing waste pile, or part thereof, for the
512 purpose of disposing, depositing, dumping coal processing
513 wastes thereon or removing coal processing waste therefrom,
514 or to employ a coal processing waste pile for retarding the
515 flow of or for the impoundment of water.

CHAPTER 149

(S. B. 87—By Mr. Gainer)

[Passed February 24, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six-b, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an annual report by the interstate mining commission to the governor, the Legislature and the governor's advisory body; setting forth the financial affairs of the interstate mining commission; allocating among the party states to the interstate mining compact the amounts of legislative appropriations expected of each party state; and setting forth the powers and duties of the commission.

Be it enacted by the Legislature of West Virginia:

That section one, article six-b, 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 6B. INTERSTATE MINING COMPACT.

§20-6B-1. Enactment of compact.

1 The "Interstate Mining Compact" is hereby enacted into
2 law and entered into with all other jurisdictions legally
3 joining therein in the form substantially as follows:

4 INTERSTATE MINING COMPACT

5 Article I. Findings and Purposes.

6 (a) The party states find that:

7 (1) Mining and the contributions thereof to the economy
8 and well-being of every state are of basic significance.9 (2) The effects of mining on the availability of land, water
10 and other resources for other uses present special problems
11 which properly can be approached only with due
12 consideration for the rights and interests of those engaged in
13 mining, those using or proposing to use these resources for
14 other purposes and the public.15 (3) Measures for the reduction of the adverse effects of
16 mining on land, water and other resources may be costly and
17 the devising of means to deal with them are of both public
18 and private concern.19 (4) Such variables as soil structure and composition,
20 physiography, climatic conditions and the needs of the public
21 make impracticable the application to all mining areas of a
22 single standard for the conservation, adaption or restoration
23 of mined land, or the development of mineral and other
24 natural resources, but justifiable requirements of law and
25 practice relating to the effects of mining on land, water and
26 other resources may be reduced in equity or effectiveness
27 unless they pertain similarly from state to state for all mining
28 operations similarly situated.29 (5) The states are in a position and have the responsibility
30 to assure that mining shall be conducted in accordance with
31 sound conservation principles, and with due regard for local
32 conditions.

33 (b) The purposes of this compact are to:

34 (1) Advance the protection and restoration of land, water
35 and other resources affected by mining.36 (2) Assist in the reduction or elimination or counteracting
37 of pollution or deterioration of land, water and air attributable
38 to mining.

39 (3) Encourage, with due recognition of relevant regional,

40 physical and other differences, programs in each of the party
41 states which will achieve comparable results in protecting,
42 conserving and improving the usefulness of natural
43 resources, to the end that the most desirable conduct of
44 mining and related operations may be universally facilitated.

45 (4) Assist the party states in their efforts to facilitate the
46 use of land and other resources affected by mining, so that
47 such use may be consistent with sound land use, public
48 health and public safety, and to this end to study and
49 recommend, wherever desirable, techniques for the
50 improvement, restoration or protection of such land and
51 other resources.

52 (5) Assist in achieving and maintaining an efficient and
53 productive mining industry and in increasing economic and
54 other benefits attributable to mining.

55

Article II. Definitions.

56 As used in this compact, the term:

57 (a) "Mining" means the breaking of the surface soil in
58 order to facilitate or accomplish the extraction or removal of
59 minerals, ores or other solid matter, any activity or process
60 constituting all or part of a process for the extraction or
61 removal of minerals, ores and other solid matter from its
62 original location, and the preparation, washing, cleaning or
63 other treatment of minerals, ores or other solid matter so as to
64 make them suitable for commercial, industrial or
65 construction use; but shall not include those aspects of deep
66 mining not having significant effect on the surface, and shall
67 not include excavation or grading when conducted solely in
68 aid of on-site farming or construction.

69 (b) "State" means a state of the United States, the District
70 of Columbia, the commonwealth of Puerto Rico or a territory
71 or possession of the United States.

72

Article III. State Programs.

73 Each party state agrees that within a reasonable time it will
74 formulate and establish an effective program for the
75 conservation and use of mined land, by the establishment of
76 standards, enactment of laws or the continuing of the same in
77 force, to accomplish:

78 (a) The protection of the public and the protection of
79 adjoining and other landowners from damage to their lands
80 and the structures and other property thereon resulting from
81 the conduct of mining operations or the abandonment or
82 neglect of land and property formerly used in the conduct of
83 such operations.

84 (b) The conduct of mining and the handling of refuse and
85 other mining wastes in ways that will reduce adverse effects
86 on the economic, residential, recreational or aesthetic value
87 and utility of land and water.

88 (c) The institution and maintenance of suitable programs
89 for adaption, restoration and rehabilitation of mined lands.

90 (d) The prevention, abatement and control of water, air
91 and soil pollution resulting from mining, present, past and
92 future.

93

Article IV. Powers.

94 In addition to any other powers conferred upon the
95 interstate mining commission, established by Article V of this
96 compact, such commission shall have power to:

97 (a) Study mining operations, processes and techniques for
98 the purpose of gaining knowledge concerning the effects of
99 such operations, processes and techniques on land, soil,
100 water, air, plant and animal life, recreation and patterns of
101 community or regional development or change.

102 (b) Study the conservation, adaptation, improvement and
103 restoration of land and related resources affected by mining.

104 (c) Make recommendations concerning any aspect or
105 aspects of law or practice and governmental administration
106 dealing with matters within the purview of this compact.

107 (d) Gather and disseminate information relating to any of
108 the matters within the purview of this compact.

109 (e) Cooperate with the federal government and any public
110 or private entities having interests in any subject coming
111 within the purview of this compact.

112 (f) Consult, upon the request of a party state and within
113 resources available therefor, with the officials of such state in
114 respect to any problem within the purview of this compact.

115 (g) Study and make recommendations with respect to any
116 practice, process, technique or course of action that may
117 improve the efficiency of mining or the economic yield from
118 mining operations.

119 (h) Study and make recommendations relating to the
120 safeguarding of access to resources which are or may become
121 the subject of mining operations to the end that the needs of
122 the economy for the products of mining may not be adversely
123 affected by unplanned or inappropriate use of land and other
124 resources containing minerals or otherwise connected with
125 actual or potential mining sites.

126

Article V. The Commission.

127 (a) There is hereby created an agency of the party states to
128 be known as the "Interstate Mining Commission," hereinafter
129 called "the commission." The commission shall be composed
130 of one commissioner from each party state who shall be the
131 governor thereof. Pursuant to the laws of his party state, each
132 governor shall have the assistance of an advisory body
133 (including membership from mining industries, conservation
134 interests and such other public and private interests as may
135 be appropriate) in considering problems relating to mining
136 and in discharging his responsibilities as the commissioner of
137 his state on the commission. In any instance where a
138 governor is unable to attend a meeting of the commission or
139 perform any other function in connection with the business
140 of the commission, he shall designate an alternate from
141 among the members of the advisory body required by this
142 paragraph, who shall represent him and act in his place and
143 stead. The designation of an alternate shall be communicated
144 by the governor to the commission in such manner as its
145 bylaws may provide.

146 (b) The commissioners shall be entitled to one vote each
147 on the commission. No action of the commission making a
148 recommendation pursuant to Articles IV (c), IV (g) and IV (h)
149 or requesting, accepting or disposing of funds, services or
150 other property pursuant to this paragraph, Article V (g), V (h)
151 or VII shall be valid unless taken at a meeting at which a
152 majority of the total number of votes on the commission is
153 cast in favor thereof. All other action shall be by a majority of
154 those present and voting: *Provided*, That action of the

155 commission shall be only at a meeting at which a majority of
156 the commissioners, or their alternates, is present. The
157 commission may establish and maintain such facilities as
158 may be necessary for the transacting of its business. The
159 commission may acquire, hold and convey real and personal
160 property and any interest therein.

161 (c) The commission shall have a seal.

162 (d) The commission shall elect annually, from among its
163 members, a chairman, a vice chairman, and a treasurer. The
164 commission shall appoint an executive director and fix his
165 duties and compensation. Such executive director shall serve
166 at the pleasure of the commission. The executive director, the
167 treasurer and such other personnel as the commission shall
168 designate shall be bonded. The amount or amounts of such
169 bond or bonds shall be determined by the commission.

170 (e) Irrespective of the civil service, personnel or other
171 merit system laws of any of the party states, the executive
172 director with the approval of the commission, shall appoint,
173 remove or discharge such personnel as may be necessary for
174 the performance of the commission's functions, and shall fix
175 the duties and compensation of such personnel.

176 (f) The commission may establish and maintain,
177 independently or in conjunction with a party state, a suitable
178 retirement system for its employees. Employees of the
179 commission shall be eligible for social security coverage in
180 respect of old age and survivor's insurance: *Provided*, That
181 the commission take such steps as may be necessary
182 pursuant to the laws of the United States to participate in
183 such program of insurance as a governmental agency or unit.
184 The commission may establish and maintain or participate in
185 such additional programs of employee benefits as it may
186 deem appropriate.

187 (g) The commission may borrow, accept or contract for
188 the services of personnel from any state, the United States or
189 any other governmental agency, or from any person, firm,
190 association or corporation.

191 (h) The commission may accept for any of its purposes
192 and functions under this compact any and all donations and
193 grants of money, equipment, supplies, materials and services,

194 conditional or otherwise, from any state, the United States or
195 any other governmental agency, or from any person, firm,
196 association or corporation, and may receive, utilize and
197 dispose of the same. Any donation or grant accepted by the
198 commission pursuant to this paragraph or services borrowed
199 pursuant to paragraph (g) of this article shall be reported in
200 the annual report of the commission. Such report shall
201 include the nature, amount and conditions, if any, of the
202 donation, grant or services borrowed and the identity of the
203 donor or lender.

204 (i) The commission shall adopt bylaws for the conduct of
205 its business and shall have the power to amend and rescind
206 these bylaws. The commission shall publish its bylaws in
207 convenient form and shall file a copy thereof and a copy of
208 any amendment thereto with the appropriate agency or
209 officer in each of the party states.

210 (j) The commission annually shall make to the governor,
211 Legislature and advisory body required by Article V (a) of
212 each party state a report covering the activities of the
213 commission for the preceding year, and embodying such
214 recommendations as may have been made by the
215 commission. The commission may make such additional
216 reports as it may deem desirable.

217 **Article VI. Advisory, Technical and**
218 **Regional Committees.**

219 The commission shall establish such advisory, technical
220 and regional committees as it may deem necessary,
221 membership on which shall include private persons and
222 public officials, and shall cooperate with and use the services
223 of any such committees and the organizations which the
224 members represent in furthering any of its activities. Such
225 committees may be formed to consider problems of special
226 interest to any party states, problems dealing with particular
227 commodities or types of mining operations, problems
228 relating to reclamation, development or use of mined land or
229 any other matters of concern to the commission.

230 **Article VII. Finance.**

231 (a) The commission shall submit to the governor or
232 designated officer or officers of each party state a budget of

233 its estimated expenditures for such periods as may be
234 required by the laws of that party state for presentation to the
235 legislature thereof.

236 (b) Each of the commission's budgets of estimated
237 expenditures shall contain specific recommendations of the
238 amount or amounts to be appropriated by each of the party
239 states. The total amount of appropriations requested under
240 any such budget shall be apportioned among the party states
241 as follows: One half in equal shares, and the remainder in
242 proportion to the value of minerals, ores and other solid
243 matter mined. In determining such values, the commission
244 shall employ such available public source or sources of
245 information as, in its judgment, present the most equitable
246 and accurate comparisons among the party states. Each of the
247 commission's budgets of estimated expenditures and
248 requests for appropriations shall indicate the source or
249 sources used in obtaining information concerning value of
250 minerals, ores and other solid matter mined.

251 (c) The commission shall not pledge the credit of any
252 party state. The commission may meet any of its obligations
253 in whole or in part with funds available to it under Article V
254 (h) of this compact: *Provided*, That the commission takes
255 specific action setting aside such funds prior to incurring any
256 obligation to be met in whole or in part in such manner.
257 Except where the commission makes use of funds available
258 to it under Article V (h) hereof, the commission shall not incur
259 any obligation prior to the allotment of funds by the party
260 states adequate to meet the same.

261 (d) The commission shall keep accurate accounts of all
262 receipts and disbursements. The receipts and disbursements
263 of the commission shall be subject to the audit and
264 accounting procedures established under its bylaws. All
265 receipts and disbursements of funds handled by the
266 commission shall be audited yearly by a qualified public
267 accountant and the report of the audit shall be included in
268 and become part of the annual report of the commission.

269 (e) The accounts of the commission shall be open at any
270 reasonable time for inspection by duly constituted officers of
271 the party states and by any persons authorized by the
272 commission.

273 (f) Nothing contained herein shall be construed to prevent
274 commission compliance with laws relating to audit or
275 inspection of accounts by or on behalf of any government
276 contributing to the support of the commission.

277 **Article VIII. Entry Into Force and Withdrawal.**

278 (a) This compact shall enter into force when enacted into
279 law by any four or more states. Thereafter, this compact shall
280 become effective as to any other state upon its enactment
281 thereof.

282 (b) Any party state may withdraw from this compact by
283 enacting a statute repealing the same, but no such withdrawal
284 shall take effect until one year after the governor of the
285 withdrawing state has given notice in writing of the
286 withdrawal to the governors of all other party states. No
287 withdrawal shall affect any liability already incurred by or
288 chargeable to a party state prior to the time of such
289 withdrawal.

290 **Article IX. Effect on Other Laws.**

291 Nothing in this compact shall be construed to limit, repeal
292 or supersede any other law of any party state.

293 **Article X. Construction and Severability.**

294 This compact shall be liberally construed so as to effectuate
295 the purposes thereof. The provisions of this compact shall be
296 severable and if any phrase, clause, sentence or provision of
297 this compact is declared to be contrary to the constitution of
298 any state or of the United States or the applicability thereof to
299 any government, agency, person or circumstance is held
300 invalid, the validity of the remainder of this compact and the
301 applicability thereof to any government, agency, person or
302 circumstance shall not be affected thereby. If this compact
303 shall be held contrary to the constitution of any state
304 participating herein, the compact shall remain in full force
305 and effect as to the remaining party states and in full force
306 and effect as to the state affected as to all severable matters.

CHAPTER 150

(Com. Sub. for H. B. 1126—By Mr. Moore)

[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-three, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section thirty-four-a, all relating to coal mine health and safety; mine rescue teams; requiring communication and lifeline at each fresh air base; allowing rescue teams to advance beyond fresh and base under certain circumstances; mandatory safety programs; duties of director of department of mines; duties of coal operators; approval of program; provision of copies of programs; penalties.

Be it enacted by the Legislature of West Virginia:

That section thirty-three, article one, 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 a new section, designated section thirty-four-a, all to read as follows:

ARTICLE 1. ADMINISTRATION; ENFORCEMENT.

§22-2-33. Mine rescue crews.

§22-1-34a. Mandatory safety programs; duties of director of department of mines; duties of coal operators; approval of program; provision of copies of program; penalties.

§22-1-33. Mine rescue crews.

1 The director of the state department of mines is hereby
2 authorized to have trained and employed at the rescue stations,
3 operated by the department within the state, such rescue crews
4 as he may deem necessary. Each member of a rescue crew
5 shall devote four hours each month for training purposes and
6 shall be available at all times to assist in rescue work at
7 explosions and mine fires. Regular members shall receive for
8 such services the sum of thirty-two dollars per month, and
9 captains shall receive thirty-five dollars per month, payable on

10 requisition approved by the director of the department of
11 mines. The director of the department of mines may remove
12 any member of a rescue crew at any time.

13 After the effective date of this article, it shall be the duty
14 and responsibility of the department of mines to see that all
15 rescue teams be properly trained by a qualified instructor
16 of the department of mines or such persons who have a certifi-
17 cate of training from the United States bureau of mines.

18 To qualify for membership of a mine rescue crew, an appli-
19 cant shall be not more than fifty years of age and shall pass
20 on at least an annual basis a physical examination by a licensed
21 physician. A record that such examination was taken, together
22 with pertinent data relating thereto, shall be kept on file by
23 the operator, and a copy shall be furnished to the director of
24 the department of mines. All rescue or recovery teams per-
25 forming recovery work shall be under the jurisdiction of the de-
26 partment of mines guided by the mine rescue apparatus and
27 auxiliary equipment manual.

28 When engaged in rescue work required by an explosion, fire
29 or other emergency at a mine, all members of mine rescue
30 teams assigned to rescue operations shall, during the period
31 of their rescue work, be employees of the operator of the mine
32 where the emergency exists, and shall be compensated by the
33 operator at the rate established in the area for such work. In
34 no case shall this rate be less than the prevailing wage rate
35 in the industry for the most skilled class of inside mine labor.
36 During the period of their emergency employment, members
37 of mine rescue teams shall be protected by the workmen's
38 compensation subscription of such emergency employer.

39 During the recovery work and prior to entering any mine
40 at the start of each shift, all rescue or recovery teams shall
41 be properly informed of existing conditions and work to be
42 performed by the designated company official in charge.

43 For every two teams performing rescue or recovery work
44 underground, one six-member team shall be stationed at the
45 mine portal.

46 Two-way communication and lifeline or its equivalent shall

47 be provided at each fresh air base for all mine rescue or
48 recovery teams, and no mine rescue team member shall ad-
49 vance more than one thousand feet inby the fresh air base:
50 *Provided*, That if a life may possibly be saved and existing
51 conditions do not create an unreasonable hazard to mine
52 rescue team members, such rescue team may advance a dis-
53 tance agreed upon by those persons directing the mine rescue
54 or recovery operations: *Provided, however*, That lifeline or its
55 equivalent shall be provided inby each fresh air base for all
56 mine rescue or recovery teams.

57 Each rescue or recovery team performing work with breath-
58 ing apparatus shall be provided with a backup team of equal
59 strength, stationed at each fresh air base.

60 A rescue or recovery team shall immediately return to the
61 fresh air base when any team member's atmospheric pressure
62 depletes to sixty atmospheres.

§22-1-34a. Mandatory safety programs; penalties.

1 (a) Within six months of the effective date of this section,
2 the director of the department of mines, in consultation with
3 the state board of coal mine health and safety, shall pro-
4 mulgate rules and regulations in accordance with chapter
5 twenty-nine-a of this code, detailing the requirements for
6 mine safety programs to be established by coal operators,
7 as provided in subsection (b) of this section. The regulations
8 may require different types of safety programs to be developed,
9 depending upon the output of the particular mine, the number
10 of employees of the particular mine, the location of the par-
11 ticular mine, the physical features of the particular mine or
12 any other factor deemed relevant by the director of the
13 department of mines.

14 (b) Within six months of the date when the regulations
15 required in subsection (a), above, become final, each operator
16 shall develop and submit to the director of the department
17 of mines a comprehensive mine safety program for each mine,
18 in accordance with such regulations. Each employee of the
19 mine shall be afforded an opportunity to review and submit
20 comments to the director of the department of mines re-
21 garding the modification or revision of such program, prior

22 to submission of such program to the director. Upon sub-
23 mission of such program the director shall have ninety days
24 to approve, reject or modify such program. If the program
25 is rejected, the director shall give the operator a reasonable
26 time to correct and resubmit such program. Each program
27 which is approved shall be reviewed, at least annually, by the
28 director. An up-to-date copy of each program shall be placed
29 on file in the department of mines and further copies shall
30 be made available to the miners of each mine and their
31 representatives. Each operator shall undertake all efforts
32 necessary to assure total compliance with the appropriate
33 safety program at each mine and shall fully implement all
34 portions of such program.

35 (c) Any person violating any provision of this section
36 is guilty of a misdemeanor, and, upon conviction thereof,
37 shall be fined not less than one hundred nor more than one
38 thousand dollars, or imprisoned in the county jail for not
39 more than six months, or both fined and imprisoned.

CHAPTER 151

(Com. Sub. for S. B. 122—By Mr. Harman)

[Passed April 8, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, 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 fifty-five-a, relating to requiring all surface mine employees to wear safety helmets when working in areas of possible danger of head injury; providing an exemption while operating machinery with specified cab protection; and requiring safety helmets to meet certain specifications.

Be it enacted by the Legislature of West Virginia:

That article two, 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 fifty-five-a, to read as follows:

ARTICLE 2. COAL MINES.**§22-2-55a. Safety helmets.**

1 All surface mine employees shall be required to wear safety
2 helmets when working in areas where there is a possible
3 danger of head injury from impact, or from falling or flying
4 objects, or from electrical shock and burns: *Provided*, That
5 such employees shall not be required to wear such safety
6 helmet while operating machinery equipped with a falling
7 object protective structure which satisfies the impact and
8 penetration requirements established by the American
9 National Standards Institute, Safety Requirements for
10 Industrial Head Protection, Standard Z89.1, unless the
11 director of the department of mines finds that the dangers set
12 forth herein may be present: *Provided, however*, That such
13 employees shall be required to wear safety helmets while not
14 operating such equipment including periods of travel to and
15 from such equipment.

16 The safety helmets required hereunder shall meet the
17 specifications for such helmets as prescribed by the mine
18 health and safety administration.

CHAPTER 152

(Com. Sub. for S. B. 559—By Mr. Ward and Mr. Rogers)

[Passed April 10, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirty, article four, chapter thirty-one-a of said code; to amend and reenact section one hundred two, article one, chapter forty-six-a of said code; to further amend said chapter forty-six-a by amending and reenacting sections one hundred one, one hundred three, one hundred four, one hundred six and one hundred eleven, article three; to further amend and reenact sections one hundred seven and one hundred eleven, article four of said chapter forty-six-a; to amend and reenact

section five-a, article six, chapter forty-seven; to further amend said article six by adding thereto a new section, designated section five-d; and to further amend said code by adding thereto a new chapter, designated chapter forty-seven-a, all relating to maximum interest rates and finance charges; increasing the maximum allowable finance charge for certain industrial loan company loans, consumer credit sales, motor vehicle and motor home sales and loans involving a specified quantity of real estate, revolving charge accounts, revolving loan accounts, lenders other than supervised lenders, and supervised lenders, all of which increased maximum allowable finance charges terminate after the first day of July, one thousand nine hundred eighty-two; eliminating the use of the sum of the digits method, commonly referred to as the "Rule of 78," in the computation of rebates upon prepayment of installment loans payable over more than thirty-six months; and providing for determination of rebates upon prepayment of loans payable over thirty-six months or more by applying the rate of finance charge required to be disclosed in the transaction, according to the actuarial method; definition of "supervised loan"; establishing the West Virginia lending and credit rate board; authorizing said board to prescribe quarterly alternative maximum interest rates or finance charges on loans, credit sales or transactions, forbearances or other similar transactions, and providing for compensation for its members; requiring quarterly reports; specifying factors to be considered in setting rates; allowing different rates within ranges of balances; staffing of and offices for the West Virginia lending and credit rate board; creation of revolving fund and assessment of fee for revolving fund for board operations; requiring report to and review by Legislature; validity of contracts, and usury; applicability of the West Virginia Administrative Procedures Act; legislative and judicial review.

Be it enacted by the Legislature of West Virginia:

That section eleven, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section thirty, article four, chapter thirty-one-a of said code be amended and reenacted; that section one hundred two, article one, chapter forty-six-a of said code be amended and reenacted; that said chapter forty-six-a be amended by amending and reenacting sections one hundred

one, one hundred three, one hundred four, one hundred six and one hundred eleven, article three; that said chapter forty-six-a be further amended by amending and reenacting sections one hundred seven and one hundred eleven, article four; that section five-a, article six, chapter forty-seven be amended and reenacted; that said article six, chapter forty-seven be further amended by adding thereto a new section, designated section five-d; and that said code be further amended by adding thereto a new chapter, designated chapter forty-seven-a, all to read as follows:

Chapter

31. Corporations.

31A. Banks and Banking.

46A. West Virginia Consumer Credit and Protection Act.

47. Regulation of Trade.

47A. West Virginia Lending and Credit Rate Board.

CHAPTER 31. CORPORATIONS.

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

***§31-7-11. Powers of industrial loan companies; limitation of powers.**

1 (a) In addition to the general powers conferred upon
2 corporations by the laws of this state, each industrial loan
3 company shall have power to exercise by its board of
4 directors or duly authorized officers or agents, subject to law,
5 all such powers as shall be necessary to:

6 (1) Lend money to any person, firm or corporation,
7 secured by the obligation of such person, firm or corporation,
8 or otherwise; and, in addition, to receive and require uniform
9 periodical installments for the repayment of the loan;

10 (2) Sell or offer for sale its secured or unsecured evidences
11 or certificates of indebtedness, and such secured or
12 unsecured evidences or certificates of indebtedness are
13 hereby defined as money for the purpose of taxation, but
14 every such evidence or certificate of indebtedness shall state,
15 on its face, in a clearly visible manner approved by the
16 commissioner, that such evidence or certificate of
17 indebtedness is not federally insured;

* Clerk's Note: This section was also amended by S. B. 360, now Chapter 153, which was passed on April 11, 1981.

18 (3) Buy and sell bonds or choses in action of any person,
19 firm or corporation;

20 (4) Impose a charge of five cents for each default in the
21 payment of one dollar, or fraction thereof, at the time at which
22 any periodical installment for the repayment of a loan
23 becomes due;

24 (5) Demand and receive for loans or for notes, bills or
25 evidences of debt discounted or purchased, such rate of
26 interest as may be agreed upon by the parties, not exceeding
27 the lawful rate of interest, and it shall be lawful to receive
28 such interest in advance. As an alternative to the loan finance
29 charge allowed by this subsection, from the effective date of
30 this subsection until and including the first day of July, one
31 thousand nine hundred eighty-two, an industrial loan
32 company may contract for and receive a loan finance charge
33 not exceeding twenty-one percent per annum calculated
34 according to the actuarial method on that part of the unpaid
35 balance of the principal which is five thousand dollars or less.
36 This section does not limit or restrict the manner of
37 calculating the loan finance charge, whether by way of
38 add-on, discount or otherwise, so long as the rate of loan
39 finance charge does not exceed that permitted by this
40 section;

41 (6) Charge for a loan made pursuant to this section, one
42 dollar for each fifty dollars, or fraction thereof, loaned, for
43 expenses including any examination or investigation of the
44 character and circumstances of the borrower, comaker or
45 surety, and the drawing and taking the acknowledgement of
46 necessary papers, or other expenses, incurred in making the
47 loan. No additional charge shall be made except to reimburse
48 the corporation for money actually expended for additional
49 service actually rendered the borrower. No charge shall be
50 collected unless a loan shall have been made as the result of
51 such examination or investigation;

52 (7) Purchase, hold and convey real estate as follows:

53 (A) Such as shall be necessary for the convenient
54 transaction of its business, including with its office other
55 apartments or offices to rent as a source of income, which
56 investment shall not exceed twenty-five percent of its paid-in
57 capital stock and surplus;

58 (B) Such as is mortgaged to it in good faith by way of
59 security for loans made by or money due to such industrial
60 loan company;

61 (C) Such as is conveyed to it in satisfaction of debts
62 previously contracted in the course of its dealings;

63 (D) Such as is acquired by sale on execution or judgment
64 or decree of any court in its favor.

65 Industrial loan companies shall not purchase, hold or
66 convey any real estate in any other case or for any other
67 purpose whatever. Real estate shall be conveyed only by
68 authority of the board of directors of any such industrial loan
69 company. No real estate acquired in the cases contemplated
70 in paragraphs (B), (C) and (D), subdivision (7) of this
71 subsection shall be held for a longer time than five years,
72 unless such period shall be extended by the commissioner of
73 banking.

74 (b) An industrial loan company shall not:

75 (1) Accept or receive deposits;

76 (2) Make any loan under the provisions of this article for a
77 longer period than two years from the date thereof, except
78 upon express authorization of the board of directors of such
79 company;

80 (3) Hold at any one time the primary obligation or
81 obligations of any one person, firm or corporation, for more
82 than ten percent of the amount of the paid-up capital and
83 surplus of such industrial loan company;

84 (4) Hold at any one time the obligation or obligations of
85 persons, firms or corporations purchased from any person,
86 firm or corporation in excess of twenty percent of the
87 aggregate paid-up capital and surplus of such industrial loan
88 company;

89 (5) Make any loan or discount on the security of its own
90 capital stock (controlling and voting stock, if there be more
91 than one class), unless such security or purchase shall be
92 necessary to prevent loss upon a debt previously contracted
93 in good faith. Stock so purchased or acquired shall be sold at
94 public or private sale or otherwise disposed of within ninety
95 days from the time of its purchase or acquisition;

- 96 (6) Have outstanding at any time its evidences or
97 certificates of indebtedness, in an aggregate sum in excess of
98 ten times the aggregate amount of its paid-up capital (voting
99 and controlling stock) and surplus;
- 100 (7) Deposit any of its funds with any other moneyed
101 corporation unless such corporation has been designated as
102 such depository by a vote of the majority of the board of
103 directors;
- 104 (8) Pledge or hypothecate any of its securities or notes
105 owned by it to any creditor, except that such companies shall
106 have the power to rediscount or to borrow money from any
107 source in addition to selling its evidences or certificates of
108 indebtedness, but the aggregate amount of such
109 rediscounting and borrowing shall at no time exceed the sum
110 total of the capital, surplus and reserve funds of such
111 company, and the security so pledged therefor shall not
112 exceed two times the amount borrowed and rediscounted;
- 113 (9) Pay any fees, bonuses, commissions, rewards, or other
114 consideration to any person, firm or corporation for the
115 privilege of using any plan of operation, scheme or device for
116 the organization or carrying on of business under this article,
117 or the use of any name, trademark or copyright to be so used;
118 nor shall any industrial loan company under this article enter
119 into any contract for such purpose or purposes, or for the
120 purpose of giving to or vesting in any other corporation any
121 power or authority over the organization or management of
122 corporations under this article.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-30. Charges and interest allowed in certain cases; negotiability of installment notes.

- 1 In addition to the interest rate provided in article six,
2 chapter forty-seven of this code and elsewhere by law, a
3 banking institution may charge and collect a reasonable
4 amount to cover the expenses incurred in procuring reports
5 and information respecting loans and the value of and title to
6 property offered as security therefor, and a charge of three
7 dollars may be made for any loan or forbearance of money or
8 other thing where the interest at the rate of six percent per

9 annum would not amount to that sum and the same shall not
10 be a usurious charge or rate of interest. Except in cases where
11 it is otherwise specially provided by law, any banking
12 institution authorized to do, and doing business in this state,
13 may contract for and charge interest for a secured or
14 unsecured loan, repayable in installments at a rate not in
15 excess of: (a) Six percent per annum upon the principal
16 amount of the loan, for the entire period of the loan, and add
17 such charge to the principal amount of the loan; or (b) six
18 percent per annum upon the face amount of the instruments
19 evidencing the obligation to repay the loan, for the entire
20 period of the loan, and deduct such charge in advance but in
21 no case shall the interest on such a discount loan exceed an
22 annual percentage rate of fifteen percent per annum
23 calculated according to the actuarial method: *Provided*, That
24 upon prepayment in full of a precomputed loan, the bank
25 shall rebate the unearned portion of such charge as specified
26 in section five-d, article six, chapter forty-seven of this code.
27 Any note evidencing any such installment loan may provide
28 that the entire unpaid balance thereof at the option of the
29 holder shall become due and payable upon default in the
30 payment of any stipulated installment without impairing the
31 negotiability of such note if otherwise negotiable.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

Article

- 1. Short Title, Definitions and General Provisions.**
- 3. Finance Charges and Related Provisions.**
- 4. Supervised Lenders.**

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-102. General definitions.

1 In addition to definitions appearing in subsequent articles,
2 in this chapter:

3 (1) "Actuarial method" means the method, defined by
4 rules adopted by the commissioner, of allocating payments
5 made on a debt between principal or amount financed and
6 loan finance charge or sales finance charge pursuant to which
7 a payment is applied first to the accumulated loan finance
8 charge or sales finance charge and the balance is applied to
9 the unpaid principal or unpaid amount financed.

10 (2) "Agreement" means the bargain of the parties in fact as
11 found in their language or by implication from other
12 circumstances including course of dealing or usage of trade
13 or course of performance. A "consumer credit agreement" is
14 an agreement where credit is granted.

15 (3) "Agricultural purpose" means a purpose related to the
16 production, harvest, exhibition, marketing, transportation,
17 processing or manufacture of agricultural products by a
18 natural person who cultivates, plants, propagates or nurtures
19 the agricultural products. "Agricultural products" includes
20 agricultural, horticultural, viticultural and dairy products,
21 livestock, wildlife, poultry, bees, forest products, fish and
22 shellfish, and any products thereof, including processed and
23 manufactured products, and any and all products raised or
24 produced on farms and any processed or manufactured
25 products thereof.

26 (4) "Amount financed" means the total of the following
27 items to the extent that payment is deferred:

28 (a) The cash price of the goods, services or interest in land,
29 less the amount of any down payment whether made in cash
30 or in property traded in;

31 (b) The amount actually paid or to be paid by the seller
32 pursuant to an agreement with the buyer to discharge a
33 security interest in or a lien on property traded in; and

34 (c) If not included in the cash price:

35 (i) Any applicable sales, use, privilege, excise or
36 documentary stamp taxes;

37 (ii) Amounts actually paid or to be paid by the seller for
38 registration, certificate of title or license fees; and

39 (iii) Additional charges permitted by this chapter.

40 (5) "Average daily balance" in a billing cycle for which a
41 sales finance charge or loan finance charge is made is the sum
42 of the amount unpaid each day during that cycle divided by
43 the number of days in that cycle. The amount unpaid on a day
44 is determined by adding to the balance, if any, unpaid as of
45 the beginning of that day all purchases and other debits and
46 deducting all payments and other credits made or received as
47 of that day.

48 (6) The “cash price” of goods, services or an interest in
49 land means the price at which the goods, services or interest
50 in land are offered for sale by the seller to cash buyers in the
51 ordinary course of business, and may include (a) applicable
52 sales, use, privilege, and excise and documentary stamp
53 taxes, (b) the cash price of accessories or related services such
54 as delivery, installation, servicing, repairs, alterations and
55 improvements, and (c) amounts actually paid or to be paid by
56 the seller for registration, certificate of title, or license fees.

57 (7) “Closing costs” with respect to a debt secured by an
58 interest in land include:

59 (a) Fees or premiums for title examination, title insurance
60 or similar purposes including surveys;

61 (b) Fees for preparation of a deed, deed of trust, mortgage,
62 settlement statement or other documents;

63 (c) Escrows for future payments of taxes and insurance;

64 (d) Official fees and fees for notarizing deeds and other
65 documents;

66 (e) Appraisal fees; and

67 (f) Credit reports.

68 (8) “Code” means the official code of West Virginia, one
69 thousand nine hundred thirty-one, as amended.

70 (9) “Commissioner” means the commissioner of banking
71 of West Virginia.

72 (10) “Conspicuous”: A term or clause is conspicuous when
73 it is so written that a reasonable person against whom it is to
74 operate ought to have noticed it. Whether a term or clause is
75 conspicuous or not is for decision by the court.

76 (11) “Consumer” means a natural person who incurs debt
77 pursuant to a consumer credit sale or a consumer loan.

78 (12) (a) Except as provided in paragraph (b), “consumer
79 credit sale” is a sale of goods, services or an interest in land in
80 which:

81 (i) Credit is granted either by a seller who regularly
82 engages as a seller in credit transactions of the same kind or
83 pursuant to a seller credit card;

- 84 (ii) The buyer is a person other than an organization;
- 85 (iii) The goods, services or interest in land are purchased
86 primarily for a personal, family, household or agricultural
87 purpose;
- 88 (iv) Either the debt is payable in installments or a sales
89 finance charge is made; and
- 90 (v) With respect to a sale of goods or services, the amount
91 financed does not exceed twenty-five thousand dollars.
- 92 (b) "Consumer credit sale" does not include a sale in
93 which the seller allows the buyer to purchase goods or
94 services pursuant to a lender credit card or similar
95 arrangement.
- 96 (13) (a) "Consumer lease" means a lease of goods:
- 97 (i) Which a lessor regularly engaged in the business of
98 leasing makes to a person, other than an organization, who
99 takes under the lease primarily for a personal, family,
100 household or agricultural purpose;
- 101 (ii) In which the amount payable under the lease does not
102 exceed twenty-five thousand dollars; and
- 103 (iii) Which is for a term exceeding four months.
- 104 (b) "Consumer lease" does not include a lease made
105 pursuant to a lender credit card or similar arrangement.
- 106 (14) "Consumer loan" is a loan made by a person regularly
107 engaged in the business of making loans in which:
- 108 (a) The debtor is a person other than an organization;
- (b) The debt is incurred primarily for a personal, family,
household or agricultural purpose;
- 111 (c) Either the debt is payable in installments or a loan
112 finance charge is made; and
- 113 (d) Either the principal does not exceed twenty-five
114 thousand dollars or the debt is secured by an interest in land.
- 115 (15) "Credit" means the privilege granted by a creditor to a
116 debtor to defer payment of debt or to incur debt and defer its
117 payment.

118 (16) "Earnings" means compensation paid or payable to
119 an individual or for his account for personal services
120 rendered or to be rendered by him, whether denominated as
121 wages, salary, commission, bonus or otherwise, and includes
122 periodic payments pursuant to a pension, retirement or
123 disability program.

124 (17) "Federal Consumer Credit Protection Act" means the
125 "Consumer Credit Protection Act" (Public Law 90-321; 82
126 Stat. 146), as amended, and includes regulations issued
127 pursuant to that act.

128 (18) "Goods" includes goods not in existence at the time
129 the transaction is entered into and gift and merchandise
130 certificates, but excludes money, chattel paper, documents of
131 title and instruments.

132 (19) "Home solicitation sale" means a consumer credit
133 sale in excess of twenty-five dollars in which the buyer
134 receives a solicitation of the sale at a place other than the
135 seller's business establishment at a fixed location and the
136 buyer's agreement or offer to purchase is there given to the
137 seller or a person acting for the seller. The term does not
138 include a sale made pursuant to a preexisting open-end-credit
139 account with the seller in existence for at least three months
140 prior to the transaction, a sale made pursuant to prior
141 negotiations between the parties at the seller's business
142 establishment at a fixed location, a sale of motor vehicles,
143 mobile homes or farm equipment or a sale which may be
144 rescinded under the Federal Truth in Lending Act (being
145 Title I of the Federal Consumer Credit Protection Act). A sale
146 which would be a home solicitation sale if credit were
147 extended by the seller is a home solicitation sale although the
148 goods or services are paid for in whole or in part by a
149 consumer loan in which the creditor is subject to claims and
150 defenses arising from the sale.

151 (20) Except as otherwise provided, "lender" includes an
152 assignee of the lender's right to payment but use of the term
153 does not in itself impose on an assignee any obligation of the
154 lender.

155 (21) "Lender credit card or similar arrangement" means
156 an arrangement or loan agreement, other than a seller credit
157 card, pursuant to which a lender gives a debtor the privilege

158 of using a credit card, letter of credit, or other credit
159 confirmation or identification in transactions out of which
160 debt arises:

161 (a) By the lender's honoring a draft or similar order for the
162 payment of money drawn or accepted by the consumer;

163 (b) By the lender's payment or agreement to pay the
164 consumer's obligations; or

165 (c) By the lender's purchase from the obligee of the
166 consumer's obligations.

167 (22) "Loan" includes:

168 (a) The creation of debt by the lender's payment of or
169 agreement to pay money to the consumer or to a third party
170 for the account of the consumer other than debts created
171 pursuant to a seller credit card;

172 (b) The creation of debt by a credit to an account with the
173 lender upon which the consumer is entitled to draw
174 immediately;

175 (c) The creation of debt pursuant to a lender credit card or
176 similar arrangement; and

177 (d) The forbearance of debt arising from a loan.

178 (23) (a) "Loan finance charge" means the sum of (i) all
179 charges payable directly or indirectly by the debtor and
180 imposed directly or indirectly by the lender as an incident to
181 the extension of credit, including any of the following types
182 of charges which are applicable: Interest or any amount
183 payable under a point, discount, or other system of charges,
184 however denominated, premium or other charge for any
185 guarantee or insurance protecting the lender against the
186 consumer's default or other credit loss; and (ii) charges
187 incurred for investigating the collateral or credit-worthiness
188 of the consumer or for commissions or brokerage for
189 obtaining the credit, irrespective of the person to whom the
190 charges are paid or payable, unless the lender had no notice of
191 the charges when the loan was made. The term does not
192 include charges as a result of default, additional charges,
193 delinquency charges or deferral charges.

194 (b) If a lender makes a loan to a consumer by purchasing

195 or satisfying obligations of the consumer pursuant to a lender
196 credit card or similar arrangement, and the purchase or
197 satisfaction is made at less than the face amount of the
198 obligation, the discount is not part of the loan finance charge.

199 (24) "Merchandise certificate" or "gift certificate" means a
200 writing issued by a seller or issuer of a seller credit card, not
201 redeemable in cash and usable in its face amount in lieu of
202 cash in exchange for goods or services.

203 (25) "Official fees" means:

204 (a) Fees and charges prescribed by law which actually are
205 or will be paid to public officials for determining the
206 existence of or for perfecting, releasing, terminating or
207 satisfying a security interest related to a consumer credit sale
208 or consumer loan; or

209 (b) Premiums payable for insurance or fees escrowed in a
210 special account for the purpose of funding self-insurance or
211 its equivalent in lieu of perfecting a security interest
212 otherwise required by the creditor in connection with the
213 sale, lease or loan, if such premium or fee does not exceed the
214 fees and charges described in paragraph (a) which would
215 otherwise be payable.

216 (26) "Organization" means a corporation, government or
217 governmental subdivision or agency, trust, estate,
218 partnership, cooperative or association.

219 (27) "Payable in installments" means that payment is
220 required or permitted by agreement to be made in (a) two or
221 more periodic payments, excluding a down payment, with
222 respect to a debt arising from a consumer credit sale pursuant
223 to which a sales finance charge is made, (b) four or more
224 periodic payments, excluding a down payment, with respect
225 to a debt arising from a consumer credit sale pursuant to
226 which no sales finance charge is made, or (c) two or more
227 periodic payments with respect to a debt arising from a
228 consumer loan. If any periodic payment other than the down
229 payment under an agreement requiring or permitting two or
230 more periodic payments is more than twice the amount of any
231 other periodic payment, excluding the down payment, the
232 consumer credit sale or consumer loan is "Payable in
233 installments."

234 (28) "Person" or "party" includes a natural person or an
235 individual, and an organization.

236 (29) "Person related to" with respect to an individual
237 means (a) the spouse of the individual, (b) a brother,
238 brother-in-law, sister or sister-in-law of the individual, (c) an
239 ancestor or lineal descendant of the individual or his spouse,
240 and (d) any other relative, by blood or marriage, of the
241 individual or his spouse who shares the same home with the
242 individual. "Person related to" with respect to an
243 organization means (a) a person directly or indirectly
244 controlling, controlled by or under common control with the
245 organization, (b) an officer or director of the organization or a
246 person performing similar functions with respect to the
247 organization or to a person related to the organization, (c) the
248 spouse of a person related to the organization, and (d) a
249 relative by blood or marriage of a person related to the
250 organization who shares the same home with him.

251 (30) "Precomputed loan." A loan, refinancing or
252 consolidation is "precomputed" if the debt is expressed as a
253 sum comprising the principal and the amount of the loan
254 finance charge computed in advance.

255 (31) "Precomputed sale." A sale, refinancing or
256 consolidation is "precomputed" if the debt is expressed as a
257 sum comprising the amount financed and the amount of the
258 sales finance charge computed in advance.

259 (32) "Presumed" or "presumption" means that the trier of
260 fact must find the existence of the fact presumed unless and
261 until evidence is introduced which would support a finding of
262 its nonexistence.

263 (33) "Principal" of a loan means the total of:

264 (a) The net amount paid to, receivable by or paid or
265 payable for the account of the debtor;

266 (b) The amount of any discount excluded from the loan
267 finance charge; and

268 (c) To the extent that payment is deferred:

269 (i) Amounts actually paid or to be paid by the lender for
270 registration, certificate of title, or license fees if not included
271 in (a); and

272 (ii) Additional charges permitted by this chapter.

273 (34) "Revolving charge account" means an agreement
274 between a seller and a buyer by which (a) the buyer may
275 purchase goods or services on credit or a seller credit card, (b)
276 the balances of amounts financed and the sales finance and
277 other appropriate charges are debited to an account, (c) a
278 sales finance charge if made is not precomputed but is
279 computed periodically on the balances of the account from
280 time to time, and (d) there is the privilege of paying the
281 balances in installments.

282 (35) "Revolving loan account" means an arrangement
283 between a lender and a consumer including, but not limited
284 to, a lender credit card or similar arrangement, pursuant to
285 which (a) the lender may permit the consumer to obtain loans
286 from time to time, (b) the unpaid balances of principal and the
287 loan finance and other appropriate charges are debited to an
288 account, (c) a loan finance charge if made is not precomputed
289 but is computed periodically on the outstanding unpaid
290 balances of the principal of the consumer's account from time
291 to time, and (d) there is the privilege of paying the balances in
292 installments.

293 (36) "Sale of goods" includes any agreement in the form of
294 a bailment or lease of goods if the bailee or lessee agrees to
295 pay as compensation for use a sum substantially equivalent to
296 or in excess of the aggregate value of the goods involved and
297 it is agreed that the bailee or lessee will become, or for no
298 other or a nominal consideration has the option to become,
299 the owner of the goods upon full compliance with his
300 obligations under the agreement.

301 (37) "Sale of an interest in land" includes a lease in which
302 the lessee has an option to purchase the interest and all or a
303 substantial part of the rental or other payments previously
304 made by him are applied to the purchase price.

305 (38) "Sale of services" means furnishing or agreeing to
306 furnish services and includes making arrangements to have
307 services furnished by another.

308 (39) "Sales finance charge" means the sum of (a) all
309 charges payable directly or indirectly by the buyer and
310 imposed directly or indirectly by the seller or issuer of a seller

311 credit card as an incident to the extension of credit, including
312 any of the following types of charges which are applicable:
313 Time-price differential, however denominated, including
314 service, carrying or other charge, premium or other charge for
315 any guarantee or insurance protecting the seller against the
316 buyer's default or other credit loss, and (b) charges incurred
317 for investigating the collateral or credit-worthiness of the
318 buyer or for commissions or brokerage for obtaining the
319 credit, irrespective of the person to whom the charges are
320 paid or payable; unless the seller had no notice of the charges
321 when the credit was granted. The term does not include
322 charges as a result of default, additional charges, delinquency
323 charges or deferral charges. If the seller or issuer of a seller
324 credit card purchases or satisfies obligations of the consumer
325 and the purchase or satisfaction is made at less than the face
326 amount of the obligation, the discount is not part of the sales
327 finance charge.

328 (40) Except as otherwise provided, "seller" includes an
329 assignee of the seller's right to payment but use of the term
330 does not in itself impose on an assignee any obligation of the
331 seller.

332 (41) "Seller credit card" means an arrangement pursuant
333 to which a person gives to a buyer or lessee the privilege of
334 using a credit card, letter of credit, or other credit
335 confirmation or identification primarily for the purpose of
336 purchasing or leasing goods or services from that person, that
337 person and any other person or persons, a person related to
338 that person, or others licensed or franchised or permitted to
339 do business under his business name or trade name or
340 designation or on his behalf.

341 (42) "Services" includes (a) work, labor and other personal
342 services, (b) privileges with respect to transportation, use of
343 vehicles, hotel and restaurant accommodations, education,
344 entertainment, recreation, physical culture, hospital
345 accommodations, funerals, cemetery accommodations, and
346 the like, and (c) insurance.

347 (43) "Supervised financial organization" means a person,
348 other than a supervised lender or an insurance company or
349 other organization primarily engaged in an insurance
350 business:

351 (a) Organized, chartered or holding an authorization
352 certificate under the laws of this state or of the United States
353 which authorizes the person to make consumer loans; and

354 (b) Subject to supervision and examination with respect
355 to such loans by an official or agency of this state or of the
356 United States.

357 (44) "Supervised lender" means a person authorized to
358 make or take assignments of supervised loans.

359 (45) "Supervised loan" means a consumer loan made by
360 other than a supervised financial organization, including a
361 loan made pursuant to a revolving loan account, where the
362 principal does not exceed two thousand dollars, and in which
363 the rate of the loan finance charge exceeds eight percent per
364 year as determined according to the actuarial method.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-101. Finance charges generally.

§46A-3-103. Sales finance charge for revolving charge accounts other than certain sales of real estate.

§46A-3-104. Finance charge for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; exceptions.

§46A-3-106. Loan finance charge for revolving loan accounts.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

§46A-3-101. Finance charges generally.

1 (1) With respect to a consumer credit sale, other than a sale
2 of real estate subject to the provisions of section one hundred
3 two of this article or a sale pursuant to a revolving charge
4 account, a seller may contract for and receive a sales finance
5 charge not exceeding eighteen percent per year on that part
6 of the unpaid balance of the amount financed which is fifteen
7 hundred dollars or less and twelve percent per year on that
8 part of the unpaid balance of the amount financed which is in
9 excess of fifteen hundred dollars calculated according to the
10 actuarial method.

11 (2) This section does not limit or restrict the manner of
12 calculating the sales finance charge, whether by way of
13 add-on, discount, or otherwise, so long as the rate of the sales
14 finance charge does not exceed that permitted by this section.
15 If the sale is precomputed:

16 (a) The sales finance charge may be calculated on the
17 assumption that all scheduled payments will be made when
18 due; and

19 (b) The effect of prepayment, refinancing or consolidation
20 is governed by the provisions on rebate upon prepayment,
21 refinancing or consolidation, contained in section one
22 hundred eleven of this article.

23 (3) For the purposes of this section, the term of a sale
24 agreement commences on the date the credit is granted or, if
25 goods are delivered or services performed ten days or more
26 after that date, with the date of commencement of delivery or
27 performance. Differences in the lengths of months are
28 disregarded and a day may be counted as one thirtieth of a
29 month. Subject to classifications and differentiations the
30 seller may reasonably establish, a part of a month in excess of
31 fifteen days may be treated as a full month if periods of fifteen
32 days or less are disregarded and if that procedure is not
33 consistently used to obtain a greater yield than would
34 otherwise be permitted.

35 (4) Subject to classifications and differentiations the seller
36 may reasonably establish, he may make the same sales
37 finance charge on all amounts financed within a specified
38 range. A sales finance charge so made does not violate
39 subsection (1) if:

40 (a) When applied to the median amount within each range,
41 it does not exceed the maximum permitted by subsection (1);
42 and

43 (b) When applied to the lowest amount within each range,
44 it does not produce a rate of sales finance charge exceeding
45 the rate calculated according to subdivision (a) by more than
46 eight percent of the rate calculated according to subdivision
47 (a).

48 (5) Notwithstanding subsection (1), the seller may contract
49 for and receive a minimum sales finance charge of not more
50 than five dollars when the amount financed does not exceed
51 seventy-five dollars, or seven dollars and fifty cents when the
52 amount financed exceeds seventy-five dollars.

53 (6) Notwithstanding any provision of this section to the

54 contrary, with respect to a consumer credit sale involving a
55 motor vehicle or a mobile home or a consumer credit sale
56 from the same seller of both a mobile home and the real estate
57 upon which such mobile home is or will be located, or a
58 consumer credit sale of a mobile home where a security
59 interest in real estate owned by the buyer is given to the seller
60 as collateral, a seller may from the effective date of this
61 section until and including the first day of July, one thousand
62 nine hundred eighty-two, contract for and receive a sales
63 finance charge not exceeding eighteen percent per year on
64 the unpaid balance calculated according to the actuarial
65 method: *Provided*, That the quantity of real estate involved
66 with the consumer credit sale of a mobile home upon which
67 such finance charge is contracted for and received shall not
68 exceed one acre.

69 (7) As an alternative to the loan finance charge allowed by
70 section one hundred one, subsection (1) of this article, from
71 the effective date of this subsection until and including the
72 first day of July, one thousand nine hundred eighty-two, with
73 respect to a consumer credit sale, other than a sale of real
74 estate subject to the provisions of section one hundred two of
75 this article or a sale pursuant to a revolving charge account, a
76 seller may contract for and receive a sales finance charge not
77 exceeding eighteen percent per year on the unpaid balance of
78 the amount financed calculated according to the actuarial
79 method.

**§46A-3-103. Sales finance charge for revolving charge accounts
other than certain sales of real estate.**

1 (1) With respect to a consumer credit sale made pursuant
2 to a revolving charge account, other than sales of real estate
3 pursuant to section one hundred two of this article, the
4 parties may contract for the payment by the buyer of a sales
5 finance charge not exceeding that permitted in this section.

6 (2) A sales finance charge may be made in each billing
7 cycle which is a percentage of an amount not exceeding the
8 greatest of:

9 (a) The average daily balance of the account, or

10 (b) The balance of the account at the beginning of the first
11 day of the billing cycle, less all payments on and credits to

12 such account during such billing cycle and excluding all
13 charges to such account during such billing cycle, or

14 (c) The median amount within a specified range within
15 which the average daily balance of the account or the balance
16 of the account at the beginning of the first day of the billing
17 cycle, less all payments on and credits to such account during
18 such billing cycle and excluding all charges to such account
19 during such billing cycle, is included. A charge may be made
20 pursuant to this paragraph only if the seller, subject to
21 classifications and differentiations he may reasonably
22 establish, makes the same charge on all balances within the
23 specified range and if the percentage when applied to the
24 median amount within the range does not produce a charge
25 exceeding the charge resulting from applying that percentage
26 to the lowest amount within the range by more than eight
27 percent of the charge on the median amount.

28 (3) If the billing cycle is monthly, the sales finance charge
29 may not exceed one and one-half percent on the first seven
30 hundred fifty dollars of unpaid balance and one percent on
31 the unpaid balance in excess of seven hundred fifty dollars. If
32 the billing cycle is not monthly, the maximum charge is that
33 percentage which bears the same relation to the applicable
34 monthly percentage as the number of days in the billing cycle
35 bears to thirty. A billing cycle is monthly if the billing
36 statement dates are on the same day each month or do not
37 vary by more than four days therefrom.

38 (4) Notwithstanding subsection (3), if there is an unpaid
39 balance on the date as of which the sales finance charge is
40 applied, the seller may contract for and receive a charge not
41 exceeding fifty cents if the billing cycle is monthly or longer,
42 or the pro rata part of fifty cents which bears the same
43 relation to fifty cents as the number of days in the billing
44 cycle bears to thirty if the billing cycle is shorter than
45 monthly.

46 (5) As an alternative to the loan finance charge allowed by
47 section one hundred three, subsection (3) of this article, from
48 the effective date of this subsection until and including the
49 first day of July, one thousand nine hundred eighty-two, with
50 respect to a consumer credit sale made pursuant to a
51 revolving charge account, other than sales of real estate

52 pursuant to section one hundred two of this article, if the
53 billing cycle is monthly, the sales finance charge may not
54 exceed one and one-half percent on the unpaid principal
55 balance. If the billing cycle is not monthly, the maximum
56 charge is that percentage which bears the same relation to the
57 applicable monthly percentage as the number of days in the
58 billing cycle bears to thirty. A billing cycle is monthly if the
59 billing statement dates are on the same day each month or do
60 not vary by more than four days therefrom.

**§46A-3-104. Finance charge for loans other than loans made
pursuant to revolving loan accounts; finance
charge on assigned contracts; exceptions.**

1 (1) With respect to a consumer loan, other than a
2 consumer loan made pursuant to a revolving loan account, (a)
3 a bank, as defined in section two, article one, chapter
4 thirty-one-a of this code, may contract for and receive a loan
5 finance charge not exceeding the charge or interest permitted
6 by the provisions of section thirty, article four, chapter
7 thirty-one-a or by the provisions of section five, section five-a,
8 or section five-b, article six, chapter forty-seven of this code,
9 (b) an industrial loan company, as defined in section three,
10 article seven, chapter thirty-one of this code, may contract for
11 and receive a loan finance charge not exceeding the aggregate
12 of the interest and charges permitted by subdivisions (5) and
13 (6), subsection (a), section eleven, article seven, chapter
14 thirty-one of this code or by the provisions of section five,
15 article six, chapter forty-seven of this code, (c) a building and
16 loan association, as defined in section two, article six, chapter
17 thirty-one of this code, may contract for and receive a loan
18 finance charge not exceeding the charge or interest permitted
19 by the provisions of section seventeen, article six, chapter
20 thirty-one of this code, or by the provisions of section five,
21 article six, chapter forty-seven of this code, (d) a credit union,
22 as defined in section one, article ten, chapter thirty-one of this
23 code, may contract for and receive a loan finance charge not
24 exceeding the charge or interest permitted by the provisions
25 of section sixteen, article ten, chapter thirty-one of this code,
26 or by the provisions of section five, article six, chapter
27 forty-seven of this code, and (e) any other lender, other than a
28 supervised lender, may contract for and receive a loan finance
29 charge not exceeding the charge or interest permitted by the

30 provisions of section five, section five-a or section five-b,
31 article six, chapter forty-seven of this code.

32 (2) As an alternative to the loan finance charge allowed by
33 section one hundred four, subsection (1) of this article, from
34 the effective date of this subsection until and including the
35 first day of July, one thousand nine hundred eighty-two, a
36 lender, other than a supervised lender, may contract for and
37 receive a loan finance charge not exceeding eighteen percent
38 per annum calculated according to the actuarial method.

39 (3) This section does not limit or restrict the manner of
40 calculating the loan finance charge, whether by way of
41 add-on, discount or otherwise, so long as the rate of loan
42 finance charge does not exceed that permitted by this section.

43 (4) Notwithstanding any provision of this section to the
44 contrary, with respect to a consumer loan involving a motor
45 vehicle or a mobile home or with respect to a consumer loan
46 to finance the sale from one seller of both a mobile home and
47 the real estate upon which such mobile home is or will be
48 located, or with respect to a consumer loan where a security
49 interest in real estate owned by the borrower is given to the
50 lender as collateral for such loan, a lender may from the
51 effective date of this section and until and including the first
52 day of July, one thousand nine hundred eighty-two, contract
53 for and receive a loan finance charge not exceeding eighteen
54 percent per year on the unpaid balance calculated according
55 to the actuarial method: *Provided*, That the quantity of real
56 estate involved in such consumer loan transactions involving
57 a mobile home and real estate where such finance charge is
58 contracted for and received shall not exceed one acre.

59 (5) If the loan is precomputed:

60 (a) The loan finance charge may be calculated on the
61 assumption that all scheduled payments will be made when
62 due, and

63 (b) The effect of prepayment, refinancing or consolidation
64 is governed by the provisions on rebate upon prepayment,
65 refinancing or consolidation contained in section one
66 hundred eleven of this article.

67 (6) Notwithstanding subsection (1), the lender may
68 contract for and receive a minimum loan finance charge of

69 not more than five dollars when the amount loaned does not
70 exceed seventy-five dollars, or seven dollars and fifty cents
71 when the amount loaned exceeds seventy-five dollars.

72 (7) An assignee of a consumer credit sale contract may
73 collect, receive or enforce the sales finance charge provided
74 in said contract, and any such charge so collected, received or
75 enforced by an assignee shall not be deemed usurious or in
76 violation of this chapter or any other provision of this code if
77 such sales finance charge does not exceed the limits
78 permitted to be charged by a seller under the provisions of
79 this chapter.

§46A-3-106. Loan finance charge for revolving loan accounts.

1 (1) With respect to a consumer loan made pursuant to a
2 revolving loan account, a supervised financial organization
3 permitted to establish revolving loan accounts may contract
4 for and receive a loan finance charge not exceeding that
5 permitted in this section.

6 (2) A loan finance charge may be made in each billing
7 cycle which is a percentage of an amount not exceeding the
8 greatest of:

9 (a) The average daily balance of the debt,

10 (b) The balance of the debt at the beginning of the first day
11 of the billing cycle, less all payments on and credits to such
12 debt during such billing cycle and excluding all additional
13 borrowings during such billing cycle, or

14 (c) The median amount within a specified range within
15 which the average daily balance of the debt or the balance of
16 the debt at the beginning of the first day of the billing cycle,
17 less all payments on and credits to such debt during such
18 billing cycle and excluding all additional borrowings during
19 such billing cycle, is included. A charge may be made
20 pursuant to this subdivision only if the lender, subject to
21 classifications and differentiations he may reasonably
22 establish, makes the same charge on all balances within the
23 specified range and if the percentage when applied to the
24 median amount within the range does not produce a charge
25 exceeding the charge resulting from applying that percentage
26 to the lowest amount within the range by more than eight
27 percent of the charge on the median amount.

28 (3) If the billing cycle is monthly, the loan finance charge
29 may not exceed one and one-half percent on the first seven
30 hundred fifty dollars of unpaid principal balance and one
31 percent on the unpaid principal balance in excess of seven
32 hundred fifty dollars. If the billing cycle is not monthly, the
33 maximum charge is that percentage which bears the same
34 relation to the applicable monthly percentage as the number
35 of days in the billing cycle bears to thirty. A billing cycle is
36 monthly if the billing statement dates are on the same day
37 each month or do not vary by more than four days therefrom.

38 (4) Notwithstanding subsection (3), if there is an unpaid
39 balance on the date as of which the loan finance charge is
40 applied the lender may contract for and receive a charge not
41 exceeding fifty cents if the billing cycle is monthly or longer,
42 or the pro rata part of fifty cents which bears the same
43 relation to fifty cents as the number of days in the billing
44 cycle bears to thirty if the billing cycle is shorter than
45 monthly, but no charge may be made pursuant to this
46 subsection if the lender has made an annual charge for the
47 same period as permitted by the provisions on additional
48 charges.

49 (5) As an alternative to the loan finance charge allowed by
50 section one hundred six, subsection (3) of this article, from
51 the effective date of this subsection until and including the
52 first day of July, one thousand nine hundred eighty-two, with
53 respect to a consumer loan made pursuant to a revolving loan
54 account, if the billing cycle is monthly, a supervised financial
55 organization permitted to establish revolving loan accounts
56 may contract for and receive a loan finance charge not
57 exceeding one and one-half percent on the unpaid principal
58 balance. If the billing cycle is not monthly, the maximum
59 charge is that percentage which bears the same relation to the
60 applicable monthly percentage as the number of days in the
61 billing cycle bears to thirty. A billing cycle is monthly if the
62 billing statement dates are on the same day each month or do
63 not vary by more than four days therefrom.

**§46A-3-111. Application of payments on account; rebate upon
prepayment, refinancing or consolidation;
judgments and interest on judgments.**

1 (1) When a consumer credit sale or consumer loan is

2 precomputed all payments on account shall be applied to
3 installments in the order in which they fall due, except as
4 provided in subsection (3), section one hundred twelve of this
5 article. When the total amount is payable in substantially
6 equal consecutive monthly installments, the portion of the
7 sales finance charge or loan finance charge attributable to any
8 particular monthly installment period shall be that
9 proportion of the sales finance charge or loan finance charge
10 originally contracted for, as the balance scheduled to be
11 outstanding on the last day of the monthly installment period
12 before deducting the payment, if any, scheduled to be made
13 on that day bears to the sum of all the monthly installment
14 balances under the original schedule of payments. (This
15 method of allocation is the sum of the digits method,
16 commonly referred to as the "Rule of 78.")

17 (2) Upon prepayment in full of a precomputed consumer
18 credit sale or consumer loan by cash, a new loan, refinancing,
19 consolidation or otherwise, the creditor shall rebate to the
20 consumer that portion of the sales finance charge or loan
21 finance charge in the manner specified in section five-d,
22 article six, chapter forty-seven of this code.

23 (3) If the maturity of a precomputed consumer credit sale
24 or consumer loan is accelerated for any reason and judgment
25 is obtained, the debtor is entitled to the same rebate as if the
26 payment had been made on the date maturity is accelerated.
27 Such judgment shall bear interest until paid at the rate of six
28 percent per annum.

ARTICLE 4. SUPERVISED LENDERS.

§46A-4-107. Loan finance charge for supervised lenders.

§46A-4-111. Maximum interest when loan is in excess of sixteen hundred dollars.

§46A-4-107. Loan finance charge for supervised lenders.

1 (1) With respect to a supervised loan, including a revolving
2 loan account, a supervised lender may contract for and
3 receive a loan finance charge not exceeding that permitted by
4 this section.

5 (2) The loan finance charge, calculated according to the
6 actuarial method, may not exceed the total of:

7 (a) Thirty-six percent per year on that part of the unpaid
8 balances of the principal which is two hundred dollars or less;

9 (b) Twenty-four percent per year on that part of the
10 unpaid balances of the principal which is more than two
11 hundred dollars but does not exceed twelve hundred dollars;
12 and

13 (c) Eighteen percent per year on that part of the unpaid
14 balances of the principal which is more than twelve hundred
15 dollars.

16 (3) This section does not limit or restrict the manner of
17 calculating the loan finance charge, whether by way of
18 add-on, discount or otherwise, so long as the rate of the loan
19 finance charge does not exceed that permitted by this section.
20 If the loan is precomputed:

21 (a) The loan finance charge may be calculated on the
22 assumption that all scheduled payments will be made when
23 due, and

24 (b) The effect of prepayment, refinancing or consolidation
25 is governed by the provisions on rebate upon prepayment,
26 refinancing or consolidation contained in section one
27 hundred eleven, article three of this chapter.

28 (4) For the purposes of this section, the term of a loan
29 commences on the date the loan is made. Differences in the
30 lengths of months are disregarded and a day may be counted
31 as one thirtieth of a month. Subject to classifications and
32 differentiations the licensee may reasonably establish, a part
33 of a month in excess of fifteen days may be treated as a full
34 month if periods of fifteen days or less are disregarded and if
35 that procedure is not consistently used to obtain a greater
36 yield than would otherwise be permitted.

37 (5) Subject to classifications and differentiations the
38 lender may reasonably establish, he may make the same loan
39 finance charge on all principal amounts within a specified
40 range. A loan finance charge so made does not violate
41 subsection (2) if:

42 (a) When applied to the median amount within each range,
43 it does not exceed the maximum permitted by subsection (2),
44 and

45 (b) When applied to the lowest amount within each range,
46 it does not produce a rate of loan finance charge exceeding

47 the rate calculated according to subdivision (a) of this
48 subsection (5) by more than eight percent of the rate
49 calculated according to said subdivision (a).

50 (6) With respect to a revolving loan account:

51 (a) A charge may be made by a supervised lender in each
52 monthly billing cycle which is one twelfth of the maximum
53 annual rates permitted by this section computed on an
54 amount not exceeding the greatest of:

55 (i) The average daily balance of the debt,

56 (ii) The balance of the debt at the beginning of the first day
57 of the billing cycle, less all payments on and credits to such
58 debt during such billing cycle and excluding all additional
59 borrowings during such billing cycle, or

60 (iii) Subject to subsection (5), the median amount within a
61 specified range within which the average daily balance of the
62 debt or the balance of the debt at the beginning of the first
63 day of the billing cycle, less all payments on and credits to
64 such debt during such billing cycle and excluding all
65 additional borrowings during such billing cycle, is included.
66 For the purpose of this subdivision (a) a billing cycle is
67 monthly if the billing statement dates are on the same day
68 each month or do not vary by more than four days therefrom.

69 (b) If the billing cycle is not monthly, the maximum loan
70 finance charge which may be made by a supervised lender is
71 that percentage which bears the same relation to an
72 applicable monthly percentage as the number of days in the
73 billing cycle bears to thirty.

74 (c) Notwithstanding subdivisions (a) and (b) of this
75 subsection (6), if there is an unpaid balance on the date as of
76 which the loan finance charge is applied, the licensee may
77 contract for and receive a charge not exceeding fifty cents if
78 the billing cycle is monthly or longer, or the pro rata part of
79 fifty cents which bears the same relation to fifty cents as the
80 number of days in the billing cycle bears to thirty if the billing
81 cycle is shorter than monthly, but no charge may be made
82 pursuant to this subdivision (c) if the lender has made an
83 annual charge for the same period as permitted by the
84 provisions on additional charges.

85 (7) As an alternative to the loan finance charge allowed by
86 section one hundred seven, subsection (2) of this article, from
87 the effective date of this subsection until and including the
88 first day of July, one thousand nine hundred eighty-two, with
89 respect to a supervised loan, including a revolving loan
90 account, a supervised lender may contract for and receive a
91 loan finance charge, calculated according to the actuarial
92 method, which may not exceed the total of:

93 (a) Thirty-six percent per year on that part of the unpaid
94 balances of the principal which is five hundred dollars or less;

95 (b) Twenty-four percent per year on that part of the
96 unpaid balances of the principal which is more than five
97 hundred dollars but does not exceed fifteen hundred one
98 dollars; and

99 (c) Eighteen percent per year on that part of the unpaid
100 balances of the principal which is more than fifteen hundred
101 one dollars.

§46A-4-111. Maximum interest when loan is in excess of sixteen hundred dollars.

1 No licensee shall directly or indirectly charge, contract for,
2 or receive any interest, discount or consideration greater than
3 six percent per annum upon the loan, use or forbearance of
4 money, goods or things in action, or upon the loan, use or sale
5 of credit, when the amount or value thereof is more than
6 sixteen hundred dollars. The foregoing prohibition shall also
7 apply to any licensee who permits any person, as borrower or
8 as endorser, guarantor or surety for any borrower, or
9 otherwise, to owe directly or contingently, or both, to the
10 licensee at any time the sum of more than sixteen hundred
11 dollars for principal.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 6. MONEY AND INTEREST.

§47-6-5a. Interest charges on loans repayable in installments.

§47-6-5d. Rebate upon prepayment, refinancing, consolidation or otherwise.

§47-6-5a. Interest charges on loans repayable in installments.

1 Except in cases where it is otherwise specially provided by
2 law, parties may contract for and charge interest for a secured
3 or unsecured loan, repayable in installments at a rate not in

4 excess of: (a) Six percent per annum upon the principal
5 amount of the loan, for the entire period of the loan, and add
6 such charge to the principal amount of the loan; or (b) six
7 percent per annum upon the face amount of the instruments
8 evidencing the obligation to repay the loan, for the entire
9 period of the loan and deduct such charge in advance but in
10 no case shall the interest on such a discount loan exceed an
11 annual percentage rate of fifteen percent per annum
12 calculated according to the actuarial method: *Provided*, That
13 upon prepayment in full of a precomputed loan, the creditor
14 shall rebate that portion of such charge in the manner set
15 forth in section five-d of this article. Any note evidencing any
16 such installment loan may provide that the entire unpaid
17 balance thereof at the option of the holder shall become due
18 and payable upon default in the payment of any stipulated
19 installment without impairing the negotiability of such note if
20 otherwise negotiable. Nothing herein contained shall affect or
21 restrict the right of the parties under section five of this article
22 to contract in writing for the payment of interest for the loan
23 or forbearance of money at a rate not to exceed eight dollars
24 upon one hundred dollars a year, and proportionately for a
25 greater or less sum, or for a longer or shorter time, including
26 points expressed as a percentage of the loan divided by the
27 number of years of the loan contract.

**§47-6-5d. Rebate upon prepayment, refinancing, consolidation
or otherwise.**

1 (a) Upon prepayment in full of a precomputed loan, credit
2 sale or transaction, forbearance or similar transaction
3 repayable according to its original terms over a period of
4 thirty-six months or less, the creditor shall rebate that portion
5 of the finance charge attributable to the prepaid periodic
6 installment periods. When the total is payable in substantially
7 equal consecutive monthly installments, the portion of such
8 finance charge attributable to any particular monthly
9 installment period shall be that proportion of the charge
10 originally contracted for, as the balance scheduled to be
11 outstanding on the last day of the monthly installment period
12 before deducting the payment, if any, scheduled to be made
13 on that day bears to the sum of all the monthly installment
14 balances under the original schedule of payments. (This
15 method of allocation is the sum of the digits method,

16 commonly referred to as the "Rule of 78.") For prepayment in
17 full of a precomputed loan, credit sale or transaction,
18 forbearance or similar transaction (i) repayable according to
19 its original terms over a period of thirty-six months or less, (ii)
20 in which unequal or irregular or other than substantially
21 equal consecutive monthly installments are payable, the
22 commissioner of banking shall prescribe by rule the method
23 or procedure for the allocation of charges and the calculation
24 of rebates consistent with the Rule of 78.

25 (b) Upon prepayment in full of a precomputed loan, credit
26 sale or transaction, forbearance or similar transaction,
27 repayable by its original terms over a period of greater than
28 thirty-six months, an amount shall be rebated of not less than
29 the unearned portion of the finance charge calculated by
30 applying the rate of finance charge which was required by
31 applicable law to be disclosed in the transaction according to
32 the actuarial method to the unpaid balance for the time
33 remaining as originally scheduled or as extended by deferral
34 or otherwise for the period following prepayment. In
35 instances where no rate of finance charge was required by law
36 or otherwise to be disclosed, the unearned portion of the
37 finance charge shall be calculated by applying the finance
38 charge which was charged in the transaction according to the
39 actuarial method to the unpaid balance for the time
40 remaining as originally scheduled or as extended by deferral
41 or otherwise for the period following prepayment.

42 (c) For purposes of the rebate of unearned finance charges
43 as required by this section, a prepayment in full shall include
44 repayment by a new loan, extension of credit, refinancing,
45 consolidation, forbearance or otherwise.

46 (d) As an alternative to the Rule of 78 method of rebate of
47 determining the unearned finance charge required by this
48 section, a creditor may rebate unearned finance charges
49 under any other method which gives a greater rebate to the
50 debtor than the rebate determined by the Rule of 78.

51 (e) The provisions governing rebates as set forth in this
52 section shall apply to all transactions entered into on or after
53 the first day of September, one thousand nine hundred
54 eighty-one. For transactions entered into prior to the first day
55 of September, one thousand nine hundred eighty-one, the

56 provisions in effect prior to the effective date of this section of
57 the respective chapters of this code shall be utilized to
58 determine the rebate of unearned finance charges.

59 (f) For consumer credit sales or consumer loans subject to
60 the provisions of chapter forty-six-a of this code the
61 provisions of article five, chapter forty-six-a, govern the
62 imposition of liability and penalties for charging interest or a
63 finance charge in excess of the maximum rate allowed under
64 the provisions of this section. In all other instances, the
65 provisions of this article govern the imposition of liability and
66 penalties for charging interest or a finance charge in excess of
67 the maximum allowed under this section.

CHAPTER 47A. WEST VIRGINIA LENDING AND CREDIT RATE BOARD.

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-1-1. Legislative findings; creation, membership, powers and duties of board.

§47A-1-2. Board staff, officers, funding.

§47A-1-3. Report to and review by Legislature; validity of contracts; usury.

§47A-1-4. Applicability of the West Virginia Administration Procedures Act;
legislative and judicial review.

§47A-1-1. Legislative findings; creation, membership, powers and duties of board.

1 (a) The Legislature hereby finds and declares that:

2 (1) Changes in the permissible charges on loans, credit
3 sales or transactions, forbearances or other similar
4 transactions requires specialized knowledge of the needs of
5 the citizens of West Virginia for credit for personal and
6 commercial purposes and knowledge of the availability of
7 such credit at reasonable rates to the citizens of this state
8 while affording a competitive return to persons extending
9 such credit;

10 (2) Maximum charges on loans, credit sales or
11 transactions, forbearances or other similar transactions
12 executed in this state should be prescribed from time to time
13 to reflect changed economic conditions, current interest rates
14 and finance charges throughout the United States and the
15 availability of credit within the state in order to promote the
16 making of such loans in this state; and

17 (3) The prescribing of such maximum interest rates and

18 finance charges can be accomplished most effectively and
19 flexibly by a board comprised of the heads of designated
20 government agencies, university schools of business and
21 administration, and members of the public.

22 (b) In view of the foregoing findings, it is the purpose of
23 this section to establish the West Virginia lending and credit
24 rate board and authorize said board to prescribe quarterly the
25 maximum interest rates and finance charges on loans, credit
26 sales or transactions, forbearances or similar transactions
27 made pursuant to this section subject to the provisions,
28 conditions and limitations hereinafter set forth and to
29 authorize lenders, sellers, and other creditors to charge up to
30 the maximum interest rates or finance charges so fixed. The
31 rates prescribed by the board are alternative rates and any
32 creditor may utilize either the rate or rates set by the board or
33 any other rate or rates which the creditor is permitted to
34 charge under any other provision of this code.

35 (c) The West Virginia lending and credit rate board shall
36 be comprised of:

37 (1) The director of the governor's office of economic and
38 community development;

39 (2) The West Virginia state treasurer;

40 (3) The West Virginia banking commissioner;

41 (4) The deans of the schools of business and
42 administration at Marshall University and West Virginia
43 University;

44 (5) The director of the division of consumer protection of
45 the attorney general's office;

46 (6) Three members of the public appointed by the
47 governor with the advice and consent of the Senate. The
48 members of the public shall be appointed for terms of six
49 years each, and until their successors are appointed and
50 qualified; except that of the members first appointed, one
51 shall be appointed for a term of two years, one for a term of
52 four years, and one for a term of six years. A member who has
53 served one full term of six years shall be ineligible for
54 appointment for the next succeeding term. Vacancies shall be
55 filled for the remainder of any unexpired term in the same
56 manner as the original appointment.

57 The West Virginia banking commissioner shall serve as
58 chairperson of the board and the rate or rates set by the board
59 shall be determined by a majority vote of those members of
60 the board in attendance at the respective board meeting.

61 (d) The West Virginia lending and credit rate board is
62 hereby authorized and directed to meet at least quarterly or
63 more frequently as required by the circumstances and to
64 prescribe by order a maximum rate of interest and finance
65 charge for the next succeeding quarter for any loans, credit
66 sales or transactions, forbearances or similar transactions
67 made pursuant to this section. In fixing said maximum rates
68 of interest and finance charge, the board shall take into
69 consideration prevailing economic conditions, including the
70 monthly index of long-term United States government bond
71 yields for the preceding calendar month, yields on
72 conventional commercial short-term loans and notes
73 throughout West Virginia and throughout the United States
74 and on corporate interest-bearing securities of high quality,
75 the availability of credit at reasonable rates to the citizens of
76 this state which afford a competitive return to persons
77 extending such credit, and such other factors as the board
78 may determine.

79 (e) Within twenty days next preceding the end of the given
80 quarter, the board shall prescribe by order in accordance with
81 the provisions of subsection (d) of this section the maximum
82 rates of interest and finance charge for the next succeeding
83 quarter for any loan, credit sale, forbearance, or similar
84 transaction made pursuant to this section and shall cause
85 such maximum rate of interest and finance charge to be
86 issued and disseminated to the public, such maximum rate of
87 interest and finance charge to be effective on the first day of
88 the next succeeding quarter.

89 (f) Notwithstanding any other provisions of this section,
90 not later than the first day of September, one thousand nine
91 hundred eighty-one, the board shall prescribe by order the
92 maximum rate of interest and finance charge for loans, credit
93 sales or transactions, forbearances, or similar transactions
94 pursuant to this section for the quarter in which this section
95 shall become effective and shall, at the earliest possible date,
96 prescribe the maximum rate of interest and finance charge
97 for any such loan, credit sale or transaction, forbearance or

98 similar transaction for the next succeeding quarter. The
99 board shall issue and disseminate such maximum rates of
100 interest and finance charge to the public. The board shall
101, thereafter determine and issue and disseminate the
102 maximum rate of interest and finance charge for any such
103 loan, credit sale or transaction, forbearance or similar
104 transaction in conformity with the other provisions of this
105 section.

106 (g) Each member of the board, except those whose regular
107 salary is paid by the state of West Virginia, shall receive
108 seventy-five dollars per diem while actually engaged in the
109 performance of the duties of the board. Each member shall be
110 reimbursed for all reasonable and necessary expenses
111 actually incurred during the performance of their duties,
112 except that in the event the expenses are paid by a third party
113 the members shall not be reimbursed by the state. The
114 reimbursement shall be paid out of the revolving fund
115 established by section two of this article upon a requisition
116 upon the state auditor, properly certified by the banking
117 commissioner.

118 (h) In setting the maximum interest rates and finance
119 charges, the board may set varying rates based on the type of
120 credit transaction, the term of transaction, the type of debtor,
121 the type of creditor, and other factors relevant to
122 determination of such rates. In addition, the board may set
123 varying rates for ranges of principal balances within a single
124 category of credit transactions.

§47A-1-2. Board staff, offices, funding.

1 Under the direction of the chairperson of the board, the
2 board shall be entitled to utilize the staff of the West Virginia
3 banking department and the offices of the board shall be
4 those of the West Virginia banking department. In order to
5 defray the cost of the board's operations including the cost of
6 its utilization of the staff of the West Virginia banking
7 department, the board shall establish the West Virginia
8 lending and credit rate board revolving fund.

9 On or before the first day of July of each year, all supervised
10 financial organizations and supervised lenders shall pay a
11 yearly fee of fifty dollars into the revolving fund established
12 by the board. The fees paid into this revolving fund shall be

13 utilized to pay the costs and expenses of the board and all
14 incidental costs and expenses necessary for its operations.

§47A-1-3. Report to and review by Legislature; validity of contracts; usury.

1 On or before the fifteenth day of January of each calendar
2 year commencing with the fifteenth day of January, one
3 thousand nine hundred eighty-two, the board shall prepare a
4 report to the Legislature detailing its (i) activities during the
5 prior year including all rules and regulations adopted or
6 modified during the year, (ii) recommendations regarding
7 legislative action on rates of interest, finance charges, and
8 usury in light of the credit needs of West Virginia's residents
9 and businesses, and (iii) plans for staffing and organization of
10 the board. Unless the Legislature or committee of the
11 Legislature delegated to review the report and actions of the
12 board specifically rejects certain portions of the report or
13 certain prior or proposed acts of the board, the board may
14 continue to implement prior actions or implement proposed
15 aspects of its actions which are within the scope of its duties
16 under this article.

17 Contracts made in good faith in conformity with an order of
18 the board setting the maximum rates of interest and finance
19 charge are valid, notwithstanding that after such contract is
20 made or finance charge is received, such order is amended or
21 rejected by the Legislature. No person who contracts for or
22 receives a finance charge in good faith in conformity with an
23 order of the board is liable in any action or suit for any
24 penalty, forfeiture or recovery based on a charge of usury,
25 notwithstanding that after such contract is made or finance
26 charge is received, such order is amended or rejected by the
27 Legislature.

§47A-1-4. Applicability of the West Virginia Administrative Procedures Act; legislative and judicial review.

1 Because of the volatile nature of the credit market and the
2 necessity of prompt action by the board, all orders, rules and
3 regulations, and other procedures adopted by the board
4 relating to setting maximum interest rates and finance
5 charges are specifically exempted from the provisions of the
6 West Virginia Administrative Procedures Act, chapter
7 twenty-nine-a of this code. All other orders, rules and

8 regulations, and other procedures adopted by the board not
9 relating to the setting of maximum rates of interest and
10 finance charges shall be made in accordance with the
11 provisions of the Administrative Procedures Act, chapter
12 twenty-nine-a of this code.

13 All actions of the board relating to the setting of maximum
14 interest rates and finance charges are subject to review as set
15 forth under section three of this article. In instances when the
16 board exceeds or fails to appropriately exercise its authority
17 under this article to set maximum interest rates and finance
18 charges, the actions of the board may be reviewed initially
19 only in the circuit court of Kanawha County, West Virginia.

CHAPTER 153

(S. B. 360—By Mr. Nelson)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven and twelve, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to restricting the issuance of evidences of indebtedness by industrial loan companies by requiring approval in advance of their issuance by the state commissioner of banking and allowing the cash reserves of said companies required on said evidences to be invested in specific short-term investments secured by United States government obligations.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twelve, article seven, 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 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-11. Powers of industrial loan companies; limitation of powers.

§31-7-12. Cash reserves

***§31-7-11. Powers of industrial loan companies; limitation of powers.**

1 (a) In addition to the general powers conferred upon
2 corporations by the laws of this state, each industrial loan
3 company shall have power to exercise by its board of
4 directors or duly authorized officers or agents, subject to law,
5 all such powers as shall be necessary to:

6 (1) Lend money to any person, firm or corporation,
7 secured by the obligation of such person, firm or corporation,
8 or otherwise; and, in addition, to receive and require uniform
9 periodical installments for the repayment of the loan;

10 (2) Sell or offer for sale, with prior written approval of the
11 commissioner, its secured or unsecured evidences or
12 certificates of indebtedness, and such secured or unsecured
13 evidences or certificates of indebtedness are hereby defined
14 as money for the purpose of taxation, but every such evidence
15 or certificate of indebtedness shall state, on its face, in a
16 clearly visible manner approved by the commissioner, that
17 such evidence or certificate of indebtedness is not federally
18 insured;

19 (3) Buy and sell bonds or choses in action of any person,
20 firm or corporation;

21 (4) Impose a charge of five cents for each default in the
22 payment of one dollar, or fraction thereof, at the time at which
23 any periodical installment for the repayment of a loan
24 becomes due;

25 (5) Demand and receive for loans or for notes, bills or
26 evidences of debt discounted or purchased, such rate of
27 interest as may be agreed upon by the parties, not exceeding
28 the lawful rate of interest, and it shall be lawful to receive
29 such interest in advance;

30 (6) Charge for a loan made pursuant to this section, one
31 dollar for each fifty dollars, or fraction thereof, loaned, for
32 expenses including any examination or investigation of the
33 character and circumstances of the borrower, comaker or
34 surety, and the drawing and taking the acknowledgment of
35 necessary papers, or other expenses, incurred in making the

*Clerk's Note: This section was also amended by S. B. 559, now Chapter 152, which was passed on April 10, 1981.

36 loan. No additional charge shall be made except to reimburse
37 the corporation for money actually expended for additional
38 service actually rendered the borrower. No charge shall be
39 collected unless a loan shall have been made as the result of
40 such examination or investigation;

41 (7) Purchase, hold and convey real estate as follows:

42 (A) Such as shall be necessary for the convenient
43 transaction of its business, including with its office other
44 apartments or offices to rent as a source of income, which
45 investment shall not exceed twenty-five percent of its paid-in
46 capital stock and surplus;

47 (B) Such as is mortgaged to it in good faith by way of
48 security for loans made by or money due to such industrial
49 loan company;

50 (C) Such as is conveyed to it in satisfaction of debts
51 previously contracted in the course of its dealings;

52 (D) Such as is acquired by sale on execution or judgment
53 or decree of any court in its favor.

54 Industrial loan companies shall not purchase, hold or
55 convey any real estate in any other case or for any other
56 purpose whatever. Real estate shall be conveyed only by
57 authority of the board of directors of any such industrial loan
58 company. No real estate acquired in the cases contemplated
59 in paragraphs (B), (C) and (D), subdivision (7) of this
60 subsection shall be held for a longer time than five years,
61 unless such period shall be extended by the commissioner of
62 banking.

63 (b) An industrial loan company shall not:

64 (1) Accept or receive deposits;

65 (2) Make any loan under the provisions of this article for a
66 longer period than two years from the date thereof, except
67 upon express authorization of the board of directors of such
68 company;

69 (3) Hold at any one time the primary obligation or
70 obligations of any one person, firm or corporation, for more
71 than ten percent of the amount of the paid-up capital and
72 surplus of such industrial loan company;

73 (4) Hold at any one time the obligation or obligations of
74 persons, firms or corporations purchased from any person,
75 firm or corporation in excess of twenty percent of the
76 aggregate paid-up capital and surplus of such industrial loan
77 company;

78 (5) Make any loan or discount on the security of its own
79 capital stock (controlling and voting stock, if there be more
80 than one class), unless such security or purchase shall be
81 necessary to prevent loss upon a debt previously contracted
82 in good faith. Stock so purchased or acquired shall be sold at
83 public or private sale or otherwise disposed of within ninety
84 days from the time of its purchase or acquisition;

85 (6) Have outstanding at any time its evidences or
86 certificates of indebtedness, in an aggregate sum in excess of
87 ten times the aggregate amount of its paid-up capital (voting
88 and controlling stock) and surplus;

89 (7) Deposit any of its funds with any other moneyed
90 corporation unless such corporation has been designated as
91 such depository by a vote of the majority of the board of
92 directors;

93 (8) Pledge or hypothecate any of its securities or notes
94 owned by it to any creditor, except that such companies shall
95 have the power to rediscount or to borrow money from any
96 source in addition to selling its evidences or certificates of
97 indebtedness, but the aggregate amount of such
98 rediscounting and borrowing shall at no time exceed the sum
99 total of the capital, surplus and reserve funds of such
100 company, and the security so pledged therefor shall not
101 exceed two times the amount borrowed and rediscounted;

102 (9) Pay any fees, bonuses, commissions, rewards, or other
103 consideration to any person, firm or corporation for the
104 privilege of using any plan of operation, scheme or device for
105 the organization or carrying on of business under this article,
106 or the use of any name, trademark or copyright to be so used;
107 nor shall any industrial loan company under this article enter
108 into any contract for such purpose or purposes, or for the
109 purpose of giving to or vesting in any other corporation any
110 power or authority over the organization or management of
111 corporations under this article.

***§31-7-12. Cash reserves.**

1 (a) Every industrial bank organized pursuant to this
2 article shall at all times maintain a cash reserve equal to five
3 percent of its aggregate deposits and for such purpose the
4 regulatory, reporting and penalty provisions of section
5 twenty-two, article four, chapter thirty-one-a of this code shall
6 apply to such reserves as shall the provision of said section
7 twenty-two with respect to the form or nature of such
8 reserves.

9 (b) Every industrial loan company organized pursuant to
10 the provisions of this article shall at all times maintain a cash
11 reserve equal to five percent of its issued and outstanding
12 evidences or certificates of indebtedness and, upon approval
13 by the commissioner, such reserves may take the form of
14 agreements, not to exceed a seven-day term, to purchase and
15 resell United States treasury and United States government
16 agency obligations and overnight federal funds sold secured
17 by United States treasury or United States agency
18 obligations.

*Clerk's Note: This section was also amended by S. B. 184, now chapter 154, which was passed on April 10, 1981.

CHAPTER 154

(S. B. 184—By Mr. Palumbo and Mr. Rogers)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-two, article four, chapter thirty-one-a of said code, all relating to considering industrial banks and banking institutions which comply with the reserve requirements of the Federal Reserve Act to be in full compliance with the state reserve requirements.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31. Corporations.

31A. Banks and Banking.

CHAPTER 31. CORPORATIONS.

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

***§31-7-12. Cash reserves.**

1 (a) Every industrial bank organized pursuant to this
2 article shall at all times maintain a cash reserve equal to five
3 percent of its aggregate deposits and for such purpose the
4 regulatory, reporting and penalty provisions of section
5 twenty-two, article four, chapter thirty-one-a of this code shall
6 apply to such reserves as shall the provision of said section
7 twenty-two with respect to the form or nature of such
8 reserves.

9 Compliance on the part of any industrial bank with the
10 reserve requirements of the Federal Reserve Act, as amended
11 prior to the thirty-first day of January, one thousand nine
12 hundred eighty-one, shall be considered full compliance with
13 the provisions of this subsection. No such industrial bank
14 may be required to carry or maintain a reserve other than
15 such as required under terms of the Federal Reserve Act, as
16 amended prior to the thirty-first day of January, one
17 thousand nine hundred eighty-one.

18 (b) Every industrial loan company organized pursuant to
19 the provisions of this article shall at all times maintain a cash
20 reserve equal to five percent of its issued and outstanding
21 evidences or certificates of indebtedness and the
22 commissioner may prescribe by rule or regulation the form or
23 nature of such reserves.

*Clerk's Note: This section was also amended by S. B. 360, now Chapter 153, which was passed on April 11, 1981.

CHAPTER 31A. BANKS AND BANKING.**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.****§31A-4-22. Reserves required of banking institutions; reports; penalties.**

1 Each state banking institution, except industrial banks
2 created and organized pursuant to the provisions of article
3 seven, chapter thirty-one of this code, shall at all times
4 maintain on hand as a reserve in lawful money of the United
5 States of America an amount equal to at least seven percent of
6 the aggregate of all of its deposits which are subject to
7 withdrawal on demand and three percent of its time deposits.
8 Whenever the commissioner of banking shall determine that
9 the maintenance of sound banking practices or the
10 prevention of injurious credit expansion or contraction
11 makes such action advisable, he may by rule or regulation
12 from time to time change such requirements as to reserves
13 against demand or time deposits, or both, but the reserves so
14 prescribed shall in no event be less than those specified in
15 this section nor more than twice those specified. Whenever
16 such reserve shall fall below that required, the institution
17 shall not thereafter make any new loan or investment until
18 the required reserve shall be restored. For the purpose of
19 computing such reserve, all deposits requiring notice of thirty
20 days or more for withdrawal and time certificates of deposit
21 and Christmas savings shall be deemed time deposits, and all
22 checking accounts, certified checks, cashier's checks,
23 demand certificates of deposit and balances due other banks
24 shall be deemed demand deposits. But in lieu of lawful
25 money on hand, four fifths of such reserve may consist of
26 balances payable on demand from any national or state bank
27 doing business in this state or solvent banking institutions in
28 other states. The reserve balances required herein shall be
29 computed on the basis of average daily net deposit balances
30 and average daily currency and coin during biweekly periods.
31 The required reserve balance of each bank shall be computed
32 at the close of business each day based upon its net deposit
33 balances and currency and coin at the opening of business on
34 the same day. The biweekly period shall end at the close of
35 business on days to be fixed by the commissioner in his
36 promulgated rules and regulations. When, however, the
37 reserve computation period ends with a nonbusiness day, or

38 two or more consecutive nonbusiness days, such
39 nonbusiness day or days may, at the option of the banking
40 institution, and whether or not it had a deficiency in reserve
41 balances in such computation period, be included in the next
42 biweekly computation period.

43 The commissioner shall, by rule and regulation, require
44 regular reports from such banking institutions, which reports
45 shall be submitted at such times and contain such
46 information as will enable the commissioner to adequately
47 supervise the maintenance of reserves under this section.
48 Penalties for any deficiencies in the required reserves of any
49 banking institution shall be assessed monthly by the
50 commissioner on the basis of average daily deficiencies
51 during each of the computation periods ending in the
52 preceding calendar month. Such penalties shall be assessed
53 at a rate of two percent per annum above the lowest rate
54 applicable to borrowings by member banks from the federal
55 reserve bank of the district in which such deficient institution
56 is located on the first day of the calendar month in which the
57 deficiencies occurred. Such penalties shall be paid by the
58 commissioner into the treasury of the state of West Virginia
59 and credited to the general fund.

60 Compliance on the part of any banking institution with the
61 reserve requirements of the Federal Reserve Act, as amended
62 prior to the thirty-first day of January, one thousand nine
63 hundred eighty-one, shall be considered full compliance with
64 the provisions of this section. No such bank may be required
65 to carry or maintain a reserve other than such as required
66 under terms of the Federal Reserve Act, as amended prior to
67 the thirty-first day of January, one thousand nine hundred
68 eighty-one.

CHAPTER 155

(Com. Sub. for S. B. 274—By Mr. Heck)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, and sections one, two, three, six, seven and eight, article eight, all of

chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article eight by adding thereto a new section, designated section twelve, all relating to definitions; reporting by police of stolen vehicles or items of special mobile equipment; reporting of the recovery of such vehicles and equipment; prohibiting receiving or transferring of or injuring or tampering with stolen vehicles or items of special mobile equipment; prohibiting the altering or changing of engine numbers and other numbers with fraudulent intent; prohibiting knowingly buying, receiving, possessing, selling, disposing of or offering for sale certain items from which certain identifying marks or numbers have been altered, covered, defaced or destroyed; recovery of special mobile equipment; sale of unclaimed special mobile equipment; penalties.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Words and Phrases Defined.**
8. **Special Antitheft Laws.**

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17A-1-1. Definitions.

- 1 Except as otherwise provided in this chapter the following
- 2 words and phrases when used in this chapter shall have the
- 3 meanings respectively ascribed to them in this article:
- 4 (a) "Vehicle" means every device in, upon or by which any
- 5 person or property is or may be transported or drawn upon a
- 6 highway, excepting devices moved by human power or used
- 7 exclusively upon stationary rails or tracks.
- 8 (b) "Motor vehicle" means every vehicle which is
- 9 self-propelled and every vehicle which is propelled by
- 10 electric power obtained from overhead trolley wires, but not
- 11 operated upon rails.

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

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

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

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

32 (g) "Farm tractor" means every motor vehicle designed
33 and used primarily as a farm implement for drawing plows,
34 mowing machines, and other implements of husbandry.

35 (h) "Road tractor" means every motor vehicle designed,
36 used or maintained for drawing other vehicles and not so
37 constructed as to carry any load thereon either independently
38 or any part of the weight of a vehicle or load so drawn.

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

41 (j) "Trailer" means every vehicle with or without motive
42 power designed for carrying persons or property and for
43 being drawn by a motor vehicle and so constructed that no
44 part of its weight rests upon the towing vehicle.

45 (k) "Semitrailer" means every vehicle with or without
46 motive power designed for carrying persons or property and
47 for being drawn by a motor vehicle and so constructed that
48 some part of its weight and that of its load rests upon or is
49 carried by another vehicle.

50 (l) "Pole trailer" means every vehicle without motive
51 power designed to be drawn by another vehicle and attached
52 to the towing vehicle by means of a reach, or pole, or by being
53 boomed or otherwise secured to the towing vehicle, and
54 ordinarily used for transporting long or irregularly shaped
55 loads such as poles, pipes, or structural members capable,
56 generally, of sustaining themselves as beams between the
57 supporting connections.

58 (m) "Specially constructed vehicles" means every vehicle
59 of a type required to be registered hereunder not originally
60 constructed under a distinctive name, make, model or type by
61 a generally recognized manufacturer of vehicles and not
62 materially altered from its original construction.

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

67 (o) "Essential parts" means all integral and body parts of a
68 vehicle of a type required to be registered hereunder, the
69 removal, alteration or substitution of which would tend to
70 conceal the identity of the vehicle or substantially alter its
71 appearance, model, type or mode of operation.

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

77 (q) "Implement of husbandry" means every vehicle which
78 is designed for or adapted to agricultural purposes and used
79 by the owner thereof primarily in the conduct of his
80 agricultural operations, including, but not limited to, trucks
81 used for spraying trees and plants: *Provided*, That said
82 vehicle shall not be let for hire at any time.

83 (r) "Special mobile equipment" means every
84 self-propelled vehicle not designed or used primarily for the
85 transportation of persons or property and incidentally
86 operated or moved over the highways, including, without
87 limitation, farm equipment, implements of husbandry, road
88 construction or maintenance machinery, ditch-digging

89 apparatus, stone crushers, air compressors, power shovels,
90 cranes, graders, rollers, well-drillers, wood-sawing
91 equipment, asphalt spreaders, bituminous mixers, bucket
92 loaders, ditchers, leveling graders, finishing machines, motor
93 graders, road rollers, scarifiers, earth-moving carryalls,
94 scrapers, drag lines, rock-drilling equipment and
95 earth-moving equipment. The foregoing enumeration shall be
96 deemed partial and shall not operate to exclude other such
97 vehicles which are within the general terms of this
98 subdivision.

99 (s) "Pneumatic tire" means every tire in which
100 compressed air is designed to support the load.

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

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

107 (v) "Commissioner" means the commissioner of motor
108 vehicles of this state.

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

112 (x) "Person" means every natural person, firm,
113 copartnership, association or corporation.

114 (y) "Owner" means a person who holds the legal title to a
115 vehicle, or in the event a vehicle is the subject of an
116 agreement for the conditional sale or lease thereof with the
117 right of purchase upon performance of the conditions stated
118 in the agreement and with an immediate right of possession
119 vested in the conditional vendee or lessee, or in the event a
120 mortgagor of a vehicle is entitled to possession, then such
121 conditional vendee or lessee or mortgagor shall be deemed
122 the owner for the purpose of this chapter.

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

125 (aa) "Dealer" or "dealers" is a general term meaning,
126 depending upon the context in which used, either a new

127 motor vehicle dealer, used motor vehicle dealer, house trailer
128 dealer, trailer dealer or motorcycle dealer, as defined in
129 section one, article six of this chapter, or all of such dealers or
130 a combination thereof, and in some instances a new motor
131 vehicle dealer or dealers in another state.

132 (bb) "Registered dealer" or "registered dealers" is a
133 general term meaning, depending upon the context in which
134 used, either a new motor vehicle dealer, used motor vehicle
135 dealer, house trailer dealer, trailer dealer or motorcycle
136 dealer, or all of such dealers or a combination thereof,
137 licensed under the provisions of article six of this chapter.

138 (cc) "Licensed dealer" or "licensed dealers" is a general
139 term meaning, depending upon the context in which used,
140 either a new motor vehicle dealer, used motor vehicle dealer,
141 house trailer dealer, trailer dealer or motorcycle dealer, or all
142 of such dealers or a combination thereof, licensed under the
143 provisions of article six of this chapter.

144 (dd) "Transporter" means every person engaged in the
145 business of delivery vehicles of a type required to be
146 registered hereunder from a manufacturing, assembling or
147 distributing plant to dealers or sales agents of a manufacturer.

148 (ee) "Manufacturer" means every person engaged in the
149 business of constructing or assembling vehicles of a type
150 required to be registered hereunder at a place of business in
151 this state which is actually occupied either continuously or at
152 regular periods by such manufacturer where his books and
153 records are kept and a large share of his business is
154 transacted.

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

ARTICLE 8. SPECIAL ANTITHEFT LAWS.

- §17A-8-1. Report by police of stolen and recovered vehicles or special mobile equipment.
- §17A-8-2. Reports by owners or lienors of stolen and recovered vehicles or special mobile equipment.
- §17A-8-3. Action by department on report of stolen or embezzled vehicle or special mobile equipment.
- §17A-8-6. Injuring or tampering with vehicle or special mobile equipment.

§17A-8-7. Vehicles or special mobile equipment without manufacturers' numbers.

§17A-8-8. Altering or changing engine or other numbers.

§17A-8-12. Recovery of special mobile equipment; chain of custody; sale of unclaimed special mobile equipment; penalties.

§17A-8-1. Report by police of stolen and recovered vehicles or special mobile equipment.

1 Every sheriff, chief of police, member of the department of
2 public safety or peace officer upon receiving reliable
3 information that any vehicle registered hereunder or any item
4 of special mobile equipment has been stolen shall
5 immediately report such theft to the department unless prior
6 thereto information has been received of the recovery of such
7 vehicle or item of special mobile equipment. Upon receiving
8 a report of a stolen or embezzled item of special mobile
9 equipment, or the recovery thereof, the department shall
10 immediately report the information to the national crime
11 information center maintained by the federal bureau of
12 investigation. Any said officer upon receiving information
13 that any such vehicle or item of special mobile equipment,
14 which he has previously reported as stolen, has been
15 recovered, shall immediately report the fact of such recovery
16 to the local sheriff's office, police department, or department
17 of public safety and to the department.

§17A-8-2. Reports by owners or lienors of stolen and recovered vehicles or special mobile equipment.

1 The owner, or person having a lien or encumbrance upon a
2 registered vehicle or any item of special mobile equipment
3 which has been stolen or embezzled, may notify the
4 department of such theft or embezzlement, but in the event of
5 an embezzlement may make such report only after having
6 procured the issuance of a warrant for the arrest of the person
7 charged with such embezzlement.

8 Every owner or other person who has given any such notice
9 must notify the department of a recovery of such vehicle or
10 special mobile equipment.

§17A-8-3. Action by department on report of stolen or embezzled vehicle or special mobile equipment.

1 The department upon receiving a report of a stolen or
2 embezzled vehicle or any item of special mobile equipment as

3 hereinbefore provided shall file and appropriately index the
4 same and shall, if the same is registered or titled, immediately
5 suspend such registration and/or certificate of title of the
6 vehicle or item of special mobile equipment so reported, and
7 shall not transfer the registration of the same until such time
8 as it is notified in writing that such vehicle or item of special
9 mobile equipment has been recovered.

10 The department shall at least once each week compile and
11 maintain at its headquarters office a list of all vehicles or
12 items of special mobile equipment which have been stolen or
13 embezzled or recovered as reported to it during the preceding
14 week and such list shall be open to inspection by any peace
15 officer or other person interested in any such vehicle or item
16 of special mobile equipment. A copy of each such weekly list
17 shall be forwarded to the superintendent of the department of
18 public safety.

19 The department shall publish once a month a list of all
20 vehicles or items of special mobile equipment stolen,
21 embezzled or recovered during the previous month and shall
22 forward a copy of the same to every sheriff and to all police
23 departments in cities of this state with over five thousand
24 inhabitants. Such list shall also be forwarded to the state
25 police department or other proper official in each state of the
26 United States.

**§17A-8-6. Injuring or tampering with vehicle or special mobile
equipment.**

1 (a) Any person who either individually or in association
2 with one or more persons willfully injures or tampers with
3 any vehicle or breaks or removes any part or parts of or from a
4 vehicle without the consent of the owner is guilty of a
5 misdemeanor.

6 Any person who with intent to commit any malicious
7 mischief, injury, or other crime climbs into or upon a vehicle
8 whether it is in motion or at rest or with like intent attempts
9 to manipulate any of the levers, starting mechanism, brakes,
10 or other mechanism or device of a vehicle while the same is at
11 rest and unattended or with like intent sets in motion any
12 vehicle while the same is at rest and unattended is guilty of a
13 misdemeanor.

14 (b) Any person, either individually or in association with
15 one or more persons, who shall willfully injure or damage any
16 item of special mobile equipment or break or remove any
17 parts from an item of special mobile equipment, without the
18 consent of the owner, which injury, damage, or breakage or
19 removal of parts shall be of an amount of two hundred dollars
20 or more, shall be guilty of a felony. If the injury, damage, or
21 breakage or removal of parts shall be of an amount which is
22 less than two hundred dollars, such person or persons shall
23 be guilty of a misdemeanor.

**§17A-8-7. Vehicles or special mobile equipment without
manufacturers' numbers.**

1 (a) Any person who knowingly buys, receives, disposes of,
2 sells, offers for sale, or has in his possession any motor
3 vehicle, or engine removed from a motor vehicle, from which
4 the manufacturer's serial or engine number or other
5 distinguishing number or identification mark or number
6 placed thereon under assignment from the department has
7 been removed, defaced, covered, altered or destroyed for the
8 purpose of concealing or misrepresenting the identity of said
9 motor vehicle or engine is guilty of a misdemeanor, and, upon
10 a second or subsequent conviction under this section, the
11 conviction shall be for a felony.

12 (b) Any person who knowingly buys, sells, receives,
13 disposes of, conceals, transports, causes to be transported, or
14 has in his possession special mobile equipment or special
15 mobile equipment tires from which the manufacturer's serial
16 number, motor number or other distinguishing number has
17 been removed, covered, altered, defaced or destroyed shall be
18 guilty of a felony.

§17A-8-8. Altering or changing engine or other numbers.

1 (a) No person shall with fraudulent intent deface, destroy
2 or alter the manufacturer's serial or engine number or other
3 distinguishing number or identification mark of a motor
4 vehicle nor shall any person place or stamp any serial, engine,
5 or other number or mark upon a motor vehicle, except one
6 assigned thereto by the department. Any violation of this
7 provision is a misdemeanor.

8 This section shall not prohibit the restoration by an owner

9 of an original serial, engine, or other number or mark when
10 such restoration is made under permit issued by the
11 department, nor prevent any manufacturer from placing in
12 the ordinary course of business numbers or marks upon
13 motor vehicles or parts thereof.

14 (b) Any person who removes, covers, alters or defaces, or
15 causes to be destroyed, removed, covered, altered or defaced,
16 the manufacturer's serial number, the motor number or other
17 distinguishing number on special mobile equipment or
18 special mobile equipment tires, the property of another, for
19 any reason, shall be guilty of a felony.

**§17A-8-12. Recovery of special mobile equipment; chain of
custody; sale of unclaimed special mobile
equipment; penalties.**

1 (a) When an item of special mobile equipment has been
2 lawfully seized and remains in the custody of the
3 law-enforcement authority having seized it, if at any time the
4 true owner thereof shall appear and prove to the satisfaction
5 of such law-enforcement authority his ownership of and
6 entitlement to such item of special mobile equipment, it may
7 be returned to such owner subject to its being made available
8 for use in any criminal prosecution under this article.

9 (b) The law-enforcement authority shall take reasonable
10 steps to locate the owner, including, but not limited to,
11 notifying local equipment dealer, notifying equipment
12 manufacturer and placing legal advertisements detailing
13 confiscated equipment in newspapers. The law-enforcement
14 authority shall take reasonable precautions to protect the
15 equipment. The owner of the special mobile equipment shall
16 pay the costs incurred by the law-enforcement authority for
17 advertising, transporting and storing such special mobile
18 equipment.

19 (c) If, after six months, no person has appeared and
20 proved he is the true owner of an item of special mobile
21 equipment seized under this article and prosecution has been
22 instituted, the court in which such prosecution has been
23 instituted may sell said item of special mobile equipment
24 under such terms as are commercially reasonable: *Provided,*
25 That notice of sale shall be published as a Class I legal
26 advertisement in compliance with the provisions of article

27 three, chapter fifty-nine of this code, and the publication area
28 shall be the county in which such prosecution was initially
29 instituted. The proceeds of such sale shall be applied, first, to
30 the payment of any expenses incurred in taking possession,
31 storing and selling such special mobile equipment; and the
32 balance, if any, shall be paid over to the general receiver of the
33 court in the county in which the prosecution was instituted
34 for its application to that county's general revenues.

35 (d) Notwithstanding the provisions of article eleven of this
36 chapter, any person convicted of a felony under the
37 provisions of subsection (b), section six, subsection (b),
38 section seven or subsection (b), section eight of this article
39 shall be confined in the penitentiary not less than one nor
40 more than ten years and fined not more than five hundred
41 dollars, or, in the discretion of the court, be confined in the
42 county jail for not more than one year and be fined not more
43 than five hundred dollars.

44 Notwithstanding the provisions of article eleven of this
45 chapter, any person convicted of a misdemeanor under the
46 provisions of subsection (b), section six of this article shall be
47 confined in the county jail for a term not to exceed one year or
48 fined not more than five hundred dollars, or both.

CHAPTER 156

(S. B. 654—Originating in the Senate Committee on Finance)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-three; to amend and reenact sections four and fourteen, article three; sections one and five, article four; section ten, article four-a; section fifteen, article six; section seven, article nine; sections ten, eleven and fourteen, article ten, all of said chapter; to amend and reenact sections eight, eleven and twelve, article two and section nine, article three, chapter

seventeen-b of said code; and to amend and reenact section two, article two, chapter seventeen-d of said code, all relating to the department of motor vehicles; increasing fees for records of vehicle registration; providing for a fee when checks are dishonored; increasing fees for certificate of title, special registration plates, temporary registration plates, transfers of registration, duplicate registrations, recording of liens, vehicle reinstatements, registration transfers, special registrations, driver's licenses; providing for photographs on driver's licenses; increasing fees for duplicates and late applications therefor; driver's license reinstatement fees; and abstracts of operating records.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.**
- 17B. Motor Vehicle Operators' and Chauffeurs' Licenses.**
- 17D. Motor Vehicle Safety Responsibility Law.**

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

Article

- 2. Department of Motor Vehicles.**
- 3. Original and Renewal of Registration; Issuance of Certificates of Title.**
- 4. Transfers of Title or Interest.**
- 4A. Liens and Encumbrances on Vehicles to be shown on Certificate of Title; Notice to Creditors and Purchasers.**
- 6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, etc.**

9. **Offenses against Registration Laws and Suspension or Revocation of Registration.**
10. **Fees for Registration, Licensing, etc.**

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.

§17A-2-13. Authority to administer oaths and certify copies of records; information as to registration.

§17A-2-23. Worthless checks tendered for fees and taxes; penalty.

§17A-2-13. Authority to administer oaths and certify copies of records; information as to registration.

1 (a) Officers and employees of the department designated
2 by the commissioner are, for the purpose of administering the
3 motor vehicle laws, authorized to administer oaths and
4 acknowledge signatures, and shall do so without fee.

5 (b) The commissioner and such officers of the department
6 as he may designate are hereby authorized to prepare under
7 the seal of the department and deliver upon request a
8 certified copy of any record of the department, charging a fee
9 of one dollar for each document so authenticated, and every
10 such certified copy shall be admissible in any proceeding in
11 any court in like manner as the original thereof.

12 (c) The commissioner and such officers of the department
13 as he may designate are hereby authorized to furnish to any
14 person requesting same in writing information regarding the
15 registration of any vehicle at a fee of one dollar for each such
16 registration about which information is furnished.

§17A-2-23. Worthless checks tendered for fees and taxes; penalty.

1 If a check tendered to the department of motor vehicles is
2 returned to the department unpaid for any reason, there shall
3 be a penalty of ten dollars to be paid to the department in
4 addition to the amount due the department. This penalty
5 applies to checks tendered for any fee or tax authorized to be
6 collected by the department and is in addition to any other
7 penalties imposed in this code: *Provided*, That in the event a
8 specific penalty is set forth for the nonpayment or late
9 payment of fees and taxes, the penalty set forth in this section
10 applies only to the extent that such penalty exceeds any
11 specific penalty for nonpayment or late payment.

12 The penalty provided in this section shall be used by the

13 department to defray expenses incurred as a result of
14 receiving returned checks and shall be in addition to the
15 regular appropriation made from the state road fund.

**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.

§17A-3-14. Registration plates generally.

**§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
6 same time make application for and be granted, an official
7 certificate of title of such vehicle. Such application shall be
8 upon a blank form to be furnished by the department of
9 motor vehicles and shall contain a full description of the
10 vehicle, which description shall contain a manufacturer's
11 serial or identification number or other number as
12 determined by the commissioner and any distinguishing
13 marks, together with a statement of the applicant's title and of
14 any liens or encumbrances upon such vehicle, the names and
15 addresses of the holders of such liens and such other
16 information as the department of motor vehicles may require.
17 The application shall be signed and sworn to by the applicant.
18 A tax is hereby imposed upon the privilege of effecting the
19 certification of title of each vehicle in the amount equal to five
20 percent of the value of said motor vehicle at the time of such
21 certification. If the vehicle is new, the actual purchase price
22 or consideration to the purchaser thereof shall be the value of
23 said vehicle; if the vehicle is a used or secondhand vehicle,
24 the present market value at time of transfer or purchase shall
25 be deemed the value thereof for the purposes of this section:
26 *Provided*, That so much of the purchase price or
27 consideration as is represented by the exchange of other
28 vehicles on which the tax herein imposed has been paid by
29 the purchaser shall be deducted from the total actual price or
30 consideration paid for said vehicle, whether the same be new
31 or secondhand; if the vehicle be acquired through gift, or by

32 any manner whatsoever, unless specifically exempted in this
33 section, the present market value of the vehicle at the time of
34 the gift or transfer shall be deemed the value thereof for the
35 purposes of this section. No certificate of title for any vehicle
36 shall be issued to any applicant unless such applicant shall
37 have paid to the department of motor vehicles the tax
38 imposed by this section which shall be five percent of the true
39 and actual value of said vehicle whether the vehicle be
40 acquired through purchase, by gift, or by any other manner
41 whatsoever except gifts between husband and wife or
42 between parents and children: *Provided, however,* That
43 husband or wife, or parents or children previously have paid
44 said tax on the vehicles so transferred to the state of West
45 Virginia. The tax imposed by this section shall not apply to
46 vehicles to be registered as Class H vehicles, or Class S
47 vehicles, as defined in section one, article ten of this chapter,
48 which are used or to be used in interstate commerce, nor shall
49 the tax imposed by this section apply to titling of vehicles by
50 a registered dealer of this state for resale only, nor shall the
51 tax imposed by this section apply to titling of vehicles by this
52 state or any political subdivisions thereof, or by any volunteer
53 fire department or duly chartered rescue or ambulance squad
54 organized and incorporated under the laws of the state of
55 West Virginia as a nonprofit corporation for protection of life
56 or property. The total amount of revenue collected by reason
57 of this tax shall be paid into the state road fund and expended
58 by the commissioner of highways for matching federal aid
59 funds allocated for West Virginia. In addition to said tax,
60 there shall be a charge of five dollars for each original
61 certificate of title or duplicate certificate of title so issued:
62 *Provided further,* That this state or any political subdivision
63 thereof, or any such volunteer fire department, or duly
64 chartered rescue squad, shall be exempted from payment of
65 such charge.

66 Such certificate shall be good for the life of the vehicle, so
67 long as the same is owned or held by the original holder of
68 such certificate, and need not be renewed annually, or any
69 other time, except as herein provided.

70 If, by will or direct inheritance, a person becomes the owner
71 of a motor vehicle and the tax herein imposed previously has
72 been paid, to the department of motor vehicles, on that
73 vehicle, he shall not be required to pay such tax.

74 A person who has paid the tax imposed by this section shall
75 not be required to pay the tax a second time for the same
76 motor vehicle, but he shall be required to pay a charge of five
77 dollars for the certificate of retitling of that motor vehicle,
78 except that such tax shall be paid by such person when the
79 title to such vehicle has been transferred either in this or
80 another state from such person to another person and
81 transferred back to such person.

82 Notwithstanding any provisions of this code to the
83 contrary, the owners of trailers, semitrailers and other
84 vehicles not subject to the certificate of title tax prior to the
85 enactment of this chapter shall be subject to the privilege tax
86 imposed by this section: *Provided*, That mobile homes, house
87 trailers, modular homes and similar nonmotive propelled
88 vehicles susceptible of being moved upon the highways but
89 primarily designed for habitation and occupancy, rather than
90 for transporting persons or property, or any vehicle operated
91 on a nonprofit basis and used exclusively for the
92 transportation of mentally retarded or physically
93 handicapped children when the application for certificate of
94 registration for such vehicle is accompanied by an affidavit
95 stating that such vehicle will be operated on a nonprofit basis
96 and used exclusively for the transportation of mentally
97 retarded and physically handicapped children, shall not be
98 subject to the tax imposed by this section, but shall be
99 taxable under the provisions of articles fifteen and fifteen-a,
100 chapter eleven of this code.

101 If any person making any affidavit required under any
102 provision of this section, shall therein knowingly swear
103 falsely, or if any person shall counsel, advise, aid or abet
104 another in the commission of false swearing, he shall be
105 guilty of a misdemeanor, and, on conviction thereof, shall be
106 fined not more than one hundred dollars or be imprisoned in
107 the county jail for a period not to exceed thirty days, or in the
108 discretion of the court be subject to both such fine and
109 imprisonment.

§17A-3-14. Registration plates generally.

1 The department upon registering a vehicle shall issue to the
2 owner one registration plate for a motorcycle, trailer,
3 semitrailer or other motor vehicle.

4 Every registration plate shall have displayed upon it the
5 registration number assigned to the vehicle for which it is
6 issued, also the name of this state, which may be abbreviated,
7 and the year number for which it is issued or the date of
8 expiration thereof.

9 Such registration plate and the required letters and
10 numerals thereon, except the year number for which issued
11 or the date of expiration, shall be of sufficient size to be
12 plainly readable from a distance of one hundred feet during
13 daylight, said registration numbering to begin with number
14 two.

15 The color of the registration plates shall be blue and gold of
16 reflectorized material.

17 The department shall not issue, permit to be issued, or
18 distribute any special numbers except as follows:

19 (a) The governor shall be issued registration plates, on one
20 of which shall be imprinted the numeral one and on the other
21 the word one.

22 (b) Upon appropriate application, there shall be issued to
23 the secretary of state, state superintendent of free schools,
24 auditor, treasurer, commissioner of agriculture, and the
25 attorney general, the members of both houses of the
26 Legislature, including the clerks thereof, the judges of the
27 supreme court of appeals of West Virginia, the
28 representatives and senators of the state in the Congress of
29 the United States, the judges of the United States district
30 courts for the state of West Virginia and the judges of the
31 United States court of appeals for the fourth circuit, if any of
32 said judges shall be residents of West Virginia, a special
33 registration plate for a motor vehicle owned by him or his
34 wife, but not to exceed one plate for each such official, which
35 plate shall bear the initials of the individual, or any
36 combination of letters not to exceed three, which
37 combination of letters shall be limited to a contraction of the
38 proper name or names of such individual or a familiar form
39 applicable to such names or a name by which the individual is
40 generally known, and shall not include any name that might
41 be construed as a slogan or advertisement which has no
42 relation to the name or names of such individual or to a

43 reasonable name by which he is generally known, together
44 with a designation of his office and which plate shall
45 supersede, during his term of office and while such motor
46 vehicle is owned by him or his wife, the regular numbered
47 plate assigned to him.

48 (c) Upon appropriate application, any owner of a motor
49 vehicle subject to Class A registration under the provisions of
50 this article may request that the department issue to him a
51 registration plate bearing a maximum of five letters or
52 numbers. The department shall attempt to comply with such
53 request wherever possible and shall promulgate appropriate
54 rules and regulations for the orderly distribution of such
55 plates: *Provided*, That for purposes of this subdivision, such
56 registration plates so requested and issued shall include all
57 plates bearing the numbers two through two thousand and
58 shall be subject to the provisions of subdivision (e) of this
59 section.

60 (d) Upon appropriate application, there shall be issued to
61 any disabled veteran, who is exempt from the payment of
62 registration fees under the provisions of this chapter, a
63 registration plate which bears the letters "DV" in red, and
64 also the regular identification numerals in red.

65 (e) In addition to the regular registration fees set forth in
66 section three, article ten of this chapter, a fee of forty dollars
67 shall be paid to the department in each case in which an
68 application for a special registration plate is made as provided
69 in subdivisions (a), (b) and (c): *Provided, however*, That
70 nothing in this section shall be construed to require a charge
71 for a free prisoner of war license plate authorized by other
72 provisions of this code.

73 Notwithstanding the provisions of this section, or of any
74 other provision of this chapter, the commissioner may, in his
75 discretion, issue a type of registration plate suitable for
76 permanent use on motor vehicles, trailers and semitrailers,
77 together with appropriate devices to be attached thereto to
78 indicate the year for which such vehicles have been properly
79 registered or the date of expiration of such registration. The
80 design of such plates shall be determined by the
81 commissioner.

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-1. Registration expires on transfer by owner; transfer, surrender or retention of plates.

§17A-4-5. Transfer by operation of law.

§17A-4-1. Registration expires on transfer by owner; transfer, surrender or retention of plates.

1 Whenever the owner of a registered vehicle transfers or
2 assigns his title, or interest thereto, the registration of such
3 vehicle shall expire: *Provided, however,* That such owner, if
4 he has made application to the department to have said
5 registration plates transferred to be used on another vehicle
6 owned by said owner, may then operate the other vehicle for a
7 period of forty days, but in no event longer than forty days
8 from the date of original transfer. Upon such transfer, it shall
9 be the duty of the original owner to retain the registration
10 plates issued therefor and to immediately notify the
11 commissioner of such transfer upon such form as may be
12 provided therefor and to deliver to him the certificate of
13 registration, whereupon the commissioner shall, upon the
14 payment of a fee of five dollars, issue a new certificate
15 showing the use to be made of such plates. Such plates may
16 then be used by such owner on another vehicle of the same
17 class as the vehicle for which they were originally issued if
18 such other vehicle does not require a greater license fee than
19 was required for such original vehicle. If such other vehicle
20 requires a greater license fee than such original vehicle, then
21 such plates may be used by paying such difference to the
22 commissioner. When such transfer of ownership is made to a
23 licensed dealer in motor vehicles it shall be the duty of such
24 dealer to immediately execute notification of transfer, in
25 triplicate, and to have this notification properly signed by the
26 owner making the transfer. The dealer shall immediately
27 forward to the department the original copy of the
28 notification of transfer. One copy of the notification of
29 transfer shall be given to the owner and one shall be retained
30 by the dealer. The owner shall immediately send to the
31 department the transfer fee of five dollars with any additional
32 fee that may be required under the terms of this chapter. The
33 owner's copy, properly signed by the dealer, will be the
34 owner's identification until he receives a new registration
35 card from the department.

36 The owner of a set of registration plates may surrender
37 them to the commissioner together with the registration card
38 and, upon the payment of five dollars as an exchange fee and
39 upon the payment of such additional fees as are necessary to
40 equalize the value of the plates surrendered with the value of
41 registration plates desired, receive in exchange a set of plates
42 and registration card for a vehicle of a different class.

§17A-4-5. Transfer by operation of law.

1 Whenever the title or interest of an owner in or to a
2 registered vehicle shall pass to another otherwise than by
3 voluntary transfer, the registration thereof shall expire and
4 the vehicle shall not be operated upon the highways unless
5 and until the person entitled to possession of such vehicle
6 shall apply for and obtain the registration thereof, except that
7 such vehicle may be operated by the person entitled to its
8 possession or his legal representative upon the highways for a
9 distance not exceeding seventy-five miles upon displaying
10 upon such vehicle the registration plates issued to the former
11 owner, or in the event title has become vested in the person
12 holding a lien or encumbrance upon said vehicle such person
13 may apply to the department for and obtain special plates as
14 may be issued under this chapter to dealers and may operate
15 any said repossessed vehicle under such special plates only
16 for purposes of transporting the same to a garage or
17 warehouse or for purposes of demonstrating or selling the
18 same: *Provided*, That the commissioner is authorized to
19 transfer the plates of a deceased person to his legal heir or
20 legatee upon payment of a transfer fee of five dollars.

21 Upon any transfer the new owner may secure a new
22 registration and certificate of title upon proper application
23 and upon presentation of the last certificate of title if
24 available, and such instruments or documents of authority or
25 certified copies thereof as may be sufficient or required by
26 law to evidence or effect a transfer of title or interest in or to
27 chattels in such case.

**ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON
CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND
PURCHASERS.**

§17A-4A-10. Fee for recording and release of lien.

1 The department of motor vehicles is hereby authorized to

2 charge a fee of five dollars for the recording of any lien
3 created by the voluntary act of the owner and endorsing it
4 upon such title certificate issued pursuant to this article, and
5 the department of motor vehicles is hereby authorized to
6 charge a fee of fifty cents for recordation of any release of a
7 lien created by the voluntary act of the owner: *Provided*, That
8 no charge shall be made for the endorsement and recordation
9 of liens or releases thereof as provided under section nine of
10 this article.

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS;
SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.**

§17A-6-15. Temporary registration plates or markers.

1 (a) In order to permit a vehicle which is sold to a purchaser
2 by a dealer to be operated on the streets and highways
3 pending receipt of the annual registration plate from the
4 department for such vehicle, the commissioner may, subject
5 to the limitations and conditions hereinafter set forth, deliver
6 temporary vehicle registration plates or markers to dealers
7 who in turn may, subject to the limitations and conditions
8 hereinafter set forth, issue the same to purchasers of vehicles,
9 but such purchasers must comply with the pertinent
10 provisions of this section.

11 (b) Application by a dealer to the commissioner for such
12 temporary registration plates or markers shall be made on the
13 form prescribed and furnished by the commissioner for such
14 purpose and shall be accompanied by a fee of three dollars for
15 each such temporary registration plate or marker. No refund
16 or credit of fees paid by dealers to the commissioner for
17 temporary registration plates or markers shall be allowed,
18 except that in the event the commissioner discontinues the
19 issuance of such temporary plates or markers, dealers
20 returning temporary registration plates or markers to the
21 commissioner may petition for and be entitled to a refund or a
22 credit thereof. No temporary registration plates or markers
23 shall be delivered by the commissioner to any dealer in house
24 trailers only, and no such temporary plates or markers shall
25 be issued for or used on any house trailer for any purpose.

26 (c) Every dealer who has made application for and
27 received temporary registration plates or markers shall
28 maintain in permanent form a record of all temporary

29 registration plates or markers delivered to him, a record of all
30 temporary registration plates or markers issued by him, and a
31 record of any other information pertaining to the receipt or
32 the issuance of temporary registration plates or markers
33 which the commissioner may require. Each such record shall
34 be kept for a period of at least three years from the date of the
35 making thereof. Every dealer who issues a temporary
36 registration plate or marker shall, within three days after he
37 issues such plate or marker, send to the department a copy of
38 the temporary registration plate or marker certificate
39 properly executed by such dealer and the purchaser. No
40 temporary registration plates or markers may be delivered to
41 any dealer until such dealer has fully accounted to the
42 commissioner for the temporary registration plates or
43 markers last delivered to such dealer, by showing the number
44 issued to purchasers by such dealer and any on hand.

45 (d) A dealer shall not issue, assign, transfer or deliver a
46 temporary registration plate or marker to anyone other than
47 the bona fide purchaser of the vehicle to be registered; nor
48 shall a dealer issue a temporary registration plate or marker to
49 anyone possessed of an annual registration plate for a vehicle
50 which has been sold or exchanged, except a dealer may issue
51 a temporary registration plate or marker to the bona fide
52 purchaser of a vehicle to be registered who possesses an
53 annual registration plate of a different class and makes
54 application to the department to exchange such annual
55 registration plate of a different class in accordance with the
56 provisions of section one, article four of this chapter; nor shall
57 a dealer lend to anyone, or use on any vehicle which he may
58 own, a temporary registration plate or marker. It shall be
59 unlawful for any dealer to issue any temporary registration
60 plate or marker knowingly containing any misstatement of
61 fact, or knowingly to insert any false information upon the
62 face thereof.

63 (e) Every dealer who issues temporary registration plates
64 or markers shall affix or insert clearly and indelibly on the
65 face of each temporary registration plate or marker the date of
66 issuance and expiration thereof, and the make and motor or
67 serial number of the vehicle for which issued.

68 (f) If the commissioner finds that the provisions of this
69 section or his directions are not being complied with by a

70 dealer, he may suspend the right of such dealer to issue
71 temporary registration plates or markers.

72 (g) Every person who is issued a temporary registration
73 plate or marker shall execute and send an application for an
74 annual registration plate to the department, previous to or not
75 later than fifteen days from the day on which the temporary
76 registration plate or marker is issued to such purchaser.

77 (h) Every person to whom a temporary registration plate
78 or marker has been issued shall permanently destroy such
79 temporary registration plate or marker immediately upon
80 receiving the annual registration plate for such vehicle from
81 the department: *Provided*, That if the annual registration
82 plate is not received within forty days of the issuance of the
83 temporary registration plate or marker, the owner shall,
84 notwithstanding the fact that the annual registration plate has
85 not been received, immediately and permanently destroy the
86 temporary registration plate or marker: *Provided, however*,
87 That not more than one temporary registration plate or
88 marker shall be issued to the same bona fide purchaser for the
89 same vehicle.

90 (i) A temporary registration plate or marker shall expire
91 and become void upon the receipt of the annual registration
92 plate from the department or upon the rescission of the
93 contract to purchase the vehicle in question, or upon the
94 expiration of forty days from the date of issuance, depending
95 upon whichever event shall first occur.

**ARTICLE 9. OFFENSES AGAINST REGISTRATION LAWS AND SUSPENSION
OR REVOCATION OF REGISTRATION.**

**§17A-9-7. Surrender of evidences of registration, etc., upon
cancellation, suspension or revocation; willful
failure or refusal to surrender; fee for
reinstatement.**

1 Whenever the registration of a vehicle, a certificate of title, a
2 registration card, registration plate or plates, a temporary
3 registration plate or marker, the right to issue temporary
4 registration plates or markers, any nonresident or other
5 permit, or any license certificate or dealer special plates
6 issued under the provisions of article six of this chapter, is
7 cancelled, suspended or revoked as authorized in this

8 chapter, the owner, holder or other person in possession of
9 such evidences shall, except as otherwise provided in said
10 article six, immediately return the evidences of the
11 registration, title, permit or license so cancelled, suspended,
12 or revoked, together with any dealer special plates relating to
13 any such license certificate, or any dealer special plate or
14 plates if such alone be suspended, to the department:
15 *Provided, That,* the owner or holder shall, before such
16 reinstatement, pay a fee of ten dollars in addition to all other
17 fees, which sum shall be collected by the department and
18 credited to the state road fund to be appropriated to the
19 department for use in enforcement of the provisions of this
20 code. If any person shall willfully fail or refuse to return to the
21 department the evidences of the registration, title, permit or
22 license so cancelled, suspended, or revoked, or any dealer
23 special plates, when obligated so to do as aforesaid, the
24 commissioner shall forthwith notify the superintendent of
25 the department of public safety who shall, as soon as possible,
26 secure possession thereof and return same to the department.
27 Said superintendent of the department of public safety shall
28 make a report in writing to the commissioner, within two
29 weeks after being so notified by the commissioner, as to the
30 result of his efforts to secure the possession and return of
31 such evidences of registration, title, permit or license, or any
32 dealer special plates. For each registration, certificate of title,
33 registration card, registration plate or plates, temporary
34 registration plate or marker, permit, license certificate, or
35 dealer special plate, which the owner, holder or other person
36 in possession thereof shall have willfully failed or refused, as
37 aforesaid, to return to the department within ten days from
38 the time that such cancellation, suspension or revocation
39 becomes effective, and which shall have been certified to the
40 superintendent of the department of public safety as
41 aforesaid, the owner or holder shall, before the same may be
42 reinstated, if reinstatement is permitted, in addition to all
43 other fees and charges, pay a fee of fifteen dollars, which fee
44 shall be collected by the department of motor vehicles, paid
45 into the state treasury and credited to the general fund to be
46 appropriated to the department of public safety for
47 application in the enforcement of the road laws. A total of
48 twenty-five dollars may be collected on each such
49 reinstatement for each vehicle to which any such
50 cancellation, suspension or revocation relates.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-10. Fees upon transfer of registration and issuance of certificates of title.

§17A-10-11. Fees for duplicate registration plates, registration cards and certificates of title.

§17A-10-14. Registration plate for amateur radio station operators.

§17A-10-10. Fees upon transfer of registration and issuance of certificates of title.

1 A fee of five dollars shall be paid for a transfer of
2 registration by an owner from one vehicle to another vehicle
3 of the same class or for surrender of registration of one
4 vehicle in exchange for registration of a vehicle of a different
5 class in addition to the payment of any difference in fees as
6 provided in section one, article four of this chapter.

7 A fee of five dollars shall be paid for the transfer of
8 registration from a deceased person to his legal heir or legatee
9 as provided in section five, article four of this chapter.

10 A fee of five dollars shall be paid for the issuance of a
11 certificate of title.

§17A-10-11. Fees for duplicate registration plates, registration cards and certificates of title.

1 A fee of five dollars shall be paid for the issuance of
2 duplicate or substitute registration plates, registration cards
3 or certificates of title.

§17A-10-14. Registration plate for amateur radio station operators.

1 Any owner of a motor vehicle who is a resident of the state
2 of West Virginia, and who holds an unrevoked and unexpired
3 official amateur radio station license and/or amateur class
4 operators' license issued by the federal communications
5 commission, upon application, accompanied by proof of
6 ownership of such amateur radio station license, complying
7 with the motor vehicle laws of the state relative to registration
8 and licensing of motor vehicles, and upon payment of the
9 registration, license and other fees required by law, and the
10 payment of the additional special fee herein provided, shall
11 be issued a license plate for a private passenger car, upon
12 which, in lieu of the registration number prescribed by law,
13 shall be inscribed the official amateur radio call letters of

14 such applicant as assigned by the federal communications
15 commission.

16 The special fee that shall be charged each applicant for the
17 issuance of a license plate bearing the official amateur radio
18 call letters, in lieu of a registration number, shall be five
19 dollars, which special fee shall be in addition to all other fees
20 required by law. This special fee is for the purpose of
21 compensating the department of motor vehicles for
22 additional costs and services required in the issuing of such
23 licenses.

24 The commissioner is authorized to prescribe proper forms
25 to be used in making application for the special license plates
26 authorized by this section.

CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSES.

Article

2. Issuance of License, Expiration and Renewal.
3. Cancellation, Suspension or Revocation of Licenses.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

- §17B-2-8. Issuance and contents of licenses; license fees.
§17B-2-11. Duplicate permits and licenses.
§17B-2-12. Expiration of licenses; renewal fees.

***§17B-2-8. Issuance and contents of licenses; license fees.**

1 On and after the first day of January, one thousand nine
2 hundred eighty-two, the department shall, upon payment of
3 the required fee, issue to every applicant qualifying therefor
4 an operator's or chauffeur's license which license shall
5 contain a coded number assigned to the licensee, the full
6 name, date of birth, residence address, a brief description and
7 a color photograph of the licensee and either a facsimile of the
8 signature of the licensee or a space upon which the signature
9 of the licensee shall be written with pen and ink immediately
10 upon receipt of the license. No license shall be valid until it
11 has been so signed by the licensee. The department shall use
12 such process or processes in the issuance of licenses that will,
13 insofar as possible, prevent any alteration, counterfeiting,

*Clerk's Note: This section was also amended by S. B. 711-S which, according to the official records in the office of the Clerk of the House of Delegates, was passed subsequent to the passage of this act.

14 duplication, reproduction, forging or modification of, or the
15 superimposition of a photograph on, such license. The color
16 photograph shall be contained on all licenses issued on and
17 after the first day of January, one thousand nine hundred
18 eighty-two, and upon every such license issued under the
19 provisions of section twelve of this article.

20 The fee for the issuance of an operator's license shall be ten
21 dollars. The fee for the issuance of a chauffeur's license shall
22 be fifteen dollars.

§17B-2-11. Duplicate permits and licenses.

1 In the event that an instruction permit, operator's license or
2 chauffeur's license issued under the provisions of this
3 chapter is lost or destroyed, the person to whom such permit
4 or license was issued may upon making proper application
5 and upon payment of a fee of five dollars obtain a duplicate
6 thereof upon furnishing proof satisfactory to the department
7 that such permit or license has been lost or destroyed.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

1 On and after the first day of January, one thousand nine
2 hundred eighty-two, every operator's license and every
3 chauffeur's license shall expire four years from the date of its
4 issuance, except that the operator's or chauffeur's license of
5 any person in the armed forces shall be extended for a period
6 of six months from the date the person is separated under
7 honorable circumstances from active duty in the armed
8 forces.

9 A person who allows his operator's or chauffeur's license to
10 expire may apply to the department for renewal thereof.
11 Application shall be made upon a form furnished by the
12 department and shall be accompanied by payment of the fee
13 required by section eight of this article plus an additional fee
14 of one dollar and fifty cents. The commissioner shall
15 determine whether such person qualifies for a renewed
16 license and may, in his discretion, renew any expired license
17 without examination of the applicant.

18 On and after the first day of January, one thousand nine
19 hundred eighty-two, each renewal of an operator's or
20 chauffeur's license shall contain a new color photograph of
21 the licensee. By first class mail to the address last known to

22 the department, the commissioner shall notify each person
23 who holds a valid operator's or chauffeur's license of the
24 expiration date of the license. The notice shall be mailed at
25 least thirty days prior to the expiration date of the license and
26 shall include a renewal application form.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

***§17B-3-9. Surrender and return of license; willful refusal to return; additional fee for reinstatement.**

1 The department upon suspending or revoking a license
2 shall require that such license shall be surrendered to and be
3 retained by the department, except that at the end of the
4 period of suspension such license so surrendered shall be
5 returned to the licensee: *Provided*, That, before such license
6 may be reinstated, the licensee shall pay a fee of ten dollars, in
7 addition to all other fees and charges, which fee shall be
8 collected by the department and deposited in the state road
9 fund to be appropriated to the department for use in the
10 enforcement of the provisions of this section. If any person
11 shall willfully fail to return to the department such suspended
12 or revoked license, the commissioner shall forthwith notify
13 the superintendent of the department of public safety who
14 shall, as soon as possible, secure possession thereof and
15 return same to the department. Said superintendent of the
16 department of public safety shall make a report in writing to
17 the commissioner, within two weeks after being so notified
18 by the commissioner, as to the result of his efforts to secure
19 the possession and return of such license. For each license
20 which shall have been suspended or revoked and which the
21 holder thereof shall have willfully failed to return to the
22 department within ten days from the time that such
23 suspension or revocation becomes effective and which shall
24 have been certified to the superintendent of the department
25 of public safety as aforesaid, the holder thereof, before the
26 same may be reinstated, in addition to all other fees and
27 charges, shall pay a fee of fifteen dollars, which shall be
28 collected by the department of motor vehicles and paid into
29 the state treasury and credited to the general fund to be
30 appropriated to the department of public safety for
31 application in the enforcement of the road laws.

***Clerks's Note:** This section was also amended by S. B. 711-S which, according to the official records in the Office of the Clerk of the House of Delegates, was passed subsequent to the passage of this act.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2. ADMINISTRATION OF LAW.

§17D-2-2. Commissioner to furnish abstract of operating record; fee for abstract.

1 The commissioner shall upon request furnish any person a
2 certified abstract of the operating record of any person
3 subject to the provisions of this chapter, which abstract shall
4 fully designate the vehicles, if any, registered in the name of
5 such person, and if there shall be no record of any conviction
6 of such person of a violation of any law relating to the
7 operation of a motor vehicle or of any injury or damage
8 caused by such person the commissioner shall so certify. The
9 commissioner shall collect three dollars for each abstract.

CHAPTER 157

(Com. Sub. for S. B. 386—By Mr. Huffman)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and seven, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter seventeen-d of said code by adding thereto a new article, designated article two-a; and to amend and reenact section one, article six-a, chapter thirty-three of said code, all relating to requirement of minimum level of security for registration and operation of a motor vehicle in this state; application for registration; application contents; presentation of proof of security; penalties for providing false information or proof of security; fee required of applicant; special revolving fund for operation of program; additional grounds for refusing registration or certificate of title; security requirements; types of security permitted; application as to certain vehicles; exceptions; certificate of insurance; obligations of insurer and insured in regard thereto; notice of cancellation or

nonrenewal of insurance policy; minimum term of such policy; investigation of accident to include inquiry regarding security; notice to department of motor vehicles; suspension, revocation and impoundment of operator's license and/or vehicle registration; notice; hearing; judicial review; reinstatement of license; reissuance of registration; conditions; criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17D. Motor Vehicle Safety Responsibility Law.

33. Insurance.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTI-THEFT PROVISIONS.

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

§17A-3-3. Application for registration.

§17A-3-7. Grounds for refusing registration or certificate of title.

§17A-3-3. Application for registration.

1 (a) Every owner of a vehicle subject to registration
 2 hereunder shall make application to the department for
 3 the registration thereof upon the appropriate form or
 4 forms furnished by the department and every such ap-
 5 plication shall bear the signature of the owner or his
 6 authorized agent, written with pen and ink, and said
 7 application shall contain:

8 (1) The name, bona fide residence and mailing address
 9 of the owner, the county in which he resides, or busi-

10 ness address of the owner if a firm, association or corp-
11 oration.

12 (2) A description of the vehicle including, insofar as
13 the hereinafter specified data may exist with respect to
14 a given vehicle, the make, model, type of body, the
15 manufacturer's serial or identification number or other
16 number as determined by the commissioner.

17 (3) In the event a motor vehicle is designated, con-
18 structed, converted or rebuilt for the transportation of
19 property, the application shall include a statement of its
20 declared gross weight if such motor vehicle is to be used
21 alone, or if such motor vehicle is to be used in combin-
22 ation with other vehicles the application for registration
23 of such motor vehicle shall include a statement of the
24 combined declared gross weight of such motor vehicle
25 and the vehicles to be drawn by such motor vehicle;
26 declared gross weight being the weight declared by the
27 owner to be the actual combined weight of the vehicle
28 or combination of vehicles and load when carrying the
29 maximum load which the owner intends to place thereon;
30 and the application for registration of each such vehicle
31 shall also include a statement of the distance between
32 the first and last axles of that vehicle or combination of
33 vehicles. The declared gross weight stated in the ap-
34 plication shall not exceed the permissible gross weight
35 for the axle spacing listed therein as determined by the
36 table of permissible gross weights contained in chapter
37 seventeen-c of this code; and any vehicle registered
38 for a declared gross weight as stated in the application
39 shall be subject to the single-axle load limit set forth in
40 chapter seventeen-c of this code.

41 (4) Each such applicant shall state whether such
42 vehicle is or is not to be used in the public transporta-
43 tion of passengers or property, or both, for compensa-
44 tion, and if so used, or to be used, the applicants shall so
45 certify, and shall, as a condition precedent to the regis-
46 tration of such vehicle, obtain a certificate of convenience,
47 or permit from the public service commission.

48 (5) A statement that liability insurance is in effect

49 within limits which shall be no less than the require-
50 ment of section two, article four, chapter seventeen-d
51 of this code, or that the applicant has qualified as a self-
52 insurer meeting the requirements of section two, article
53 six, chapter seventeen-d of the code and that as a self-
54 insurer he has complied with the minimum security re-
55 quirements as established in section two, article four, of
56 said chapter seventeen-d, or that such applicant has
57 submitted bond or other security approved by the com-
58 missioner of motor vehicles which shall provide the
59 equivalent of the policy of insurance herein specified,
60 or that the applicant has submitted the required cash
61 or other securities with the state treasurer as set forth
62 in the provisions of section sixteen, article four, of said
63 chapter seventeen-d of this code.

64 The department shall make random periodic checks
65 of the applications required by this section to enforce
66 the requirements hereof.

67 If any person making an application required under
68 the provision of this section, therein knowingly provides
69 false information, or if any person knowingly counsels,
70 advises, aids or abets another in providing false informa-
71 tion in such application, he is guilty of a misdemeanor,
72 and, upon conviction thereof, shall be fined not more than
73 one hundred dollars, or be imprisoned in the county jail
74 for a period not to exceed thirty days, and shall have his
75 operator's or chauffeur's license and vehicle registration
76 suspended for a period of six months in addition to either
77 of the aforesaid penalties.

78 (6) Such further information as may reasonably be
79 required by the department to enable it to determine
80 whether the vehicle is lawfully entitled to registration.

81 (7) Each such application for registration shall be
82 accompanied by the fees hereafter provided.

83 (b) Every applicant for registration of a motor vehicle
84 under the provisions of this article shall, at the time of
85 making application for registration required by this sec-
86 tion, submit the following:

87 (1) A certificate of insurance obtained by the applicant
88 pursuant to the provisions of section three, article two-a,
89 chapter seventeen-d of the code, or

90 (2) Proof of other security provided by the applicant
91 pursuant to the provisions of section three, article two-a,
92 chapter seventeen-d of the code, and

93 (3) A fee of two dollars for each motor vehicle for
94 which the applicant seeks registration, such fee to be
95 deposited in a special revolving fund for the operation
96 by the department of its functions established by the
97 provisions of article two-a, chapter seventeen-d of the
98 code.

99 Any applicant knowingly submitting false proof of
100 security in making application required by this section
101 is guilty of a misdemeanor, and, upon conviction thereof,
102 shall be fined not more than one hundred dollars, or be
103 imprisoned in the county jail not to exceed thirty days,
104 or both fined and imprisoned, and in addition to such
105 fine and/or imprisonment, such person shall have his oper-
106 ator's or chauffeur's license and vehicle registration sus-
107 pended for a period of six months.

§17A-3-7. Grounds for refusing registration or certificate of title.

1 The department shall refuse registration or issuance of
2 a certificate of title or any transfer of registration upon
3 any of the following grounds:

4 (1) That the application contains any false or fraudu-
5 lent statement or that the applicant has failed to furnish
6 required information or reasonable additional information
7 requested by the department or that the applicant is not
8 entitled to the issuance of a certificate of title or registra-
9 tion of the vehicle under this chapter;

10 (2) That the applicant fails to present a certificate of
11 insurance or proof of other security as required pursuant
12 to the provisions of section three of this article;

13 (3) That the vehicle is mechanically unfit or unsafe to
14 be operated or moved upon the highways;

15 (4) That the department has reasonable grounds to be-
 16 lieve that the vehicle is a stolen or embezzled vehicle or
 17 that the granting of registration or the issuance of cer-
 18 tificate of title would constitute a fraud against the right-
 19 ful owner or other person having a valid lien upon such
 20 vehicle;

21 (5) That the registration of the vehicle stands sus-
 22 pended or revoked for any reason as provided in the
 23 motor vehicle laws of this state;

24 (6) That the required fees have not been paid.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-1. Purpose of article.

§17D-2A-2. Scope of article.

§17D-2A-3. Required security; exceptions.

§17D-2A-4. Certificate of insurance.

§17D-2A-5. Cancellation of insurance policy; suspension of registration;
 minimum policy term.

§17D-2A-6. Accident investigators to check for security.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

§17D-2A-8. Rules and regulations.

§17D-2A-9. Criminal penalties.

§17D-2A-1. Purpose of article.

1 The purpose of this article is to promote the public
 2 welfare by requiring every owner or registrant of a motor
 3 vehicle licensed in this state to maintain certain security
 4 during the registration period for such vehicle.

§17D-2A-2. Scope of article.

1 This article applies to the operation of all motor ve-
 2 hicles required to be registered pursuant to article three,
 3 chapter seventeen-a of this code, with the exception of
 4 motor vehicles owned by the state, any of its political
 5 subdivisions or by the federal government.

§17D-2A-3. Required security; exceptions.

1 Every owner or registrant of a motor vehicle required
 2 to be registered and licensed in this state shall maintain

3 security as hereinafter provided in effect continuously
4 throughout the registration or licensing period.

5 Every nonresident owner or registrant of a motor ve-
6 hicle, which is operated upon any road or highway of this
7 state, and which has been physically present within this
8 state for more than thirty days during the preceding three
9 hundred sixty-five days, shall thereafter maintain secur-
10 ity as hereinafter provided in effect continuously
11 throughout the period such motor vehicle remains with-
12 in this state.

13 No person shall knowingly drive or operate upon any
14 road or highway in this state any motor vehicle upon
15 which security is required by the provisions of this article
16 unless such security is in effect.

17 Such security shall be provided by one of the following
18 methods:

19 (a) By an insurance policy delivered or issued for the
20 delivery in this state by an insurance company authorized
21 to issue vehicle liability and property insurance policies
22 in this state within limits which shall be no less than the
23 requirements of section two, article four, and section five,
24 article three, chapter seventeen-d of this code, or

25 (b) By any other method approved by the commis-
26 sioner of the department of motor vehicles of this state as
27 affording security equivalent to that offered by a policy
28 of insurance, including qualification as a self-insurer un-
29 der the provisions of section two, article six, chapter sev-
30 enteen-d, or

31 (c) By depositing with the state treasurer such cash or
32 other securities in the manner set forth in section sixteen,
33 article four, chapter seventeen-d of this code.

34 The requirements of this section apply to every regis-
35 tered and licensed vehicle upon the next application for
36 renewal of license following the effective date of this
37 section: *Provided*, That this article shall not apply to any
38 motor vehicle owned by the state or by a political subdivi-
39 sion of this state, nor to any motor vehicle owned by the
40 federal government.

§17D-2A-4. Certificate of insurance.

1 (a) All insurance carriers transacting insurance in this
2 state, shall supply a certificate to the insured or to any
3 person subject to the registration provisions of article
4 three, chapter seventeen-a of this code, certifying that
5 there is in effect a motor vehicle liability policy upon such
6 motor vehicle in accordance with the provisions of article
7 three of chapter seventeen-a of this code. The certificate
8 shall give its effective date and the effective date of the
9 policy and, unless the policy is issued to a person who is
10 not the owner of a motor vehicle, must designate by ex-
11 plicit description, in such detail as the commissioner of
12 the department of motor vehicles shall by rule require
13 all motor vehicles covered and all replacement vehicles
14 of similar classification. The certificate must specify for
15 each vehicle listed therein, that there is a minimum lia-
16 bility insurance coverage not less than the requirements of
17 section two, article four, and section five, article three,
18 chapter seventeen-d of this code.

19 (b) The certificate of insurance provided pursuant to
20 the provisions of this section shall be submitted to the
21 commissioner of motor vehicles prior to the issuance of
22 any certificate of registration or renewal or registration of
23 any motor vehicle or registration plates pursuant to arti-
24 cle three, chapter seventeen-a of this code.

§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.

1 (a) Cancellation or termination of the insurance policy
2 by the insurance carrier is effective only upon the expira-
3 tion of thirty days' notice of cancellation, or forty-five
4 days' notice in the case of nonrenewal, to the commission-
5 er of motor vehicles and to the insured.

6 (b) The commissioner of motor vehicles shall, upon
7 receipt of notice of cancellation or nonrenewal of insur-
8 ance, as provided in this section, suspend the registration
9 of any motor vehicle for which the insurance policy has
10 been cancelled or renewal of which has been refused, un-
11 less the registrant furnishes the commissioner of motor

12 vehicles a new certificate of insurance within applicable
13 notice period as provided in subsection (a) of this section:
14 *Provided*, That the registrant shall be given notice and
15 afforded an opportunity for hearing and judicial review
16 thereof in accordance with the provisions of subsection
17 (c), section seven of this article.

18 (c) No policy of motor vehicle liability insurance issued
19 or delivered for issuance in this state shall be contracted
20 for a period of less than ninety days: *Provided, however*,
21 That certain exceptions to such ninety-day requirement
22 may be established under regulations of the commissioner
23 of insurance.

§17D-2A-6. Accident investigators to check for security.

1 At the time of investigation of a motor vehicle accident
2 in this state by the department of public safety or other
3 law-enforcement agency, the officer of such agency mak-
4 ing such investigation shall inquire of the operators of
5 any motor vehicles involved and of the department of
6 motor vehicles as to the existence upon such vehicle or
7 vehicles of the security required by the provisions of this
8 article and upon a finding by such law-enforcement agen-
9 cy, officer or agent thereof that the security required by
10 the provisions of this article is not in effect, as to any such
11 vehicle, he shall promptly notify the department of motor
12 vehicles of such finding.

**§17D-2A-7. Suspension or revocation of license, registration;
reinstatement.**

1 (a) Any owner of a motor vehicle, subject to the pro-
2 visions of this article, who fails to have the required
3 security in effect at the time such vehicle is being oper-
4 ated upon the roads or highways of this state, shall have
5 his operator's or chauffeur's license suspended by the
6 commissioner of the department of motor vehicles for a
7 period of ninety days and shall have his motor vehicle
8 registration revoked until such time as he shall present
9 to the department of motor vehicles the proof of security
10 required by this article.

11 (b) Any person who knowingly operates a motor ve-

12 hicle upon the roads or highways of this state, which does
13 not have the security required by the provisions of this
14 article, shall have his operator's or chauffeur's license
15 suspended by the commissioner of the department of
16 motor vehicles for a period of ninety days.

17 (c) No person shall have his operator's or chauffeur's
18 license or motor vehicle registration suspended or re-
19 voked under any provisions of this section unless he shall
20 first be given written notice of such suspension or revo-
21 cation sent by certified mail, at least fifteen days prior to
22 the effective date of such suspension or revocation, and
23 upon such person's written request, sent by certified mail,
24 he shall be afforded an opportunity for a hearing there-
25 upon as well as a stay of the commissioner's order of
26 suspension or revocation and an opportunity for judicial
27 review of such hearing as set forth in the provisions of
28 section fifteen, article three, chapter seventeen-d of this
29 code. Upon affirmation of the commissioner's order, the
30 owner or operator, as the case may be, shall surrender
31 such revoked license and/or registration or have the same
32 impounded in the manner set forth in the provisions of
33 section seven, article nine, chapter seventeen-a of the
34 code.

35 (d) Such suspended operator's or chauffeur's license
36 shall be reinstated following the period of suspension
37 upon compliance with the conditions set forth in this
38 article and such revoked motor vehicle registration shall
39 be reissued only upon lawful compliance with the pro-
40 visions of this article.

§17D-2A-8. Rules and regulations.

1 The commissioners of the departments of motor vehicles
2 and insurance are hereby authorized to promulgate such
3 rules and regulations, in accordance with chapter twenty-
4 nine-a of this code, as each deems necessary for the ad-
5 ministration, operation and enforcement of the provisions
6 of this article.

§17D-2A-9. Criminal penalties.

1 In addition to any other penalty provided for violation

2 of any provision of this article, any person who violates
3 any provision of this article is guilty of a misdemeanor,
4 and, upon conviction, shall be fined not less than one
5 hundred dollars nor more than one thousand dollars, or
6 imprisoned in the county jail not less than ten days nor
7 more than one year, or both fined and imprisoned.

8 The arrest procedures authorized in section four, ar-
9 ticle nineteen, chapter seventeen-c of this code shall ap-
10 ply to the enforcement of the provisions of this article.

CHAPTER 33. INSURANCE.

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMO- BILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

1 No insurer once having issued or delivered a policy
2 providing automobile liability insurance in this state in-
3 suring a private passenger automobile shall, after the
4 policy has been in effect for sixty days, or in case of re-
5 newal effective immediately, issue or cause to issue a
6 notice of cancellation during the term of the policy except
7 for one or more of the following specified reasons:

8 (a) The named insured fails to discharge when due any
9 of his obligations in connection with the payment of
10 premium for such policy or any installment thereof;

11 (b) The policy was obtained through material mis-
12 representation;

13 (c) The insured violates any of the material terms and
14 conditions of the policy;

15 (d) The named insured or any other operator, either
16 resident in the same household or who customarily oper-
17 ates an automobile insured under such policy:

18 (1) Has had his operator's license suspended or revoked
19 during the policy period including suspension or revoca-
20 tion for failure to comply with the provisions of article
21 five-a, chapter seventeen-c of this code regarding consent
22 for chemical test for intoxication; or

23 (2) Is or becomes subject to epilepsy or heart attacks,
24 and such individual cannot produce a certificate from a
25 physician testifying to his ability to operate a motor ve-
26 hicle.

27 (e) The named insured or any other operator, either
28 resident in the same household or who customarily oper-
29 ates an automobile insured under such policy is con-
30 victed of or forfeits bail during the policy period for any
31 of the following:

32 (1) Any felony or assault involving the use of a motor
33 vehicle;

34 (2) Negligent homicide arising out of the operation of
35 a motor vehicle;

36 (3) Operating a motor vehicle while under the influ-
37 ence of alcohol or of any controlled substance or while
38 having an alcohol concentration in his blood of ten one
39 hundredths of one percent (.10) or more by weight;

40 (4) Leaving the scene of a motor vehicle accident in
41 which the insured is involved without reporting as re-
42 quired by law;

43 (5) Theft of a motor vehicle or the unlawful taking of
44 a motor vehicle;

45 (6) Making false statements in an application for a
46 motor vehicle operator's license;

47 (7) A third violation, committed within a period of
48 twelve months, of any moving traffic violation which con-
49 stitutes a misdemeanor, whether or not the violations were
50 repetitious of the same offense or were different offenses.
51 Notwithstanding any of the provisions of this section to
52 the contrary, no insurance company may cancel a policy
53 of automobile liability insurance without first giving the
54 insured thirty days' notice of its intention to cancel.

CHAPTER 158

(Com. Sub. for H. B. 1379—By Mr. Shingleton)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to liens upon the titles to motor vehicles and the length of such liens; length of liens on mobile homes; refiling.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-15. Expiration of lien or encumbrance; refiling.

1 The filing of any lien or encumbrance and its recordation
2 upon the face of a certificate of title to any vehicle as provided
3 in this article shall be valid for a period of ten years only from
4 the date of such filing, unless the lien or encumbrance is refiled
5 in the manner provided in this article for filing and recordation
6 in the first instance, in which event the lien or encumbrance
7 shall be valid for successive additional periods of two years
8 from the date of each such refiling: *Provided*, That in the case
9 of a mobile home, the filing of any lien or encumbrance and
10 its recordation upon the face of a certificate of title to such
11 mobile home shall be valid for a period of fifteen years from
12 the date of such filing.

13 When the last lien or encumbrance shown on a certificate
14 of title becomes invalid by the passage of time as provided in
15 this section, the commissioner of motor vehicles shall not be
16 required to maintain a lien index as to such certificate of title.

CHAPTER 159

(S. B. 711-S—By Mr. Boettner, Mr. Ash, Mrs. Chace, Mr. Heck,
Mr. Holliday, Mr. McCune and Mr. White)

[Passed April 11, 1981; in effect September 1, 1981. Approved by the Governor.]

AN ACT to repeal sections four, five, six, seven and eight, article five-a, and article five-b, chapter seventeen-c; to amend and reenact sections seven and eight, article two; and sections five, eight and nine, article three, chapter seventeen-b; to amend and reenact section two, article five, and to further amend said article by adding thereto eight new sections, designated sections two-a, four, five, six, seven, eight, nine and ten; to amend and reenact sections one, two and three, article five-a, chapter seventeen-c; to further amend said article by adding thereto a new section, designated section four; to amend article six, chapter sixty by adding thereto a new section, designated section twenty-four, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to driving a motor vehicle under the influence of alcohol, controlled substances or drugs generally; requiring that applicants for a license to operate a motor vehicle shall be tested on their knowledge of the effects of alcohol upon persons and the dangers of driving a motor vehicle while under the influence of alcohol; prescribing the form and content of a license to operate a motor vehicle and requiring licenses to be marked so as to indicate past violations resulting in suspension; setting forth the grounds for mandatory revocation of licenses upon conviction of certain offenses; placing limitations on the period of suspension; providing for the surrender and return of licenses and the willful refusal to return a license and fees in connection therewith; defining criminal offenses involving driving a motor vehicle while under the influence of alcohol, controlled substances or drugs and setting forth the penalties therefor; providing for implied consent to blood alcohol tests and the administration of such tests; defining the term "law-enforcement officer"; prescribing how preliminary breath analysis to be administered and how the results thereof are to be used; describing how blood tests are administered, and granting immunities to persons administering tests; permitting persons to refuse to take tests

upon being warned of penalties for refusal; providing administrative penalties for refusal and allowing right to hearing before suspension; setting forth hearing procedure; providing for judicial review of suspension based on refusal to submit to tests; providing for the interpretation and use of chemical tests and describing presumptions arising from such tests; granting person arrested the right to demand test; allowing fee for withdrawing blood sample and permitting recovery of fee upon conviction; providing for implied consent to administrative procedures dealing with suspension and revocation of licenses; allowing temporary suspension and subsequent revocation of license; setting forth hearing procedures; defining the scope of the hearing; providing for findings to be made prior to revocation of license; providing for order of suspension and judicial review of the same; establishing a safety and treatment program for persons violating article; providing a procedure for reissuance of revoked license; requiring commissioner to report prior offenses to police officer submitting report of violations; establishing penalties to be imposed on officer or commissioner for failure to file affidavits or mail reports within time periods prescribed; requirement for posting informational sign in establishments selling alcoholic beverages or nonintoxicating beer.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six, seven and eight, article five-a, and article five-b, chapter seventeen-c be repealed; that sections seven and eight, article two, and sections five, eight and nine, article three, chapter seventeen-b be amended and reenacted; that section two, article five, chapter seventeen-c be amended and reenacted; that said article be further amended by adding thereto eight new sections, designated sections two-a, four, five, six, seven, eight, nine and ten; that sections one, two and three, article five-a, chapter seventeen-c be amended and reenacted; that said article be further amended by adding thereto a new section, designated section four; and that article six, chapter sixty be amended by adding thereto a new section, designated section twenty-four, all to read as follows:

Chapter

17B. Motor Vehicle Operator's and Chauffeur's Licenses.

17C. Traffic Regulations and Laws of the Road.

60. State Control of Alcoholic Liquors.

**CHAPTER 17B. MOTOR VEHICLE OPERATOR'S AND
CHAUFFEUR'S LICENSES.**

Article

2. **Issuance of License, Expiration and Renewal.**
3. **Cancellation, Suspension or Revocation of Licenses.**

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-7. Examination of applicants.

§17B-2-8. Issuance and contents of licenses; license fees.

§17B-2-7. Examination of applicants.

1 (a) Upon the exhibiting by the applicant under the age of
2 eighteen years, of his or her birth certificate, or a certified
3 copy thereof, as evidence that the applicant is of lawful age,
4 the department of public safety shall examine every applicant
5 for a license to operate a motor vehicle in this state, except as
6 otherwise provided in this section. Such examination shall
7 include a test of the applicant's eyesight, his ability to read
8 and understand highway signs regulating, warning, and
9 directing traffic, his knowledge of the traffic laws of this state,
10 his knowledge of the effects of alcohol upon persons and the
11 dangers of driving a motor vehicle under the influence of
12 alcohol, and shall include an actual demonstration of ability
13 to exercise ordinary and reasonable control in the operation
14 of a motor vehicle, and such further physical and mental
15 examination as the department of motor vehicles deems
16 necessary to determine the applicant's fitness to operate a
17 motor vehicle safely upon the highways.

18 (b) The commissioner shall adopt and promulgate
19 regulations concerning the examination of applicants for
20 licenses and the qualifications required of such applicants,
21 and the examination of such applicants by the department of
22 public safety shall be in accordance with such regulations.
23 Such regulations shall provide for the viewing of educational
24 material or films on the effects of alcohol upon persons and
25 the dangers of driving a motor vehicle while under the
26 influence of alcohol.

***§17B-2-8. Issuance and contents of licenses; license fees.**

1 On and after the first day of January, one thousand nine

* **Clerk's Note:** This section was also amended by S. B. 654 which, according to the official records in the Office of the Clerk of the House of Delegates, was passed prior to the passage of this act.

2 hundred eighty-two, the department shall, upon payment of
3 the required fee, issue to every applicant qualifying therefor
4 an operator's or chauffeur's license which license shall
5 contain a coded number assigned to the licensee, the full
6 name, date of birth, residence address, a brief description and
7 a color photograph of the licensee and either a facsimile of the
8 signature of the licensee or a space upon which the signature
9 of the licensee shall be written with pen and ink immediately
10 upon receipt of the license. No license shall be valid until it
11 has been so signed by the licensee. The department shall use
12 such process or processes in the issuance of licenses that will,
13 insofar as possible, prevent any alteration, counterfeiting,
14 duplication, reproduction, forging, or modification of, or the
15 superimposition of a photograph on, such license. The color
16 photograph shall be contained on all licenses issued on and
17 after the first day of January, one thousand nine hundred
18 eighty-two, and upon every such license issued under the
19 provisions of section twelve of this article.

20 The fee for the issuance of an operator's license shall be ten
21 dollars. The fee for the issuance of a chauffeur's license shall
22 be fifteen dollars.

23 The department of motor vehicles shall mark any license
24 which is reissued following a suspension of a person's license
25 to operate a motor vehicle in this state with the type of
26 violation for which the original license was suspended and
27 shall indicate the date of the violation. For purposes of this
28 section, any conviction under the provisions of subsections
29 (a) and (b) of the prior enactment of section two, article five,
30 chapter seventeen-c of this code which offense was
31 committed within a period of five years immediately
32 preceding the effective date of the present section two, article
33 five, chapter seventeen-c, shall be treated as a violation to
34 which this section is applicable and suspensions based on
35 such convictions shall be marked on licenses which are
36 hereafter reissued.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-5. Grounds for mandatory revocation of license by department.

§17B-3-8. Period of suspension or revocation.

§17B-3-9. Surrender and return of license; willful refusal to return; additional fee for reinstatement.

§17B-3-5. Grounds for mandatory revocation of license by department.

1 The department shall forthwith revoke the license of any
2 operator or chauffeur upon receiving a record of such
3 operator's or chauffeur's conviction of any of the following
4 offenses, when such conviction has become final:

5 (1) Manslaughter or negligent homicide resulting from the
6 operation of a motor vehicle;

7 (2) Any felony in the commission of which a motor vehicle
8 is used;

9 (3) Failure to stop and render aid as required under the
10 laws of this state in the event of involvement in a motor
11 vehicle accident resulting in the death or personal injury of
12 another;

13 (4) Perjury or the making of a false affidavit or statement
14 under oath to the department under this chapter or under any
15 other law relating to the ownership or operation of motor
16 vehicles;

17 (5) Conviction, or forfeiture of bail not vacated, upon three
18 charges of reckless driving committed within a period of
19 twenty-four months;

20 (6) Nothing herein shall prohibit the department from
21 exercising its authority to revoke or suspend a person's
22 license to drive a motor vehicle in this state as provided in
23 chapter seventeen-c of this code.

§17B-3-8. Period of suspension or revocation.

1 The department shall not suspend a driver's license or
2 privilege to drive a motor vehicle on the public highways for a
3 period of more than one year, except as provided in chapter
4 seventeen-c of this code.

***§17B-3-9. Surrender and return of license; willful refusal to return; additional fee for reinstatement.**

1 The department upon suspending or revoking a license
2 shall require that such license shall be surrendered to and be

* Clerk's Note: This section was also amended by S. B. 854 which, according to the official records in the Office of the Clerk of the House of Delegates, was passed prior to the passage of this act.

3 retained by the department, except that at the end of the
4 period of suspension such license so surrendered shall be
5 returned to the licensee: *Provided*, That, before such license
6 may be reinstated, the licensee shall pay a fee of fifteen
7 dollars, in addition to all other fees and charges, which fee
8 shall be collected by the department and deposited in a
9 special revolving fund to be appropriated to the department
10 for use in the enforcement of the provisions of this section. If
11 any person shall willfully fail to return to the department
12 such suspended or revoked license, the commissioner shall
13 forthwith notify the superintendent of the department of
14 public safety who shall, without delay, secure possession
15 thereof and return same to the department. Said
16 superintendent of the department of public safety shall make
17 a report in writing to the commissioner, within two weeks
18 after being so notified by the commissioner, as to the result of
19 his efforts to secure the possession and return of such license.
20 For each license which shall have been suspended or revoked
21 and which the holder thereof shall have willfully failed to
22 return to the department within ten days from the time that
23 such suspension or revocation becomes effective and which
24 shall have been certified to the superintendent of the
25 department of public safety as aforesaid, the holder thereof,
26 before the same may be reinstated, in addition to all other fees
27 and charges, shall pay a fee of fifteen dollars, which shall be
28 collected by the department of motor vehicles and paid into
29 the state treasury and credited to the general fund to be
30 appropriated to the department of public safety for
31 application in the enforcement of the road laws.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

Article

5. Serious Traffic Offenses.

5A. Administrative Procedures for Suspension and Revocation of Licenses for Driving under the Influence of Alcohol, Controlled Substances or Drugs.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

- §17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.
- §17C-5-2a. Phrases synonymous with driving under the influence of alcohol; validation of warrants and indictments.
- §17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

- §17C-5-5. Preliminary analysis of breath to determine alcoholic content of blood.
- §17C-5-6. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.
- §17C-5-7. Refusal to submit to tests; suspension of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing procedures; judicial review.
- §17C-5-8. Interpretation and use of chemical test.
- §17C-5-9. Right to demand test.
- §17C-5-10. Fee for withdrawing blood sample and making urine test; payment of fees.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

1 (a) Any person who, while under the influence of alcohol,
2 or under the influence of any controlled substance, or under
3 the influence of any other drug to a degree which renders him
4 incapable of safely driving, or under the combined influence
5 of alcohol and any controlled substance or any other drug to a
6 degree which renders him incapable of safely driving, drives
7 a vehicle in this state, and when so driving does any act
8 forbidden by law or fails to perform any duty imposed by law
9 in the driving of such vehicle, which act or failure
10 proximately causes the death of any person within one year
11 next following such act or failure, if such act or failure be
12 committed in reckless disregard of the safety of others, and if
13 the influence of alcohol, controlled substances or drugs is
14 shown to be a contributing cause to the death, shall be guilty
15 of a felony, and, upon conviction thereof, shall be confined in
16 the penitentiary for not less than one nor more than three
17 years and shall be fined not less than one thousand dollars.

18 (b) Any person who, while under the influence of alcohol,
19 or under the influence of any controlled substance, or under
20 the influence of any other drug to a degree which renders him
21 incapable of safely driving, or under the combined influence
22 of alcohol and any controlled substance or any other drug to a
23 degree which renders him incapable of safely driving, drives
24 a vehicle in this state, and when so driving does any act
25 forbidden by law or neglects any duty imposed by law in the
26 driving of such vehicle, which act or neglect proximately
27 causes the death of any person within one year next following
28 such act, shall be guilty of a misdemeanor, and, upon
29 conviction thereof, shall be confined in the county jail for not
30 less than ninety days nor more than one year and shall be

31 fined not less than five hundred dollars nor more than one
32 thousand dollars.

33 (c) Any person who, while under the influence of alcohol,
34 or under the influence of any controlled substance, or under
35 the influence of any other drug to a degree which renders him
36 incapable of safely driving, or under the combined influence
37 of alcohol and any controlled substance or any other drug to a
38 degree which renders him incapable of safely driving, drives
39 a vehicle in this state, and when so driving does any act
40 forbidden by law or neglects any duty imposed by law in the
41 driving of such vehicle, which act or neglect proximately
42 causes bodily injury to any person other than himself, shall be
43 guilty of a misdemeanor, and, upon conviction thereof, shall
44 be confined in the county jail for a period of not less than one
45 day nor more than one year, which jail term shall include
46 actual confinement of not less than twenty-four hours, and
47 shall be fined not less than two hundred dollars nor more
48 than one thousand dollars.

49 (d) Any person who, while under the influence of alcohol,
50 or under the influence of any controlled substance, or under
51 the influence of any other drug to a degree which renders him
52 incapable of safely driving, or under the combined influence
53 of alcohol and any controlled substance or any other drug to a
54 degree which renders him incapable of safely driving, drives
55 a vehicle in this state, shall be guilty of a misdemeanor, and,
56 upon conviction thereof, shall be confined in the county jail
57 for a period of not less than one day nor more than six
58 months, which jail term shall include actual confinement of
59 not less than twenty-four hours, and shall be fined not less
60 than one hundred dollars nor more than five hundred dollars.

61 (e) Any person who, being an habitual user of narcotic
62 drugs or amphetamine or any derivative thereof, drives a
63 vehicle in this state, shall be guilty of a misdemeanor, and,
64 upon conviction thereof, shall be confined in the county jail
65 for not more than six months.

66 (f) Any person who knowingly permits his vehicle to be
67 driven in this state by any other person who is under the
68 influence of alcohol, or under the influence of any controlled
69 substance, or under the influence of any other drug to a
70 degree which renders him incapable of safely driving, or

71 under the combined influence of alcohol and any controlled
72 substance or any other drug to a degree which renders him
73 incapable of safely driving, or is an habitual user of narcotic
74 drugs or amphetamine or any derivative thereof shall be
75 guilty of a misdemeanor, and, upon conviction thereof, shall
76 be confined in the county jail for not more than six months
77 and shall be fined not less than one hundred dollars nor more
78 than five hundred dollars.

79 (g) Any person violating any provision of subsection (b),
80 (c), (d), (e) or (f) of this section shall, for the second offense
81 under this section, be guilty of a misdemeanor, and, upon
82 conviction thereof, shall be imprisoned in the county jail for a
83 period of not less than six months nor more than one year.

84 (h) A person violating any provision of subsection (b), (c),
85 (d), (e) or (f) of this section shall, for the third or any
86 subsequent offense under this section, be guilty of a felony,
87 and, upon conviction thereof, shall be imprisoned in the
88 penitentiary for not less than one nor more than three years.

89 (i) For purposes of subsections (g) and (h) of this section
90 relating to second, third and subsequent offenses, any
91 conviction under the provisions of subsections (a) or (b) of the
92 prior enactment of this section which occurred within a
93 period of five years immediately preceding the effective date
94 of this section, shall be regarded as convictions under
95 subsections (d) or (f) of this section.

96 (j) The fact that any person charged with a violation of
97 subsection (a), (b), (c), (d) or (e) of this section is or has been
98 legally entitled to use alcohol, a controlled substance or a
99 drug shall not constitute a defense against any charge of
100 violating subsection (a), (b), (c), (d) or (e) of this section.

101 (k) For purposes of this section, the term "controlled
102 substance" shall have the meaning ascribed to it in chapter
103 sixty-a of this code.

104 (l) The sentences provided herein upon conviction of a
105 violation of this article are mandatory and shall not be subject
106 to suspension or probation, except that the court may provide
107 for community service, or work release alternatives, or
108 weekends or part-time confinements.

§17C-5-2a. Phrases synonymous with driving under the influence of alcohol; validation of warrants and indictments.

1 (a) When used in this code, the terms or phrases “driving
2 under the influence of intoxicating liquor,” “driving or
3 operating a motor vehicle while intoxicated,” “for any person
4 who is under the influence of intoxicating liquor to drive any
5 vehicle,” or any similar term or phrase shall be construed to
6 mean and be synonymous with the term or phrase “while
7 under the influence of alcohol . . . drives a vehicle” as the
8 latter term or phrase is used in section two of this article.

9 (b) From and after the effective date of this section, a
10 warrant or indictment which charges or alleges the offense
11 prohibited by the provisions of section two of this article and
12 which warrant or indictment uses any of the terms or phrases
13 set forth in subsection (a) of this section shall not thereby be
14 fatally defective if such warrant or indictment otherwise
15 informs the person so accused of the charges against him.

§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

1 Any person who drives a motor vehicle upon the public
2 streets or highways of this state shall be deemed to have given
3 his consent by the operation thereof, subject to the provisions
4 of this article, to a preliminary breath analysis and a
5 secondary chemical test of either his blood, breath or urine
6 for the purposes of determining the alcoholic content of his
7 blood. A preliminary breath analysis may be administered in
8 accordance with the provisions of section five of this article
9 whenever a police officer has reasonable cause to believe a
10 person to have been driving a motor vehicle upon the public
11 streets and highways while under the influence of alcohol,
12 controlled substances or drugs as prohibited by section two
13 of this article. A secondary test of blood, breath or urine shall
14 be incidental to a lawful arrest and shall be administered at
15 the direction of the arresting law-enforcement officer having
16 reasonable grounds to believe the person to have been
17 driving a motor vehicle upon the public streets or highways
18 while under the influence of alcohol, controlled substances or
19 drugs as prohibited by section two of this article. The

20 law-enforcement agency by which such law-enforcement
21 officer is employed shall designate which one of the aforesaid
22 secondary tests shall be administered: *Provided*, That if the
23 test so designated is a blood test and the person so arrested
24 refuses to submit to such blood test, then the
25 law-enforcement officer making such arrest shall designate in
26 lieu thereof, either a breath or urine test be administered, and
27 notwithstanding the provisions of section seven of this
28 article, such refusal to submit to a blood test only shall not
29 result in the suspension of the arrested person's license to
30 operate a motor vehicle in this state. Any person to whom a
31 preliminary breath test is administered who is then arrested
32 shall be told that his refusal to submit to the secondary test
33 finally designated as provided in this section, will result in the
34 suspension of his license to operate a motor vehicle in this
35 state for a period of one year.

36 For the purposes of this article the term "law-enforcement
37 officer" shall mean and be limited to (1) any member of the
38 department of public safety of this state, (2) any sheriff and
39 any deputy sheriff of any county, and (3) any member of a
40 municipal police department in any Class I, Class II or Class
41 III city, as cities are classified in section three, article one,
42 chapter eight of this code. If any Class I, Class II or Class III
43 city does not have available to its law-enforcement officers
44 the testing equipment or facilities necessary to conduct any
45 secondary test which a law-enforcement officer may
46 administer under this article, any member of the department
47 of public safety, the sheriff of the county wherein the arrest is
48 made or any deputy of such sheriff, may, upon the request of
49 such arresting law-enforcement officer and in his presence,
50 conduct such secondary test and the results of such test may
51 be used in evidence to the same extent and in the same
52 manner as if such test had been conducted by such arresting
53 law-enforcement officer. Only the person actually
54 administering or conducting such test shall be competent to
55 testify as to the results and the veracity of such test.

**§17C-5-5. Preliminary analysis of breath to determine alcoholic
content of blood.**

1 When a police officer has reason to believe a person to have
2 been driving a motor vehicle upon the public streets and
3 highways of this state while under the influence of alcohol,

4 controlled substances or drugs, the police officer may require
5 such person to submit to a preliminary breath analysis for the
6 purpose of determining such person's blood alcohol content.
7 Such breath analysis must be administered as soon as
8 possible after the police officer has a reasonable belief that
9 the person has been driving while under the influence of
10 alcohol, controlled substances or drugs. Any preliminary
11 breath analysis required under this section must be
12 administered with a device and in a manner approved by the
13 department of health for that purpose. The results of a
14 preliminary breath analysis shall be used solely for the
15 purpose of guiding the officer in deciding whether an arrest
16 should be made. When a driver is arrested following a
17 preliminary breath analysis, the tests as hereinafter provided
18 in this article shall be administered in accordance with the
19 provisions thereof.

**§17C-5-6. How blood test administered; additional test at
option of person tested; use of test results; certain
immunity from liability incident to administering
test.**

1 Only a doctor of medicine or osteopathy, or registered
2 nurse, or trained medical technician at the place of his
3 employment, acting at the request and direction of the
4 law-enforcement officer, may withdraw blood for the purpose
5 of determining the alcoholic content thereof. These
6 limitations shall not apply to the taking of a breath test or a
7 urine specimen. In withdrawing blood for the purpose of
8 determining the alcoholic content thereof, only a previously
9 unused and sterile needle and sterile vessel may be utilized
10 and the withdrawal shall otherwise be in strict accord with
11 accepted medical practices. A nonalcoholic antiseptic shall
12 be used for cleansing the skin prior to venapuncture. The
13 person tested may, at his own expense, have a doctor of
14 medicine or osteopathy, or registered nurse, or trained
15 medical technician at the place of his employment, of his own
16 choosing, administer a chemical test in addition to the test
17 administered at the direction of the law-enforcement officer.
18 Upon the request of the person who is tested, full information
19 concerning the test taken at the direction of the
20 law-enforcement officer shall be made available to him. No
21 person who administers any such test upon the request of a

22 law-enforcement officer as herein defined, no hospital in or
23 with which such person is employed or is otherwise
24 associated or in which such test is administered, and no other
25 person, firm or corporation by whom or with which such
26 person is employed or is in any way associated, shall be in
27 anywise criminally liable for the administration of such test,
28 or civilly liable in damages to the person tested unless for
29 gross negligence or willful or wanton injury.

**§17C-5-7. Refusal to submit to tests; suspension of license or
privilege; consent not withdrawn if person arrested
is incapable of refusal; hearing procedures; judicial
review.**

1 (a) If any person under arrest as specified in section four
2 of this article refuses to submit to any secondary chemical
3 test, the tests shall not be given: *Provided*, That prior to such
4 refusal, the person is given a written statement advising him
5 of the possible criminal and civil penalties for such refusal.
6 The officer shall within twenty-four hours of such refusal,
7 submit to the commissioner of motor vehicles a sworn
8 statement of the officer that (1) he had reasonable grounds to
9 believe such person had been driving a motor vehicle upon
10 the public streets and highways of this state while under the
11 influence of alcohol, controlled substances or drugs, (2) such
12 person was lawfully placed under arrest for the offense of
13 driving a motor vehicle upon the public streets or highways
14 of this state while under the influence of alcohol, controlled
15 substances or drugs, (3) such person refused to submit to the
16 secondary test finally designated in the manner provided in
17 section four of this article and (4) such person was told that
18 his license to operate a motor vehicle in this state would be
19 suspended for a period of one year if he refused to submit to
20 the secondary test finally designated in the manner provided
21 in section four of this article. The commissioner shall make
22 and enter an order suspending such person's license to
23 operate a motor vehicle in this state for a period of one year. A
24 copy of such order shall be forwarded to such person by
25 registered or certified mail, return receipt requested. No such
26 suspension shall become effective until ten days after receipt
27 of the copy of such order. Any person who is unconscious or
28 who is otherwise in a condition rendering him incapable of
29 refusal, shall be deemed not to have withdrawn his consent

30 for a test of his blood, breath or urine as provided in section
31 one of this article and the test may be administered although
32 such person is not told that his failure to submit to the test
33 will result in the suspension of his license to operate a motor
34 vehicle in this state for a period of one year.

35 A suspension hereunder shall run concurrently with the
36 period of any suspension or revocation imposed in
37 accordance with other provisions of this code and growing out
38 of the same incident which gave rise to the arrest for driving a
39 motor vehicle while under the influence of alcohol, controlled
40 substances or drugs and the subsequent refusal to undergo
41 the test finally designated in accordance with the provisions
42 of section four of this article.

43 (b) Upon the written request of a person whose license to
44 operate a motor vehicle in this state has been suspended
45 under the provisions of subsection (a) of this section, the
46 commissioner of motor vehicles shall afford the person an
47 opportunity to be heard. Such written request must be filed
48 with the commissioner in person or by registered or certified
49 mail, return receipt requested, within ten days after receipt of
50 a copy of the order of suspension. The hearing shall be before
51 said commissioner or authorized deputy or agent of said
52 commissioner, and all of the pertinent provisions of article
53 five, chapter twenty-nine-a of this code shall apply to and
54 govern the hearing and the administrative procedures in
55 connection with and following such hearing, with like effect
56 as if the provisions of said article five were set forth in
57 extenso in this section, except that in the case of a resident of
58 this state the hearing shall be held in the county wherein the
59 person resides unless the commissioner or his authorized
60 deputy or agent and such person agree that the hearing may
61 be held in some other county. Any such hearing shall be held
62 within twenty days after the date upon which the
63 commissioner received the timely written request therefor,
64 unless there is a postponement or continuance. The
65 commissioner may postpone or continue any hearing on his
66 own motion, or upon application of such person for good
67 cause shown. For the purpose of conducting such hearing,
68 the commissioner shall have the power and authority to issue
69 subpoenas and subpoenas duces tecum in accordance with
70 the provisions of section one, article five, chapter

71 twenty-nine-a of this code. All subpoenas and subpoenas
72 duces tecum shall be issued and served within the time and
73 for the fees and shall be enforced, as specified in section one,
74 article five of said chapter twenty-nine-a, and all of the said
75 section one provisions dealing with subpoenas and
76 subpoenas duces tecum shall apply to subpoenas and
77 subpoenas duces tecum issued for the purpose of a hearing
78 hereunder.

79 The scope of such hearing shall be (1) whether the arresting
80 law-enforcement officer had reasonable grounds to believe
81 such person had been driving a motor vehicle upon the public
82 streets or highways of this state while under the influence of
83 alcohol, controlled substances or drugs, (2) whether such
84 person was lawfully placed under arrest for the offense of
85 driving a motor vehicle upon the public streets or highways
86 of this state while under the influence of alcohol, controlled
87 substances or drugs, (3) whether such person refused to
88 submit to the secondary test finally designated in the manner
89 provided in section four of this article, and (4) whether such
90 person had been told that his license to operate a motor
91 vehicle in this state would be suspended for a period of one
92 year if he refused to submit to the test finally designated in
93 the manner provided in section four of this article.

94 After such hearing and consideration of all of the
95 testimony, evidence and record in the case, the commissioner
96 shall make and enter an order affirming or rescinding his
97 earlier order of suspension. The commissioner shall affirm his
98 earlier order of suspension if he finds that (1) the arresting
99 law-enforcement officer had reasonable grounds to believe
100 such person had been driving a motor vehicle upon the public
101 streets or highways of this state while under the influence of
102 alcohol, controlled substances or drugs, (2) such person was
103 lawfully placed under arrest for the offense of driving a motor
104 vehicle upon the public streets or highways of the state while
105 under the influence of alcohol, controlled substances or
106 drugs, (3) such person refused to submit to the test finally
107 designated in the manner provided in section four of this
108 article, and (4) such person had been told that his license to
109 operate a motor vehicle in this state would be suspended for a
110 period of one year if he refused to submit to the test finally
111 designated in the manner provided in section four of this

112 article. If the commissioner finds to the contrary with respect
113 to any one of the above issues, he shall rescind his earlier
114 order of suspension.

115 A copy of the commissioner's order made and entered
116 following the hearing shall be served upon such person by
117 registered or certified mail, return receipt requested. The
118 commissioner shall not stay enforcement of the order; and
119 pending appeal, the court to which such appeal is made, may
120 grant a stay or supersedeas of such order only upon motion
121 and hearing, and a finding by the court upon the evidence
122 presented, that there is a reasonable probability that the
123 appellant shall prevail upon the merits, and that the appellant
124 will suffer irreparable harm if such order is not stayed.

125 (c) If the commissioner shall after hearing make and enter
126 an order affirming his earlier order of suspension, such
127 person shall be entitled to judicial review thereof. All of the
128 pertinent provisions of section four, article five, chapter
129 twenty-nine-a of this code shall apply to and govern such
130 review with like effect as if the provisions of said section four
131 were set forth in extenso in this section. The judgment of the
132 circuit court shall be final unless reversed on appeal to the
133 supreme court of appeals, in accordance with the provisions
134 of section one, article six, chapter twenty-nine-a of this code,
135 except that notwithstanding the provisions of said section
136 one, the petition seeking such review must be filed with said
137 supreme court of appeals within thirty days from the date of
138 entry of the judgment of the circuit court.

§17C-5-8. Interpretation and use of chemical test.

1 Upon trial for the offense of driving a motor vehicle on the
2 public streets or highways of this state while under the
3 influence of alcohol, controlled substances or drugs, or upon
4 the trial of any civil or criminal action arising out of acts
5 alleged to have been committed by any person while driving a
6 motor vehicle while under the influence of alcohol, controlled
7 substances or drugs, evidence of the amount of alcohol in the
8 person's blood at the time of the arrest or of the acts alleged,
9 as shown by a chemical analysis of his blood, breath or urine,
10 is admissible, if the sample or specimen was taken within two
11 hours from and after the time of arrest or of the acts alleged,
12 and shall give rise to the following presumptions or have the
13 following effect:

14 (a) Evidence that there was, at that time, five hundredths
15 of one percent or less, by weight, of alcohol in his blood, shall
16 be prima facie evidence that the person was not under the
17 influence of intoxicating liquor;

18 (b) Evidence that there was, at that time, more than five
19 hundredths of one percent and less than ten hundredths of
20 one percent, by weight, of alcohol in the person's blood shall
21 be relevant evidence, but it is not to be given prima facie
22 effect in indicating whether the person was under the
23 influence of intoxicating liquor;

24 (c) Evidence that there was, at that time, ten hundredths
25 of one percent or more, by weight, of alcohol in his blood,
26 shall be admitted as prima facie evidence that the person was
27 under the influence of intoxicating liquor.

28 Percent by weight of alcohol in the blood shall be based
29 upon milligrams of alcohol per one hundred cubic
30 centimeters of blood.

31 A chemical analysis of a person's blood, breath or urine, in
32 order to give rise to the presumptions or to have the effect
33 provided for in subdivisions (a), (b) and (c) of this section,
34 must be performed in accordance with methods and
35 standards approved by the state department of health. A
36 chemical analysis of blood or urine to determine the alcoholic
37 content of blood shall be conducted by a qualified laboratory
38 or by the state police scientific laboratory, of the criminal
39 identification bureau of the department of public safety.

40 The provisions of this article shall not limit the introduction
41 in any administrative or judicial proceeding of any other
42 competent evidence bearing on the question of whether the
43 person was under the influence of alcohol, controlled
44 substances or drugs.

§17C-5-9. Right to demand test.

1 Any person lawfully arrested for driving a motor vehicle on
2 the public streets or highways of this state while under the
3 influence of alcohol, controlled substances or drugs who is
4 lawfully arrested as aforesaid by a police officer, shall have
5 the right to demand that a sample or specimen of his blood,
6 breath or urine be taken within two hours from and after the
7 time of arrest, and that a chemical test thereof be made. The

8 analysis disclosed by such chemical test shall be made
9 available to such arrested person forthwith upon demand.

§17C-5-10. Fee for withdrawing blood sample and making urine test; payment of fees.

1 A reasonable fee shall be allowed to the person
2 withdrawing a blood sample or administering a urine test at
3 the request and direction of a law-enforcement officer in
4 accordance with the provisions of this article. If the person
5 whose blood sample was withdrawn or whose urine was
6 tested was arrested and charged with a violation of
7 subsection (a), section two, article five of this chapter, the
8 county having venue of such charge shall pay said fee, and if
9 said person is subsequently convicted of such charge, such
10 fee shall be taxed as a part of the costs of the criminal
11 proceeding and shall be paid, notwithstanding any other
12 provision of this code to the contrary, into the general fund of
13 said county. If the person whose blood sample was
14 withdrawn or whose urine was tested was arrested and
15 charged with a violation of a similar ordinance of any
16 municipality, said municipality shall pay said fee, and if said
17 person is subsequently convicted of such charge, such fee
18 shall be taxed as a part of the costs of the criminal proceeding
19 and shall be paid, notwithstanding any other provision of this
20 code to the contrary, into the general fund of said
21 municipality.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND
REVOCATION OF LICENSES FOR DRIVING UNDER THE
INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES
OR DRUGS.**

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or drugs; temporary suspension of license.

§17C-5A-2. Hearing; revocation; suspension; review.

§17C-5A-3. Safety and treatment program; reissuance of license.

§17C-5A-4. Search for record of prior offenses by driver.

**§17C-5A-1. Implied consent to administrative procedure;
revocation for driving under the influence of
alcohol, controlled substances or drugs;
temporary suspension of license.**

1 (a) Any person who drives a motor vehicle upon the public

2 streets or highways of this state shall be deemed to have given
3 his consent by the operation thereof, subject to the provisions
4 of this article, to the administrative procedure set forth in this
5 article for the determination of whether his license to operate
6 a motor vehicle in this state should be revoked or suspended
7 because he did drive a motor vehicle while under the
8 influence of alcohol, controlled substances or drugs, or did
9 drive a motor vehicle while having an alcoholic concentration
10 in his blood of ten hundredths of one percent (.10), or more,
11 by weight.

12 (b) Any law-enforcement officer arresting a person for an
13 offense described in section two, article five of this chapter
14 shall report to the commissioner of the department of motor
15 vehicles by sworn, written statement within twenty-four
16 hours the name and address of the person so arrested. Such
17 report shall include the specific offense with which the
18 person is charged, and, if applicable, a copy of the results of
19 any secondary tests of blood, breath or urine. The
20 law-enforcement officer shall certify that such tests were
21 administered in accordance with the provisions of article five
22 of this chapter, and that he believes the results to be correct.

23 (c) If, upon examination of the sworn statement and the
24 tests results described in subsection (b) of this section, the
25 commissioner shall determine that a person was arrested for
26 an offense described in section two, article five of this
27 chapter, and that the results of the tests indicate that at the
28 time the test or tests were administered the person had, in his
29 blood, an alcohol concentration of ten hundredths of one
30 percent (.10), or more, by weight, or at the time the person was
31 arrested he was under the influence of a controlled substance
32 or drug, the commissioner shall make and enter an order
33 temporarily suspending such person's license to operate a
34 motor vehicle in this state. A copy of such order shall be
35 forwarded to such person by registered or certified mail,
36 return receipt requested. No suspension shall become
37 effective until ten days after receipt of a copy of such order.

§17C-5A-2. Hearing; revocation; suspension; review.

1 (a) Upon the written request of a person whose license to
2 operate a motor vehicle in this state has been suspended,
3 under the provisions of section one of this article, the

4 commissioner of motor vehicles shall afford the person an
5 opportunity to be heard. Such written request must be filed
6 with the commissioner in person or by registered or certified
7 mail, return receipt requested, within ten days after receipt of
8 a copy of the order of suspension. The hearing shall be before
9 said commissioner or authorized deputy or agent of said
10 commissioner and all of the pertinent provisions of article
11 five, chapter twenty-nine-a of this code shall apply.

12 (b) Except that in the case of a resident of this state the
13 hearing shall be held in the county wherein the person resides
14 unless the commissioner or his authorized deputy or agent
15 and such person agree that the hearing may be held in some
16 other county. Any such hearing shall be held within twenty
17 days after the date upon which the commissioner received
18 the timely written request therefor, unless there is a
19 postponement or continuance. The commissioner may
20 postpone or continue any hearing on his own motion, or upon
21 application for each person for good cause shown. For the
22 purpose of conducting such hearing, the commissioner shall
23 have the power and authority to issue subpoenas and
24 subpoenas duces tecum in accordance with the provisions of
25 section one, article five, chapter twenty-nine-a of this code.
26 All subpoenas and subpoenas duces tecum shall be issued
27 and served within the time and for the fees and shall be
28 enforced, as specified in section one, article five of said
29 chapter twenty-nine-a, and all of the said section one
30 provisions dealing with subpoenas and subpoenas duces
31 tecum shall apply to subpoenas and subpoenas duces tecum
32 issued for the purpose of a hearing hereunder.

33 (c) The principal question at such hearing shall be
34 whether the person did drive a motor vehicle while under the
35 influence of alcohol, or under the influence of any controlled
36 substance, or under the influence of any other drug to a
37 degree which renders him incapable of safely driving, or
38 under the combined influence of alcohol and any controlled
39 substance or any other drug to a degree which renders him
40 incapable of safely driving, or did drive a motor vehicle while
41 having an alcoholic concentration in his blood of ten
42 hundredths of one percent (.10), or more, by weight.

43 The commissioner shall make specific findings as to (1)
44 whether the arresting law-enforcement officer had reasonable

45 grounds to believe such person to have been driving while
46 under the influence of alcohol, controlled substances or
47 drugs, (2) whether such person was lawfully placed under
48 arrest for an offense involving driving under the influence of
49 alcohol, controlled substances or drugs, and (3) whether the
50 tests which were administered were administered in
51 accordance with the provisions of this article and article five
52 of this chapter.

53 (1) If, in addition to a finding that the person did drive a
54 motor vehicle while under the influence of alcohol, or under
55 the influence of any controlled substance, or under the
56 influence of any other drug to a degree which renders him
57 incapable of safely driving, or under the combined influence
58 of alcohol and any controlled substance or any other drug to a
59 degree which renders him incapable of safely driving, or did
60 drive a motor vehicle while having an alcoholic concentration
61 in his blood of ten hundredths of one percent (.10), or more,
62 by weight, the commissioner also finds by a preponderance of
63 the evidence that the person when so driving did an act
64 forbidden by law or failed to perform a duty imposed by law,
65 which act or failure proximately caused the death of a person
66 and was committed in reckless disregard of the safety of
67 others, and if the commissioner further finds that the
68 influence of alcohol, controlled substances or drugs or the
69 alcoholic concentration in the blood was a contributing cause
70 to the death, the commissioner shall revoke the person's
71 license for a period of ten years: *Provided*, That if the
72 commissioner has previously suspended the person's license
73 under the provisions of this section, the period of revocation
74 shall be for the life of such person.

75 (2) If, in addition to a finding that the person did drive a
76 motor vehicle while under the influence of alcohol, or under
77 the influence of any controlled substance, or under the
78 influence of any other drug to a degree which renders him
79 incapable of safely driving, or under the combined influence
80 of alcohol and any controlled substance or any other drug to a
81 degree which renders him incapable of safely driving, or did
82 drive a motor vehicle while having an alcoholic concentration
83 in his blood of ten hundredths of one percent (.10), or more,
84 by weight, the commissioner also finds by a preponderance of
85 the evidence that the person when so driving did an act

'86 forbidden by law or failed to perform a duty imposed by law,
87 which act or failure proximately caused the death of a person
88 the commissioner shall revoke the person's license for a
89 period of five years: *Provided*, That if the commissioner has
90 previously suspended the person's license under the
91 provisions of this section, the period of revocation shall be for
92 the life of such person.

93 (3) If, in addition to a finding that the person did drive a
94 motor vehicle while under the influence of alcohol, or under
95 the influence of any controlled substance, or under the
96 influence of any other drug to a degree which renders him
97 incapable of safely driving, or under the combined influence
98 of alcohol and any controlled substance or any other drug to a
99 degree which renders him incapable of safely driving, or did
100 drive a motor vehicle while having an alcoholic concentration
101 in his blood of ten hundredths of one percent (.10), or more,
102 by weight, the commissioner also finds by a preponderance of
103 the evidence that the person when so driving did an act
104 forbidden by law or failed to perform a duty imposed by law,
105 which act or failure proximately caused bodily injury to a
106 person other than himself, the commissioner shall revoke the
107 person's license for a period of two years: *Provided*, That if
108 the commissioner has previously suspended the person's
109 license under the provisions of this section, the period of
110 revocation shall be ten years.

111 (4) If the commissioner finds by a preponderance of the
112 evidence that the person did drive a motor vehicle while
113 under the influence of alcohol, or under the influence of any
114 controlled substance, or under the influence of any other
115 drug to a degree which renders him incapable of safely
116 driving, or under the combined influence of alcohol and any
117 controlled substance or any other drug to a degree which
118 renders him incapable of safely driving, or did drive a motor
119 vehicle while having an alcoholic concentration in his blood
120 of ten hundredths of one percent (.10), or more, by weight, or
121 finds that the person, being an habitual user of narcotic drugs
122 or amphetamine or any derivative thereof, did drive a motor
123 vehicle, or finds that the person knowingly permitted his
124 vehicle to be driven by another person who was under the
125 influence of alcohol, or under the influence of any controlled
126 substance, or under the influence of any other drug to a

127 degree which rendered him incapable of safely driving, or
128 under the combined influence of alcohol and any controlled
129 substance or any other drug to a degree which rendered him
130 incapable of safely driving, the commissioner shall revoke the
131 person's license for a period of six months: *Provided*, That if
132 the commissioner has previously suspended the person's
133 license under the provisions of this section, the period of
134 revocation shall be ten years: *Provided, however*, That if the
135 commissioner has previously suspended the person's license
136 more than once under the provisions of this section, the
137 period of revocation shall be for the life of the person.

138 (d) For the purpose of this section, a conviction for an
139 offense under subsection (a) or (b) of the prior enactment of
140 section two, article five of this chapter, which offense was
141 committed within five years immediately preceding the
142 effective date of said section two, article five, shall be
143 considered the same as a prior finding of the commissioner
144 under this section.

145 (e) If the commissioner finds to the contrary with respect
146 to the above issues, he shall rescind his earlier order of
147 suspension or shall reduce the order of revocation to the
148 appropriate period of revocation under this section.

149 A copy of the commissioner's order made and entered
150 following the hearing shall be served upon such person by
151 registered or certified mail, return receipt requested. During
152 the pendency of any such hearing, the suspension of the
153 person's license to operate a motor vehicle in this state shall
154 be stayed.

155 If the commissioner shall after hearing make and enter an
156 order affirming his earlier order of suspension, such person
157 shall be entitled to judicial review as set forth in chapter
158 twenty-nine-a of this code, except that the commissioner
159 shall not stay enforcement of the order; and, pending such
160 appeal, the court may grant a stay or supersedeas of such
161 order only upon motion and hearing, and a finding by the
162 court upon the evidence presented, that there is a reasonable
163 probability that the appellant shall prevail upon the merits,
164 and that the appellant will suffer irreparable harm if such
165 order is not stayed.

§17C-5A-3. Safety and treatment program; reissuance of license.

1 (a) The department of motor vehicles in cooperation with
2 the department of health, the division of alcoholism and drug
3 abuse, shall establish by rule and regulation, a
4 comprehensive safety and treatment program for persons
5 found in initial and subsequent violations of this article. The
6 program shall include, but not be limited to, treatment of
7 alcoholism, alcohol and drug abuse, psychological
8 counseling, educational courses on the dangers of alcohol and
9 drugs as they relate to driving, defensive driving, or other
10 safety driving instruction, and other programs designed to
11 properly educate, train, and rehabilitate the offender.

12 (b) (1) The department of motor vehicles, in cooperation
13 with the department of health, the division of alcoholism and
14 drug abuse, shall provide for the preparation of an
15 educational and treatment program for each person found in
16 violation of this article, which shall contain the following: (A)
17 A listing and evaluation of the offender's prior traffic record;
18 (B) characteristics and history of alcohol or drug use, if any;
19 (C) his amenability to rehabilitation through the alcohol
20 safety program; and (D) a recommendation as to treatment or
21 rehabilitation, and the terms and conditions of such
22 treatment or rehabilitation. The program shall be prepared by
23 persons knowledgeable in the diagnosis of alcohol or drug
24 abuse and treatment. The cost of the program shall be paid
25 out of fees established by the commissioner of motor vehicles
26 in cooperation with the department of health, division of
27 alcohol and drug abuse. These fees shall be deposited in a
28 special account administering the program, to be designated
29 the "driver's rehabilitation fund."

30 (2) The commissioner, after giving due consideration to the
31 program developed for the offender, shall prescribe the
32 necessary terms and conditions for the reissuance of the
33 license to operate a motor vehicle in this state suspended
34 hereunder, which shall include successful completion of the
35 educational, treatment, or rehabilitation program, subject to
36 the following:

37 (A) When the period of revocation is six months, the
38 license to operate a motor vehicle in this state shall not be
39 reissued until (i) at least thirty days have elapsed from the

40 date of the initial suspension, during which time the
41 suspension was actually in effect, (ii) the offender has
42 successfully completed the program, (iii) all costs of the
43 program and administration have been paid, (iv) the
44 commissioner finds that the offender is not likely to repeat a
45 violation of this article, and (v) there is no unusual and
46 immediate danger to the public if the offender is permitted to
47 drive again.

48 (B) When the period of revocation is for a period of years,
49 the license to operate a motor vehicle in this state shall not be
50 reissued until (i) at least one half of such time period has
51 elapsed from the date of the initial suspension, during which
52 time the suspension was actually in effect, (ii) the offender
53 has successfully completed the program, (iii) all costs of the
54 program and administration have been paid, (iv) the
55 commissioner finds that the offender is not likely to repeat a
56 violation of this article, and (v) there is no unusual and
57 immediate danger to the public if the offender is permitted to
58 drive again.

59 (C) When the period of revocation is for life, the license to
60 operate a motor vehicle in this state shall not be reissued until
61 (i) at least ten years have elapsed from the date of the initial
62 suspension, during which time the suspension was actually in
63 effect, (ii) the offender has successfully completed the
64 program, (iii) all costs of the program and administration have
65 been paid, (iv) the commissioner finds that the offender is not
66 likely to repeat a violation of this article, and (v) there is no
67 unusual and immediate danger to the public if the offender is
68 permitted to drive again.

§17C-5A-4. Search for record of prior offenses by driver.

1 The commissioner shall immediately upon receipt of the
2 affidavits required by section seven, article five of this
3 chapter and section one of this article record the date and
4 time of day of the receipt of such affidavits and shall
5 forthwith cause a search of the appropriate records of the
6 department to be made for any record of prior offenses under
7 this article and such commissioner shall immediately report
8 to the officer making such affidavit an abstract showing any
9 such prior offense, the date thereof, the identity of any court
10 record which any proceedings in regard thereto were
11 instituted and the disposition thereof.

12 Any police officer who fails to file the affidavits required by
13 this chapter within twenty-four hours of the arrest of any
14 person charged for any violation of article five shall be guilty
15 of a misdemeanor and shall be subject to a fine of not less
16 than twenty dollars nor more than five hundred dollars. And
17 if the commissioner shall willfully fail to post by United
18 States mail or other adequate means of communication a
19 written report addressed to the police officer of any such
20 offense, as required by this section, within a period of
21 twenty-four hours after the receipt of the affidavit, the
22 commissioner shall be guilty of a misdemeanor and shall be
23 subject to a fine of not less than twenty dollars nor more than
24 five hundred dollars.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-24. Requirement for posting informational sign.

1 Each store or outlet controlled or operated by the state
2 alcohol beverage control commission, and any store,
3 supermarket, club, restaurant, or other facility selling
4 alcoholic beverages or nonintoxicating beer for either
5 on-premise or off-premise consumption, shall post in an open
6 and prominent place within such establishment a
7 blood-alcohol chart containing information showing the
8 estimated percent of alcohol in the blood by the number of
9 drinks in relation to body weight and time of consumption, as
10 follows:

HAS ALCOHOL AFFECTED YOUR DRIVING ABILITY?

The % of alcohol in your blood will tell you. This % can be estimated by—COUNTING YOUR DRINKS (1-drink equalling 1 volume oz. of 100 proof alcohol or 1-12 oz. bottle of beer).

Use Blood-Alcohol Chart below. Under number of DRINKS and opposite Body-Weight find the % of Blood-Alcohol listed.

SUBTRACT from this number the % of alcohol “burned up” during the time elapsed since your first drink.

No. Hours Since 1st Drink	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
SUBTRACT	.015%	.030%	.045%	.060%	.075%	.090%

Example—180 lb. man - 8 drinks in 4 hours
 .167% minus .060% = .107%

THIS REMAINDER IS AN ESTIMATE of the % of alcohol in your blood.

<u>% OF BLOOD-ALCOHOL</u>	<u>INTERPRETATION OF RESULTS</u> <u>INTOXICATED?</u>	<u>IF YOU DRIVE A CAR—</u>
.000 to .050	You Are Not	Take It Easy
.050 to .100	You Probably Are	Better Not

FOR BEST RESULTS — DON'T DRINK AND DRIVE

BLOOD-ALCOHOL CHART

SHOWING ESTIMATED % OF ALCOHOL IN THE BLOOD
BY NO. OF DRINKS IN RELATION TO BODY WEIGHT

DRINKS	1	2	3	4	5	6	7	8	9	10	11	12
BODY WEIGHT												
100 lb.	.038	.075	.113	.150	.188	.225	.263	.300	.338	.375	.413	.450
120 lb.	.031	.063	.094	.125	.156	.188	.219	.250	.281	.313	.344	.375
140 lb.	.027	.054	.080	.107	.134	.161	.188	.214	.241	.268	.295	.321
160 lb.	.023	.047	.070	.094	.117	.141	.164	.188	.211	.234	.258	.281
180 lb.	.021	.042	.063	.083	.104	.125	.146	.167	.188	.208	.229	.250
200 lb.	.019	.038	.056	.075	.094	.113	.131	.150	.169	.188	.206	.225
220 lb.	.017	.034	.051	.068	.085	.102	.119	.136	.153	.170	.188	.205
240 lb.	.016	.031	.047	.063	.078	.094	.109	.125	.141	.156	.172	.188

MOTOR VEHICLES

TRAFFIC RESEARCH & SAFETY DIVISION
W.VA. DEPARTMENT OF PUBLIC SAFETY

11 The size of display and location of said blood-alcohol chart
12 shall be prescribed by the commissioner, by rule and
13 regulation. Enforcement of the posting provisions of this
14 section shall be carried out by the West Virginia
15 nonintoxicating beer commissioner in establishments which
16 are required to post such notice but are not subject to the
17 supervision of the West Virginia alcohol beverage control
18 commissioner.

CHAPTER 160

(Com. Sub. for H. B. 917—By Mr. Stephens)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-six, relating to required use of approved infant car seats; providing a criminal penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

§17C-15-46. Child passenger restraining system required.

1 Every driver who regularly and customarily transports a
2 child under the age of five years in a passenger automobile,
3 van or pickup truck other than one operated for hire, which
4 is registered in this state shall, while such motor vehicle is in
5 motion and operated on a public road, street or highway of
6 this state, provide for the protection of such child by properly
7 placing, maintaining and securing such child in a child pas-
8 senger restraining system meeting applicable federal motor
9 vehicle safety standards in effect on the effective date of this

10 section, including without limitation, a car bed or a car seat
11 meeting such standards: *Provided*, That if such child is be-
12 tween the age of three and five, a seat belt shall be sufficient
13 to meet the requirements of this section.

14 Any person who violates any provision of this section
15 is guilty of a misdemeanor, and, upon conviction thereof, shall
16 be fined not less than ten dollars nor more than twenty
17 dollars. Penalties shall not be applied to those drivers who
18 show reasonable proof that they have purchased a child
19 restraint device within thirty days after violation.

20 A violation of this section shall not be deemed by virtue
21 of such violation to constitute evidence of negligence or
22 contributory negligence or comparative negligence in any civil
23 action or proceeding for damages.

CHAPTER 161

(H. B. 931—By Mr. Tompkins)

[Passed April 4, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a, relating to adoption of the multistate tax compact; setting forth certain legislative findings; defining terms used in said compact; relating as to such compact to: purposes of this compact, elements of income tax laws including optional three-factor formula for apportionment of net income and a short form tax return; uniform rules for division of income and for such purpose providing for: definitions, allocation of nonbusiness income, apportionment of business income, and other methods of allocation and apportionment; use tax credit for sales tax lawfully paid to another state; recognition of sales tax exemption certificates authorized by another state; creation of the multistate tax commission, its organization and management; representation of political subdivisions of this state; voting by commission members; official

seal; meetings and notice of meetings; election of officers; appointment of executive director; bonding of officers and employees; appointment and discharge of employees of the commission; services of personnel from governmental entities; donations and grants; establishment of offices; bylaws of commission; annual report of commission to governor and Legislature of each member state; committees of the commission; powers of the multistate tax commission; budget and finance; apportionment of commission's budget to each member state; prohibition against pledging the credit of any member state; books and records; inspection of books and records; promulgation of uniform regulations and forms; interstate audits; subpoena and subpoena duces tecum; confidentiality of audit information; arbitration of disputes concerning apportionment and allocation of income and for such purpose providing for: creation of an arbitration panel, composition of arbitration board, meetings of the board, notice of hearings, powers of the board, expenses of arbitration, determinations of the board and their finality, filing and publishing of determinations, rules of procedure and written compromises; procedure for joining the multistate tax compact and withdrawal therefrom; transition rules on withdrawal of membership; effect of this compact on other laws and jurisdiction of courts; construction and severability of this article; providing for the tax commissioner or an alternate designated by him to represent this state on the commission and representation of political subdivisions of this state; creating the multistate tax compact advisory committee; providing for appropriation of membership dues and audit fees; and establishing effective date and transition rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. MULTISTATE TAX COMPACT.

- §11-10A-1. Legislative findings.
- §11-10A-2. Short title; arrangement and classification.
- §11-10A-3. Ratification of compact.
- §11-10A-4. Purposes.
- §11-10A-5. Definitions.

- §11-10A-6. Elements of income tax laws.
- §11-10A-7. Division of income.
- §11-10A-8. Elements of sales and use taxes.
- §11-10A-9. Multistate tax commission; organization and management.
- §11-10A-10. Committees of the multistate tax commission.
- §11-10A-11. Powers of the multistate tax commission.
- §11-10A-12. Commission funding; books and records.
- §11-10A-13. Uniform regulations and forms.
- §11-10A-14. Interstate audits.
- §11-10A-15. Arbitration.
- §11-10A-16. Entry into force and withdrawal.
- §11-10A-17. Effect on other laws and jurisdiction.
- §11-10A-18. Tax commissioner to represent state.
- §11-10A-19. Representation by an alternate.
- §11-10A-20. Representation of political subdivisions of this state.
- §11-10A-21. Multistate tax compact advisory committee created.
- §11-10A-22. Appropriation of dues and audit fees.
- §11-10A-23. Effective date; transition rules.

§11-10A-1. Legislative findings.

1 The Legislature hereby finds and declares that the adoption
2 by this state of the multistate compact will (1) simplify the
3 problem which multistate and multinational businesses en-
4 counter in complying with the tax laws of this state, and (2)
5 promote efficiency and uniformity of application in the ad-
6 ministration of the tax laws. The Legislature does therefore
7 declare that this article be construed so as to accomplish
8 the foregoing purposes.

§11-10A-2. Short title; arrangement and classification.

1 This article may be cited as the "multistate tax compact." No
2 inference, implications or presumptions of legislative construc-
3 tion may be drawn on or made by reasons of the location or
4 grouping of any particular section or provision or portion of
5 this article, and no legal effect may be given to any descriptive
6 matter or headings relating to any part, section, subsection or
7 paragraph of this article.

§11-10A-3. Ratification of compact.

1 The "multistate tax compact" as hereby codified in sections
2 four through seventeen of this article, is hereby approved,
3 ratified and adopted by this state and entered into with all

- 4 jurisdictions legally joining therein in the form substantially as
5 provided in sections four through seventeen of this article.

§11-10A-4. Purposes.

- 1 The purposes of this compact are to:
- 2 (a) Facilitate proper determination of state and local tax
3 liability of multistate taxpayers, including the equitable appor-
4 tionment of tax bases and settlement of apportionment dis-
5 putes.
- 6 (b) Promote uniformity or compatibility in significant com-
7 ponents of tax systems.
- 8 (c) Facilitate taxpayer convenience and compliance in the
9 filing of tax returns and in other phases of tax administration.
- 10 (d) Avoid duplicative taxation.

§11-10A-5. Definitions.

- 1 As used in this article, the terms:
- 2 (a) "Capital stock tax" means a tax measured in any way
3 by the capital of a corporation considered in its entirety.
- 4 (b) "Gross receipts tax" means a tax, other than a sales
5 tax, which is imposed on or measured by the gross volume of
6 business, in terms of gross receipts or in other terms, and in
7 the determination of which no deduction is allowed which
8 would constitute the tax an income tax.
- 9 (c) "Income tax" means a tax imposed on or measured by
10 net income including any tax imposed on or measured by an
11 amount arrived at by deducting expenses from gross income,
12 one or more forms of which expenses are not specifically and
13 directly related to particular transactions.
- 14 (d) "Sales tax" means a tax imposed with respect to the
15 transfer for a consideration of ownership, possession or cus-
16 tody of tangible personal property or the rendering of services
17 measured by the price of the tangible personal property trans-
18 ferred or services rendered and which is required by state or
19 local law to be separately stated from the sales price by the
20 seller, or which is customarily separately stated from the sales

21 price, but does not include a tax imposed exclusively on the
22 sale of a specifically identified commodity or article or class of
23 commodities or articles.

24 (e) "State" means a state of the United States, the District
25 of Columbia, the Commonwealth of Puerto Rico or any
26 territory or possession of the United States.

27 (f) "Subdivision" means any governmental unit or special
28 district of a state.

29 (g) "Tax" means an income tax capital stock tax, gross
30 receipts tax, sales tax, use tax and any other tax which has
31 a multistate impact, except that the provisions of sections six,
32 seven and eight of this article shall apply only to the taxes
33 specifically designated therein and the provisions of section
34 twelve of this compact shall apply only in respect to deter-
35 minations pursuant to section seven.

36 (h) "Taxpayer" means any corporation, partnership, firm,
37 association, governmental unit or agency or person acting as
38 a business entity in more than one state.

39 (i) "Use tax" means a nonrecurring tax, other than a sales
40 tax, which (1) is imposed on or with respect to the exercise or
41 enjoyment of any right or power over tangible personal prop-
42 erty incident to the ownership, possession or custody of that
43 property or the leasing of that property from another in-
44 cluding any consumption, keeping, retention or other use of
45 tangible personal property and (2) is complementary to a
46 sales tax.

§11-10A-6. Elements of income tax laws.

1 (a) *Taxpayer option, state and local income taxes.*—
2 Any taxpayer subject to an income tax whose income is
3 subject to apportionment and allocation for tax purposes
4 pursuant to the laws of a party state or pursuant to the
5 laws of subdivisions in two or more party states may elect
6 to apportion and allocate his income in the manner provided
7 by the laws of such state or by the laws of such states and
8 subdivisions without reference to this compact, or may elect
9 to apportion and allocate in accordance with section seven
10 of this article. This election for any tax year may be made

11 in all party states or subdivisions thereof or in any one or
12 more of the party states or subdivisions thereof without
13 reference to the election made in the others. For the pur-
14 poses of this subsection, taxes imposed by subdivisions shall
15 be considered separately from state taxes and the appor-
16 tionment and allocation also may be applied to the en-
17 tire tax base. In no instance wherein section seven is em-
18 ployed for all subdivisions of a state may the sum of all
19 apportionments and allocations to subdivisions within a state
20 be greater than the apportionment and allocation that would
21 be assignable to that state if the apportionment or allocation
22 were being made with respect to a state income tax.

23 (b) *Taxpayer option, short form.*—Each party state or
24 any subdivision thereof which imposes an income tax shall
25 provide by law that any taxpayer required to file a return,
26 whose only activities within the taxing jurisdiction consist
27 of sales and do not include owning or renting real estate or
28 tangible personal property, and whose dollar volume of gross
29 sales made during the tax year within the state or sub-
30 division, as the case may be, is not in excess of one hundred
31 thousand dollars may elect to report and pay any tax due
32 on the basis of a percentage of such volume, and shall
33 adopt rates which shall produce a tax which reasonably
34 approximates the tax otherwise due. The multistate tax com-
35 mission, not more than once in five years, may adjust the
36 figure in order to reflect such changes as may occur in the
37 real value of the dollar, and such adjusted figure, upon
38 adoption by the commission, shall replace the figure spe-
39 cifically provided herein. Each party state and subdivision
40 thereof may make the same election available to taxpayers
41 additional to those specified in this subsection.

42 (c) *Coverage.*—Nothing in this section relates to the re-
43 porting or payment of any tax other than an income tax.

§11-10A-7. Division of income.

1 (a) *Definitions.*—As used in this section, unless the con-
2 text otherwise requires:

3 (1) “Business income” means income arising from trans-
4 actions and activity in the regular course of the taxpayer’s

5 trade or business and includes income from tangible and
6 intangible property if the acquisition, management and dis-
7 position of the property constitute integral parts of the tax-
8 payer's regular trade or business operations.

9 (2) "Commercial domicile" means the principal place from
10 which the trade or business of the taxpayer is directed or
11 managed.

12 (3) "Compensation" means wages, salaries, commissions
13 and any other form of remuneration paid to employees for
14 personal services.

15 (4) "Financial organization" means any bank, trust com-
16 pany, savings bank, industrial bank, land bank, safe deposit
17 company, private banker, savings and loan association, credit
18 union, cooperative bank, small loan company, sales finance
19 company, investment company or any type of insurance com-
20 pany.

21 (5) "Nonbusiness income" means all income other than
22 business income.

23 (6) "Public utility" means any business entity (A) which
24 owns or operates any plant, equipment, property, franchise
25 or license for the transmission of communications, transpor-
26 tation of goods or persons, except by pipeline, or the produc-
27 tion, transmission, sale, delivery or furnishing of electricity,
28 water or steam; and (B) whose rates of charges for goods
29 or services have been established or approved by a federal,
30 state or local government or governmental agency.

31 (7) "Sales" means all gross receipts of the taxpayer not
32 allocated under paragraphs of this section.

33 (8) "State" means any state of the United States, the
34 District of Columbia, the Commonwealth of Puerto Rico, any
35 territory or possession of the United States and any foreign
36 country or political subdivision thereof.

37 (9) "This state" means the state in which the relevant tax
38 return is filed or, in the case of application of this section to
39 the apportionment and allocation of income for local tax

40 purposes, the subdivision or local taxing district in which the
41 relevant tax return is filed.

42 (b) *Income from multistate activity.*—Any taxpayer having
43 income from business activity which is taxable both within and
44 without this state, other than activity as a financial organi-
45 zation or public utility or the rendering of purely personal
46 services by an individual, shall allocate and apportion his net
47 income as provided in this section. If a taxpayer has income
48 from business activity as a public utility but derives the
49 greater percentage of his income from activities subject to this
50 section, the taxpayer may elect to allocate and apportion his
51 entire net income as provided in this section.

52 (c) *"Taxable in another state" defined.*—For purposes of
53 allocation and apportionment of income under this section, a
54 taxpayer is taxable in another state if (1) in that state he is
55 subject to a net income tax, a franchise tax measured by net
56 income, a franchise tax for the privilege of doing business or
57 a corporate stock tax, or (2) that state has jurisdiction to
58 subject the taxpayer to a net income tax regardless of whether,
59 in fact, the state does or does not.

60 (d) *Allocation of nonbusiness income.*—Rents and royal-
61 ties from real or tangible personal property, capital gains,
62 interest, dividends or patent or copyright royalties, to the
63 extent that they constitute nonbusiness income, shall be allo-
64 cated as provided in paragraphs (1) through (4) of this sub-
65 section.

66 (1) *Net rents and royalties.*—

67 (A) Net rents and royalties from real property located in
68 this state are allocable to this state.

69 (B) Net rents and royalties from tangible personal property
70 are allocable to this state: (i) if and to the extent that the
71 property is utilized in this state, or (ii) in their entirety if the
72 taxpayer's commercial domicile is in this state and the tax-
73 payer is not organized under the laws of or taxable in the
74 state in which the property is utilized.

75 (C) The extent of utilization of tangible personal property
76 in a state is determined by multiplying the rents and royalties

77 by a fraction, the numerator of which is the number of days
78 of physical location of the property in the state during the
79 rental or royalty period in the taxable year and the denomina-
80 tor of which is the number of days of physical location of the
81 property everywhere during all rental or royalty periods in the
82 taxable year. If the physical location of the property during the
83 rental or royalty period is unknown or unascertainable by the
84 taxpayer, tangible personal property is utilized in the state in
85 which the property was located at the time the rental or royalty
86 payer obtained possession.

87 (2) *Capital gains.*—

88 (A) Capital gains and losses from sales of real property
89 located in this state are allocable to this state.

90 (B) Capital gains and losses from sales of tangible personal
91 property are allocable to this state if (i) the property had a
92 situs in this state at the time of the sale, or (ii) the taxpayer's
93 commercial domicile is in this state and the taxpayer is not
94 taxable in the state in which the property had a situs.

95 (C) Capital gains and losses from sales of intangible per-
96 sonal property are allocable to this state if the taxpayer's com-
97 mercial domicile is in this state.

98 (3) *Interest.*—Interest and dividends are allocable to this
99 state if the taxpayer's commercial domicile is in this state.

100 (4) *Patent and copyright royalties.*—

101 (A) Patent and copyright royalties are allocable to this
102 state: (i) if and to the extent that the patent or copyright is
103 utilized by the payer in this state, or (ii) if and to the extent
104 that the patent copyright is utilized by the payer in a state
105 in which the taxpayer is not taxable and the taxpayer's com-
106 mercial domicile is in this state.

107 (B) A patent is utilized in a state to the extent that it is
108 employed in production, fabrication, manufacturing or other
109 processing in the state or to the extent that a patented product
110 is produced in the state. If the basis of receipts from patent
111 royalties does not permit allocation to states or if the account-
112 ing procedures do not reflect states of utilization, the patent

113 is utilized in the state in which the taxpayer's commercial
114 domicile is located.

115 (C) A copyright is utilized in a state to the extent that
116 printing or other publication originates in the state. If the
117 basis of receipts from copyright royalties does not permit allo-
118 cation to states or if the accounting procedures do not reflect
119 states of utilization, the copyright is utilized in the state in
120 which the taxpayer's commercial domicile is located.

121 (e) *Apportionment of business income.*—All business in-
122 come shall be apportioned to this state by multiplying the in-
123 come by a fraction, the numerator of which is the property
124 factor plus the payroll factor plus the sales factor, and the
125 denominator of which is three.

126 (f) *Property factor.*—The property factor is a fraction, the
127 numerator of which is the average value of the taxpayer's real
128 and tangible personal property owned or rented and used in
129 this state during the tax period and the denominator of which
130 is the average value of all the taxpayer's real and tangible per-
131 sonal property owned or rented and used during the tax period.

132 (g) *Value of property.*—Property owned by the taxpayer
133 is valued at its original cost. Property rented by the taxpayer
134 is valued at eight times the net annual rental rate. Net annual
135 rental rate is the annual rental rate paid by the taxpayer less
136 any annual rental rate received by the taxpayer from sub-
137 rentals.

138 (h) *Average value of property.*—The average value of
139 property shall be determined by averaging the values at the
140 beginning and ending of the tax period but the tax adminis-
141 trator may require the averaging of monthly values during the
142 tax period if reasonably required to reflect properly the aver-
143 age value of the taxpayer's property.

144 (i) *Payroll factor.*—The payroll factor is a fraction, the
145 numerator of which is the total amount paid in this state dur-
146 ing the tax period by the taxpayer for compensation and the
147 denominator of which is the total compensation paid every-
148 where during the tax period.

149 (j) *Compensation.*—Compensation is paid in this state if:

150 (1) The individual's service is performed entirely within
151 the state;

152 (2) The individual's service is performed both within and
153 without the state, but the service performed without the state
154 is incidental to the individual's service within the state; or

155 (3) Some of the service is performed in the state and (A) the
156 base of operations or, if there is no base of operations, the
157 place from which the service is directed or controlled is in the
158 state, or (B) the base of operations or the place from which
159 the service is directed or controlled is not in any state in
160 which some part of the service is performed, but the indivi-
161 dual's residence is in this state.

162 (k) *Sales factor*.—The sales factor is a fraction, the num-
163 erator of which is the total sales of the taxpayer in this state
164 during the tax period, and the denominator of which is the
165 total sales of the taxpayer everywhere during the tax period.

166 (1) *Allocation of sales of tangible personal property*.—
167 Sales of tangible personal property are in this state if:

168 (1) The property is delivered or shipped to a purchaser,
169 other than the United States government, within this state re-
170 gardless of the f.o.b. point or other conditions of the sale; or

171 (2) The property is shipped from an office, store, ware-
172 house, factory or other place of storage in this state and (A)
173 the purchaser is the United States government or (B) the tax-
174 payer is not taxable in the state of the purchaser.

175 (m) *Allocation of other sales*.—Sales, other than sales
176 of tangible personal property, are in this state if:

177 (1) The income-producing activity is performed in this
178 state; or

179 (2) The income-producing activity is performed both in and
180 outside this state and a greater proportion of the income-
181 producing activity is performed in this state than in any other
182 state, based on costs of performance.

183 (n) *Other methods of allocation and apportionment*.—If
184 the allocation and apportionment provisions of this section

185 do not fairly represent the extent of the taxpayer's business
186 activity in this state, the taxpayer may petition for or the tax
187 commissioner may require, in respect to all or any part of the
188 taxpayer's business activity, if reasonable:

189 (1) Separate accounting;

190 (2) The exclusion of any one or more of the factors;

191 (3) The inclusion of one or more additional factors which
192 will fairly represent the taxpayer's business activity in this
193 state; or

194 (4) The employment of any other method to effectuate an
195 equitable allocation and apportionment of the taxpayer's in-
196 come.

§11-10A-8. Elements of sales and use taxes.

1 (a) *Use tax credit.*—Each purchaser liable for a use tax
2 on tangible personal property shall be entitled to full credit for
3 the combined amount or amounts of legally imposed sales or
4 use taxes paid by him with respect to the same property to
5 another state and any subdivision thereof. The credit shall
6 be applied first against the amount of any use tax due the
7 state, and any unused portion of the credit shall then be
8 applied against the amount of any use tax due a subdivision.

9 (b) *Sales tax exemption certificates; vendors may rely.*
10 —Whenever a vendor receives and accepts in good faith from
11 a purchaser a resale or other exemption certificate or other
12 written evidence of exemption authorized by the appropriate
13 state or subdivision taxing authority, the vendor shall be
14 relieved of liability for a sale or use tax with respect to the
15 transaction.

**§11-10A-9. Multistate tax commission; organization and manage-
ment.**

1 (a) *General.*—The multistate tax commission is hereby
2 established. It shall be composed of one "member" from each
3 party state who shall be the head of the state agency
4 charged with the administration of the type of taxes to
5 which this article applies. If there is more than one such
6 agency the state shall provide by law for the selection of

7 the commission member from the heads of the relevant
8 agencies. State law may provide that a member of the
9 commission be represented by an alternate but only if there
10 is on file with the commission written notification of the
11 designation and identity of the alternate. The attorney
12 general of each party state or his designee, or other
13 counsel if the laws of the party state specifically provide,
14 shall be entitled to attend the meetings of the commission,
15 but shall not vote. Such attorneys general, designees or other
16 counsel shall receive all notices of meetings required under
17 subsection (e) of this section.

18 (b) *Representation of subdivisions.*—Each party state
19 shall provide by law for the selection of representatives from
20 its subdivisions affected by this compact to consult with the
21 commission member from that state.

22 (c) *Voting.*—Each member shall be entitled to one vote.
23 The commission shall not act unless a majority of the mem-
24 bers are present, and no action shall be binding unless approved
25 by a majority of the total number of members.

26 (d) *Official seal.*—The commission shall adopt an official
27 seal to be used as it may provide.

28 (e) *Meetings and notice of meetings.*—The commission
29 shall hold an annual meeting and such other regular meetings
30 as its bylaws may provide and such special meetings as its
31 executive committee may determine. The commission bylaws
32 shall specify the dates of the annual and any other regular
33 meetings, and shall provide for the giving of notice of annual,
34 regular and special meetings. Notices of special meetings shall
35 include the reasons therefor and an agenda of the items to be
36 considered.

37 (f) *Election of officers; appointment of executive director;*
38 *bonding.*—The commission shall elect annually, from among
39 its members, a chairman, a vice chairman and a treasurer.
40 The commission shall appoint an executive director who shall
41 serve at its pleasure and it shall fix his duties and compensa-
42 tion. The executive director shall be secretary of the com-
43 mission. The commission shall make provision for the bond-

44 ing of such of its officers and employees as it may deem ap-
45 appropriate.

46 (g) *Employees of commission.*—Irrespective of the civil
47 service, personnel or other merit system laws of any party
48 state, the executive director shall appoint or discharge such
49 personnel as may be necessary for the performance of the
50 functions of the commission and shall fix their duties and
51 compensation. The commission bylaws shall provide for per-
52 sonnel policies and programs.

53 (h) *Services of personnel from governmental entities.*—
54 The commission may borrow, accept or contract for the
55 services of personnel from any state, the United States or any
56 other governmental entity.

57 (i) *Donations and grants.*—The commission may accept
58 for any of its purposes and functions any donations and grants
59 of money, equipment, supplies, materials and services, con-
60 ditional or otherwise, from any governmental entity, and may
61 utilize and dispose of the same.

62 (j) *Offices.*—The commission may establish one or more
63 offices for the transaction of its business.

64 (k) *Bylaws.*—The commission shall adopt bylaws for
65 the conduct of its business. The commission shall publish
66 its bylaws in convenient form, and shall file a copy of the
67 bylaws and any amendments thereto with the appropriate
68 agency or officer in each of the party states.

69 (l) *Annual report to governor and legislature.*—The com-
70 mission annually shall make to the governor and legislature
71 of each party state a report covering its activities for the
72 preceding year. Any donation or grant accepted by the com-
73 mission or services borrowed shall be reported in the annual
74 report of the commission, and shall include the nature, amount
75 and conditions, if any, of the donation, gift, grant or services
76 borrowed and the identity of the donor or lender. The com-
77 mission may make additional reports as it may deem desirable.

§11-10A-10. Committees of the multistate tax commission.

1 (a) *Executive committee.*—To assist in the conduct of its

2 business when the full commission is not meeting, the com-
3 mission shall have an executive committee of seven members,
4 including the chairman, vice chairman, treasurer and four
5 other members elected annually by the commission. The
6 executive committee, subject to the provisions of this compact
7 and consistent with the policies of the commission, shall
8 function as provided in the bylaws of the commission.

9 (b) *Advisory and technical committees.*—The commis-
10 sion may establish advisory and technical committees,
11 membership on which may include private persons and pub-
12 lic officials, in furthering any of its activities. Such
13 committees may consider any matter of concern to the
14 commission, including problems of special interest to any
15 party state and problems dealing with particular types of
16 taxes.

17 (c) *Additional committees.*—The commission may estab-
18 lish such additional committees as its bylaws may provide.

§11-10A-11. Powers of the multistate tax commission.

1 In addition to powers conferred elsewhere in this compact,
2 the commission shall have power to:

3 (a) Study state and local tax systems and particular
4 types of state and local taxes.

5 (b) Develop and recommend proposals for an increase in
6 uniformity or compatibility of state and local tax laws with
7 a view toward encouraging the simplification and improvement
8 of state and local tax law administration.

9 (c) Compile and publish information as in its judgment
10 would assist the party states in implementation of the com-
11 pact and taxpayers in complying with state and local tax
12 laws.

13 (d) Do all things necessary and incidental to the ad-
14 ministration of its functions pursuant to this compact.

§11-10A-12. Commission funding; books and records.

1 (a) *Annual budget.*—The commission shall submit to the
2 governor or designated officer or officers of each party state

3 a budget of its estimated expenditures for such period as
4 may be required by the laws of that state for presentation to
5 the legislature thereof.

6 (b) *State's share.*—Each of the commission's budgets
7 of estimated expenditures shall contain specific recommenda-
8 tions of the amounts to be appropriated by each of the party
9 states. The total amount of appropriations requested under
10 any such budget shall be apportioned among the party
11 states as follows: One tenth in equal shares; and the remainder
12 in proportion to the amount of revenue collected by each
13 party state and its subdivisions from income taxes, capital
14 stock taxes, gross receipts taxes, sales and use taxes. In deter-
15 mining such amounts, the commission shall employ such avail-
16 able public sources of information as, in its judgment, present
17 the most equitable and accurate comparisons among the party
18 states. Each of the commission's budgets of estimated ex-
19 penditures and requests for appropriations shall indicate the
20 sources used in obtaining information employed in applying
21 the formula contained in this subsection.

22 (c) *Credit of state not to be pledged.*—The commission
23 shall not pledge the credit of any party state. The commis-
24 sion may meet any of its obligations in whole or in part
25 with funds available to it under subsection (i), section eight
26 of the article: *Provided*, That the commission takes specific
27 action setting aside such funds prior to incurring any obliga-
28 tion to be met in whole or in part in such manner. Except
29 where the commission makes use of funds available to it under
30 subsection (i), section fourteen, the commission shall not
31 incur any obligation prior to the allotment of funds by the
32 party states adequate to meet the same.

33 (d) *Books and records.*—The commission shall keep ac-
34 curate accounts of all receipts and disbursements. The receipts
35 and disbursements of the commission shall be subject to the
36 audit and accounting procedures established under its bylaws.
37 All receipts and disbursements of funds handled by the com-
38 mission shall be audited yearly by a certified or licensed
39 public accountant and the report of the audit shall be included
40 in and become part of the annual report of the commission.

41 (e) *Inspection of books and records.*—The accounts of
42 the commission shall be open at any reasonable time for
43 inspection by duly constituted officers of the party states
44 and by any persons authorized by the commission.

45 (f) *Audits.*—Nothing contained in this section shall be
46 construed to prevent commission compliance with laws relating
47 to audit or inspection of accounts by or on behalf of any
48 government contributing to the support of the commission.

§11-10A-13. Uniform regulations and forms.

1 (a) *General.*—Whenever any two or more party states,
2 or subdivisions of party states, have uniform or similar
3 provisions of law relating to an income tax, capital stock
4 tax, gross receipts tax, sales or use tax, the commission
5 may adopt uniform regulations for any phase of the ad-
6 ministration of such law, including assertion of jurisdiction
7 to tax, or prescribing uniform tax forms. The commission
8 may also act with respect to the provisions of section seven
9 of this article.

10 (b) *Public hearing.*—Prior to the adoption of any regula-
11 tion, the commission shall:

12 (1) As provided in its bylaws, hold at least one public
13 hearing on due notice to all affected party states and sub-
14 divisions thereof and to all taxpayers and other persons who
15 have made timely request of the commission for advance
16 notice of its regulation-making proceedings.

17 (2) Afford all affected party states and subdivisions and
18 interested persons an opportunity to submit relevant written
19 data and views, which shall be considered fully by the com-
20 mission.

21 (c) *Adoption by member states.*—The commission shall
22 submit any regulations adopted by it to the appropriate of-
23 ficials of all party states and subdivisions to which they
24 might apply. Each such state and subdivision shall consider
25 any such regulation for adoption in accordance with its own
26 laws and procedures.

§11-10A-14. Interstate audits.

1 (a) *General.*—This article shall be in force only in those
2 party states that specifically provide therefor by statute. Any
3 party state or subdivision thereof desiring to make or partici-
4 pate in an audit of any accounts, books, papers, records or
5 other documents may request the commission to perform the
6 audit on its behalf. In responding to the request, the commis-
7 sion shall have access to and may examine, at any reasonable
8 time, such accounts, books, papers, records and other docu-
9 ments and any relevant property or stock of merchandise. The
10 commission may enter into agreements with party states or
11 their subdivisions for assistance in performance of the audit.
12 The commission shall make charges, to be paid by the state or
13 local government or governments for which it performs the
14 service, for any audits performed by it in order to reimburse
15 itself for the actual costs incurred in making the audit.

16 (b) *Attendance of persons.*—The commission may re-
17 quire the attendance of any person within the state where
18 it is conducting an audit or part thereof at a time and place
19 fixed by it within such state for the purpose of giving testimony
20 with respect to any account, book, paper, document, other
21 record, property or stock of merchandise being examined in
22 connection with the audit. If the person is not within the
23 jurisdiction, he may be required to attend for such purpose at
24 any time and place fixed by the commission within the state
25 of which he is a resident: *Provided*, That such state has
26 adopted this section.

27 (c) *Subpoena.*—The commission may apply to any court
28 of record in West Virginia having power to issue compulsory
29 process for orders in aid of its powers and responsibilities pur-
30 suant to this section and any and all such courts shall have
31 jurisdiction to issue such orders. Failure of any person to obey
32 any such order shall be punishable as contempt of the issuing
33 court. If the party or subject matter on account of which the
34 commission seeks an order is within the jurisdiction of the court
35 to which application is made, such application may be to
36 a court in the state or subdivision on behalf of which the
37 audit is being made or a court in the state in which the
38 object of the order being sought is situated. The provisions

39 of this subsection apply only to courts in a state that has
40 adopted this section.

41 (d) *Refusal to perform audit.*—The commission may de-
42 cline to perform any audit requested if it finds that its available
43 personnel or other resources are insufficient for the purpose or
44 that, in the terms requested, the audit is impracticable for
45 satisfactory performance. If the commission, on the basis
46 of its experience, has reason to believe that an audit of a
47 particular taxpayer, either at a particular time or on
48 a particular schedule, would be of interest to a num-
49 ber of party states or their subdivisions, it may offer
50 to make the audit or audits, the offer to be contingent on
51 sufficient participation therein as determined by the com-
52 mission.

53 (e) *Confidentiality of audit information.*—Information ob-
54 tained by any audit pursuant to this section shall be con-
55 fidential and available only for tax purposes to party states,
56 their subdivisions or the United States. Availability of in-
57 formation shall be in accordance with the laws of the states
58 or subdivisions on whose account the commission performs the
59 audit, and only through the appropriate agencies or officers
60 of such states or subdivisions. Nothing in this section shall
61 be construed to require any taxpayer to keep records for any
62 period not otherwise required by law.

63 (f) *Cooperative audit.*—Other arrangements made or
64 authorized pursuant to law for cooperative audit by or on
65 behalf of the party states or any of their subdivisions are
66 not superseded or invalidated by this section.

67 (g) *Taxpayers not charged for audit.*—In no event shall
68 the commission make any charge against a taxpayer for an
69 audit.

70 (h) *Definition of "tax."*—As used in this section, "tax,"
71 in addition to the meaning ascribed to it in section five,
72 means any tax or license fee imposed in whole or in part
73 for revenue purposes.

§11-10A-15. Arbitration.

1 (a) *General.*—Whenever the commission finds a need

2 for settling disputes concerning apportionments and alloca-
3 tions by arbitration, it may adopt a regulation placing this
4 section in effect, notwithstanding the provisions of this section.

5 (b) *Arbitration panel.*—The commission shall select and
6 maintain an arbitration panel composed of officers and em-
7 ployees of state and local governments and private persons
8 who shall be knowledgeable and experienced in matters of tax
9 law and administration.

10 (c) *Taxpayer request for arbitration.*—Whenever a tax-
11 payer who has elected to employ section six, or whenever
12 the laws of the party state or subdivision thereof are sub-
13 stantially identical with the relevant provisions of section
14 six, the taxpayer, by written notice to the commission and to
15 each party state or subdivision thereof that would be affected,
16 may secure arbitration of an apportionment or allocation,
17 if he is dissatisfied with the final administrative determination
18 of the tax agency of the state or subdivision with respect thereto
19 on the ground that it would subject him to double or multiple
20 taxation by two or more party states or subdivision thereof.
21 Each party state and subdivision thereof hereby consents to
22 the arbitration as provided herein, and agrees to be bound
23 thereby.

24 (d) *Composition of arbitration board.*—The arbitration
25 board shall be composed of one person selected by the tax-
26 payer, one by the agency or agencies involved, and one member
27 of the commission's arbitration panel. If the agencies involved
28 are unable to agree on the person to be selected by them,
29 such person shall be selected by lot from the total member-
30 ship of the arbitration panel. The two persons selected for the
31 board in the manner provided by the foregoing provisions
32 of this subsection shall jointly select the third member of
33 the board. If they are unable to agree on the selection,
34 the third member shall be selected by lot from among the
35 total membership of the arbitration panel. No member of a
36 board selected by lot shall be qualified to serve if he is an
37 officer or employee or is otherwise affiliated with any party
38 to the arbitration proceeding. Residence within the jurisdiction
39 of a party to the arbitration proceeding shall not constitute
40 affiliation within the meaning of this subsection.

41 (e) *Meeting of board.*—The board may sit in any state
42 or subdivision party to the proceeding, in the state of the
43 taxpayer's incorporation, residence or domicile, in any state
44 where the taxpayer does business or in any place that it finds
45 most appropriate for gaining access to evidence relevant to
46 the matter before it.

47 (f) *Notice of hearing.*—The board shall give due notice
48 of the times and places of its hearings. The parties shall be
49 entitled to be heard, to present evidence and to examine and
50 cross-examine witnesses. The board shall act by majority
51 vote.

52 (g) *Powers of board.*—The board shall have power to
53 administer oaths, take testimony, subpoena and require the
54 attendance of witnesses and the production of accounts,
55 books, papers, records, and other documents, and issue com-
56 missions to take testimony. Subpoenas may be signed by
57 any member of the board. In case of failure to obey a
58 subpoena, and upon application by the board, any judge of a
59 court of competent jurisdiction of the state in which the
60 board is sitting or in which the person to whom the subpoena
61 is directed may be found may make an order requiring com-
62 pliance with the subpoena, and the court may punish failure
63 to obey the order as a contempt. The provisions of this
64 subsection apply only in states that have adopted this section.

65 (h) *Expense of arbitration.*—Unless the parties otherwise
66 agree the expenses and other costs of the arbitration shall
67 be assessed and allocated among the parties by the board in
68 such manner as it may determine. The commission shall fix
69 a schedule of compensation for members of arbitration boards
70 and of other allowable expenses and costs. No officer or
71 employee of a state or local government who serves as a
72 member of a board shall be entitled to compensation therefor
73 unless he is required on account of his service to forego the
74 regular compensation attaching to his public employment, but
75 any such board member shall be entitled to expenses.

76 (i) *Determinations of board; finality.*—The board shall
77 determine the disputed apportionment or allocation and any
78 matters necessary thereto. The determinations of the board

79 shall be final for purposes of making the apportionment or
80 allocation, but for no other purpose.

81 (j) *Filing of determinations.*—The board shall file with
82 the commission and with each tax agency represented in the
83 proceeding: The determination of the board; the board's writ-
84 ten statement of its reasons therefor; the record of the board's
85 proceedings; and any other documents required by the arbitra-
86 tion rules of the commission to be filed.

87 (k) *Publishing of determinations.*—The commission shall
88 publish the determinations of boards together with the state-
89 ments of the reasons therefor.

90 (l) *Rules of procedure.*—The commission shall adopt and
91 publish rules of procedure and practice and shall file a copy
92 of such rules and of any amendment thereto with the ap-
93 propriate agency or officer in each of the party states.

94 (m) *Written compromise.*—Nothing contained herein
95 shall prevent at any time a written compromise of any matter
96 or matters in dispute, if otherwise lawful, by the parties
97 to the arbitration proceedings.

§11-10A-16. Entry into force and withdrawal.

1 (a) *General.*—This compact shall enter into force when
2 enacted into law by any seven states. Thereafter, this com-
3 pact shall become effective as to any other state upon its
4 enactment thereof. The commission shall arrange for notifica-
5 tion of all party states whenever there is a new enactment of
6 the compact.

7 (b) *Withdrawal of membership.*—Any party state may
8 withdraw from this compact by enacting a statute repealing
9 the same. No withdrawal shall affect any liability already
10 incurred by or chargeable to a party state prior to the time
11 of such withdrawal.

12 (c) *Transition rule on withdrawal of membership.*—No
13 proceeding commenced before an arbitration board prior to
14 the withdrawal of a state and to which the withdrawing state
15 or any subdivision thereof is a party shall be discontinued
16 or terminated by the withdrawal, nor shall the board thereby

17 lose jurisdiction over any of the parties to the proceeding
18 necessary to make a binding determination therein.

§11-10A-17. Effect on other laws and jurisdiction.

1 Nothing in this compact shall be construed to:

2 (a) Affect the power of any state or subdivision thereof
3 to fix rates of taxation, except that a party state shall be
4 obligated to implement subsection (b), section six of this
5 article.

6 (b) Apply to any tax or fixed fee imposed for the
7 registration of a motor vehicle or any tax on motor fuel,
8 other than a sales tax: *Provided*, That the definition of
9 "tax" in subsection (g), section four of this article may
10 apply for the purposes of that section and the commisison's
11 powers of study and recommendation pursuant to section
12 eleven of this article may apply.

13 (c) Withdraw or limit the jurisdiction of any state or
14 local court or administrative officer or body with respect
15 to any person, corporation or other entity or subject matter,
16 except to the extent that such jurisdiction is expressly con-
17 ferred by or pursuant to this compact upon another agency
18 or body.

19 (d) Supersede or limit the jurisdiction of any court of
20 the United States.

§11-10A-18. Tax commissioner to represent state.

1 The tax commissioner shall represent this state on the
2 multistate tax commission.

§11-10A-19. Representation by an alternate.

1 The tax commissioner may be represented on the multi-
2 state tax commission by an alternate designated by him. Any
3 such alternate shall be a principal deputy or assistant of the
4 tax commissioner.

§11-10A-20. Representation of political subdivisions of this state.

1 The governor, after consultation with representatives of

2 municipalities having a business and occupation tax, shall
3 appoint three persons who are representative of subdivisions
4 affected or likely to be affected by the multistate tax com-
5 pact. The member of the commission representing this state,
6 and any alternate designated by him, shall consult regularly
7 with these appointees in accordance with subsection (b),
8 section nine of this article.

§11-10A-21. Multistate tax compact advisory committee created.

1 There is hereby established the multistate tax compact
2 advisory committee composed of the member of the multistate
3 tax commission representing this state, any alternate designated
4 by him, the attorney general or his designee, and two mem-
5 bers of the Senate, appointed by the president thereof and two
6 members of the House of Delegates, appointed by the speaker
7 thereof. The chairman shall be the member of the com-
8 mission representing this state. The committee shall meet on
9 the call of its chairman or at the request of a majority of
10 its members, but in any event it shall meet not less than
11 three times in each year. The committee may consider any
12 matters relating to recommendations of the multistate tax
13 commission and the activities of the members in representing
14 this state thereon.

§11-10A-22. Appropriation of dues and audit fees.

1 There shall annually be appropriated in the budget of
2 the tax commissioner, sufficient funds to pay audit fees and
3 the cost of being a member of the multistate tax compact.

§11-10A-23. Effective date; transition rules.

1 This article shall take effect on the first day of July, one
2 thousand nine hundred eighty-one, and shall apply to all tax
3 years ending after said first day of July. With respect to
4 tax years ending prior to the first day of July, one thousand
5 nine hundred eighty-one, the laws of this state as they existed
6 prior to the effective date of this article shall be preserved and
7 continued as fully and completely as if set forth in extenso
8 herein.

CHAPTER 162

(S. B. 422—By Mr. Moreland)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article twelve of said chapter, all relating to general powers of municipalities; compensation of officers and employees; and authorizing municipalities to expend municipal revenues for purposes of general employee benefits.

Be it enacted by the Legislature of West Virginia:

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

Article

5. **Election, Appointment, Qualification and Compensation of Officers; general provisions relating to Officers and Employees; Elections and Petitions generally; Conflict of Interest.**
12. **General and Specific Powers, Duties and allied relations of Municipalities, Governing Bodies and Municipal Officers and Employees; Suits against Municipalities.**

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

PART VI. GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES.

§8-5-12. Compensation of officers and employees.

1 Notwithstanding any charter provision to the contrary, the
2 governing body of every municipality shall by ordinance fix
3 or cause to be fixed the salary or compensation of every
4 municipal officer and employee: *Provided*, That the salary of
5 any officer shall not be increased or diminished during his
6 term.

7 The governing body of every municipality shall have

8 plenary power and authority to provide by ordinance for the
9 allowance of time off of officers and employees with pay for
10 vacations and illness and for personnel management
11 incentives, as additional consideration for their services and
12 employment.

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED
RELATIONS OF MUNICIPALITIES, GOVERNING BODIES
AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS
AGAINST MUNICIPALITIES.**

**PART III. GENERAL POWERS OF MUNICIPALITIES
AND GOVERNING BOARDS.**

**§8-12-5. General powers of every municipality and the
governing body thereof.**

1 In addition to the powers and authority granted by (i) the
2 constitution of this state, (ii) other provisions of this chapter,
3 (iii) other general law, and (iv) any charter, and to the extent
4 not inconsistent or in conflict with any of the foregoing
5 except a special legislative charter, every municipality and
6 the governing body thereof shall have plenary power and
7 authority therein by ordinance or resolution, as the case may
8 require, and by appropriate action based thereon:

9 (1) To lay off, establish, construct, open, alter, curb,
10 recurb, pave or repave and keep in good repair, or vacate,
11 discontinue and close, streets, avenues, roads, alleys, ways,
12 sidewalks, crosswalks, drains and gutters, for the use of the
13 public, and to improve and light the same, and have them
14 kept free from obstructions on or over them which have not
15 been authorized pursuant to the succeeding provisions of this
16 subdivision (1); and, subject to such terms and conditions as
17 the governing body shall prescribe, to permit, without in any
18 way limiting the power and authority granted by the
19 provisions of article sixteen of this chapter, any person to
20 construct and maintain a passageway, building or other
21 structure overhanging or crossing the airspace above a public
22 street, avenue, road, alley, way, sidewalk or crosswalk, but
23 before any such permission for any person to construct and
24 maintain a passageway, building or other structure
25 overhanging or crossing any such airspace is granted, a
26 public hearing thereon shall be held by the governing body
27 after publication of a notice of the date, time, place and

28 purpose of such public hearing has been published as a Class
29 I legal advertisement in compliance with the provisions of
30 article three, chapter fifty-nine of this code, and the
31 publication area for such publication shall be the
32 municipality: *Provided, however,* That any such permit so
33 granted, shall automatically cease and terminate in the event
34 of abandonment and nonuse thereof for the purposes
35 intended for a period of ninety days, and all rights therein or
36 thereto shall revert to such municipality for its use and
37 benefit;

38 (2) To provide for the opening and excavation of streets,
39 avenues, roads, alleys, ways, sidewalks, crosswalks and
40 public places belonging to the municipality and regulate the
41 conditions under which any such opening may be made;

42 (3) To prevent by proper penalties the throwing,
43 depositing or permitting to remain on any street, avenue,
44 road, alley, way, sidewalk, square or other public place any
45 glass, scrap iron, nails, tacks, wire, other litter, or any
46 offensive matter or anything likely to injure the feet of
47 individuals or animals or the tires of vehicles;

48 (4) To regulate the use of streets, avenues, roads, alleys,
49 ways, sidewalks, crosswalks and public places belonging to
50 the municipality;

51 (5) To regulate the width of sidewalks on the streets,
52 avenues and roads, and, subject to the provisions of article
53 eighteen of this chapter, to order the sidewalks, footways and
54 crosswalks to be paved, repaved, curbed or recurbed and
55 kept in good order, free and clean, by the owners or
56 occupants thereof or of the real property next adjacent
57 thereto;

58 (6) To establish, construct, alter, operate and maintain, or
59 discontinue, bridges, tunnels and ferries and approaches
60 thereto;

61 (7) To provide for the construction and maintenance of
62 water drains, the drainage of swamps or marshlands and
63 drainage systems;

64 (8) To provide for the construction, maintenance and
65 covering over of watercourses;

- 66 (9) To control and administer the waterfront and
67 waterways of the municipality, and to acquire, establish,
68 construct, operate and maintain and regulate flood control
69 works, wharves and public landings, warehouses and all
70 adjuncts and facilities for navigation and commerce and the
71 utilization of the waterfront and waterways and adjacent
72 property;
- 73 (10) To prohibit the accumulation and require the disposal
74 of garbage, refuse, wastes, ashes, trash and other similar
75 matters;
- 76 (11) To construct, establish, acquire, equip, maintain and
77 operate incinerator plants and equipment and all other
78 facilities for the efficient removal and destruction of garbage,
79 refuse, wastes, ashes, trash and other similar matters;
- 80 (12) To regulate or prohibit the purchase or sale of articles
81 intended for human use or consumption which are unfit for
82 such use or consumption, or which may be contaminated or
83 otherwise unsanitary;
- 84 (13) To prevent injury or annoyance to the public or
85 individuals from anything dangerous, offensive or
86 unwholesome;
- 87 (14) To regulate the keeping of gunpowder and other
88 combustibles;
- 89 (15) To make regulations guarding against danger or
90 damage by fire;
- 91 (16) To arrest, convict and punish any individual for
92 carrying about his person any revolver or other pistol, dirk,
93 bowie knife, razor, slungshot, billy, metallic or other false
94 knuckles, or any other dangerous or other deadly weapon of
95 like kind or character;
- 96 (17) To arrest, convict and punish any person for
97 importing, printing, publishing, selling or distributing any
98 pornographic publications;
- 99 (18) To arrest, convict and punish any person for keeping a
100 house of ill fame, or for letting to another person any house or
101 other building for the purpose of being used or kept as a
102 house of ill fame, or for knowingly permitting any house
103 owned by him or under his control to be kept or used as a

104 house of ill fame, or for loafing, boarding or loitering in a
105 house of ill fame, or frequenting same;

106 (19) To prevent and suppress conduct and practices which
107 are immoral, disorderly, lewd, obscene and indecent;

108 (20) To prevent the illegal sale of intoxicating liquors,
109 drinks, mixtures and preparations;

110 (21) To arrest, convict and punish any individual for
111 driving or operating a motor vehicle while intoxicated or
112 under the influence of liquor, drugs or narcotics;

113 (22) To arrest, convict and punish any person for gambling
114 or keeping any gaming tables, commonly called "A, B, C," or
115 "E, O," table or faro bank or keno table, or table of like kind,
116 under any denomination, whether the gaming table be played
117 with cards, dice or otherwise, or any person who shall be a
118 partner or concerned in interest, in keeping or exhibiting
119 such table or bank, or keeping or maintaining any gaming
120 house or place, or betting or gambling for money or anything
121 of value;

122 (23) To provide for the elimination of hazards to public
123 health and safety and to abate or cause to be abated anything
124 which in the opinion of a majority of the governing body is a
125 public nuisance;

126 (24) To license, or for good cause to refuse to license in a
127 particular case, or in its discretion to prohibit in all cases, the
128 operation of pool and billiard rooms and the maintaining for
129 hire of pool and billiard tables notwithstanding the general
130 law as to state licenses for any such business and the
131 provisions of section four, article thirteen of this chapter; and
132 when the municipality, in the exercise of its discretion, shall
133 have refused to grant a license to operate a pool or billiard
134 room, mandamus shall not lie to compel such municipality to
135 grant such license unless it shall clearly appear that the
136 refusal of the municipality to grant such license is
137 discriminatory or arbitrary; and in the event that the
138 municipality determines to license any such business, the
139 municipality shall have plenary power and authority, and it
140 shall be the duty of its governing body, to make and enforce
141 reasonable ordinances regulating the licensing and operation
142 of such businesses;

- 143 (25) To protect places of divine worship and to preserve
144 peace and order in and about the premises where held;
- 145 (26) To regulate or prohibit the keeping of animals or
146 fowls and to provide for the impounding, sale or destruction
147 of animals or fowls kept contrary to law or found running at
148 large;
- 149 (27) To arrest, convict and punish any person for cruelty,
150 unnecessarily or needlessly beating, torturing, mutilating,
151 killing or overloading or overdriving, or willfully depriving of
152 necessary sustenance, any domestic animal;
- 153 (28) To provide for the regular building of houses or other
154 structures, for the making of division fences by the owners of
155 adjacent premises and for the drainage of lots by proper
156 drains and ditches;
- 157 (29) To provide for the protection and conservation of
158 shade or ornamental trees, whether on public or private
159 property, and for the removal of trees or limbs of trees in a
160 dangerous condition;
- 161 (30) To prohibit with or without zoning the location of
162 occupied house trailers or mobile homes in certain residential
163 areas;
- 164 (31) To regulate the location and placing of signs,
165 billboards, posters, and similar advertising;
- 166 (32) To erect, establish, construct, acquire, improve,
167 maintain and operate a gas system, an electric system, a
168 waterworks system, or sewer system and sewage treatment
169 and disposal system, or any combination of the foregoing
170 (subject to all of the pertinent provisions of articles nineteen
171 and twenty of this chapter and particularly to the limitations
172 or qualifications on the right of eminent domain set forth in
173 said articles nineteen and twenty), within or without the
174 corporate limits of the municipality, or partly within and
175 partly without the corporate limits of the municipality,
176 except that the municipality shall not erect any such system
177 partly without the corporate limits of the municipality to
178 serve persons already obtaining service from an existing
179 system of the character proposed, and where such system is
180 by the municipality erected, or has heretofore been so

181 erected, partly within and partly without the corporate limits
182 of the municipality, the municipality shall have the right to
183 lay and collect charges for service rendered to those served
184 within and those served without the corporate limits of the
185 municipality, and to prevent injury to such system or the
186 pollution of the water thereof and its maintenance in a
187 healthful condition for public use within the corporate limits
188 of the municipality;

189 (33) To acquire watersheds, water and riparian rights,
190 plant sites, rights-of-way and any and all other property and
191 appurtenances necessary, appropriate, useful, convenient or
192 incidental to any such system, waterworks or sewage
193 treatment and disposal works, as aforesaid, subject to all of
194 the pertinent provisions of articles nineteen and twenty of
195 this chapter;

196 (34) To establish, construct, acquire, maintain and operate
197 and regulate markets, and prescribe the time of holding the
198 same;

199 (35) To regulate and provide for the weighing of articles
200 sold or for sale;

201 (36) To establish, construct, acquire, maintain and operate
202 public buildings, municipal buildings or city halls,
203 auditoriums, arenas, jails, juvenile detention centers or
204 homes, motor vehicle parking lots, or any other public works;

205 (37) To establish, construct, acquire, provide, equip,
206 maintain and operate recreational parks, playgrounds and
207 other recreational facilities for public use, and in this
208 connection also to proceed in accordance with the provisions
209 of article two, chapter ten of this code;

210 (38) To establish, construct, acquire, maintain and operate
211 a public library or museum or both for public use;

212 (39) To provide for the appointment and financial support
213 of a library board in accordance with the provisions of article
214 one, chapter ten of this code;

215 (40) To establish and maintain a public health unit in
216 accordance with the provisions of section two, article two,
217 chapter sixteen of this code, which unit shall exercise its
218 powers and perform its duties subject to the supervision and

219 control of the West Virginia board of health and state
220 department of health;

221 (41) To establish, construct, acquire, maintain and operate
222 hospitals, sanitarium and dispensaries;

223 (42) To acquire, by purchase, condemnation or otherwise,
224 land within or near the corporate limits of the municipality
225 for providing and maintaining proper places for the burial of
226 the dead and to maintain and operate the same and regulate
227 interments therein upon such terms and conditions as to
228 price and otherwise as may be determined by the governing
229 body, and, in order to carry into effect such authority the
230 governing body may acquire any cemetery or cemeteries
231 already established;

232 (43) To exercise general police jurisdiction over any
233 territory without the corporate limits owned by the
234 municipality or over which it has a right-of-way;

235 (44) To protect and promote the public morals, safety,
236 health, welfare and good order;

237 (45) To adopt rules for the transaction of business and the
238 government and regulation of its governing body;

239 (46) Except as otherwise provided, to require and take
240 such bonds from such officers, when deemed necessary,
241 payable to the municipality, in its corporate name, with such
242 sureties and in such penalty as the governing body may see
243 fit, conditioned upon the faithful discharge of their duties;

244 (47) To require and take from such employees and
245 contractors such bonds in such penalty, with such sureties
246 and with such conditions, as the governing body may see fit;

247 (48) To investigate and inquire into all matters of concern
248 to the municipality or its inhabitants;

249 (49) To establish, construct, require, maintain and operate
250 such instrumentalities, other than free public schools, for the
251 instruction, enlightenment, improvement, entertainment,
252 recreation and welfare of the municipality's inhabitants as the
253 governing body may deem necessary or appropriate for the
254 public interest;

255 (50) To create, maintain and operate a system for the

256 enumeration, identification and registration, or either, of the
257 inhabitants of the municipality and visitors thereto, or such
258 classes thereof as may be deemed advisable;

259 (51) To appropriate and expend not exceeding twenty-five
260 cents per capita per annum for advertising the municipality
261 and the entertainment of visitors;

262 (52) To conduct programs to improve community
263 relations and public relations generally and to expend
264 municipal revenue for such purposes;

265 (53) To reimburse applicants for employment by the
266 municipality for travel and other reasonable and necessary
267 expenses actually incurred by such applicants in traveling to
268 and from such municipality to be interviewed;

269 (54) To provide revenue for the municipality and
270 appropriate the same to its expenses;

271 (55) To create and maintain an employee benefits fund,
272 which shall not exceed one tenth of one percent of the annual
273 payroll budget for general employee benefits and which shall
274 be set up for the purpose of stimulating and encouraging
275 employees to develop and implement cost-saving ideas and
276 programs, and to expend moneys from such fund for such
277 purposes; and

278 (56) To provide penalties for the offenses and violations of
279 law mentioned in this section, subject to the provisions of
280 section one, article eleven of this chapter, and such penalties
281 shall not exceed any penalties provided in this chapter, and
282 chapter sixty-one of this code for like offenses and violations.

CHAPTER 163

(H. B. 1331—By Mr. Farley)

[Passed April 10, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section seven, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine-

d, article three, chapter sixty of said code, all relating to raising tax on purchases of intoxicating liquors in municipalities to five percent of purchase price; and relating to raising tax on purchases of intoxicating liquors outside corporate limits of municipalities from three to five percent of the purchase price.

Be it enacted by the Legislature of West Virginia:

That section seven, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section nine-d, article three, chapter sixty of said code be amended and reenacted, to read as follows:

Chapter

8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.

60. State Control of Alcoholic Liquors.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 13. TAXATION AND FINANCE.

***§8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.**

1 Every municipality shall have plenary power and authority
 2 to levy and collect a tax upon all purchases within such
 3 municipality of intoxicating liquors from the alcohol beverage
 4 control commissioner or from any person licensed to sell wine
 5 at retail to the public under the provisions of article eight,
 6 chapter sixty of this code: *Provided*, That no municipality
 7 shall have authority to levy or collect any such tax on the
 8 intoxicating liquors sold by or purchased from holders of a
 9 license issued under the provisions of article seven, chapter
 10 sixty of this code. The tax shall be levied upon the purchaser
 11 and shall be added to and collected with the price of purchase.
 12 The tax shall not exceed five percent of the purchase price.

13 A copy of any ordinance imposing the tax authorized by
 14 this section shall be certified by the mayor of the municipality

*Clerk's Note: This section was also amended by H. B. 1111, now Chapter 217, which was passed March 26, 1981.

15 to the West Virginia alcohol beverage control commissioner
16 and to the tax commissioner. The West Virginia alcohol beverage
17 control commissioner by appropriate rules and regulations
18 shall provide for the collection of such tax upon all purchases
19 within such municipality of intoxicating liquors from the alcohol
20 beverage control commissioner or from any person licensed
21 to sell wine at retail pursuant to the provisions of chapter sixty
22 of this code and for distribution thereof to the respective
23 municipalities for which the same shall be collected. Such
24 rules and regulations shall provide that all such taxes shall
25 be deposited with the state treasurer and distributed quarterly
26 by the treasurer upon warrants of the auditor payable to the
27 municipality.

28 Every municipality shall have plenary power and authority
29 to levy and collect a fee from any private club licensee whose
30 premises are situate therein as authorized in section seven,
31 article seven, chapter sixty of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3. SALES BY COMMISSIONER.

*§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.

1 For the purpose of providing financial assistance to and
2 for the use and benefit of the various counties and municipalities
3 of this state, there is hereby levied a tax upon all purchases
4 outside the corporate limits of any municipality of intoxicating
5 liquor from state stores or other agencies of the alcohol beverage
6 control commissioner and of wine from any person licensed
7 to sell wine at retail under the provisions of article eight,
8 chapter sixty of this code. The tax shall be five percent of
9 the purchase price and shall be added to and collected with
10 the purchase price by the commissioner or by the person so
11 licensed to sell wine: *Provided*, That no such tax shall be
12 collected on the intoxicating liquors sold by or purchased
13 from holders of a license issued under the provisions of article
14 seven of this chapter.

*Clerk's Note: This section was also amended by H. B. 1111 (Chapter 217), which was passed on March 26, 1981; and by H. B. 935 (Chapter 218), which was passed on March 5, 1981.

15 All such tax collected within one mile of the corporate
16 limits of any municipality within the state shall be remitted
17 to such municipality; all other tax so collected shall be
18 remitted to the county wherein collected: *Provided*, That
19 where the corporate limits of more than one municipality be
20 within one mile of the place of collection of such tax, all
21 such tax collected shall be divided equally among each of
22 said municipalities: *Provided, however*, That such mile is
23 measured by the most direct hard surface road or access way
24 usually and customarily used as ingress and egress to the
25 place of tax collection.

26 The West Virginia alcohol beverage control commissioner
27 by appropriate rules and regulations shall provide for the
28 collection of such tax upon all purchases outside the corporate
29 limits of any municipality of intoxicating liquor from state
30 stores or other agencies of the alcohol beverage control
31 commissioner, separation or proration of the same and dis-
32 tribution thereof to the respective counties and municipalities
33 for which the same shall be collected. The tax commissioner
34 by appropriate rules and regulations shall provide for the
35 collection of such tax upon all purchases outside the corporate
36 limits of any municipality of wine from any person licensed to
37 sell wine at retail under the provisions of article eight,
38 chapter sixty of this code, separation or proration of the
39 same and distribution thereof to the respective counties and
40 municipalities for which the same shall be collected. Such
41 rules and regulations shall provide that all such taxes shall
42 be deposited with the state treasurer and distributed quarterly
43 by the treasurer upon warrants of the auditor payable to the
44 counties and municipalities.

CHAPTER 164

(H. B. 1467—By Mr. Schifano)

[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article sixteen, chapter eight of the code of West Virginia, one thousand nine hundred

thirty-one, as amended; and to amend and reenact section three, article two-c, chapter thirteen of said code, all relating to expanding the definitions of "municipal public works" and "commercial project" for the purposes of revenue bond financing and industrial and commercial development bond financing to include farms, housing for students and faculty at institutions of higher education; and facilities providing housing for the elderly.

Be it enacted by the Legislature of West Virginia:

That section one, article sixteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article two-c, chapter thirteen of said code be amended and reenacted, all to read as follows:

Chapter

8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.

13. Public Bonded Indebtedness.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART I. DEFINITIONS; AUTHORIZATION OF MUNICIPAL PUBLIC WORKS.

§8-16-1. Definitions.

1 As used in this article, the terms "municipal public works"
2 or "works" or "projects" shall be construed to mean and in-
3 clude the construction, reconstruction, establishment, acquisi-
4 tion, improvement, renovation, extension, enlargement, in-
5 crease, equipment, maintenance, repair (including replace-
6 ments) and operation of jails, jail facilities, municipal buildings,
7 police stations, fire stations, libraries, museums, other public
8 buildings, incinerator plants, landfill or other garbage disposal
9 systems, hospitals, piers, docks, terminals, airports, drainage
10 systems, flood control systems, floodwalls, culverts, bridges
11 (including approaches, causeways, viaducts, underpasses and
12 connecting roadways), public markets, cemeteries, motor

13 vehicle parking facilities (including parking lots, buildings,
14 ramps, curb-line parking, meters and other facilities deemed
15 necessary, appropriate, useful, convenient or incidental to the
16 regulation, control and parking of motor vehicles), farms, dor-
17 mitories, apartments and other housing facilities for the students
18 and faculties of institutions of higher education; facilities pro-
19 viding housing for the elderly, including, but not limited to, life
20 care facilities, congregate living facilities and adult residential
21 facilities, stadiums, gymnasiums, sports arenas, auditoriums,
22 public recreation centers, public recreation parks, swimming
23 pools, roller skating rinks, ice skating rinks, tennis courts, golf
24 courses, polo grounds, or the grading, regrading, paving, re-
25 paving, surfacing, resurfacing, curbing, recurbing, widening or
26 otherwise improving of any street, avenue, road, alley or way,
27 or the building or renewing of sidewalks, where such works or
28 projects will be made self-supporting, and the cost thereof,
29 together with the interest thereon, will be returned within a
30 reasonable period, not exceeding forty years, by means of
31 tolls, fees, rents, special assessments or charges other than
32 taxation; and the terms shall mean and include any works or
33 project as a whole, and all integral parts thereof, including all
34 necessary, appropriate, useful, convenient or incidental ap-
35 purtenances and equipment in connection with any one or
36 more of the above.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-3. Definitions.

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

3 (a) "Commercial project" means real or personal property or
4 both, including any buildings, improvements, additions, exten-
5 sions, replacements, appurtenances, lands, rights in land, water
6 rights, franchises, machinery, equipment, furnishings, landscap-
7 ing, utilities, railroad spurs and sidings, parking facilities,
8 farms, parking wharfs, approaches and roadways or any number
9 or combination of the foregoing necessary or desirable in con-
10 nection with a commercial enterprise or incidental thereto and

11 includes, without limiting the generality of the foregoing, hotels
12 and motels and related facilities, nursing homes and other health
13 care facilities, facilities for participatory or spectator sports,
14 conventions or trade show facilities, airport facilities, shopping
15 centers, office buildings, residential real property for family
16 units, and mass commuting facilities, dormitories, apartments
17 and other housing facilities for the students and faculties of
18 institutions of higher education, facilities providing housing for
19 the elderly, including, but not limited to, life care facilities.
20 congregate living facilities and adult residential facilities.

21 (b) "County commission" means the governmental body
22 created by section 22, article VIII of the West Virginia Con-
23 stitution.

24 (c) "Governmental body" means the county commission, a
25 town or city council or any other governing body in lieu
26 thereof.

27 (d) "Industrial project" means any site, structure, building,
28 industrial park, water dock, wharf or port facilities, fixtures,
29 machinery, equipment and related facility, including real and
30 personal property, or any combination thereof, suitable as a
31 factory, mill or shop, or processing, assembly, manufacturing
32 or fabricating project, or warehouse or distribution facility,
33 or facilities for the extraction, production or distribution of
34 mineral resources and related facilities, or sewage or solid
35 waste disposal facilities, or facilities for the local furnishing
36 of electric energy or gas, or facilities for the furnishing of
37 water, if available on reasonable demand to members of the
38 general public, or storage or training facilities related to any of
39 the foregoing, or research or development facility or pollu-
40 tion abatement or control facility and includes the reconstruc-
41 tion, modernization and modification of any existing industrial
42 project for the abatement or control of industrial pollution.

43 (e) "Industrial pollution" means any gaseous, liquid or
44 solid waste substances or adverse thermal effects or com-
45 binations thereof resulting from any process of industry,
46 manufacturing, trade or business or from the development,
47 processing or recovery of any natural resources which pollute
48 the land, water or air of this state.

CHAPTER 165

(S. B. 415—By Mr. Moreland)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal retirement benefits; raising from fifty to sixty the maximum age of eligibility to join the system; providing that the age of retirement be seventy instead of sixty-five; and requiring that an employee have at least ten years continuous service with the city for eligibility.

Be it enacted by the Legislature of West Virginia:

That sections five and seven, article twenty-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 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-5. Employees eligible for participation in fund.

§8-22-7. Retirement pensions.

§8-22-5. Employees eligible for participation in fund.

1 Employees eligible for participation in the fund shall
2 include all employees who are employed by the city on a
3 permanent basis. The following employees, however, shall
4 not be eligible for participation in the fund:

5 (1) Appointive members of administrative boards and
6 commissions, except employees of such boards and
7 commissions;

8 (2) Individuals employed under contract for a definite
9 period or for the performance of a particular or special
10 service;

11 (3) Employees serving on a part-time basis of less than
12 one-half time;

13 (4) Policemen and firemen covered by a policemen's
14 pension and relief fund or firemen's pension and relief fund;

15 (5) Employees who are paid in part by the state, county or
16 other governmental agency, and only in part by the city;

17 (6) Employees who are past sixty years of age on the
18 effective date of the fund; and

19 (7) Employees who are hired after the effective date of the
20 fund and who were past sixty years of age at the time they
21 were so employed.

22 In case of doubt, the board of trustees of the fund may make
23 determination as to any individual's eligibility to become a
24 member of the fund.

25 All employees eligible for participation at the effective date
26 of the fund shall become members of the fund, unless they
27 file a written election not to become a member within thirty
28 days after the effective date of the fund.

§8-22-7. Retirement pensions.

1 (a) After the effective date of the fund, any member of the
2 fund who has at least ten years of continuous total service
3 credit shall receive a vested right to a retirement pension
4 which he may exercise upon or after attainment of age sixty.
5 When he has attained the age of sixty years he may, at his
6 option, apply for a retirement pension, the amount thereof to
7 be determined in accordance with the provisions of
8 subsection (d) of this section.

9 (b) Retirement for all members of the fund shall be
10 compulsory at the age of seventy subject to the following
11 conditions: The employee may be permitted to continue in
12 the service if he so desires and if his services are still valuable
13 to the city. Whether an employee's services are valuable at the
14 age of seventy shall be determined by the appointing officer
15 of the city. If he determines that such services are valuable,
16 his determination must be certified to the board for approval.
17 If the board approves, the employee may continue in the
18 service of the city. The appointing officer shall annually
19 certify to the board relative to the ability and competency of
20 all employees over age seventy. The amount of any pension
21 under the provisions of this subsection shall be determined in

22 accordance with the provisions of subsection (d) of this
23 section.

24 (c) Although he has not attained the age of sixty, any
25 member who has thirty-five years' total service and who
26 becomes so physically or mentally disabled as to render him
27 unfit for the performance of the duties of the position he
28 occupies shall be entitled to an annual retirement pension,
29 the amount thereof to be determined in accordance with the
30 provisions of subsection (d) of this section.

31 (d) A member of the fund, upon retirement, shall be
32 entitled to the following annual retirement pension, payable
33 in twelve monthly installments:

34 For thirty-five years of total service credit to and including
35 twenty-four years of total service credit, fifty percent of
36 average salary plus one and two-thirds percent of average
37 salary per year of service for each year above twenty-three
38 years;

39 For twenty-three years of total service credit, fifty percent
40 of average salary: *Provided*, That if a member has
41 twenty-three years of total service credit he shall be entitled
42 to a minimum retirement pension of one hundred dollars per
43 month;

44 For twenty-two years of total service credit, forty-nine
45 percent of average salary;

46 For twenty-one years of total service credit, forty-eight
47 percent of average salary;

48 For twenty years of total service credit, forty-seven percent
49 of average salary;

50 For nineteen years of total service credit, forty-five percent
51 of average salary;

52 For eighteen years of total service credit, forty-three
53 percent of average salary;

54 For seventeen years of total service credit, forty-one
55 percent of average salary;

56 For sixteen years of total service credit, thirty-nine percent
57 of average salary;

58 For fifteen years of total service credit, thirty-six percent of
59 average salary;

60 For fourteen years of total service credit, thirty-three
61 percent of average salary;

62 For thirteen years of total service credit, thirty-one percent
63 of average salary;

64 For twelve years of total service credit, twenty-nine percent
65 of average salary;

66 For eleven years of total service credit, twenty-seven
67 percent of average salary; and

68 For ten years of continuous total service credit, twenty-five
69 percent of average salary.

70 The rate of a retirement pension shall be prorated for any
71 fractional part of the total service credit of an employee of less
72 than a full year.

73 (e) With the condition that no optional benefit shall be
74 effective if the member dies within thirty days after the
75 effective date of his retirement, such member may elect at
76 least one year prior to such effective date of his retirement to
77 receive a lesser retirement pension, on a joint and last
78 survivor basis, in order to provide, on an actuarial equivalent
79 basis, an annuity to a designated beneficiary under any of the
80 following two options:

81 Option 1. Upon his death while on retirement, his lesser
82 retirement pension shall be continued throughout the life of
83 and paid to such individual having an insurable interest in his
84 life, as he shall have named in a written designation duly
85 acknowledged and filed with the board.

86 Option 2. Upon his death while on retirement, one half of
87 his lesser retirement pension shall be continued throughout
88 the life of and paid to such individual having an insurable
89 interest in his life as he shall have named in a written
90 designation duly acknowledged and filed with the board.

91 (f) A member who has attained the age of sixty years and
92 who has less than ten years' total service credit shall be
93 entitled to an annuity which shall be the actuarial equivalent
94 of his total accumulation account at the time of his
95 retirement.

CHAPTER 166

(H. B. 1537—By Mr. Karras)

[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to death benefits for municipal employees under pension and relief funds; naming a beneficiary other than a spouse.

Be it enacted by the Legislature of West Virginia:

That section nine, article twenty-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 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-9. Death benefits; return of contributions.

1 (a) A beneficiary or beneficiaries of a deceased member,
2 which member was not receiving a retirement pension under
3 the provisions of section seven of this article at the date
4 of his death, may qualify for death benefits under either of
5 the following mutually exclusive provisions:

6 (1) If the member died as a result of personal injury or
7 disease arising out of and in the course of his employment
8 with the city, the surviving spouse shall be entitled during
9 widowhood or widowerhood to a monthly benefit equal to
10 thirty-three and one-third percent of the final monthly salary
11 of the member, but not to exceed one hundred and twenty-
12 five dollars per month. In the event there be no surviving
13 spouse, or if remarriage occurs before the youngest child
14 attains age eighteen, each child under age eighteen shall
15 be entitled until age eighteen to a monthly benefit equal to
16 twenty percent of the member's final monthly salary, subject to

17 a total payment to all such children of fifty percent of such
18 final monthly salary, or one hundred twenty-five dollars per
19 month, whichever is the lesser. If there be no surviving spouse
20 or children under age eighteen, the deceased member's de-
21 pendent father or mother or both, the question of dependency
22 to be determined by the board, shall each be entitled until
23 death to a monthly payment equal to one sixth of the
24 deceased member's final monthly salary, but the payment to
25 either parent shall not exceed fifty dollars per month.

26 (2) If the member died from any cause other than that
27 stated in subdivision (1) of this subsection, and such member
28 at the date of his death had ten or more years' total service
29 credit, his beneficiary or beneficiaries shall be entitled, for
30 a period not to exceed ten years, to death benefits in ac-
31 cordance with the retirement pension table contained in
32 section seven of this article. The death benefits shall be
33 paid to such individual or individuals having an insurable
34 interest in the member's life as such member shall have
35 nominated in a designation filed with the board. As to any
36 spouse beneficiary, the marriage must have occurred at least
37 one year prior to the death of the member in order that the
38 spouse may be eligible for benefits under this subdivision (2).

39 (b) If a member receiving a retirement pension under the
40 provisions of section seven of this article at the date of his
41 death dies with a spouse or beneficiary surviving (concerning
42 which retirement pension the optional benefit provisions
43 set forth in subsection (e) of said section seven are not
44 applicable), and such member had been receiving such re-
45 tirement pension for less than ten years, such surviving
46 spouse or beneficiary shall be entitled to receive death bene-
47 fits equivalent to the deceased member's retirement pension
48 for the remaining period of ten years dating from the date
49 of the member's retirement. The death benefits shall be paid
50 to such individual or individuals having an insurable interest
51 in the member's life as such member shall have nominated
52 in a designation filed with the board; but a surviving
53 spouse shall not be entitled to death benefits under the
54 provisions of this subsection unless such surviving spouse was
55 married to the member before the date of his retirement and

56 such marriage took place at least one year prior to the date
57 of the death of the member. If the surviving spouse re-
58 marries, such spouse's death benefits shall be terminated and
59 shall not be resumed upon subsequent change in the marital
60 status of such spouse.

61 (c) If a member dies with less than ten years' total
62 service credit so that he was not entitled to a retirement
63 pension during life, the member's total contributions to the
64 fund, without interest, shall be returned to such individual
65 or individuals having an insurable interest in the member's
66 life as such member shall have nominated in a designation
67 filed with the board, and in the absence of any such designa-
68 tion, to the member's estate.

CHAPTER 167

(Com. Sub. for H. B. 1679—By Mr. Farley and Mr. Goff)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to arrest fees collected for municipal policemen's pension and relief funds and to enact in lieu thereof a new section twenty of said article, relating to minimum standards for actuarial soundness; to amend and reenact sections sixteen, seventeen, nineteen, twenty-one, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight of said article; to further amend said article by adding thereto two new sections, designated sections nineteen-a and twenty-three-a, to amend and reenact section eleven, article fourteen of said chapter eight; to amend and reenact section sixteen, article fifteen of said chapter eight, to further amend said article fifteen by adding thereto two new sections, designated sections eight-a and eight-b; to amend and reenact section two, article six, chapter twelve of said code; to amend article three, chapter thirty-three of said code by adding thereto a new section, designated sec-

tion fourteen-d, and to amend article twelve, chapter thirty-three of said code by adding thereto a new section, designated section sixteen-a, all relating to policemen's and firemen's pension and relief funds; requiring all applicants for positions in a paid police department or a paid fire department to meet certain medical requirements; providing eligibility requirements for volunteer fire departments to receive funds from the municipal pensions and protection fund and priorities for their spending of such funds; defining certain terms; declaring the board of trustees of policemen's and firemen's pension and relief funds as fiduciaries of such funds; providing a new method of funding policemen's and firemen's pension and relief funds to begin at a designated time including an allocable portion of the municipal pensions and protection fund and increased contributions by members; requiring repayment to the respective funds by a member wishing to rejoin; providing minimum standards for actuarial soundness; requiring the treasurer of the funds to keep necessary data and to act as a fiduciary for the funds; allowing the funds to be invested in the state consolidated fund or the consolidated pension fund; setting eligibility standards for total and temporary, and total and permanent, disability pensions; providing the amount of such disability pensions; making certain adjustments to computing retirement pensions and death benefits; limiting credit for absence from service and military service; levying additional fire and casualty insurance premium taxes for the municipal pensions and protection fund and providing a method of allocating moneys in such fund.

Be it enacted by the Legislature of West Virginia:

That section twenty, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and that a new section twenty of said article be enacted in lieu thereof; that sections sixteen, seventeen, nineteen, twenty-one, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight of said article be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections nineteen-a and twenty-three-a; that section eleven, article fourteen of said chapter eight be amended and reenacted; that section sixteen, article fifteen of said chapter eight be amended and reenacted; that said article fifteen be further amended by adding thereto two

new sections, designated sections eight-a and eight-b; that section two, article six, chapter twelve of said code be amended and reenacted; that article three, chapter thirty-three of said code be amended by adding thereto a new section, designated section fourteen-d; and that article twelve, chapter thirty-three of said code be amended by adding thereto a new section, designated section sixteen-a, all to read as follows:

Chapter

- 8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.**
- 12. Public Moneys and Securities.**
- 33. Insurance.**

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

Article

- 14. Law and Order; Police Force or Departments; Powers, Authority and Duties of Law-Enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments.**
- 15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.**
- 22. Retirement Benefits Generally; Policemen's Pension and Relief Fund; Firemen's Pension and Relief Fund; Pension Plans for Employees of Waterworks System, Sewerage System or Combined Waterworks and Sewerage System.**

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-11. Rules and regulations for all examinations; probationary appointments.

- 1 The policemen's civil service commission in each Class I
- 2 and Class II city shall make rules and regulations providing
- 3 for both competitive and medical examinations for appoint-
- 4 ments and promotions to all positions in the paid police de-
- 5 partment in such city, and for such other matters as are nec-

6 essary to carry out the purposes of the civil service provisions
7 of this article. Any such commission shall have the power and
8 authority to require by rules and regulations a physical fitness
9 examination as a part of its competitive examination or as a
10 part of its medical examination: *Provided*, That after the
11 thirtieth day of June, one thousand nine hundred eighty-one,
12 the medical requirements for appointment to all positions in
13 the paid police department in such city shall include, but not
14 be limited to, the medical requirements stated in section six-
15 teen, article twenty-two of this chapter. Due notice of the
16 contents of all such rules and regulations and of any modifi-
17 cations thereof shall be given, by mail, in due season, to the
18 appointing officer; and said rules and regulations and any
19 modifications thereof shall also be printed for public distri-
20 bution. All original appointments to any positions in a paid
21 police department subject to the civil service provisions of this
22 article shall be for a probationary period of one year: *Pro-*
23 *vided*, That at any time during the probationary period the
24 probationer may be discharged for just cause, in the manner
25 provided in section twenty of this article. If, at the close of this
26 probationary term, the conduct or capacity of the probationer
27 has not been satisfactory to the appointing officer, the pro-
28 bationer shall be notified, in writing, that he will not receive
29 absolute appointment, whereupon his employment shall cease;
30 otherwise, his retention in the service shall be equivalent to his
31 final appointment.

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPART-
MENTS; CIVIL SERVICE FOR PAID FIRE DEPART-
MENTS.**

- §8-15-8a. Eligibility for allocation from municipal pensions and protection fund.
- §8-15-8b. Priorities for expenditures of revenues from the municipal pensions and protection fund.
- §8-15-16. Rules and regulations for all examinations; probationary appointments.

§8-15-8a. Eligibility for allocation from municipal pensions and protection fund.

- 1 In order to be eligible to receive revenues allocated from
2 the municipal pensions and protection fund, each volunteer or
3 part volunteer fire company or department must meet the re-
4 quirements listed in subsections (a) through (c) of this section.

5 Each volunteer or part volunteer fire company or depart-
6 ment must:

7 (a) Submit and maintain current submission of fire loss
8 data to the state fire marshal, including verification via notary
9 public, if no fire loss has occurred;

10 (b) Complete or be in the process of receiving firefighters
11 training, including section one of the West Virginia University
12 fire service extension or its equivalent. Such fire company or
13 department must have at least ten members certified having
14 completed such training or if a volunteer fire company or de-
15 partment has twenty or fewer members, fifty percent of the
16 active volunteer members must have completed such training;
17 and

18 (c) Comply with all applicable federal and state laws.

§8-15-8b. Priorities for expenditures of revenues from the municipal pensions and protection fund.

1 Revenues allocated to volunteer and part volunteer fire com-
2 panies and departments may be expended only for the priority
3 items listed in subsections (a) through (d) of this section. Such
4 expenditures may be made for the following:

5 (a) Personal protective equipment, including protective
6 headgear, bunker coats, pants, boots, combination of bunker
7 pants and boots, coats and gloves;

8 (b) Equipment for compliance with the national fire pro-
9 tection standard or automotive fire apparatus, NFPA-1901;

10 (c) Compliance with insurance service office recommenda-
11 tions relating to fire departments; and

12 (d) Rescue equipment, communications equipment and am-
13 bulance equipment: *Provided*, That no moneys received from
14 the municipal pensions and protection fund may be used for
15 capital improvements, retirement of debts or equipment for
16 personal vehicles owned or operated by volunteer fire com-
17 pany or department members.

§8-15-16. Rules and regulations for all examinations; probationary appointments.

1 The firemen's civil service commission in each municipality

2 shall make rules and regulations providing for both competitive
3 and medical examinations for appointments and promotions to
4 all positions in the paid fire department in such municipality,
5 and for such other matters as are necessary to carry out the
6 purposes of the civil service provisions of this article. Any
7 such commission shall have the power and authority to require
8 by rules and regulations a physical fitness examination as a
9 part of its competitive examination or as a part of its medical
10 examination: *Provided*, That after the thirtieth day of June,
11 one thousand nine hundred eighty-one, the medical require-
12 ments for appointment to all positions in the paid fire depart-
13 ment in such municipality shall include, but not be limited to,
14 the medical requirements stated in section sixteen, article
15 twenty-two of this chapter. Due notice of the contents of such
16 rules and regulations and of any modifications thereof shall
17 be given, by mail, in due season, to the appointing officer; and
18 said rules and regulations and any modifications thereof shall
19 also be printed for public distribution. All original appoint-
20 ments to any positions in a paid fire department subject to the
21 civil service provisions of this article shall be for a probationary
22 period of six months: *Provided*, That at any time during the
23 probationary period the probationer may be discharged for
24 just cause, in the manner provided in section twenty-five of
25 this article. If, at the close of this probationary term, the con-
26 duct or capacity of the probationer has not been satisfactory
27 to the appointing officer, the probationer shall be notified, in
28 writing, that he will not receive absolute appointment, whereup-
29 on his employment shall cease; otherwise, his retention in the
30 service shall be equivalent to his final appointment.

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S
PENSION AND RELIEF FUND; FIREMEN'S PENSION
AND RELIEF FUND; PENSION PLANS FOR EM-
PLOYEES OF WATERWORKS SYSTEM, SEWERAGE
SYSTEM OR COMBINED WATERWORKS AND SEW-
ERAGE SYSTEM.**

**PART III. POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND.**

- §8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds.
§8-22-17. Powers and duties of boards of trustees.

- §8-22-19. Levy to maintain fund.
- §8-22-19a. Refunds of member contributions.
- §8-22-20. Minimum standards for actuarial soundness.
- §8-22-21. Duties and bond of custodian of funds.
- §8-22-22. Investment of funds; exercise of judgment in making investments; actuarial studies required; annual report.
- §8-22-23a. Eligibility for total and temporary disability pensions and total and permanent disability pensions.
- §8-22-24. Disability pensions.
- §8-22-25. Retirement pensions.
- §8-22-26. Death benefits.
- §8-22-27. General provisions concerning disability pensions, retirement pensions and death benefits.
- §8-22-28. Period in which payments limited to income from fund; reduced payments where fund insufficient.

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds.

1 In every Class I and Class II city having, or which may
2 hereafter have, a paid police department and a paid fire de-
3 partment, or either of such departments, the governing body
4 shall, and in every Class III city and Class IV town or
5 village having, or which may hereafter have, a paid police
6 department and a paid fire department, or either of such de-
7 partments, the governing body may, by ordinance provide for
8 the establishment and maintenance of a policemen's pension
9 and relief fund, and for a firemen's pension and relief fund,
10 for the purposes hereinafter enumerated, and, thereupon, there
11 shall be created boards of trustees which shall administer and
12 distribute the moneys authorized to be raised by this section
13 and the following sections of this article. For the purposes of
14 this section and sections seventeen through twenty-eight of
15 this article, the term "paid police department" or "paid fire
16 department" means only a municipal police department or
17 municipal fire department, as the case may be, maintained and
18 paid for out of public funds and whose employees are paid
19 on a full-time basis out of public funds. The term shall not be
20 taken to mean any such department whose employees are paid
21 nominal salaries or wages or are only paid for services actually
22 rendered on an hourly basis.

23 Unless and until other provision is made by subsequent
24 legislative action, any policemen's pension and relief fund and
25 any firemen's pension and relief fund established in accordance
26 with the provisions of former article six of this chapter or this
27 article twenty-two shall be or remain mandatory and shall be
28 governed by the provisions of sections sixteen through twenty-
29 eight of this article twenty-two (with like effect, in the case of
30 a Class III city or Class IV town or village, as if such Class
31 III city or Class IV town or village were a Class I or Class II
32 city), and shall not be affected by the transition from one
33 class of municipal corporation to a lower class as specified in
34 section three, article one of this chapter: *Provided*, That any
35 Class III or Class IV town or village that hereafter becomes a
36 Class I or Class II city shall not be required to establish such
37 pension and relief fund if said town or village is a participant
38 in an existing pension plan regarding paid firemen and/or
39 policemen.

40 After the thirtieth day of June, one thousand nine hundred
41 eighty-one, for the purposes of sections sixteen through
42 twenty-eight of this article the word "member" means any paid
43 police officer or firefighter who at time of appointment to such
44 paid police or fire department met the medical requirements
45 of chapter 2-2 of the National Fire Protection Association
46 Standards Number 1001—Firefighters Professional Quali-
47 fications '74 as updated from year to year: *Provided*, That any
48 police officer or firefighter who was a member of such fund
49 prior to the first day of July, one thousand nine hundred
50 eighty-one, shall be considered a member after June thirtieth,
51 one thousand nine hundred eighty-one.

52 For purposes of sections sixteen through twenty-eight of this
53 article the words "salary or compensation" means remunera-
54 tion actually received by a member: *Provided*, That the
55 remuneration received by such member during any twelve-
56 consecutive-month period utilized in determining benefits
57 which is in excess of an amount which is twenty percent great-
58 er than the "average adjusted salary" received by such mem-
59 ber in the two consecutive twelve-consecutive-month periods
60 immediately preceding such twelve-consecutive-month period
61 utilized in determining benefits shall be disregarded: *Provided*,

62 *however*, That the "average adjusted salary" means the arith-
63 metic average of each year's adjusted salary such adjustment
64 made to reflect current salary rate and such average adjusted
65 salary shall be determined as follows: Assuming "year-one"
66 means the second twelve-consecutive-month period preceding
67 such twelve-consecutive-month period utilized in determining
68 benefits, "year-two" means the twelve-consecutive-month per-
69 iod immediately preceding such twelve-consecutive-month per-
70 iod utilized in determining benefits, and "year-three" means
71 the twelve-consecutive-month period utilized in determining
72 benefits, year-one total remuneration shall be multiplied by
73 the ratio of year-three base salary, exclusive of all overtime
74 and other remuneration, to year-one base salary, exclusive of
75 all overtime and other remuneration, such product shall equal
76 "year-one adjusted salary"; year-two total remuneration shall
77 be multiplied by the ratio of year-three base salary, exclusive
78 of all overtime and other remuneration, to year-two base salary,
79 exclusive of all overtime and other remuneration, such pro-
80 duct shall equal "year-two adjusted salary"; and the arithme-
81 tic average of year-one adjusted salary and year-two adjusted
82 salary shall equal the average adjusted salary.

§8-22-17. Powers and duties of boards of trustees.

1 Such board of trustees, or boards of trustees, shall be public
2 corporations by the name and style of "The Board of Trustees
3 of the Policemen's Pension and Relief Fund of (name of
4 municipality)," or "The Board of Trustees of the Firemen's
5 Pension and Relief Fund of (name of municipality)," as the
6 case may be, by which names they may sue and be sued, plead
7 and be impleaded, contract and be contracted with, take and
8 hold real and personal property for the use of said policemen's
9 pension and relief fund or said firemen's pension and relief
10 fund and have and use a common seal. In the absence of such
11 a seal, the seal of the president of any such corporation shall be
12 equivalent to such common seal. Any such board of trustees
13 may also in its corporate name do and perform any and all
14 other acts and business pertaining to the trust created hereby
15 or by any conveyance, devise or dedication made for the
16 uses and purposes of said board.

17 After the thirtieth day of June, one thousand nine hundred

18 eighty-one, any such board of trustees, boards of trustees and
19 any members thereof shall, as fund fiduciaries, discharge their
20 duties with respect to such pension and relief funds solely in
21 the interest of the members and members' beneficiaries for the
22 exclusive purpose of providing benefits to members and their
23 beneficiaries and defraying reasonable expenses of adminis-
24 tering the fund.

§8-22-19. Levy to maintain fund.

1 (a) The provisions of this subsection shall remain in effect
2 through the thirtieth day of June, one thousand nine hundred
3 eighty-three.

4 In every municipality in which there is a policemen's pension
5 and relief fund or a firemen's pension and relief fund, or both,
6 the same shall be maintained as follows: The governing body
7 of the municipality shall levy annually and in the manner pro-
8 vided by law for other municipal levies, and include within the
9 maximum levy or levies permitted by law, and if necessary in
10 excess of any charter provision, a tax at such rate as will, after
11 crediting the amount of the contributions received during
12 such year from the members of the respective paid police de-
13 partment or paid fire department, provide funds equal to the
14 sum of (1) the full amount of estimated expenditures of the
15 boards of trustees of the respective funds, and (2) an additional
16 amount equal to ten percent of such estimated expenditures,
17 said ten percent amount to be taken, accumulated and invested,
18 if possible, as surplus reserve: *Provided*, That in no event shall
19 such levy for each of the respective boards of trustees be less
20 than one cent nor more than eight cents on each one hundred
21 dollars of all real and personal property as listed for taxation
22 in such municipality: *Provided, however*, That in the event that
23 the funds derived above are not sufficient to meet the annual
24 expenditures and the surplus reserve funds for any fiscal year
25 do not contain a sufficient balance to maintain full retirement
26 benefits for that fiscal year, the municipality shall for only
27 that fiscal year levy an amount not to exceed an additional two
28 cents on each one hundred dollars of all real and personal
29 property listed for taxation in such municipality: *Provided*
30 *further*, That in the event that a municipality is required to

31 levy an amount for any fiscal year in excess of eight cents on
32 each one hundred dollars of all real and personal property as
33 provided above, the municipality shall assess and collect for
34 only that fiscal year from each member an additional amount
35 of one percent of the actual salary or compensation for each
36 one cent that the municipality has levied in excess of the eight
37 cents which shall become a required part of the pension and
38 relief fund to which the member belongs.

39 The levies authorized under the provisions of this section, or
40 any part of them, may by the governing body be laid in addi-
41 tion to all other municipal levies, and to that extent, beyond the
42 limit of levy imposed by the charter of such municipality; and
43 such levies shall supersede and if necessary exclude levies for
44 other purposes if such priority or exclusion is necessary under
45 limitations upon taxes or tax levies imposed by law.

46 Such public corporations are authorized to take by gift,
47 grant, devise or bequest, any money or real or personal prop-
48 erty, upon such terms as to the investment and expenditures
49 thereof as may be fixed by the grantor or determined by said
50 trustees.

51 In addition to all other sums provided for pensions in this
52 section, it shall be the duty of every municipality in which any
53 such fund or funds have been or shall be established to assess
54 and collect from each member of the paid police department
55 or paid fire department or both each month, the sum of six
56 percent of the actual salary or compensation of such member;
57 and the amount so collected shall become a regular part of the
58 policemen's pension and relief fund, if collected from a police-
59 man, and of the firemen's pension and relief fund, if collected
60 from a fireman.

61 (b) (1) After the thirtieth day of June, one thousand nine
62 hundred eighty-three: In order for a municipal policemen's or
63 firemen's pension and relief fund to receive the allocable por-
64 tion of moneys from the municipal pensions and protection fund
65 established in section fourteen-d, article three, chapter thirty-
66 three of this code, the governing body of the municipality shall
67 levy annually and in the manner provided by law for other
68 municipal levies, and include within the maximum levy or

69 levies permitted by law, and if necessary in excess of any chart-
70 er provision, a tax at such rate as will, after crediting (A) the
71 amount of the contributions received during such year from
72 the members of the respective paid police department or paid
73 fire department and (B) the allocable portion of the municipal
74 pensions and protection fund established in section fourteen-d,
75 article three, chapter thirty-three of this code provide funds
76 equal to the amount necessary to meet the minimum stand-
77 ards for actuarial soundness as provided in section twenty of
78 this article, said amount to be irrevocably contributed, accu-
79 mulated and invested as fund assets described in sections
80 twenty-one and twenty-two of this article. Such municipality
81 contributions shall be deposited as such fund assets on at least
82 a quarterly basis and any revenues received from any source by
83 a municipality which are specifically collected for the purpose
84 of allocation for deposit into such fund shall be so deposited
85 within thirty days of receipt by the municipality. Such hereto-
86 fore surplus reserves accumulated before the first day of July,
87 one thousand nine hundred eighty-three, shall be irrevocably
88 contributed, aggregated and invested as fund assets described
89 in sections twenty-one and twenty-two of this article. Any ac-
90 tuarial deficiency arising under this section and section twenty
91 of this article shall not be the obligation of the state of West
92 Virginia.

93 (2) The levies authorized under the provisions of this section,
94 or any part of them, may by the governing body be laid in addi-
95 tion to all other municipal levies, and to that extent, beyond the
96 limit of levy imposed by the charter of such municipality; and
97 such levies shall supersede and if necessary exclude levies for
98 other purposes, where such other purposes have not already
99 attained priority, and within the limitations upon taxes or tax
100 levies imposed by the constitution and laws.

101 (3) Such public corporations are authorized to take by gift,
102 grant, devise or bequest any money or real or personal prop-
103 erty, upon such terms as to the investment and expenditures
104 thereof as may be fixed by the grantor or determined by said
105 trustees.

160 (4) In addition to all other sums provided for pensions in this
107 section, it shall be the duty of every municipality in which any

108 such fund or funds have been or shall be established to as-
109 sess and collect from each member of the paid police depart-
110 ment or paid fire department or both each month, the sum of
111 seven percent of the actual salary or compensation of such
112 member; and the amount so collected shall become a regular
113 part of the policemen's pension and relief fund, if collected
114 from a policeman, and of the firemen's pension and relief fund,
115 if collected from a fireman. Such member contributions shall
116 be deposited in such pension and relief fund on at least a
117 monthly basis.

118 (5) For the fiscal year beginning on the first day of July, one
119 thousand nine hundred eighty-three and for each fiscal year
120 thereafter, the state treasurer shall retain the allocable portion
121 of the municipal pensions and protection fund, established in
122 section fourteen-d, article three, chapter thirty-three of this
123 code, until such time as the treasurer of the municipality ap-
124 plies for such allocable portion and certifies in writing to the
125 state auditor that:

126 (A) The municipality has irrevocably contributed the amount
127 required under this section and section twenty of this article
128 to such pension and relief fund for the fiscal year; and

129 (B) The board of trustees of such pension and relief fund
130 has made a report to the governing body of the municipality
131 on the condition of its fund with respect to the fiscal year.

132 (6) When the aforementioned application and certification
133 are made the allocable portion of moneys from the municipal
134 pensions and protection fund shall be paid to the correspond-
135 ing policemen's or firemen's pension and relief fund.

136 (7) The state auditor has the power and duty as he deems
137 necessary to perform or review audits on such pension and re-
138 lief funds or to employ an independent consulting actuary or
139 accountant to determine the compliance of the aforementioned
140 certification with the requirements of this section and section
141 twenty of this article. The expense of such audit or determina-
142 tion shall be paid from the portion of the municipal pensions
143 and protection fund allocable to municipal policemen's and
144 firemen's pension and relief funds. If such allocable portion of
145 the municipal pensions and protection fund is not paid to such

146 pension and relief fund within thirty-six months, such portion
147 is forfeited by such pension and relief fund and is allocable to
148 other eligible municipal policemen's and firemen's pension and
149 relief funds in accordance with section fourteen-d, article three,
150 chapter thirty-three of this code.

§8-22-19a. Refunds of member contributions.

1 Any member of a paid police or fire department who is re-
2 moved or discharged or who before retirement on any retire-
3 ment pension or disability pension severs his connection with
4 said department, whether or not consecutive, shall, upon re-
5 quest, be refunded all pension and relief fund deductions made
6 from his salary or compensation, but without interest. Any
7 member who receives such refund and such member subse-
8 quently wishes to reenter the department, such police officer or
9 firefighter shall not be allowed to reenter the department un-
10 less such police officer or firefighter repays to the pension
11 and relief fund all sums refunded to him in a lump sum at the
12 date of reentry or by monthly payroll deductions within thirty-
13 six months from the date he reenters the department with in-
14 terest at the rate of eight percent per annum. In the event such
15 refund is made prior to the first day of January, one thousand
16 nine hundred eighty-one, and such member subsequently re-
17 enters the department such police officer or firefighter shall
18 be allowed membership in such pension and relief fund; how-
19 ever, no credit may be allowed such member for any former
20 service, unless such member repays to the pension and relief
21 fund all sums refunded to him within one year from the date
22 he reenters the department with interest at the rate of eight
23 percent per annum: *Provided*, That any member who, on or
24 before June three, one thousand nine hundred fifty-five, re-
25 entered the paid police or fire department shall be allowed
26 credit for any former service in the same department reentered
27 if he, within one year from said June three, one thousand nine
28 hundred fifty-five, repaid all sums withdrawn or refunded to
29 him with interest at the rate of six percent per annum, but for
30 such member who receives such refund prior to the first day
31 of January, one thousand nine hundred eighty, interest may
32 not be charged for more than three years. Any probationary
33 member of a paid police or fire department who is not given an

34 absolute appointment at the end of his probationary period
35 shall, upon request, be refunded all pension and relief fund
36 deductions made from his salary or compensation, but without
37 interest. Any member contribution made in fiscal years be-
38 ginning on the first day of July, one thousand nine hundred
39 eighty-one, and thereafter by any members of such fund, which
40 is in excess of the percentages, required in section nineteen of
41 this article of such member's salary or compensation as defined
42 in section sixteen of this article shall be refunded with eight per-
43 cent interest to such member upon completion of the calcu-
44 lation of his retirement benefit.

§8-22-20. Minimum standards for actuarial soundness.

1 The board of trustees for each pension and relief fund shall
2 have regularly scheduled actuarial valuation reports prepared
3 by a qualified actuary. All of the following standards must
4 be met:

5 (a) An actuarial valuation report shall be prepared at least
6 once every three years commencing with the later of (1) the
7 first day of July, one thousand nine hundred eighty-three, or
8 (2) three years following the most recently prepared actuarial
9 valuation report: *Provided*, That this most recently prepared
10 actuarial valuation report meets all of the standards of this
11 section.

12 (b) The actuarial valuation report shall consist of, but is
13 not limited to, the following disclosures: (1) the financial ob-
14 jective of the fund and how the objective is to be attained, (2)
15 the progress being made toward realization of the financial
16 objective, (3) recent changes in the nature of the fund, benefits
17 provided, or actuarial assumptions or methods, (4) the fre-
18 quency of actuarial valuation reports and the date of the most
19 recent actuarial valuation report, (5) the method used to value
20 fund assets, (6) the extent to which the qualified actuary relies
21 on the data provided and whether the data was certified by the
22 fund's auditor or examined by the qualified actuary for reas-
23 onableness, (7) a description and explanation of the actuarial
24 assumptions and methods, and (8) any other information the
25 qualified actuary feels is necessary or would be useful in fully
26 and fairly disclosing the actuarial condition of the fund.

27 (c) After the thirtieth day of June, one thousand nine hun-
28 dred eighty-three, and thereafter, the financial objective of each
29 municipality shall not be less than to contribute to the fund
30 annually an amount which, together with the contributions from
31 the members and the allocable portion of the state premium
32 tax fund for municipal pension and relief funds established
33 under section fourteen-d, article three, chapter thirty-three of
34 this code and other income sources as authorized by law, will
35 be sufficient to meet the normal cost of the fund and amortize
36 any actuarial deficiency over a period not more than forty
37 years: *Provided*, That for those funds in existence on the first
38 day of June, one thousand nine hundred eighty-one, its ac-
39 tuarial deficiency, if any, shall not be amortized over a period
40 longer than that which remains under its current schedule. For
41 purposes of determining this minimum financial objective, (1)
42 the value of the fund's assets shall be determined on the basis
43 of any reasonable actuarial method of valuation which takes
44 into account fair market value, and (2) all costs, deficiencies,
45 rate of interest, and other factors under the fund shall be de-
46 termined on the basis of actuarial assumptions and methods
47 which, in aggregate, are reasonable (taking into account the
48 experience of the fund and reasonable expectations) and which,
49 in combination, offer the qualified actuary's best estimate of
50 anticipated experience under the fund. If as a result of this
51 legislation a municipality's financial commitment to the fund
52 is materially increased, the municipality may elect to phase in
53 this increase over the five fiscal years commencing the first
54 day of June, one thousand nine hundred eighty-three.

55 (d) For purposes of this section the term "qualified actuary"
56 means only an actuary who is a member of the society of ac-
57 tuaries or the American academy of actuaries. The qualified
58 actuary shall be designated a fiduciary and shall discharge his
59 duties with respect to a fund solely in the interest of the
60 members and member's beneficiaries of that fund. In order for
61 the standards of this section to be met, the qualified actuary
62 shall certify that the actuarial valuation report is complete
63 and accurate and that in his opinion the technique and assump-
64 tions used are reasonable and meet the requirements of this
65 section of this article.

- 66 (e) The cost of the preparation of the actuarial valuation
67 report shall be paid by the fund.

§8-22-21. Duties and bond of custodian of funds.

1 The treasurer of the municipality shall be the custodian of
2 all of the assets of the policemen's pension and relief fund
3 and firemen's pension and relief fund, and shall deposit and
4 pay out the moneys thereof upon, and in accordance with, any
5 proper order of the board of trustees. Such treasurer shall be
6 liable upon his official bond as treasurer for the faithful per-
7 formance of his duties in respect to such fund or funds, and the
8 official bond of the treasurer covering such fund or funds shall
9 be executed with a good and financially responsible surety
10 company authorized to do business in this state, as surety for
11 such fund or funds. The treasurer of the municipality shall as
12 a fund fiduciary, discharge his duties with respect to such pen-
13 sion and relief fund solely in the interest of the members and
14 members' beneficiaries for the exclusive purpose of providing
15 benefits to such members and their beneficiaries and defray-
16 ing reasonable expenses of administering the fund. Such fund
17 or funds shall be trust funds and shall not be used for any
18 other purpose than provided herein. Such treasurer shall keep
19 in convenient form such data as may be necessary for an
20 actuarial valuation report of such fund and for checking the
21 actuarial experience of such fund.

**§8-22-22. Investment of funds; exercise of judgment in making in-
vestments; actuarial studies required; annual report.**

1 The board of trustees may invest a portion or all of the
2 fund assets in the consolidated fund or the consolidated pen-
3 sion fund. The board of trustees shall invest any moneys re-
4 ceived by it and not invested in the consolidated fund or the
5 consolidated pension fund in the following classes of securities
6 and accounts and not otherwise, which securities and accounts
7 mature on such dates as will make available such amount of
8 cash as is required:

- 9 (a) Obligations of the United States or any agency thereof,
10 which are guaranteed by the United States or for which the
11 full faith and credit of the United States is pledged for the
12 payment of principal and interest, or any obligation of an

13 agency of the United States designated in section nine, article
14 six, chapter twelve of this code.

15 (b) Certificates of deposit secured by (1) obligations as
16 listed in subdivision (a) of this section, (2) general obligation
17 or revenue bonds of the state of West Virginia, (3) general
18 obligation bonds of any other state, (4) general obligation bonds
19 of any county in this state or of any county board of education
20 in this state, or (5) general obligation bonds of any municipi-
21 pality in this state.

22 (c) Interest bearing savings accounts or certificates of de-
23 posit in banking institutions, the accounts of which are in-
24 sured by the federal deposit insurance corporation, or interest
25 bearing savings accounts in federal savings and loan asso-
26 ciations, the accounts of which are insured by the federal sav-
27 ings and loan insurance corporation, or interest bearing sav-
28 ings accounts in building and loan associations, the accounts
29 of which are insured by the federal savings and loan insurance
30 corporation: *Provided*, That an investment in any such savings
31 account in excess of the amount thereof which would be in-
32 sured by the federal deposit insurance corporation or the feder-
33 al savings and loan insurance corporation, as the case may be,
34 shall not be made unless such banking institution, federal
35 savings and loan association or building and loan association
36 provides adequate bond or other adequate security for the
37 amount of the proposed municipal investment in excess of
38 such insurance coverage, the adequacy of any such bond or
39 other security to be determined by the treasurer of such
40 municipality.

41 (d) Any security that is secured by a first lien deed of
42 trust or mortgage on real property situate within this state:
43 *Provided*, That the value of the securing of first lien deed of
44 trust or mortgage shall be at least twice the amount loaned
45 thereon, based on a sound appraisal by a competent appraiser
46 and duly certified by him or federally insured: *Provided, how-*
47 *ever*, That the interest for such loan of money at a rate ex-
48 pressed in terms of dollars upon one hundred dollars for a
49 year, shall be not less than the monthly index of long-term
50 government bonds yields for the second preceding calendar

51 month plus an additional one percent a year rounded off to
52 the nearest quarter of one percent a year.

53 Any investment made under this article shall be made with
54 the exercise of that degree of judgment and care, under cir-
55 cumstances then prevailing, which men of experience, pru-
56 dence, discretion and intelligence exercise in the management
57 of their own affairs, not for speculation but for investment,
58 considering the probable safety of their capital as well as the
59 probable income to be derived.

**§8-22-23a. Eligibility for total and temporary disability pensions
and total and permanent disability pensions.**

1 (a) All members applying for total and temporary or
2 total and permanent disability benefits after the thirtieth
3 day of June, one thousand nine hundred eighty-one, shall be
4 examined by at least two physicians under the direction of
5 the staff at Marshall University, West Virginia University,
6 Morgantown or West Virginia University, Charleston: *Pro-*
7 *vided*, That if such member's medical condition cannot be
8 agreed upon by two such physicians, a third physician shall
9 examine such member. Such medical examination shall include
10 the review of such member's medical history. The expense of
11 the member's transportation to such medical examination and
12 the expense of the medical examination shall be paid by the
13 board of trustees, such medical expense shall not exceed the
14 reasonable and customary charges for such services.

15 (b) Effective for members becoming eligible for total and
16 temporary disability benefits after the thirtieth day of June,
17 one thousand nine hundred eighty-one, initially or previously
18 under this subsection allowance for initial or additional total
19 and temporary disability payments, the amount thereof to be
20 determined as specified in section twenty-four of this article,
21 shall be paid to such member during such disability for a
22 period not exceeding twenty-six weeks if after a medical
23 examination in accordance with subsection (a) of this section
24 of this article, two examining physicians report in writing to
25 the board of trustees that (1) such member has become so
26 totally, physically or mentally disabled, from any reason, as to
27 render such member totally, physically or mentally, incapa-

28 cited for employment as a police officer or firefighter and
29 (2) it has not been determined if such disability is permanent
30 or it has been determined that such disability may be alleviat-
31 ed or eliminated if such member follows a reasonable medical
32 treatment plan or reasonable medical advice: *Provided, That*
33 in any event a member is not eligible for total and temporary
34 disability payments following the fourth consecutive twenty-
35 six week period of total and temporary disability unless such
36 subsequent disability results from a cause unrelated to the
37 cause of the four previous periods of total and temporary dis-
38 ability. During such two-year period of such total and tem-
39 porary disability, such department is required to restore such
40 member to his former position in such department at any time
41 he is determined to no longer be disabled: *Provided, That* the
42 department may refill, on a temporary basis, the position va-
43 cated by such member after the first twenty-six weeks of his
44 temporary disability.

45 (c) Effective for members becoming eligible for total and
46 permanent disability benefits initially under this subsection or
47 becoming eligible for total and temporary disability benefits
48 under subsection (b) of this section after the thirtieth day of
49 June, one thousand nine hundred eighty-one, allowance for
50 total and permanent disability payments, the amount thereof to
51 be determined as specified in section twenty-four of this
52 article, shall be paid to such member after a medical examina-
53 tion in accordance with subsection (a) of this section, two
54 examining physicians report in writing to the board of trustees
55 that such member has become so totally, physically or ment-
56 ally, and permanently disabled, as a proximate result of ser-
57 vice rendered in the performance of his duties in such depart-
58 ment, as to render such member totally, physically or ment-
59 ally, and permanently incapacitated for employment as a
60 police officer or firefighter or, if such member has been a
61 member of either of such departments for a period of not less
62 than five consecutive years preceding such disability, such
63 member has become so totally, physically or mentally, and
64 permanently disabled, from any reason other than service ren-
65 dered in the performance of his duties in such department, as to
66 render such member totally, physically or mentally, and per-

67 manently incapacitated for employment as a police officer or
68 firefighter. The phrase "totally, physically or mentally, and
69 permanently disabled" shall not be construed to include a
70 medical condition which may be corrected if such member
71 follows a reasonable medical treatment plan or reasonable
72 medical advice.

73 (d) Effective for members becoming eligible for total and
74 temporary disability benefits after the thirtieth day of June,
75 one thousand nine hundred eighty-one, under the provisions of
76 subsection (b) of this section, any payments for total and tem-
77 porary disability for a period during such disability for not
78 exceeding twenty-six weeks shall cease at the end of such
79 twenty-six week period under the following conditions:

80 (1) Such member fails to be examined as provided in sub-
81 section (a) of this section or (2) such member is examined or
82 reexamined as provided in subsection (a) and two examining
83 physicians report to the board of trustees that such member's
84 medical condition does not meet the requirements of sub-
85 section (b) or (c) of this section. Effective for members be-
86 coming eligible for total and temporary disability benefits after
87 the thirtieth day of June, one thousand nine hundred eighty-
88 one, under subsection (b) of this section, subsequent to such
89 member's receipt of total and temporary disability payments
90 for a period of two years, such payments shall cease at the
91 end of such two-year period under the following conditions:
92 (A) Such member fails to be examined as provided in subsec-
93 tion (a) of this section or (B) such member is examined or
94 reexamined as provided in subsection (a) and two examining
95 physicians report to the board of trustees that such member's
96 medical condition does not meet the requirements of sub-
97 section (c) of this section.

§8-22-24. Disability pensions.

1 (a) The monthly sum to be paid to each member eligible
2 for disability, prior to the first day of July, one thousand
3 nine hundred eighty-one, under the provisions of section
4 twenty-four of this article or, after the thirtieth day of
5 June, one thousand nine hundred eighty-one, under the pro-

6 visions of section twenty-three-a of this article, shall be equal
7 to sixty percent of the monthly salary or compensation being
8 received by such member, at the time he is so disabled, or
9 the sum of two hundred dollars per month, whichever shall
10 be greater: *Provided*, That the limitation provided in sub-
11 section (b) of the section is not exceeded.

12 (b) Effective for any member who becomes eligible for
13 disability benefits on or after the first day of July, one
14 thousand nine hundred eighty-one, under the provisions of
15 section twenty-three-a of this article, as a proximate result
16 of service rendered in the performance of his duties within
17 such departments, his monthly disability payment as pro-
18 vided in subsection (a) of this section shall not, when aggre-
19 gated with the monthly amount of state workmen's com-
20 pensation, result in such disabled member receiving a total
21 monthly income from such sources in excess of one hundred
22 percent of the basic compensation which is paid to members
23 holding the same position which such member held within
24 such department at the time of his disability. Lump sum
25 payments of state workmen's compensation benefits shall
26 not be considered for purposes of this subsection unless such
27 lump sum payments represented commuted values of monthly
28 state workmen's compensation benefits.

§8-22-25. Retirement pensions.

1 (a) Any member of a paid police or fire department who
2 is entitled to a retirement pension hereunder, and who has
3 been in the honorable service of such department for twenty
4 years, may, upon written application to the board of trustees,
5 be retired from all service in such department without medical
6 examination or disability; and on such retirement the board
7 of trustees shall authorize the payment of annual retirement
8 pension benefits commencing upon his retirement or upon his
9 attaining the age of fifty years, whichever is later, payable
10 in twelve monthly installments for each year of the remainder
11 of his life, in an amount equal to sixty percent of such mem-
12 ber's average annual salary or compensation received during
13 the three twelve-consecutive-month periods, not necessarily
14 consecutive, each of such three periods beginning with the
15 same calendar month of different years and all such three

16 periods falling within the member's final five years of em-
17 ployment with such department, in which such member
18 received his highest salary or compensation while a member
19 of the department, or an amount of two hundred dollars per
20 month, whichever shall be greater.

21 (b) Any member of any such department who is entitled to
22 a retirement pension under the provisions of subsection (a)
23 of this section and who has been in the honorable service of
24 such department for more than twenty years at the time of
25 his retirement, as herein provided, shall, in addition to the
26 sixty percent authorized in said subsection (a), receive one
27 additional percent, to be added to the sixty percent, per each
28 year served in excess of said twenty years, up to a maximum
29 of ten additional percent.

30 (c) Any member of any such department whose service has
31 been interrupted by duty with the armed forces of the United
32 States as provided in section twenty-seven of this article
33 and who retires prior to the first day of July, one thousand
34 nine hundred eighty-one, shall be eligible for retirement
35 pension benefits immediately upon retirement, regardless of
36 his age, if he shall otherwise be eligible for such retirement
37 pension benefits.

38 (d) Any member of a paid police or fire department shall
39 be retired at the age of sixty-five years in the manner pro-
40 vided in this subsection. When a member of the paid police
41 or fire department shall have reached the age of sixty-five
42 years, the said board of trustees shall notify the mayor of
43 this fact, within thirty days of such member's sixty-fifth
44 birthday; and the mayor shall cause such sixty-five-year-old
45 member of the paid police or fire department to be retired
46 within a period of not more than thirty additional days.
47 Upon retirement under the provisions of this subsection (d),
48 such member shall receive retirement pension benefits pay-
49 able in twelve monthly installments for each year of the
50 remainder of his life, in an amount equal to sixty percent of
51 such member's average annual salary or compensation received
52 during the three twelve-consecutive-month periods, not neces-
53 sarily consecutive, each of such three periods beginning with
54 the same calendar month of different years and all such

55 three periods falling within the member's final five years
56 of employment with such department, in which such member
57 received his highest salary or compensation while a member
58 of the department, or an amount of two hundred dollars per
59 month, whichever shall be greater, and if such member has
60 been employed in said department for more than twenty
61 years, the provisions of subsection (b) of this section shall
62 apply.

63 (e) It shall be the duty of each member of a paid police
64 or fire department at the time a fund is hereafter established
65 to furnish the necessary proof of his date of birth to the said
66 board of trustees, as specified in section twenty-three of this
67 article, within a reasonable length of time, said length of
68 time to be determined by the said board of trustees; and
69 then the board of trustees and the mayor shall proceed to
70 act in the manner provided in subsection (d) of this section
71 and shall cause all members of the paid police or fire de-
72 partment who are over the age of sixty-five years to be
73 retired in not less than sixty days from the date the fund is
74 established. Upon retirement under the provisions of this
75 subsection (e), such member, whether he has been employed
76 in said department for twenty years or not, shall receive
77 retirement pension benefits payable in twelve monthly in-
78 stallments for each year of the remainder of his life, in an
79 amount equal to sixty percent of such member's average
80 annual salary or compensation received during the three
81 twelve-consecutive-month periods, not necessarily consecu-
82 tive, each of such three periods beginning with the same
83 calendar month of different years and all such three periods
84 falling within the member's final five years of employment
85 with such department, in which such member received his
86 highest salary or compensation while a member of the de-
87 partment, or an amount of two hundred dollars per month,
88 whichever shall be greater, and if such member has been
89 employed in said department for more than twenty years, the
90 provisions of subsection (b) of this section shall apply.

§8-22-26. Death benefits.

1 (a) In case:

2 (1) Any member of a paid police or fire department who

3 has been in continuous service for more than five years dies
4 from any cause other than as specified in subsection (b) of this
5 section before retirement on a disability pension under the
6 provisions of, prior to the first day of July, one thousand nine
7 hundred eighty-one, section twenty-four of this article or, after
8 the thirtieth day of June, one thousand nine hundred eighty-
9 one, section twenty-three-a and twenty-four of this article or a
10 retirement pension under the provisions of subsection (a) or
11 both subsections (a) and (b), section twenty-five of this
12 article, leaving in either case surviving a dependent spouse, or
13 any dependent child or children under the age of eighteen years,
14 or dependent father or mother or both, or any dependent
15 brothers or sisters or both under the age of eighteen years; or

16 (2) Any former member of any such department who is on
17 a disability pension prior to the first day of July, one thousand
18 nine hundred eighty-one, under section twenty-four of this
19 article, or after the thirtieth day of June, one thousand nine
20 hundred eighty-one, under sections twenty-three-a and twenty-
21 four of this article, or is receiving or is entitled to receive re-
22 tirement pension benefits under the provisions of subsection
23 (a) or both subsections (a) and (b), section twenty-five of this
24 article, shall die from any cause other than as specified in
25 subsection (b) of this section leaving in either case surviving a
26 dependent spouse to whom the marriage took place prior to the
27 date of such member's retirement on a disability pension or a
28 retirement pension, or any dependent child or children under
29 the age of eighteen years who were born prior to or within ten
30 months after the date of such member's retirement on a dis-
31 ability pension or a retirement pension, or dependent father or
32 mother or both, or any dependent brothers or sisters or both
33 under the age of eighteen years; then in any of the cases set
34 forth above in (1) and (2) the board of trustees of such pen-
35 sion and relief fund shall, immediately following the death of
36 such member, pay to or for each of such entitled surviving de-
37 pendents the following pension benefits viz.: To such depen-
38 dent spouse, until death or remarriage, a sum per month equal
39 to thirty percent of such member's average monthly salary or
40 compensation received during the three twelve-consecutive-
41 month periods, not necessarily consecutive, each of such three

42 periods beginning with the same calendar month of different
43 years and all such three periods falling within the member's
44 final five years of employment with such department, in which
45 such member received his highest salary or compensation while
46 a member of the department, hereinafter for convenience re-
47 ferred to in this section as "monthly average," or an amount of
48 one hundred dollars per month, whichever shall be greater; to
49 each such dependent child a sum per month equal to ten per-
50 cent of such monthly average, or the sum of thirty dollars per
51 month for each such child, whichever shall be greater, until
52 such child shall attain the age of eighteen years or marry,
53 whichever first occurs; to each such dependent orphaned child
54 a sum per month equal to fifteen percent of such monthly
55 average, or the sum of forty-five dollars per month for each
56 such child, whichever shall be greater, until such child shall
57 attain the age of eighteen years or marry, whichever first oc-
58 curs; to each such dependent father or mother a sum per
59 month for each equal to ten percent of such monthly average,
60 or the sum of thirty dollars per month for each such father
61 and mother, whichever shall be greater; to each such depen-
62 dent brother or sister the sum of five dollars per month until
63 such individual shall attain the age of eighteen years or marry,
64 whichever first occurs but in no event shall the aggregate
65 amount paid to such brothers and sisters exceed thirty dollars
66 per month; but if at any time, because of the number of de-
67 pendents, all such dependents cannot be paid in full as herein
68 provided, then each dependent shall receive his pro rata share
69 of such payments: *Provided*, That in no case shall the payments
70 to the surviving spouse and children be cut below sixty-five
71 percent of the total amount to be paid to all dependents.

72 (b) The dependent spouse, child or children, or dependent
73 father or mother, or dependent brothers or sisters, of any such
74 member who shall die by reason of service rendered in the
75 performance of such member's duties shall, regardless of the
76 length of such member's service and irrespective of whether
77 such member was or was not entitled to receive or was or
78 was not receiving disability pension or temporary disability
79 payments at the time of his death, receive the death benefits
80 provided for in subsection (a) of this section, and if such mem-

81 ber had less than three years' service at the time of his death,
82 the monthly average shall be computed on the basis of the
83 actual number of years of service.

84 (c) If a member dies without leaving a dependent spouse,
85 child or children, or dependent father or mother, or dependent
86 brothers or sisters, his contributions to the fund plus interest
87 shall be refunded to his named beneficiary or, if no beneficiary
88 has been named, to his estate to the extent that such contri-
89 butions plus interest exceed any disability or retirement benefits
90 that he may have received before his death.

91 (d) The provisions of this section shall not be construed as
92 creating or establishing any contractual or vested rights in favor
93 of any individual who may be or become qualified as a bene-
94 ficiary of the death benefits herein authorized to be made, all
95 the provisions hereof and benefits provided for hereunder be-
96 ing expressly subject to such subsequent legislative enactments
97 as may provide for any change, modification or elimination of
98 the beneficiaries or benefits specified herein.

**§8-22-27. General provisions concerning disability pensions, re-
tirement pensions and death benefits.**

1 (a) In determining the years of service of a member in a
2 paid police or fire department for the purpose of ascertain-
3 ing certain disability pension benefits, all retirement pension
4 benefits and certain death benefits, the following provisions
5 shall be applicable:

6 (1) Absence from the service because of sickness or
7 injury for a period of two years or less shall not be construed
8 as time out of service; and

9 (2) Any member of any paid police or fire department
10 covered by the provisions of sections sixteen through twenty-
11 eight of this article who has been required to or shall at any
12 future time be required to enter the armed forces of the
13 United States by conscription, by reason of being a member
14 of some reserve unit of the armed forces which unit is called
15 into active duty for one year or more or a member of the
16 West Virginia national guard or air national guard, or who
17 enlists in one of the armed forces of the United States during

18 hostilities, and who upon receipt of an honorable discharge
19 from such armed forces presents himself for resumption of
20 duty to his appointed municipal official within six months
21 from his date of discharge, and is accepted by the pension
22 board's board of medical examiners as being mentally and
23 physically capable of performing his required duties as a
24 member of such paid police or fire department, shall be given
25 credit for continuous service in said paid police or fire
26 department, and his rights shall be governed as herein pro-
27 vided. No member of a paid police or fire department shall
28 be required to pay the monthly assessment as now required
29 by law, during his period of service in the armed forces of the
30 United States.

31 (b) As to any former member of a paid police or fire
32 department receiving disability pension benefits or retire-
33 ment pension benefits from a policemen's or firemen's pension
34 and relief fund, on the effective date of this article, the follow-
35 ing provisions shall govern and control the amount of such
36 pension benefits:

37 (1) A former member who on June thirtieth, one thousand
38 nine hundred sixty-two, was receiving disability pension bene-
39 fits or retirement pension benefits from a policemen's or
40 firemen's pension and relief fund, shall continue to receive
41 pension benefits but on and after July one, one thousand
42 nine hundred seventy-one, such pension benefits shall be in the
43 amount of two hundred dollars per month; and

44 (2) A former member who became entitled to disability
45 pension benefits or retirement pension benefits on or after
46 July one, one thousand nine hundred sixty-two, shall con-
47 tinue to receive pension benefits but on and after July one,
48 one thousand nine hundred seventy-one, shall receive the
49 disability pension benefits or retirement pension benefits
50 provided for in section twenty-four or section twenty-five
51 of this article, as the case may be.

52 (c) As to any dependent spouse, child or children, or de-
53 pendent father or mother, or dependent brothers or sisters,
54 of any former member of a paid police or fire department,
55 receiving any death benefits from a policemen's pension and

56 relief fund or firemen's pension and relief fund, on the
57 effective date of this article, the following provisions shall
58 govern and control the amount of such death benefits:

59 (1) A dependent spouse, child or children, or dependent
60 father or mother, or dependent brothers or sisters, of any
61 former member, who on June thirty, one thousand nine
62 hundred sixty-two, was receiving any death benefits from a
63 policemen's pension and relief fund or firemen's pension and
64 relief fund, shall continue to receive death benefits but on
65 and after July one, one thousand nine hundred seventy-one,
66 such death benefits shall be in the following amounts: To a
67 dependent spouse, until death or remarriage, the sum of one
68 hundred dollars per month; to each dependent child the sum
69 of thirty dollars per month, until such child shall attain
70 the age of eighteen years or marry, whichever first occurs;
71 to each dependent orphaned child the sum of forty-five
72 dollars per month, until such child shall attain the age of
73 eighteen years or marry, whichever first occurs; to each
74 dependent father and mother the sum of thirty dollars per
75 month for each; to each dependent brother or sister the sum
76 of five dollars per month, until such individual shall attain
77 the age of eighteen years or marry, whichever first occurs,
78 but in no event shall the aggregate amount paid to such
79 brothers and sisters exceed thirty dollars per month; but
80 if at any time, because of the number of dependents, all
81 such dependents cannot be paid in full as herein provided,
82 then each dependent shall receive his pro rata share of such
83 payments: *Provided*, That in no case shall the payments to
84 the surviving spouse and children be cut below sixty-five
85 percent of the total amount to be paid to all dependents;

86 (2) A dependent spouse, child or children, or dependent
87 father or mother, or dependent brothers or sisters, of any
88 former member, who became eligible for death benefits on
89 or after July one, one thousand nine hundred sixty-two, shall
90 continue to receive death benefits but on and after July
91 one, one thousand nine hundred seventy-one, shall receive
92 the death benefits provided for in section twenty-six of this
93 article.

94 (d) A former member who is receiving disability pension

95 benefits on the thirtieth day of June, one thousand nine
96 hundred eighty-one, shall continue to receive disability pension
97 benefits provided for in section twenty-four of this article.

**§8-22-28. Period in which payments limited to income from fund;
reduced payments where fund insufficient.**

1 Until the expiration of three years from the time of the
2 creation of any such fund, unless otherwise authorized by
3 ordinance of the municipality, no payment shall be made to
4 any member or beneficiary except from the income arising
5 from said fund; and if at any time prior to the first day of
6 July, one thousand nine hundred eighty-one, there shall not
7 be sufficient money to the credit of said pension and relief
8 fund to pay each member and beneficiary entitled to the
9 benefits thereof the full amount per month, as herein pro-
10 vided, then an equal percentage of such monthly payments
11 shall be made to each member and beneficiary thereof, until
12 the earlier of (a) the first day of July, one thousand nine
13 hundred eighty-three, and (b) such time when said fund is
14 so replenished as to warrant payment in full to each of such
15 members and beneficiaries.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

***§12-6-2. Definitions.**

1 As used in this article, unless a different meaning clearly ap-
2 pears from the context:

3 (1) "Board" means the West Virginia state board of in-
4 vestments;

5 (2) "Consolidated fund" means the investment fund
6 managed by the board and established pursuant to subsection
7 (b), section eight of this article;

8 (3) "Consolidated pension fund" means the investment
9 fund managed by the board and established pursuant to
10 subsection (a), section eight of this article;

11 (4) "Local government account" means the account within

*Clerk's Note: This section was also amended by S. B. 574, now Chapter 135, which was passed on April 10, 1981.

12 the consolidated fund established pursuant to subsection (b),
13 section eight of this article;

14 (5) "Local government funds" means the moneys of a
15 political subdivision, including policemen's pension and re-
16 lief funds and firemen's pension and relief funds, transferred to
17 the board for deposit in the local government account;

18 (6) "Pension funds" means and includes the workmen's
19 compensation fund; the state teachers retirement system
20 funds; the death, disability and retirement fund for members
21 of the department of public safety; the public employees re-
22 tirement system funds; the judges retirement fund; policemen's
23 pension and relief funds; firemen's pension and relief fund; and
24 such other retirement or pension funds and systems as may
25 be hereafter established on behalf of public employees of the
26 state or of its political subdivisions and administered by the
27 state;

28 (7) "Securities" means all bonds, notes, debentures or
29 other evidences of indebtedness, and shall not mean corporate
30 stock;

31 (8) "State account" means the account within the con-
32 solidated fund established pursuant to subsection (b), section
33 eight of this article; and

34 (9) "State funds" means all moneys of the state which
35 may be lawfully invested except (a) the pension funds (as de-
36 fined in subdivision (6) of this section) and (b) the "school
37 fund" established by section four, article XII of the state con-
38 stitution.

CHAPTER 33. INSURANCE.

Article

3. Licensing, Fees and Taxation of Insurers.

12. Agents, Brokers, Solicitors and Excess Line.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

1 (a) For the purpose of providing additional revenue for
2 municipal policemen's and firemen's pension and relief funds

3 and additional revenue for volunteer and part volunteer fire
4 companies and departments, there is hereby levied and im-
5 posed, on and after the first day of January, one thousand nine
6 hundred eighty-two, an additional premium tax equal to one
7 percent of gross direct premiums collected, less premiums re-
8 turned to policyholders because of cancellation of policies, for
9 fire insurance and casualty insurance policies. Except as other-
10 wise provided in this section, all provisions of this article
11 relating to the levy, imposition and collection of the regular
12 premium tax are applicable to the levy, imposition and collec-
13 tion of the additional tax.

14 All moneys collected from this additional tax shall be re-
15 ceived by the commissioner and paid by him into a special
16 account in the state treasury, designated the municipal pen-
17 sions and protection fund. The net proceeds of this tax after
18 appropriation thereof by the Legislature, shall be distributed
19 in accordance with the provisions of subsection (c) of this
20 section.

21 (b) Before the first day of August, one thousand nine hun-
22 dred eighty-three, and before the first day of August of each
23 calendar year thereafter, the treasurer of each municipality
24 in which a municipal policemen's or firemen's pension and
25 relief fund has been established shall report to the state audi-
26 tor the average monthly number of members who worked at
27 least one hundred hours per month of municipal policemen's
28 or firemen's pension systems during the preceding fiscal year.
29 Before the first day of August, one thousand nine hundred
30 eighty-three, and before the first day of August of each calen-
31 dar year thereafter, the state fire marshal shall report to the
32 state auditor the names and addresses of all volunteer and part
33 volunteer fire companies and departments within the state
34 which meet the eligibility requirements established in section
35 eight-a, article fifteen, chapter eight of this code.

36 Before the first day of September, one thousand nine hun-
37 dred eighty-three, and before the first day of September of each
38 calendar year thereafter, the state auditor shall allocate and
39 distribute the revenues in the municipal pensions and protection
40 fund which were collected during the preceding calendar year

41 to municipal policemen's and firemen's pension and relief
42 funds and to volunteer and part volunteer fire companies and
43 departments. Seventy-five percent of the aforementioned reve-
44 nues allocated shall be allocated to municipal policemen's and
45 firemen's pension and relief funds and twenty-five percent of
46 such allocated revenues shall be allocated to volunteer and
47 part volunteer fire companies and departments.

48 (c) (1) Each municipal pension and relief fund shall receive
49 a pro rata share of the revenues allocated to municipal police-
50 men's and firemen's pension and relief funds based upon the
51 corresponding municipality's average monthly number of mem-
52 bers who worked at least one hundred hours per month during
53 the preceding fiscal year. All moneys received by municipal
54 pension and relief funds under this section may be expended
55 only for the purposes described in sections sixteen through
56 twenty-eight, article twenty-two, chapter eight of this code.

57 (2) Each volunteer fire company or department shall re-
58 ceive an equal share of the revenues allocated for volunteer
59 and part volunteer fire companies and departments.

60 (3) In addition to the share allocated and distributed in ac-
61 cordance with subdivision (1) of this subsection, each muni-
62 cipal fire department composed of full-time paid members
63 and volunteers and part volunteer fire companies and depart-
64 ments equal to the share distributed to volunteer fire compan-
65 ies under subdivision (2) of this subsection reduced by an
66 amount equal to such share multiplied by the ratio of the
67 number of full-time paid fire department members who are
68 also members of a municipal firemen's pension system to the
69 total number of members of such fire department.

70 (d) The allocation and distribution of revenues provided for
71 in this section are subject to the provisions of section twenty,
72 article twenty-two, and sections eight-a and eight-b, article
73 fifteen, chapter eight of this code.

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-16a. Additional premium tax on excess line brokers.

1 For the purpose of providing additional revenue for muni-
2 cipal policemen's and firemen's pension and relief funds and

3 additional revenue for volunteer and part volunteer fire com-
4 panies and departments, an additional annual premium tax
5 is hereby imposed and required to be paid, on and after the first
6 day of January, one thousand nine hundred eighty-two, in addi-
7 tion to the annual premium tax imposed by section sixteen of
8 this article, which additional tax shall be a sum equal to four
9 percent of the gross premiums received on the gross business
10 procured by such licensee on subjects of insurance, resident,
11 located or to be performed in this state and obtained pursuant
12 to the provisions of this article, including any so-called
13 dividends on participating insurance policies applied in reduc-
14 tion of premiums, less premiums returnable for cancellation.
15 All provisions of this article relating to the levy, imposition
16 and collection of the regular premium tax are applicable to the
17 levy, imposition and collection of this additional tax.

18 All such taxes paid to the commissioner pursuant to this
19 section shall be paid by him into a special account in the
20 state treasury, designated the municipal pensions and protection
21 fund, and after appropriation by the Legislature, shall be dis-
22 tributed in accordance with the provisions of subsection (c),
23 section fourteen-d, article three of this chapter.

CHAPTER 168

(Com. Sub. for H. B. 862—By Mr. Ballouz)

[Passed April 3, 1981; 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 five-b, relating to exceeding the creel limit on trout or otherwise violating laws, rules and regulations for trout fishing; and providing a criminal penalty therefor.

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 five-b, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5b. Exceeding creel limit on trout; other violations of code or rules and regulations for trout fishing; penalties.

1 Any person who exceeds the creel limit on trout or
2 who otherwise violates any provisions of this code or any
3 rules and regulations relating to trout fishing is guilty of a
4 misdemeanor, and, upon conviction thereof, shall be fined not
5 less than fifty dollars nor more than three hundred dollars,
6 or imprisoned in the county jail not less than ten nor more
7 than one hundred days, or both fined and imprisoned.

CHAPTER 169

(Com. Sub. for S. B. 398—By Mr. Colombo)

[Passed April 10, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-three-a, all relating to regulation of outfitters and guides by the department of natural resources; defining certain terms; defining commercial whitewater outfitters; requiring commercial whitewater outfitters to comply with same requirements as outfitters and guides; stating legislative findings and purpose; requiring the director of natural resources to investigate and study commercial whitewater rafting, outfitting and activities in zones where overcrowding, environmental misuse and safety hazards are found to exist; requiring certain fees to be paid by certain commercial whitewater outfitters; providing for a limitation on additional licenses to commercial whitewater outfitters seeking to operate in zones under study; creating an advisory board; providing for composition of board; requiring board to

promulgate rules and regulations applicable to zones studied based upon study of zone by director; providing for enforcement of rules and regulations; setting certain dates by which studies are to be commenced, all rules and regulations are to be promulgated, and the board is to terminate its activities and be discontinued.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-23. Outfitters and guides—generally; definitions.

§20-2-23a. Special studies of whitewater rafting zones to be conducted; creation of advisory commission to promulgate rules and regulations; special fees imposed; time limitation.

§20-2-23. Outfitters and guides—generally; definitions.

1 Services of outfitters and guides for the benefit and
2 convenience of hunters, fishermen and others in this state are
3 recognized as essential, and such outfitters and guides may
4 be licensed and authorized to serve as provided in this article.
5 The director is hereby authorized to promulgate rules and
6 regulations on services of outfitters and guides as herein
7 authorized and defined.

8 The term "outfitter", as used herein, shall mean and include
9 any person who, operating from any temporary or permanent
10 camp, private or public lodge, or private or incorporated
11 home situate within this state, provides for monetary profit or
12 gain, saddle or pack animals or other animals, vehicles, boats,
13 conveyances or equipment, or guide services for any person
14 or persons hunting game animals, game birds, fishing or
15 taking expeditions, both land and water, in this state. The
16 term "outfitter" shall not include, however, any person who
17 occasionally for accommodation or favor rather than profit or
18 gain, rents equipment to hunters, fishermen or others as a
19 service incidental to his principal occupation or business
20 without advertising outfitter or guide services or holding out
21 to the public the offering of such services. The term "guide",

22 as used herein, shall be construed to include and embrace
23 outfitter services and the term "outfitter" shall be construed
24 to include and embrace guide services, but the applicant for
25 any license hereunder may in his or her application elect to be
26 designated as an outfitter or guide.

27 The term "commercial whitewater outfitter", as used
28 herein, shall mean and include any outfitter duly authorized
29 and operating from within or from without the state, which
30 for monetary profit or gain, provides whitewater expeditions
31 or rents whitewater craft or equipment for use in whitewater
32 expeditions on any river, portions of rivers or waters of the
33 state designated by the director as whitewater recreation
34 zones.

**§20-2-23a. Special studies of whitewater rafting zones to be
conducted; creation of advisory commission to
promulgate rules and regulations; special fees
imposed; time limitation.**

1 (a) The Legislature finds that the recent increase in the
2 number of persons engaging in the sport of whitewater
3 rafting has resulted in overcrowding, safety and ecological
4 problems along areas and portions of rivers and waters in this
5 state necessitating the study, investigation and regulation of
6 whitewater rafting to promote the safe and equitable
7 enjoyment of this sport by all persons seeking to engage in it
8 as recreational activity. The Legislature further finds it
9 desirable to require the director of the department of natural
10 resources, pending such study and investigation and the
11 promulgation of necessary rules and regulations applicable to
12 such areas and portions of rivers and waters, to restrict, deny
13 or postpone the issuance of licenses to additional commercial
14 whitewater outfitters seeking to operate in such areas and
15 portions of rivers and waters in this state until the
16 promulgation of such rules and regulations applicable thereto
17 and to provide for the creation of an advisory board to
18 promulgate such rules and regulations.

19 (b) The director shall investigate and study commercial
20 whitewater rafting, outfitting and activities related thereto,
21 which rafting, outfitting or activities take place along the
22 rivers or waters of the state. The director shall designate any
23 such rivers or waters or any portions thereof, which herein

24 are referred to as "whitewater zones" for which commercial
25 whitewater rafting, outfitting and activities are to be
26 investigated and studied, and shall determine the order and
27 the periods of time within which such investigations and
28 studies are to be conducted. The director shall first
29 investigate and study those whitewater zones which the
30 director finds to present serious problems requiring
31 immediate regulation, including without limitation, safety
32 hazards and problems of overcrowding or environmental
33 misuse.

34 (c) Upon the filing of a written notice to be entered upon
35 the records of the department containing the designation and
36 reasonable description of the whitewater zone to be
37 investigated and studied pursuant to subsection (b) above,
38 the director may not issue licenses to additional commercial
39 whitewater outfitters seeking to operate in or for the
40 whitewater zone described in the notice. This limitation on
41 additional licenses shall continue until the director has
42 completed investigation and study of the whitewater zone
43 designated in the notice and the rules and regulations
44 applicable to such zone are promulgated in accordance with
45 this section: *Provided*, That the director may issue additional
46 licenses for such whitewater zones during the study period
47 and prior to the promulgation of the rules and regulations
48 applicable to a zone, if the director finds that such license
49 would not interfere with the conduct of the pending
50 investigation and study, and the issuance of such additional
51 license is in the best interests of persons seeking to enjoy
52 whitewater rafting and the interests of the state in promotion
53 of tourism and the recreational and ecological use of the
54 state's natural resources.

55 (d) The annual license fees set forth in section twenty-six
56 of this article for commercial whitewater outfitters and such
57 annual fee shall be two hundred fifty dollars for each
58 commercial whitewater outfitter. In addition to such annual
59 license fee, each commercial whitewater outfitter, operating
60 within a whitewater zone under investigation and study as
61 provided in subsection (c) of this section, shall pay to the
62 director the sum of two hundred fifty dollars as a special
63 study fee which shall be paid within three months after the
64 date of the notice and designation of the whitewater zone to

65 be studied. The annual license fee and the special study fee
66 may be used to offset and pay for the expenses and costs of
67 such investigations and studies and the promulgation of rules
68 and regulations pursuant to this section.

69 (e) Upon official designation by the director of the first
70 whitewater zone to be studied as provided in subsection (b) of
71 this section, the director shall appoint a commercial
72 whitewater advisory board. Such board shall consist of two
73 staff employees of the department, three persons
74 representing three different licensed commercial whitewater
75 outfitters currently operating within the state, and three
76 residents of the state who represent the consumers of
77 commercial whitewater rafting in the state: *Provided, That,*
78 for purposes of the appointment of the commercial
79 whitewater outfitters and consumer members of the board,
80 there shall be designated three regions within the state as
81 follows: region one, the counties of Jackson, Roane, Calhoun,
82 Gilmer, Lewis, Upshur, Randolph, Tucker, Barbour, Preston,
83 Taylor, Monongalia, Marion, Harrison, Doddridge, Ritchie,
84 Wirt, Wood, Pleasants, Tyler, Wetzel, Marshall, Ohio, Brooke
85 and Hancock; region two, the counties of Greenbrier,
86 Pocahontas, Pendleton, Hardy, Grant, Mineral, Hampshire,
87 Morgan, Berkeley and Jefferson; region three, the counties of
88 Mason, Putnam, Kanawha, Clay, Braxton, Webster, Nicholas,
89 Fayette, Summers, Monroe, Mercer, Raleigh, Wyoming,
90 McDowell, Mingo, Logan, Boone, Wayne, Cabell and Lincoln.
91 The director shall appoint one member representing
92 commercial whitewater outfitters operating in each of the
93 three regions. The director shall likewise appoint a citizen
94 consumer member from each of the three regions. The
95 director shall serve as an ex officio member of the board and
96 shall serve as chairperson at meetings.

97 (f) The commercial whitewater advisory board shall
98 participate in the investigations and studies conducted by the
99 director. The board shall meet upon the call of the
100 chairperson or a majority of the members of the board and
101 shall meet within a reasonable time after completion of the
102 director's investigation and study relative to each designated
103 whitewater zone. At such meetings the board shall review all
104 data, materials and relevant findings compiled by the director
105 relating to the investigation and study then under

106 consideration and, as soon as practicable thereafter, the board
107 shall promulgate rules and regulations to govern and apply to
108 that designated whitewater zone. Such rules and regulations
109 shall include, but not be limited to, the following: (1)
110 minimum safety requirements for equipment; (2) criteria for
111 increasing or limiting the number of commercial whitewater
112 outfitters operating in whitewater zones; (3) standards for the
113 size and number of rafts and numbers of persons transported
114 in rafts; and (4) qualifications of guides. Board members shall
115 be paid all reasonable and necessary expenses incurred in the
116 exercise of their duties.

117 (g) Upon promulgation of such rules and regulations, the
118 director shall immediately commence enforcement of the
119 rules and regulations promulgated by the board relative to
120 the designated whitewater zone. The promulgation of such
121 rules and regulations and any revision thereof shall be subject
122 to the provisions of chapter twenty-nine-a of this code.

123 (h) The director shall commence the first investigation
124 and study no later than the first day of July, one thousand
125 nine hundred eighty-one. All activities pursuant to all
126 investigations and studies or as may be required for the
127 promulgation of rules and regulations hereunder shall be
128 completed no later than the first day of July, one thousand
129 nine hundred eighty-four.

130 (i) The commercial whitewater advisory board shall
131 terminate and cease to exist as an entity one year following a
132 finding made by the director that all studies and
133 investigations and the promulgation of rules and regulations
134 applicable to the last designated whitewater zone have been
135 completed.

CHAPTER 170

(H. B. 1722—By Mr. Ballouz)

[Passed April 11, 1981: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirty-nine, forty, forty-a,
forty-six-c and forty-six-e, article two, chapter twenty of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class A, Class B, Class AB and Class Q licenses for residents and Class O licenses for residents and non-residents; increasing the fee of a Class A, Class B and Class AB resident license; requiring a trout stamp be affixed to Class AB, B, F, G and K license and assessing a fee thereof; changing the requirements of Class Q special resident license; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. 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.

§20-2-46c. Class O resident and nonresident trout fishing license.

§20-2-46e. Class Q special resident hunting permit for disabled persons.

§20-2-39. Class A resident statewide hunting and trapping license.

1 On and after the first day of January, one thousand nine
2 hundred eighty-two, a Class A license shall be a resident state-
3 wide hunting and trapping license and shall entitle the licensee
4 to hunt and trap all legal species of game in all counties of the
5 state, except as prohibited by rules or regulations of the
6 director. It shall be issued only to citizens of the United
7 States and to unnaturalized persons who possess the permit
8 referred to in section twenty-nine of this article who are
9 residents of this state. The fee therefor shall be eight dollars.

§20-2-40. Class B resident statewide fishing license.

1 On and after the first day of January, one thousand nine
2 hundred eighty-two, a Class B license shall be a resident state-
3 wide fishing license and shall entitle the licensee to fish for all
4 legal fish, except trout, in all counties of the state, except as
5 prohibited by rules or regulations of the director. It shall
6 be issued only to citizens of the United States, and un-

7 naturalized persons possessing the permit mentioned in sec-
8 tion twenty-nine of this article, who are residents of this state.
9 The fee therefor shall be eight dollars.

10 Trout fishing is not permitted with a Class B license unless
11 such license has affixed thereto an appropriate trout stamp
12 as prescribed by the department of natural resources. The
13 fee for a trout stamp shall be five dollars. The trout stamp
14 is in addition to a Class B license.

**§20-2-40a. Class AB combination resident statewide hunting, trap-
ping and fishing license.**

1 On and after the first day of January, one thousand nine
2 hundred eighty-two, a Class AB combination license shall be a
3 resident statewide hunting, trapping and fishing license and
4 shall entitle the licensee to hunt and trap for all legal species
5 of game, and fish for all legal species of fish, except trout, and
6 frogs in all counties of the state, except as prohibited by rules
7 or regulations of the director. It shall be issued only to
8 citizens of the United States and to unnaturalized persons
9 who possess the permit referred to in section twenty-nine
10 of this article who are residents of this state. The fee therefor
11 shall be fourteen dollars.

12 Trout fishing is not permitted with a Class AB license
13 unless such license has affixed thereto an appropriate trout
14 stamp as prescribed by the department of natural resources.
15 The fee for a trout stamp shall be five dollars. The trout
16 stamp is in addition to a Class AB license.

§20-2-46c. Class O resident and nonresident trout fishing license.

1 On and after the first day of January, one thousand nine
2 hundred eighty-two, a Class O license shall be a resident and
3 nonresident statewide trout fishing license and shall entitle the
4 licensee to fish for trout in all counties of the state, except as
5 prohibited by rules or regulations of the director.

6 The fee shall be five dollars. The revenue derived from
7 the sale of this license shall be deposited in the state treasury
8 and credited to the department of natural resources and
9 shall be used and paid out, upon order of the director, for
10 state trout hatchery production.

11 This license shall be issued in the form of a stamp prescribed
12 by the director, shall be in addition to a Class AB, B, F, G
13 or K license and shall be valid only when affixed thereto.

§20-2-46e. Class Q special resident hunting permit for disabled persons.

1 On and after the first day of January, one thousand nine
2 hundred eighty-two, a Class Q permit shall be a special state-
3 wide hunting permit and shall entitle the permittee to hunt all
4 legal species of game during the designated hunting seasons.

5 A form for such permit shall be furnished by the director
6 to any applicant who meets the following requirements:

7 (1) He is a resident of this state;

8 (2) He is permanently disabled in the lower extremities;
9 and

10 (3) He holds a Class A or AB resident statewide hunting
11 license or a senior citizens license.

12 The form when properly filled out by a licensed physician
13 shall attest to the disability of the applicant and shall, from
14 the date of signing by the physician, constitute a Class Q
15 permit which the permittee shall have in his possession when
16 hunting during any hunting season for which permittee holds
17 a valid license as provided herein. The director shall establish
18 such rules and regulations as he deems necessary to administer
19 the qualifications and permitting of applicants.

20 A Class Q permit shall entitle the holder thereof to hunt
21 from a motor vehicle and, notwithstanding the provisions of
22 subsection (10), section five of this article, to possess a
23 loaded firearm in a motor vehicle, but only under the follow-
24 ing circumstances:

25 (a) The motor vehicle is stationary;

26 (b) The engine of the motor vehicle is not operating;

27 (c) The permittee is the only occupant of the vehicle;

28 (d) The vehicle is not parked on the right-of-way of any
29 public road or highway; and

- 30 (e) The permittee observes all other pertinent laws and
31 regulations.

CHAPTER 171

(S. B. 65—By Mr. Colombo)

[Passed March 18, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-six-b, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special hunting licenses for antlerless deer; setting restrictions on obtaining a license to hunt antlerless deer; providing exceptions to such restrictions; requiring that persons licensed to hunt such deer hold certain other hunting licenses and providing certain exceptions for persons over age sixty-five or less than age sixteen; and requiring proof of age in such cases.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46b. Class N special deer hunting license.

1 A Class N license is a special deer hunting license for
2 antlerless deer of either sex and entitles the licensee to hunt
3 for and kill one antlerless deer of either sex during the Class
4 N license season: *Provided*, That if a hunter kills a buck deer
5 during the regular deer hunting season, he shall also be
6 permitted to hunt for and kill one antlerless deer during Class
7 N license season if he has applied for and has had issued to
8 him a Class N license. Only one Class N license may be
9 acquired during any calendar year in which the Class N
10 license season is held, and the Class N license can be used
11 only by the applicant. No person receiving a Class N license
12 for any given Class N license season may receive a Class N
13 license for the next consecutive Class N license season. In
14 order to implement this restriction the director shall cause

15 the names and social security numbers of those persons
16 receiving licenses to be recorded in the department's records.
17 The fee for a Class N license is eight dollars: *Provided,*
18 *however,* That the director may issue a Class N license to a
19 person who received a Class N license the preceding year if
20 there are not sufficient applications received from persons
21 who did not receive a Class N license the preceding year to
22 meet the purpose for which Class N licenses are issued.

23 The Class N license may be issued only for the purpose of
24 removing antlerless deer on a post-season basis when the
25 director deems it essential for proper management of wildlife
26 resources. The director shall establish such rules and
27 regulations governing the issuance of such Class N licenses as
28 he deems necessary to limit, on a fair and equitable basis, the
29 number of persons who may hunt for antlerless deer in any
30 county, or any part of a county: *Provided, however,* That no
31 more than four Class N licenses shall be issued for each deer
32 that the director desires to have killed during the Class N
33 season.

34 When the director deems it essential that Class N license
35 season be held in a particular county or part of a county, the
36 season shall be held on the Friday and Saturday following
37 regular deer hunting season, and shall extend beyond the
38 two-day period only upon order of the director when
39 necessary to accomplish the desired kill.

40 Bona fide resident landowners or their resident children,
41 bona fide resident tenants of such land, and any bona fide
42 resident stockholder of resident corporations which are
43 formed for the primary purpose of hunting or fishing and
44 which are the fee simple owners of no less than one thousand
45 acres of land upon which such antlerless deer may be hunted
46 are not required to have a Class N license in their possession
47 while hunting antlerless deer on their own land during the
48 Class N license season.

49 A Class N license may be issued only to a resident of this
50 state who holds a valid Class A, Class AB, Class O or Class Q
51 license issued for the current calendar year or a resident of
52 this state who has attained the age of sixty-five years, except
53 that this requirement shall not apply to persons under the age
54 of sixteen. The director shall require proof of age before

55 issuing a Class N license, and such license shall contain a
56 space for recording the number of the valid Class A, Class AB,
57 Class O or Class Q license.

58 Notwithstanding any provision of this code to the contrary,
59 no Class N license shall be issued for a county or a part of a
60 county unless, during the regular deer hunting season in the
61 previous year, two bucks have been killed per square mile of
62 deer range in that county or part of the county in which the
63 hunt is held, and the director deems the holding of the Class
64 N season necessary.

CHAPTER 172

(H. B. 870—By Mr. Kopelman)

[Passed April 3, 1981; in effect July 1, 1981. 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 two-a, relating to wildlife resources; creating a voluntary wildlife check-off program for individual taxpayers; providing for disposition of funds; and specifying effective date.

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 two-a, to read as follows:

ARTICLE 2A. VOLUNTARY WILDLIFE CHECK-OFF PROGRAM.

- §20-2A-1. Legislative intent.
- §20-2A-2. Voluntary check-off designation.
- §20-2A-3. Contributions credited to special fund.
- §20-2A-4. Use of funds.
- §20-2A-5. Effective date.

§20-2A-1. Legislative intent.

- 1 It is in the public interest to preserve, protect and per-
- 2 petuate all species of wildlife for the use and benefit of

3 the citizens of West Virginia. The intent of this legislation is
4 to provide additional funding for wildlife programs, to be
5 primarily used to enhance nongame wildlife programs and
6 for the management, preservation, protection and perpetua-
7 tion of nongame species.

8 The financing of these programs will be derived from a
9 voluntary check-off and contribution designation on state per-
10 sonal income tax return forms of a portion or all of a taxpayer's
11 refund. The funding provided shall be supplemental to existing
12 revenues.

§20-2A-2. Voluntary check-off designation.

1 (a) Each West Virginia individual income tax return form
2 shall contain a designation as follows:

3 *West Virginia Voluntary Wildlife Check-Off Program.*

4 Check () if you wish to designate \$1, \$5, \$10, or more
5 of your tax refund for this program. If joint return, check ()
6 if spouse wishes to designate \$1, \$5, \$10, or more.

7 (b) Each individual taxpayer desiring to contribute to
8 the voluntary wildlife program may designate by placing an
9 "X" in the appropriate box on the state income tax return
10 form. His contribution shall be credited to said program.

§20-2A-3. Contributions credited to special fund.

1 The tax department shall determine by the first day of
2 July of each year the total amount designated pursuant to
3 this legislation and shall report such amount to the state
4 treasurer who shall credit such amount to a special depart-
5 ment of natural resources fund.

§20-2A-4. Use of funds.

1 The funds shall be used for the purpose of enhancement
2 and perpetuation of nongame wildlife programs in this
3 state upon order of the director. The director shall on the fif-
4 teenth day of January each year furnish the Legislature with
5 a report stating the amount of money that has been provided
6 and how such moneys have been expended.

§20-2A-5. Effective date.

- 1 This legislation shall take effect on the first day of January,
- 2 one thousand nine hundred eighty-two, and shall apply to tax
- 3 return forms filed thereafter.

CHAPTER 173

(H. B. 1184—By Mr. Burdette and Miss Shuman)

[Passed April 3, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections one, two, three, four, five, six, seven, eight and nine, article seventeen, chapter five; section two, article six-b, chapter twenty; sections one, two, three and four, article five, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article four, chapter twenty of said code, all relating to repealing the code sections creating and governing the West Virginia commission on energy, economy and environment; repealing the code sections continuing and governing the bureau of Negro welfare and statistics; repealing the code section creating and governing the mining council; and removing references to the Point Pleasant battle monument commission, the Prickett's Fort state park commission, the Droop Mountain battlefield commission, the Philippi battlefield commission and the Carnifex Ferry battleground park commission, and the responsibility of the division of parks and recreation therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PARKS AND RECREATION.**§20-4-1. Duties and functions of division of parks and recreation.**

1 The division of parks and recreation herein created and
2 established shall have within its jurisdiction and supervision:

3 (a) All state parks and state recreation areas, including
4 all lodges, cabins, swimming pools, motorboating and all
5 other recreational facilities therein, except the roads therein
6 which, by reason of section one, article four, chapter seven-
7 teen, are transferred to the state road system and to the
8 responsibility of the commissioner of highways with respect
9 to the construction, reconstruction and maintenance of the
10 roads or any future roads for public usage on publicly owned
11 lands in future state parks, state forests and public hunting and
12 fishing areas;

13 (b) The authority and responsibility to do the necessary
14 cutting and planting of vegetation along road rights-of-way in
15 state parks and recreational areas;

16 (c) Administration of all laws and regulations relating to
17 the establishment, development, protection, use and enjoy-
18 ment of all state parks and state recreational facilities consistent
19 with the provisions of this chapter.

20 Berkeley Springs sanitarium in Morgan county shall be
21 continued as a state recreational facility under the jurisdiction
22 and supervision of the division of parks and recreation and
23 shall be managed, directed and controlled as prescribed in
24 articles one and four, chapter twenty of the code.

25 The director shall have and is hereby granted all of the
26 powers and authority and shall perform all of the functions
27 and duties with regard to Berkeley Springs sanitarium that
28 were previously vested in and performed by the state com-
29 missioner of public institutions, who shall no longer have
30 such power and authority and whose power and authority
31 with regard to Berkeley Springs sanitarium is hereby abolished.
32 The title to all property consisting of or belonging to Berkeley
33 Springs sanitarium is hereby transferred to and shall be vested
34 in the director who shall be the custodian of all deeds and
35 other muniments of title to all of that property and shall

36 cause those deeds and muniments susceptible of recordation
37 to be recorded in the proper office.

38 The chief of the division shall be primarily responsible for
39 the execution and administration of the provisions of this
40 article as an integral part of the natural resources program
41 of the state and shall organize and staff his division for the
42 orderly, efficient and economical accomplishment of these ends.

CHAPTER 174

(S. B. 338—By Mr. McGraw, Mr. President)

[Passed April 9, 1981: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six and fourteen, 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 by adding thereto a new section, designated section twenty-four, all relating to defining certain terms; establishing the powers, duties and responsibilities of the West Virginia water development authority; authorizing the authority to fund and issue bonds to fund projects to establish facilities for the treatment and distribution of potable, sanitary water for human consumption and use; providing for rentals and revenues from water development projects owned by the authority; providing for the contracts and leases of the authority; providing for cooperation with other governmental agencies; and placing a limit on borrowing by the authority.

Be it enacted by the Legislature of West Virginia:

That sections three, six and fourteen, 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 be further amended by adding thereto a new section, designated section twenty-four, all to read as follows:

ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT AUTHORITY.

§20-5C-3. Definitions.

§20-5C-6. Powers, duties and responsibilities of authority generally.

§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-24. Authorized limit on borrowing.

§20-5C-3. Definitions.

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

3 (1) "Authority" means the West Virginia water
4 development authority created in section four of this article,
5 the duties, powers, responsibilities and functions of which
6 are specified in this article.

7 (2) "Beneficial use" means a use of water by a person or by
8 the general public that is consistent with the public interest,
9 health and welfare in utilizing the water resources of this
10 state, including, but not limited to, domestic, agricultural,
11 irrigation, industrial, manufacturing, mining, power, public,
12 sanitary, fish and wildlife, state, county, municipal,
13 navigational, recreational, aesthetic and scenic use.

14 (3) "Board" means the West Virginia water development
15 authority board created in section four of this article, which
16 shall manage and control the West Virginia water
17 development authority.

18 (4) "Bond" or "water development revenue bond" means
19 a revenue bond or note issued by the West Virginia water
20 development authority to effect the intents and purposes of
21 this article.

22 (5) "Construction" includes reconstruction, enlargement,
23 improvement and providing furnishings or equipment.

24 (6) "Cost" means, as applied to water development
25 projects, the cost of their acquisition and construction; the
26 cost of acquisition of all land, rights-of-way, property rights,
27 easements, franchise rights and interests required by the
28 authority for such acquisition and construction; the cost of
29 demolishing or removing any buildings or structures on land
30 so acquired, including the cost of acquiring any lands to
31 which such buildings or structures may be moved; the cost of
32 acquiring or constructing and equipping a principal office
33 and suboffices of the authority; the cost of diverting
34 highways, interchange of highways; access roads to private

35 property, including the cost of land or easements therefor; the
36 cost of all machinery, furnishings, and equipment; all
37 financing charges, and interest prior to and during
38 construction and for no more than eighteen months after
39 completion of construction; the cost of all engineering
40 services and all expenses of research and development with
41 respect to public water or waste water facilities; the cost of all
42 legal services and expenses; the cost of all plans,
43 specifications, surveys and estimates of cost and revenues; all
44 working capital and other expenses necessary or incident to
45 determining the feasibility or practicability of acquiring or
46 constructing any such project; all administrative expenses
47 and such other expenses as may be necessary or incident to
48 the acquisition or construction of the project; the financing of
49 such acquisition or construction, including the amount
50 authorized in the resolution of the authority providing for the
51 issuance of water development revenue bonds to be paid into
52 any special funds from the proceeds of such bonds; and the
53 financing of the placing of any such project in operation. Any
54 obligation or expenses incurred after the effective date of this
55 section by any governmental agency, with the approval of the
56 authority, for surveys, borings, preparation of plans and
57 specifications and other engineering services in connection
58 with the acquisition or construction of a project shall be
59 regarded as a part of the cost of such project and shall be
60 reimbursed out of the proceeds of loans or water
61 development revenue bonds as authorized by the provisions
62 of this article.

63 (7) "Establishment" means an industrial establishment,
64 mill, factory, tannery, paper or pulp mill, mine, colliery,
65 breaker or mineral processing operation, quarry, refinery,
66 well, and each and every industry or plant or works or activity
67 in the operation or process of which industrial wastes, or
68 other wastes are produced.

69 (8) "Governmental agency" means the state government
70 or any agency, department, division or unit thereof; counties;
71 municipalities; watershed improvement districts; soil
72 conservation districts; sanitary districts; public service
73 districts; drainage districts; regional governmental
74 authorities and any other governmental agency, entity,
75 political subdivision, public corporation or agency having the

76 authority to acquire, construct or operate public water or
77 waste water facilities; the United States government or any
78 agency, department, division or unit thereof; and any agency,
79 commission or authority established pursuant to an interstate
80 compact or agreement.

81 (9) "Industrial wastes" means any liquid, gaseous, solid or
82 other waste substance, or any combination thereof, resulting
83 from or incidental to any process of industry, manufacturing,
84 trade or business, or from or incidental to the development,
85 processing or recovery of any natural resources; and the
86 admixture with such industrial wastes of sewage or other
87 wastes, as defined in this section, shall also be considered
88 industrial wastes.

89 (10) "Other wastes" means garbage, refuse, decayed wood,
90 sawdust, shavings, bark and other wood debris and residues,
91 sand, lime, cinders, ashes, offal, night soil, silt, oil, tar,
92 dyestuffs, acids, chemicals, and all other materials or
93 substances not sewage or industrial wastes which may cause
94 or might reasonably be expected to cause or to contribute to
95 the pollution of any of the waters of this state.

96 (11) "Owner" includes all persons, copartnerships or
97 governmental agencies having any title or interest in any
98 property rights, easements and interests authorized to be
99 acquired by this article.

100 (12) "Person" means any public or private corporation,
101 institution, association, firm or company organized or
102 existing under the laws of this or any other state or country;
103 the United States or the state of West Virginia; any federal or
104 state governmental agency; political subdivision; county
105 commission; municipality; industry; sanitary district; public
106 service district; drainage district; soil conservation district;
107 watershed improvement district; partnership; trust; estate;
108 person or individual; group of persons or individuals acting
109 individually or as a group or any other legal entity whatever.

110 (13) "Pollution" means (a) the discharge, release, escape,
111 deposit or disposition, directly or indirectly, of treated or
112 untreated sewage, industrial wastes, or other wastes, of
113 whatever kind or character, in or near any waters of the state,
114 in such condition, manner or quantity, as does, will, or is
115 likely to (1) contaminate or substantially contribute to the

116 contamination of any of such waters, or (2) alter or
117 substantially contribute to the alteration of the physical,
118 chemical or biological properties of any of such waters, if
119 such contamination or alteration, or the resulting
120 contamination or alteration where a person only contributes
121 thereto, is to such an extent as to make any of such waters (i)
122 directly or indirectly harmful, detrimental or injurious to the
123 public health, safety and welfare, or (ii) directly or indirectly
124 detrimental to existing animal, bird, fish, aquatic or plant life,
125 or (iii) unsuitable for present or future domestic, commercial,
126 industrial, agricultural, recreational, scenic or other
127 legitimate uses; and also means (b) the discharge, release,
128 escape, deposit, or disposition, directly or indirectly, of
129 treated or untreated sewage, industrial wastes or other
130 wastes, of whatever kind or character, in or near any waters of
131 the state in such condition, manner or quantity, as does, will,
132 or is likely to reduce the quality of the waters of the state
133 below the standards established therefor by the United States
134 or any department, agency, board or commission of this state
135 authorized to establish such standards.

136 (14) "Project" or "water development project" means any
137 public water or waste water facility, the acquisition or
138 construction of which is authorized in whole or in part by the
139 West Virginia water development authority or the acquisition
140 or construction of which is financed in whole or in part from
141 funds made available by grant or loan by, or through, the
142 authority as provided in this article, including facilities, the
143 acquisition or construction of which is authorized in whole or
144 in part by the West Virginia water development authority or
145 the acquisition or construction of which is financed in whole
146 or in part from funds made available by grant or loan by, or
147 through, the authority as provided in this article, including all
148 buildings and facilities which the authority deems necessary
149 for the operation of the project, together with all property,
150 rights, easements and interest which may be required for the
151 operation of the project, but excluding all buildings and
152 facilities used to produce electricity other than electricity for
153 consumption by the authority in the operation and
154 maintenance of the project.

155 (15) "Public roads" means all public highways, roads and
156 streets in this state, whether maintained by the state, county,
157 municipality or other political subdivision.

158 (16) "Public utility facilities" means public utility plants
159 or installations and includes tracks, pipes, mains, conduits,
160 cables, wires, towers, poles and other equipment and
161 appliances of any public utility.

162 (17) "Revenue" means any money or thing of value
163 collected by, or paid to, the West Virginia water development
164 authority as rent, use or service fee or charge for use of, or in
165 connection with, any water development project, or as
166 principal of or interest, charges or other fees on loans, or any
167 other collections on loans made by the West Virginia water
168 development authority to governmental agencies to finance
169 in whole or in part the acquisition or construction of any
170 water development project or projects, or other money or
171 property which is received and may be expended for or
172 pledged as revenues pursuant to this article.

173 (18) "Sewage" means water-carried human or animal
174 wastes from residences, buildings, industrial establishments
175 or other places, together with such ground water infiltration
176 and surface waters as may be present.

177 (19) "Water resources," "water" or "waters" means any
178 and all water on or beneath the surface of the ground,
179 whether percolating, standing, diffused or flowing, wholly or
180 partially within this state, or bordering this state and within
181 its jurisdiction, and shall include, without limiting the
182 generality of the foregoing, natural or artificial lakes, rivers,
183 streams, creeks, branches, brooks, ponds (except farm ponds,
184 industrial settling basins and ponds and water treatment
185 facilities), impounding reservoirs, springs, wells and
186 watercourses.

187 (20) "Waste water" means any water containing sewage,
188 industrial wastes, or other wastes or contaminants derived
189 from the prior use of such water, and shall include, without
190 limiting the generality of the foregoing, surface water of the
191 type storm sewers are designed to collect and dispose of.

192 (21) "Waste water facilities" means facilities for the
193 purpose of treating, neutralizing, disposing of, stabilizing,
194 cooling, segregating or holding waste water, including,
195 without limiting the generality of the foregoing, facilities for
196 the treatment and disposal of sewage, industrial wastes, or

197 other wastes, waste water, and the residue thereof; facilities
198 for the temporary or permanent impoundment of waste
199 water, both surface and underground; and sanitary sewers or
200 other collection systems, whether on the surface or
201 underground, designed to transport waste water together
202 with the equipment and furnishings thereof and their
203 appurtenances and systems, whether on the surface or
204 underground including force mains and pumping facilities
205 therefor.

206 (22) "Water facility" means all facilities, land and
207 equipment used for the collection of water, both surface and
208 underground, transportation of water, treatment of water and
209 distribution of water all for the purpose of providing potable,
210 sanitary water suitable for human consumption and use.

**§20-5C-6. Powers, duties and responsibilities of authority
generally.**

1 The West Virginia water development authority is hereby
2 granted, has and may exercise all powers necessary or
3 appropriate to carry out and effectuate its corporate purpose.
4 The authority shall have the power and capacity to:

5 (1) Adopt, and from time to time, amend and repeal
6 bylaws necessary and proper for the regulation of its affairs
7 and the conduct of its business and rules and regulations to
8 implement and make effective its powers and duties, such
9 rules and regulations to be promulgated in accordance with
10 the provisions of chapter twenty-nine-a of this code.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office and, if necessary, regional
13 suboffices at locations properly designated or provided.

14 (4) Sue and be sued in its own name and plead and be
15 impleaded in its own name, and particularly to enforce the
16 obligations and covenants made under sections eight, nine
17 and fourteen of this article. Any actions against the authority
18 shall be brought in the circuit court of Kanawha County in
19 which the principal office of the authority shall be located.

20 (5) Make loans and grants to governmental agencies for
21 the acquisition or construction of water development projects
22 by any such governmental agency and, in accordance with

23 the provisions of chapter twenty-nine-a of this code, adopt
24 rules and procedures for making such loans and grants.

25 (6) Acquire, construct, reconstruct, enlarge, improve,
26 furnish, equip, maintain, repair, operate, lease or rent to, or
27 contract for operation by a governmental agency or person,
28 water development projects, and, in accordance with the
29 provisions of chapter twenty-nine-a of this code, adopt rules
30 and regulations for the use of such projects.

31 (7) Make available the use or services of any water
32 development project to one or more persons, one or more
33 governmental agencies, or any combination thereof.

34 (8) Issue water development revenue bonds and notes and
35 water development revenue refunding bonds of the state,
36 payable solely from revenues as provided in section eight of
37 this article unless the bonds are refunded by refunding
38 bonds, for the purpose of paying all or any part of the cost of,
39 or financing by loans to governmental agencies, one or more
40 water development projects or parts thereof.

41 (9) Acquire by gift or purchase, hold and dispose of real
42 and personal property in the exercise of its powers and the
43 performance of its duties as set forth in this article.

44 (10) Acquire in the name of the state, by purchase or
45 otherwise, on such terms and in such manner as it deems
46 proper, or by the exercise of the right of eminent domain in
47 the manner provided in chapter fifty-four of this code, such
48 public or private lands, or parts thereof or rights therein,
49 rights-of-way, property, rights, easements and interests it
50 deems necessary for carrying out the provisions of this
51 article, but excluding the acquisition by the exercise of the
52 right of eminent domain of any public water or waste water
53 facilities operated under permits issued pursuant to the
54 provisions of article five-a, chapter twenty of this code and
55 owned by any person or governmental agency, and
56 compensation shall be paid for public or private lands so
57 taken.

58 (11) Make and enter into all contracts and agreements and
59 execute all instruments necessary or incidental to the
60 performance of its duties and the execution of its powers.
61 When the cost under any such contract or agreement, other

62 than compensation for personal services, involves an
63 expenditure of more than two thousand dollars, the authority
64 shall make a written contract with the lowest responsible
65 bidder after public notice published as a Class II legal
66 advertisement in compliance with the provisions of article
67 three, chapter fifty-nine of this code, the publication area for
68 such publication to be the county wherein the work is to be
69 performed or which is affected by the contract, which notice
70 shall state the general character of the work and the general
71 character of the materials to be furnished, the place where
72 plans and specifications therefor may be examined and the
73 time and place of receiving bids, but a contract or lease for the
74 operation of a water development project constructed and
75 owned by the authority or an agreement for cooperation in
76 the acquisition or construction of a water development
77 project pursuant to section fourteen of this article is not
78 subject to the foregoing requirements and the authority may
79 enter into such contract or lease or such agreement pursuant
80 to negotiation and upon such terms and conditions and for
81 such period as it finds to be reasonable and proper under the
82 circumstances and in the best interests of proper operation or
83 of efficient acquisition or construction of such project. The
84 authority may reject any and all bids. A bond with good and
85 sufficient surety, approved by the authority, shall be required
86 of all contractors in an amount equal to at least fifty percent of
87 the contract price, conditioned upon the faithful performance
88 of the contract.

89 (12) Employ managers, superintendents and other
90 employees, who shall be covered by the state civil service
91 system, and retain or contract with consulting engineers,
92 financial consultants, accounting experts, architects,
93 attorneys and such other consultants and independent
94 contractors as are necessary in its judgment to carry out the
95 provisions of this article, and fix the compensation or fees
96 thereof. All expenses thereof shall be payable solely from the
97 proceeds of water development revenue bonds or notes
98 issued by the authority, from revenues and from funds
99 appropriated for such purpose by the Legislature.

100 (13) Receive and accept from any federal agency, subject
101 to the approval of the governor, grants for or in aid of the
102 construction of any water development project or for

103 research and development with respect to public water or
104 waste water facilities and receive and accept aid or
105 contributions from any source of money, property, labor or
106 other things of value, to be held, used and applied only for the
107 purposes for which such grants and contributions are made.

108 (14) Engage in research and development with respect to
109 public water or waste water facilities.

110 (15) Purchase property coverage and liability insurance
111 for any water development project and for the principal office
112 and suboffices of the authority, insurance protecting the
113 authority and its officers and employees against liability, if
114 any, for damage to property or injury to or death of persons
115 arising from its operations and any other insurance the
116 authority may agree to provide under any resolution
117 authorizing the issuance of water development revenue
118 bonds or in any trust agreement securing the same.

119 (16) Charge, alter and collect rentals and other charges for
120 the use or services of any water development project as
121 provided in this article, and charge and collect reasonable
122 interest, fees and charges in connection with the making and
123 servicing of loans to governmental agencies in the
124 furtherance of the purposes of this article.

125 (17) Establish or increase reserves from moneys received
126 or to be received by the authority to secure or to pay the
127 principal of and interest on the bonds and notes issued by the
128 authority pursuant to this article.

129 (18) Do all acts necessary and proper to carry out the
130 powers expressly granted to the authority in this article.

§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.

1 This section shall apply to any water development project
2 or projects which are owned in whole or in part by the
3 authority. The authority may charge, alter and collect rentals
4 or other charges for the use or services of any water
5 development project, and contract in the manner provided by
6 this section with one or more persons, one or more

7 governmental agencies, or any combination thereof, desiring
8 the use or services thereof, and fix the terms, conditions,
9 rentals or other charges for such use or services. Such rentals
10 or other charges shall not be subject to supervision or
11 regulation by any other authority, department, commission,
12 board, bureau or agency of the state, and such contract may
13 provide for acquisition by such person or governmental
14 agency of all or any part of such water development project
15 for such consideration payable over the period of the contract
16 or otherwise as the authority in its sole discretion determines
17 to be appropriate, but subject to the provisions of any
18 resolution authorizing the issuance of water development
19 revenue bonds or notes or water development revenue
20 refunding bonds of the authority or any trust agreement
21 securing the same. Any governmental agency which has
22 power to construct, operate and maintain public water or
23 waste water facilities may enter into a contract or lease with
24 the authority whereby the use or services of any water
25 development project of the authority will be made available
26 to such governmental agency and pay for such use or services
27 such rentals or other charges as may be agreed to by such
28 governmental agency and the authority.

29 Any governmental agency or agencies or combination
30 thereof may cooperate with the authority in the acquisition or
31 construction of a water development project and shall enter
32 into such agreements with the authority as are necessary,
33 with a view to effective cooperative action and safeguarding
34 of the respective interests of the parties thereto, which
35 agreements shall provide for such contributions by the
36 parties thereto in such proportion as may be agreed upon and
37 such other terms as may be mutually satisfactory to the
38 parties, including, without limitation the authorization of the
39 construction of the project by one of the parties acting as
40 agent for all of the parties and the ownership and control of
41 the project by the authority to the extent necessary or
42 appropriate for purposes of the issuance of water
43 development revenue bonds by the authority. Any
44 governmental agency may provide such contribution as is
45 required under such agreements by the appropriation of
46 money or, if authorized by a favorable vote of the electors to
47 issue bonds or notes or levy taxes or assessments and issue

48 notes or bonds in anticipation of the collection thereof, by the
49 issuance of bonds or notes or by the levying of taxes or
50 assessments and the issuance of bonds or notes in
51 anticipation of the collection thereof, and by the payment of
52 such appropriated money or the proceeds of such bonds or
53 notes to the authority pursuant to such agreements.

54 Any governmental agency, pursuant to a favorable vote of
55 the electors in an election held for the purpose of issuing
56 bonds to provide funds to acquire, construct or equip, or
57 provide real estate and interests in real estate for a public
58 water or waste water facility, whether or not the
59 governmental agency at the time of such an election had the
60 authority to pay the proceeds from such bonds or notes
61 issued in anticipation thereof to the authority as provided in
62 this section, may issue such bonds or notes in anticipation of
63 the issuance thereof and pay the proceeds thereof to the
64 authority in accordance with an agreement between such
65 governmental agency and the authority: *Provided*, That the
66 legislative authority of the governmental agency finds and
67 determines that the water development project to be acquired
68 or constructed by the authority in cooperation with such
69 governmental agency will serve the same public purpose and
70 meet substantially the same public need as the facility
71 otherwise proposed to be acquired or constructed by the
72 governmental agency with the proceeds of such bonds or
73 notes.

§20-5C-24. Authorized limit on borrowing.

1 The aggregate principal amount of bonds and notes issued
2 by the authority shall not exceed one hundred million dollars
3 outstanding at any one time: *Provided*, That in computing the
4 total amount of bonds and notes which may at any one time
5 be outstanding, the principal amount of any outstanding
6 bonds or notes refunded or to be refunded either by
7 application of the proceeds of the sale of any refunding bonds
8 or notes of the authority or by exchange for any such
9 refunding bonds or notes, shall be excluded.

CHAPTER 175

(S. B. 255—By Mr. Moreland)

[Passed April 8, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to department of natural resources law-enforcement procedures and penalties; removing the requirement that special conservation officers employed by the department of natural resources reside on state park premises; and deleting the provision allowing a subsistence allowance to be paid to the chief conservation officer and full-time uniformed conservation officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTOR-BOATING.

PART I. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.

§20-7-1. Chief conservation officer; conservation officers; special and emergency conservation officers; subsistence allowance; expenses.

1 The department's law-enforcement policies, practices and
2 programs shall be under the immediate supervision and
3 direction of the department law-enforcement officer selected
4 by the director and designated as chief conservation officer as
5 provided in article one hereof.

6 Under the supervision of the director, the chief
7 conservation officer shall organize, develop and maintain
8 law-enforcement practices, means and methods geared,
9 timed and adjustable to seasonal, emergency and other needs
10 and requirements of the department's comprehensive natural
11 resources program. All department personnel detailed and
12 assigned to law-enforcement duties and services hereunder
13 shall be known and designated as conservation officers and

14 shall be under the immediate supervision and direction of the
15 chief conservation officer. All such conservation officers shall
16 be trained, equipped and conditioned for duty and services
17 wherever and whenever required by department
18 law-enforcement needs.

19 The chief conservation officer, acting under supervision of
20 the director, is authorized to select and appoint emergency
21 conservation officers for a limited period of time for effective
22 enforcement of the provisions of this chapter when
23 considered necessary because of emergency or other unusual
24 circumstances. The emergency conservation officers shall be
25 selected from qualified civil service personnel of the
26 department, except in emergency situations and
27 circumstances when the director may designate such officers,
28 without regard to such requirements and qualifications, to
29 meet law-enforcement needs. Emergency conservation
30 officers shall exercise all powers and duties prescribed in
31 section four of this article for full-time salaried conservation
32 officers except the provisions of subdivision (8).

33 The chief conservation officer, acting under supervision of
34 the director, is also authorized to select and appoint as special
35 conservation officers any full-time civil service employee of
36 the department who is assigned to, and has direct
37 responsibility for management of, an area owned, leased or
38 under the control of the department and who has
39 satisfactorily completed a course of training established and
40 administered by the chief conservation officer, when such
41 action is deemed necessary because of law-enforcement
42 needs. The powers and duties of a special conservation
43 officer, appointed under this provision, shall be the same
44 within his assigned area as prescribed for full-time salaried
45 conservation officers. The jurisdiction of such person
46 appointed as a special conservation officer, under this
47 provision, shall be limited to the department area or areas to
48 which he is assigned and directly manages.

49 The chief conservation officer, acting under supervision of
50 the director, is also authorized to appoint as special
51 conservation officers any full-time civil service forest fire
52 control personnel who have satisfactorily completed a course
53 of training established and administered by the chief
54 conservation officer. The jurisdiction of forest fire control

55 personnel appointed as special conservation officers shall be
56 limited to the enforcement of the provisions of article three of
57 this chapter.

58 The chief conservation officer, with the approval of the
59 director, shall have the power and authority to revoke any
60 such appointment of an emergency conservation officer or of
61 a special conservation officer at any time.

62 Conservation officers shall be subject to seasonal or other
63 assignment and detail to duty whenever and wherever
64 required by the functions, services and needs of the
65 department.

66 The chief conservation officer shall designate the area of
67 primary residence of each conservation officer, including
68 himself. Since the area of business activity of the department
69 is actually anywhere within the territorial confines of the
70 state of West Virginia, actual expenses incurred shall be paid
71 whenever the duties are performed outside the area of
72 primary assignment and still within the state.

CHAPTER 176

(S. B. 526—By Mr. Gainer and Mr. Colombo)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections four-a and four-b, relating to natural resources; law-enforcement procedures and penalties; and procedures to be followed when arrests are made by conservation officers.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections four-a and four-b, to read as follows:

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING.

§20-7-4a. Arrest procedure.

§20-7-4b. Record of cases.

§20-7-4a. Arrest procedure.

1 (a) Whenever a person is arrested for any violation of
2 this chapter punishable as a misdemeanor, and such person
3 is not immediately taken before a magistrate or court, the
4 arresting officer shall prepare written notice to appear in
5 court containing the name, address, date of birth, sex,
6 hunting or fishing license number, if any, and social
7 security number of such person, serial number or de-
8 scription of any property found in the possession of the
9 person arrested and susceptible to use in committing the
10 offense charged, if any, the offense charged and the time
11 and place, when and where such person shall appear in
12 court.

13 (b) The time specified in said notice to appear must be
14 at least five days after such arrest unless the person
15 arrested demands an earlier hearing.

16 (c) The place specified in said notice to appear must be
17 before a magistrate or court within the county in which
18 the offense charged is alleged to have been committed
19 and who has jurisdiction of such offense.

20 (d) The arrested person in order to secure release, as
21 provided in this section, must accept a copy of the written
22 notice prepared by the arresting officer. The officer shall
23 deliver a copy of the notice to the person promising to
24 appear. Thereupon, said officer shall forthwith release the
25 person arrested from custody.

§20-7-4b. Record of cases.

1 Every magistrate or judge of a court shall keep or
2 cause to be kept a record of every complaint, or other
3 legal form of charge, which alleges a violation of the
4 provisions of this chapter or the rules and regulations
5 promulgated thereunder, deposited with or presented to
6 said court, and shall keep a record of every official action

7 by said court in reference thereto, including, but not
8 limited to, a record of every conviction, forfeiture of bail,
9 judgment of acquittal and the amount of fine or forfei-
10 ture resulting from every said complaint or charge de-
11 posited with or presented to said court.

CHAPTER 177

(H. B. 1716—By Mr. Damron, 10th Dist., and Mr. Kopp)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eleven-a, relating to employing the oil and gas conservation commissioner as acting administrator of the office of oil and gas; authorizing additional salary for the commissioner; allowing the director of the department of mines to employ an administrative assistant to the commissioner to assist with duties of acting administrator; allocating salary of administrative assistant from special oil and gas conservation tax; and filing of maps and plans as a prerequisite for extending coal mining operations to within two hundred feet of a well, or to a mine through a well.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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 a new section, designated section eleven-a, to read as follows:

ARTICLE 4. OIL AND GAS WELLS.

§22-4-11. Coal operators—Procedure before operating near wells.

§22-4-11a. Oil and gas conservation commissioner as acting administrator; administrative assistant.

§22-4-11. Coal operators—Procedure before operating near wells.

1 (a) Before a coal operator conducts underground mining
2 operations within five hundred feet of any well, including
3 the driving of an entry or passageway, or the removal of
4 coal or other material, the coal operator shall file with
5 the department of mines and forward to the well operator by
6 certified mail, return receipt requested, its mining maps and
7 plans (which it is required to prepare, file and update to and
8 with the regulatory authority) for the area within five hundred
9 feet of the well, together with a notice, on a form furnished
10 by the department of mines, informing them that the mining
11 maps and plans are being filed or mailed pursuant to the re-
12 quirements of this section.

13 Once these mining maps and plans are filed with the de-
14 partment of mines, the coal operator may proceed with its
15 underground mining operations in the manner and as projected
16 on such plans or maps, but shall not remove, without the
17 consent of the department of mines, any coal or other material
18 or cut any passageway nearer than two hundred feet of any
19 completed well or well that is being drilled. The coal operator
20 shall, at least every six months while mining within the five
21 hundred foot area, update its mining maps and plans and file
22 the same with the department of mines and the well operator.

23 (b) Application may be made at any time to the department
24 of mines by a coal operator for leave to conduct underground
25 mining operations within two hundred feet of any well or to
26 mine through any well, by petition, duly verified, showing
27 the location of the well, the workings adjacent to the well
28 and the mining operations contemplated within two hundred
29 feet of the well or through such well, and praying the approval
30 of the same by the department of mines and naming the well
31 operator as a respondent. The coal operator shall file such
32 petition with the department of mines and mail a true copy to
33 the well operator by certified mail, return receipt requested.

34 The petition shall notify the well operator that it may answer
35 the petition within five days after receipt, and that in default
36 of an answer the department of mines may approve the pro-
37 posed operations as requested if it be shown by the petitioner

38 or otherwise to the satisfaction of the department of mines
39 that such operations are in accordance with the law and with
40 the provisions of this article. If the well operator files an
41 answer which requests a hearing, one shall be held within ten
42 days of such answer, and the department of mines shall fix a
43 time and date and give both the coal operator and well opera-
44 tor five days' written notice of same by certified mail, return
45 receipt requested. At the hearing, the well operator and coal
46 operator, as well as the department of mines, shall be permitted
47 to offer any competent and relevant evidence. Upon conclusion
48 of the hearing, the department of mines shall grant the re-
49 quest of the coal operator or refuse to grant the same, or make
50 such other decision with respect to such proposed under-
51 ground operation as in its judgment is just and reasonable
52 under all circumstances and in accordance with law and the
53 provisions of this article: *Provided*, That a grant by the de-
54 partment of mines of a request to mine through a well shall
55 require an acceptable test to be conducted by the coal operator
56 establishing that such mining through can be done safely.

57 If a hearing is not requested by the well operator or if
58 the well operator gives, in writing, its consent to the coal
59 operator to mine within closer than two hundred feet of the
60 specified well, the department of mines shall grant the re-
61 quest of the coal operator within five days after the petition's
62 original five day answer period if the department of mines
63 determines that such operations are just, reasonable and in
64 accordance with law and the provisions of this article.

65 The department of mines shall docket and keep a record of
66 all such proceedings substantially as required in the last
67 paragraph of section three of this article, and from any such
68 final decision or order of the department of mines, either the
69 well operator or coal operator, or both, may, within ten days,
70 appeal to the circuit court of the county in which the well
71 subject to said petition is located. The procedure in the circuit
72 court shall be substantially as provided in section four, article
73 four, chapter twenty-two of this code, with the department of
74 mines being named as a respondent. From any final order or
75 decree of the circuit court, an appeal may be taken to the
76 supreme court of appeals as heretofore provided.

77 A copy of the document or documents evidencing the action
78 of the department of mines with respect to such petition
79 shall promptly be filed with the administrator.

80 (c) Before a coal operator conducts surface or strip min-
81 ing operations as defined in article six, chapter twenty of this
82 code, within two hundred feet of any well, including the re-
83 moval of coal and other material, the operator shall file with
84 the department of mines and furnish to the well operator by
85 certified mail, return receipt requested, its mining maps and
86 plans (which it is required to prepare, file and update to and
87 with the regulatory authority) for the area within two hundred
88 feet of the well, together with a notice, on a form furnished
89 by the department of mines, informing them that the mining
90 maps and plans are being filed or mailed pursuant to the re-
91 quirements of this section, and representing that the planned
92 operations will not unreasonably interfere with access to or
93 operation of the well and will not damage the well. In addition,
94 the coal operator shall furnish the well operator with evidence
95 that it has in force public liability insurance, with at least the
96 minimum insurance coverage required by article six, chapter
97 twenty of this code, and the rules and regulations promulgated
98 thereto and thereunder.

99 Once these mining maps and plans are filed with the depart-
100 ment of mines, the coal operator may proceed with its surface
101 or strip mining operations in the manner and as projected on
102 such plans or maps, so long as such surface mining operations
103 do not unreasonably interfere with access to, or operation of,
104 the well or do not damage the well.

105 (d) The filing of petitions and notices with the department
106 of mines as herein provided may be complied with by mailing
107 such petition or notice to the department of mines by certified
108 mail, return receipt requested.

**§22-4-11a. Oil and gas conservation commissioner as acting ad-
ministrator; administrative assistant.**

1 The director of the department of mines, with permission
2 of the oil and gas conservation commission, may employ
3 the oil and gas conservation commissioner as acting adminis-

4 trator of the office of oil and gas, providing the commissioner
5 otherwise meets the qualifications for administrator of the
6 office of oil and gas, and pay him an additional amount not
7 to exceed the minimum salary provided for the administrator
8 of the office of oil and gas; and additionally, the director
9 may employ an administrative assistant to the oil and gas
10 conservation commissioner, to be approved by the oil and
11 gas conservation commissioner for purposes of acting as the
12 assistant to the oil and gas conservation commissioner in
13 carrying out his duties as acting administrator of the office
14 of oil and gas, the salary of the administrative assistant to
15 be paid from moneys collected by the oil and gas conservation
16 commission for the special oil and gas conservation tax
17 imposed pursuant to section thirteen, article four-a of this
18 chapter. In no event shall the term of appointment of the
19 oil and gas conservation commissioner as acting administrator
20 or the administrative assistant to the oil and gas conservation
21 commissioner extend beyond June thirtieth, one thousand nine
22 hundred eighty-two.

CHAPTER 178

(Com. Sub. for S. B. 31—By Mr. Steptoe)

[Passed March 6, 1981: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abolishing the diploma privilege for graduates of the college of law of West Virginia University.

Be it enacted by the Legislature of West Virginia:

That section one, article two, 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 2. ATTORNEYS AT LAW.**§30-2-1. Certificate of good moral character; examination of applicants for license; licenses.**

1 Any person desiring to obtain a license to practice law
2 in the courts of this state shall appear before the circuit
3 court of the county in which he has resided for the last
4 preceding year and prove to the satisfaction of the
5 court, or to the satisfaction of a committee of three
6 attorneys practicing before the court, appointed by the
7 court, that he is a person of good moral character, that he
8 is eighteen years of age, and that he has resided in such
9 county for one year next preceding the date of his
10 appearance; and upon the presentation of such proof, the
11 court shall enter an order on its record accordingly. The
12 supreme court of appeals shall prescribe and publish rules
13 and regulations for the examination of all applicants for
14 admission to practice law, which shall include the period
15 of study and degree of preparation required of applicants
16 previous to being admitted, as well as the method of
17 examinations, whether by the court or otherwise. And the
18 supreme court of appeals may, upon the production of a
19 duly certified copy of the order of the circuit court, here-
20 inbefore mentioned, and upon being satisfied that the
21 applicant has shown, upon an examination conducted in
22 accordance with such rules and regulations, that he is
23 qualified to practice law in the courts of this state, and
24 upon being further satisfied that such rules and regula-
25 tions have been complied with in all respects, grant
26 such applicant a license to practice law in the courts of
27 this state, and such license shall show upon its face that
28 all the provisions of this section and of the said rules
29 have been complied with: *Provided*, That any person who
30 shall produce a duly certified copy of such order of the
31 circuit court, and also a diploma of graduation from the
32 college of law of West Virginia University reflecting a
33 date of graduation prior to the first day of July, one
34 thousand nine hundred eighty-three, shall, upon presen-
35 tation thereof in any of the courts of this state, be en-
36 titled to practice in any and all courts of this state, and

37 the order so admitting him shall state the facts pertaining
38 to the same.

CHAPTER 179

(S. B. 682—By Mr. Wise and Mr. Tomblin)

[Passed April 10, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section ten, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending until the first day of July, one thousand nine hundred eighty-four, certain temporary permits to practice medicine and surgery in the state; extending a certain privilege to take a certain examination; and expanding to three years a certain privilege to practice medicine and surgery in specified geographical areas of the state; establishing a program to assist temporary license holders in preparing for the medical examination.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry; educational training permits; temporary licenses and permits.

1 (a) The board shall issue a license to practice medicine and
2 surgery or to practice podiatry to any individual who if
3 qualified to do so in accordance with the provisions of th^e a
4 article. the

5 (b) For an individual to be licensed to practice med^{ically}
6 and surgery in this state, he must meet the fol^{lowing} podiatric
7 requirements:

8 (1) He shall submit an application to the board ^{receipt of}
equivalent

9 provided by the board and remit to the board an examination
10 fee not to exceed two hundred fifty dollars, the amount of
11 such fee to be set by the board. The application must, as a
12 minimum, require a sworn and notarized statement that the
13 applicant is of good moral character and that he is physically
14 and mentally capable of engaging in the practice of medicine
15 and surgery;

16 (2) He must provide evidence of graduation and receipt of
17 the degree of doctor of medicine or its equivalent from a
18 school of medicine which is approved by the liaison
19 committee on medical education or by the board;

20 (3) He must submit evidence to the board of having
21 completed a minimum of one year of graduate clinical
22 training in a program approved by the board; and

23 (4) He must pass an examination approved by the board,
24 which examination can be related to a national standard. The
25 examination shall be in the English language and be designed
26 to ascertain an applicant's fitness to practice medicine and
27 surgery. The board shall before the date of examination
28 determine what will constitute a passing score: *Provided*,
29 That the said board, or a majority of them, may accept in lieu
30 of an examination of applicants, the certificate of the national
31 board of medical examiners issued within the previous eight
32 years, or diplomate certificate from an American specialty
33 board: *Provided, however*, That any certificate or license to
34 practice which is granted by the board by virtue of such
35 diplomate certificate shall only be valid so long as the holder
36 thereof maintains such diplomate certificate in good standing
37 with the applicable American specialty board and no longer
38 and such certification shall be limited to that specific
39 specialty in the practice of medicine and surgery in this state.
40 If an applicant fails to pass the examination on two occasions,
41 he shall successfully complete a course of study or training,
42 as approved by the board, designed to improve his ability to
43 engage in the practice of medicine and surgery, before being
44 eligible for reexamination: *Provided further*, That said board
45 is required to establish a program that will assist all
46 temporary license holders in preparing for and passing the
47 practical examination prescribed by it: *Provided further*, That
48 that board shall maintain the program until the first day of
49 the year one thousand nine hundred eighty-four, and shall make

50 an annual report of its activities to the Legislature for each
51 year the program is maintained.

52 (c) In addition to the requirements of subsection (b)
53 hereof, any individual who has received the degree of doctor
54 of medicine or its equivalent from a school of medicine
55 located outside of the United States, the Commonwealth of
56 Puerto Rico and Canada, to be licensed to practice medicine
57 in this state, must also meet the following additional
58 requirements and limitations:

59 (1) He must be able to demonstrate to the satisfaction of
60 the board his ability to communicate in the English language;
61 and

62 (2) He must have fulfilled the requirements of the
63 educational council for foreign medical graduates for
64 certification before taking a licensure examination, including
65 the receipt of a passing score on the educational council for
66 foreign medical graduates examination; and

67 (3) An individual subject to the provisions of this
68 subsection shall not be awarded a temporary permit unless
69 such individual was a bona fide resident of this state for the
70 six-month period preceding the filing of his application for
71 such temporary permit: *Provided*, That an individual subject
72 to the provisions of this subsection who did not hold a
73 temporary permit before June eight, one thousand nine
74 hundred seventy-nine, shall be ineligible for a temporary
75 permit if he has failed to pass the medical examination
76 prescribed by the board on two or more occasions.

77 (d) For an individual to be licensed to practice podiatry in
78 this state, he must meet the following requirements:

79 (1) He shall submit an application to the board on a form
80 provided by the board and remit to the board an examination
81 fee not to exceed two hundred fifty dollars, the amount of
82 such fee to be set by the board. The application must, as a
83 minimum, require a sworn and notarized statement that the
84 applicant is of good moral character and that he is physically
85 and mentally capable of engaging in the practice of podiatric
86 medicine;

87 (2) He must provide evidence of graduation and receipt of
88 the degree of doctor of podiatric medicine or its equivalent

89 from a school of podiatric medicine which is approved by the
90 council of podiatry education or by the board;

91 (3) He must pass an examination approved by the board,
92 which examination can be related to a national standard. The
93 examination shall be in the English language and be designed
94 to ascertain an applicant's fitness to practice podiatric
95 medicine. The board shall before the date of examination
96 determine what will constitute a passing score. If an applicant
97 fails to pass the examination on two occasions, he shall
98 successfully complete a course of study or training, as
99 approved by the board, designed to improve his ability to
100 engage in the practice of podiatric medicine, before being
101 eligible for reexamination.

102 (e) An individual meeting the requirements set forth in
103 subdivisions (1) and (2), subsection (b) and subdivisions (1)
104 and (2), subsection (c), if applicable, of this section, may be
105 granted an educational training permit to practice medicine
106 and surgery. Such permits shall authorize the permit holder
107 to practice medicine and surgery only under the supervision
108 of a licensed physician in a training program approved by the
109 liaison committee on graduate medical education or the
110 board. The board may fix and collect a fee not to exceed fifty
111 dollars for this class of permit.

112 (f) If the board determines that the public health in a
113 specified geographical area of the state requires such action,
114 the board may grant a temporary permit to an individual who
115 meets the requirements set forth in subdivisions (1) and (2),
116 subsection (b) and subdivisions (1) and (2), subsection (c), if
117 applicable, of this section. Such license shall be limited to the
118 specified geographical area and shall be valid for a period of
119 not more than one year. The board may fix and collect a fee
120 not to exceed fifty dollars for this class of temporary permit.

121 (g) All licenses or temporary permits granted prior to the
122 effective date of this article and valid on the effective date of
123 this article shall continue in full effect for such term and
124 under such conditions as provided by law at the time of the
125 granting of the license or temporary permit: *Provided*, That
126 any physician who has been certified by the educational
127 council for foreign medical graduates or who, as of the
128 effective date of this section, holds a temporary permit to

129 practice in a prescribed area, shall not when under the
130 supervision of a licensed physician be ineligible for a
131 temporary license permit to practice in any mental health or
132 state-owned facility and in any hospital, clinic, physician's
133 office and any other approved health care facility until the
134 first day of July, one thousand nine hundred eighty-four, by
135 virtue of his failure to pass the medical examination
136 prescribed by the board, so long as such physician shall take
137 said examination at least once each year: *Provided, however,*
138 That any such physician granted a temporary permit who
139 fails to pass the medical examination prescribed by the board
140 before the first day of July, one thousand nine hundred
141 eighty-four, shall be thereafter disqualified from obtaining
142 any further temporary permits in this state: *Provided further,*
143 That the provisions of subsection (d) of this section shall not
144 apply to any person legally entitled to practice chiropody or
145 podiatry in this state prior to June eleventh, one thousand
146 nine hundred sixty-five: *And provided further,* That all
147 persons licensed to practice chiropody prior to June eleventh,
148 one thousand nine hundred sixty-five, shall be permitted to
149 use the term "chiropody-podiatry" and shall have the rights,
150 privileges and responsibilities of a podiatrist set out in this
151 article.

CHAPTER 180

(S. B. 647—By Mr. Williams)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections three and six, article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the per diem rate for the board of examiners for registered nurses; increasing the license fee for registered professional nurses for year commencing the first day of July, one thousand nine hundred eighty-two; and raising the maximum allowable fee for examination.

Be it enacted by the Legislature of West Virginia:

That sections three and six, article seven, 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 7. REGISTERED PROFESSIONAL NURSES.

§30-7-3. Board of examiners for registered professional nurses.

§30-7-6. Qualifications; licensure; fees; temporary permits.

§30-7-3. Board of examiners for registered professional nurses.

1 The governor shall appoint, by and with the advice and
2 consent of the Senate, a board consisting of five members
3 who shall constitute and be known as the West Virginia board
4 of examiners for registered professional nurses.

5 Appointments hereunder shall be made by the governor, by
6 and with the advice and consent of the Senate, from lists
7 submitted to the governor by the West Virginia nurses'
8 association. Such lists shall contain the names of at least three
9 persons eligible for membership for each membership or
10 vacancy to be filled and shall be submitted to the governor on
11 or before the first day of June of each year and at such other
12 time or times as a vacancy on the board shall exist.
13 Appointments under the provisions of this article shall be for
14 a term of five years each or for the unexpired term, if any, of
15 the present members. Any member may be eligible for
16 reappointment, but no member shall serve longer than two
17 successive terms. Vacancies shall be filled in the same
18 manner as is provided for appointment in the first instance.
19 The governor may remove any member for neglect of duty,
20 for incompetence, or for unprofessional or dishonorable
21 conduct.

22 Each member of the board hereafter appointed shall (a) be a
23 citizen of the United States and a resident of this state, (b) be a
24 graduate from an accredited educational program in this or
25 any other state for the preparation of practitioners of
26 registered professional nursing, or be a graduate from an
27 accredited college or university with a major in the field of
28 nursing, (c) be a graduate from an accredited college or
29 university, (d) be a registered professional nurse licensed in
30 this state or eligible for licensure as such, (e) have had at least
31 five years of experience in teaching in an educational

32 program for the preparation of practitioners of registered
33 professional nursing, or in a combination of such teaching
34 and either nursing service administration or nursing
35 education administration, and (f) have been actually engaged
36 in registered professional nursing for at least three within the
37 past five years preceding his or her appointment or
38 reappointment.

39 Each member of the board shall receive fifty dollars for
40 each day actually spent in attending meetings of the board, or
41 of its committees, and shall also be reimbursed for actual and
42 necessary expenses: *Provided*, That the per diem increased
43 by this amendment shall be effective upon passage of this
44 article.

§30-7-6. Qualifications; licensure; fees; temporary permits.

1 To obtain a license to practice registered professional
2 nursing, an applicant for such license shall submit to the
3 board written evidence, verified by oath, that he or she (a) is
4 of good moral character; (b) has completed an approved
5 four-year high school course of study or the equivalent
6 thereof, as determined by the appropriate educational
7 agency; and (c) has completed an accredited program of
8 registered professional nursing education and holds a
9 diploma of a school accredited by the board.

10 The applicant shall also be required to pass a written
11 examination in such subjects as the board may determine.
12 Each written examination may be supplemented by an oral
13 examination. Upon successfully passing such examination or
14 examinations, the board shall issue to the applicant a license
15 to practice registered professional nursing. The board shall
16 determine the times and places for examinations. In the event
17 an applicant shall have failed to pass examinations on two
18 occasions, the applicant shall, in addition to the other
19 requirements of this section, present to the board such other
20 evidence of his or her qualifications as the board may
21 prescribe.

22 The board may, upon application, issue a license to practice
23 registered professional nursing by endorsement to an
24 applicant who has been duly licensed as a registered
25 professional nurse under the laws of another state, territory or

26 foreign country if in the opinion of the board the applicant
27 meets the qualifications required of registered professional
28 nurses at the time of graduation.

29 Any person holding a valid license designated as a "waiver
30 license" may submit an application to the board for a license
31 containing no reference to the fact that such person has
32 theretofore been issued such "waiver license." The provisions
33 of this section relating to examination and fees and the
34 provisions of all other sections of this article shall apply to
35 any application submitted to the board pursuant to the
36 provisions of this paragraph.

37 Any person applying for a license to practice registered
38 professional nursing under the provisions of this article shall,
39 with his or her application, pay to the board a fee of forty
40 dollars: *Provided*, That the fee to be paid for the year
41 commencing the first day of July, one thousand nine hundred
42 eighty-two, shall be seventy dollars: *Provided, however*, That
43 the board in its discretion may, by rule or regulation, decrease
44 either or both said license fees. In the event it shall be
45 necessary for the board to reexamine any applicant for a
46 license, an additional fee shall be paid to the board by the
47 applicant for reexamination: *Provided further*, That the total
48 of such additional fees shall in no case exceed one hundred
49 dollars for any one examination.

50 Any person holding a license heretofore issued by the West
51 Virginia state board of examiners for registered nurses and
52 which license is valid on the date this article becomes
53 effective shall be deemed to be duly licensed under the
54 provisions of this article for the remainder of the period of
55 any such license heretofore issued. Any such license
56 heretofore issued shall also, for all purposes, be deemed to be
57 a license issued under this article and to be subject to the
58 provisions hereof.

59 The board shall, upon receipt of a duly executed
60 application for licensure and of the accompanying fee of
61 seventy dollars, issue a temporary permit to practice
62 registered professional nursing to any applicant who has
63 received a diploma from a school of nursing approved by the
64 board pursuant to this article after the date the board last
65 scheduled a written examination for persons eligible for

66 licensure: *Provided*, That no such temporary permit shall be
67 renewable nor shall any such permit be valid for any purpose
68 subsequent to the date the board has announced the results of
69 the first written examination given by the board following the
70 issuance of such permit.

CHAPTER 181

(Com. Sub. for S. B. 129—By Mr. Nelson)

[Passed March 2, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article twenty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that certain school psychologists in the state need not have a state license or temporary permit to practice school psychology and need not work under the supervision of a licensed psychologist.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PSYCHOLOGISTS.

§30-21-2. Definitions.

§30-21-3. License required; firms, associations and corporations engaging in the practice of psychology.

§30-21-2. Definitions.

- 1 Unless the context in which used clearly requires a
- 2 different meaning, as used in this article:
- 3 (a) "Applicant" means any person making application for
- 4 an original or renewal license or a temporary permit under
- 5 the provisions of this article.
- 6 (b) "Licensee" means any person holding a license or a
- 7 temporary permit issued under the provisions of this article.

8 (c) "Board" means the board of examiners of
9 psychologists created by this article.

10 (d) "Psychology" means the science involving the
11 principles, methods and procedures of understanding,
12 predicting and influencing behavior; the principles
13 pertaining to learning, perception, motivation, thinking,
14 emotions and interpersonal relationships; the methods and
15 procedures of interviewing and counseling; the methods and
16 procedures of psychotherapy, meaning the use of learning,
17 conditioning methods and emotional reactions, in a
18 professional relationship, to assist a person or persons to
19 modify feelings, attitudes and behavior, which are
20 intellectually, socially or emotionally maladjustive or
21 ineffectual; the constructing, administering and interpreting
22 of tests of intelligence, special abilities, aptitudes, interests,
23 attitudes, personality characteristics, emotions and
24 motivation; the psychological evaluation, prevention and
25 improvements of adjustment problems of individuals and
26 groups; and the resolution of interpersonal and social
27 conflicts.

28 (e) "Practice of psychology" means the rendering or
29 offering to render for a fee, salary or other compensation,
30 monetary or otherwise, any psychological service involving:
31 (i) The application of the principles, methods and procedures
32 of understanding, predicting and influencing behavior; (ii)
33 the application of the principles pertaining to learning,
34 perception, motivation, thinking, emotions and interpersonal
35 relationships; (iii) the application of the methods and
36 procedures of interviewing and counseling; (iv) the
37 application of the methods and procedures of psychotherapy,
38 meaning the use of learning, conditioning methods and
39 emotional reactions, in a professional relationship, to assist a
40 person or persons to modify feelings, attitudes and behavior,
41 which are intellectually, socially or emotionally maladjustive
42 or ineffectual; (v) the constructing, administering and
43 interpreting of tests of intelligence, special abilities,
44 aptitudes, interests, attitudes, personality characteristics,
45 emotions and motivation; (vi) the psychological evaluation,
46 prevention and improvement of adjustment problems of
47 individuals and groups; and (vii) the resolution of
48 interpersonal and social conflicts.

49 However, for the purpose of this article, the term "practice
50 of psychology" shall not include:

51 (1) Teaching, lecturing or engaging in research in
52 psychology as part of salaried employment at an institution of
53 higher learning;

54 (2) The official duties of a person employed as a
55 psychologist by the state of West Virginia or any of its
56 departments, agencies, divisions or bureaus, or local
57 governments, except for the West Virginia department of
58 education, a county board of education, or a regional
59 education agency, which duties are performed under the
60 direct and regular supervision of a licensee;

61 (3) The official duties of a person employed as a
62 psychologist by any department, agency, division or bureau
63 of the United States of America;

64 (4) The official duties of a person working under the direct
65 and regular supervision of a licensee for the purpose of
66 gaining the experience required for a license hereunder by
67 the provisions of subdivision (4), subsection (a), section seven
68 of this article, which experience is of a type approved by the
69 board;

70 (5) The use, in good faith, of certain psychological
71 techniques, procedures, methods and principles as an
72 incident to engaging in a recognized occupation or
73 profession, other than the practice of psychology, including,
74 but not limited to, the occupation or profession of a
75 physician, lawyer, dentist, social worker, sociologist, political
76 scientist, economist, probation or parole officer,
77 rehabilitation or marriage counselor, clergyman, audiologist,
78 speech pathologist, teacher, educational or guidance
79 counselor and a placement or personnel director;

80 (6) The activities of a student of psychology, psychological
81 intern or psychological resident, which activities are a part of
82 and are engaged in pursuant to a course of study at an
83 institution of higher learning; or

84 (7) The activities of an assistant or technician which are
85 performed under the direct and regular supervision of a
86 licensee.

87 (f) "Examination" means the examination in psychology
88 required by subdivision (5), subsection (a), section seven of
89 this article.

**§30-21-3. License required; firms, associations and corporations
engaging in the practice of psychology.**

1 (a) No person shall engage in, offer to engage in, or hold
2 himself out to the public as being engaged in, the practice of
3 psychology in this state, nor shall any person use in
4 connection with any trade, business, profession or
5 occupation, except in those instances specifically excluded
6 from the definition of the practice of psychology by
7 subparagraphs (1), (2), (3), (4) and (6), subdivision (e), section
8 two of this article, the word "psychologist," "psychology,"
9 "psychological" or any other title, word or abbreviation
10 which induces or tends to induce the belief that such person
11 is qualified to engage or is engaged in the practice of
12 psychology, unless and until he shall first obtain a license or
13 temporary permit to engage in the practice of psychology in
14 accordance with the provisions of this article, which license
15 or temporary permit remains unexpired, unsuspended and
16 unrevoked: *Provided*, That such license or temporary permit
17 shall not be required for an individual who is the holder of a
18 school psychology certificate issued by the West Virginia
19 department of education and who is engaged in the practice
20 of psychology solely within the scope of his employment with
21 the West Virginia department of education, a county board of
22 education, or a regional education agency: *Provided*,
23 *however*, That no such license or temporary permit shall be
24 required for a psychologist who is not a resident of this state,
25 who is the holder of a license or certificate to engage in the
26 practice of psychology issued by a state with licensing or
27 certification requirements determined by the board to be at
28 least as great as those provided in this article, who has no
29 regular place of practice in this state and who engages in the
30 practice of psychology in this state for a period of not more
31 than ten days in any calendar year.

32 (b) No firm, association or corporation shall, except
33 through a licensee or licensees, render any service or engage
34 in any activity which if rendered or engaged in by any
35 individual would constitute the practice of psychology.

CHAPTER 182

(Com. Sub. for H. B. 1190—By Mr. Wooton and Mr. Teets)

[Passed April 10, 1981; 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-nine, relating to law-enforcement officers and their training and qualification; creating a law-enforcement training subcommittee of the governor's committee on crime, delinquency and corrections; requiring the governor's committee to administer provisions of the article with recommendation of the subcommittee; establishing a special revenue account for the funding of training academies and payment of expenses of the governor's committee; providing for funding of special revenue account by assessing additional two dollar fee for court costs and for bonds posted for criminal violations other than violations of municipal parking ordinances; requiring certification of all law-enforcement officers in the state; providing special time periods for certain law-enforcement agencies to have their officers comply with certification requirements; establishing criteria for granting certification; assigning responsibility for compliance with article; and permitting law-enforcement agencies to pay wages and expenses of personnel during training and to demand reimbursement from personnel who voluntarily quit within one year of such training.

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-nine, to read as follows:

ARTICLE 29. LAW-ENFORCEMENT OFFICER TRAINING AND CERTIFICATION.

- §30-29-1. Definitions.
- §30-29-2. Law-enforcement training subcommittee.
- §30-29-3. Duties of the governor's committee and the subcommittee.
- §30-29-4. Special revenue account—Collections; disbursements; administrative expenses.
- §30-29-5. Certification requirements.
- §30-29-6. Review of certification.
- §30-29-7. Compliance.

§30-29-8. Agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.

§30-29-1. Definitions.

1 For purposes of this article, unless a different meaning
2 clearly appears in the context:

3 “Approved law-enforcement training academy” means any
4 training facility which is approved and authorized to con-
5 duct law-enforcement training as provided in this article;

6 “Chief executive” means the superintendent of the depart-
7 ment of public safety; the chief conservation officer, depart-
8 ment of natural resources; the sheriff of any West Virginia
9 county; or the chief of any West Virginia municipal law-
10 enforcement agency;

11 “County” means the fifty-five major political subdivisions
12 of the state;

13 “Exempt rank” means any noncommissioned or commis-
14 sioned rank of sergeant or above;

15 “Governor’s committee on crime, delinquency and correc-
16 tions” or “governor’s committee” means the governor’s com-
17 mittee on crime, delinquency and corrections established as a
18 state planning agency pursuant to section one, article nine,
19 chapter fifteen of this code.

20 “Law-enforcement officer” means any duly authorized mem-
21 ber of a law-enforcement agency who is authorized to main-
22 tain public peace and order, prevent and detect crime, make
23 arrests, and, enforce the laws of the state or any county or
24 municipality thereof, other than parking ordinances. As used in
25 this article, the term “law-enforcement officer” does not apply
26 to the chief executive of any West Virginia law-enforcement
27 agency or any watchman or college campus security per-
28 sonnel.

29 “Law-enforcement official” means the duly appointed chief
30 administrator of a designated law-enforcement agency or a duly
31 authorized designee;

32 “Municipality” means any incorporated town or city whose
33 boundaries lie within the geographic boundaries of the state;

34 “Subcommittee” or “law-enforcement training subcom-
35 mittee” means the subcommittee of the governor’s committee
36 on crime, delinquency and corrections created by section two
37 of this article; and

38 “West Virginia law-enforcement agency” means any duly
39 authorized state, county or municipal organization employing
40 one or more persons whose responsibility is the enforcement
41 of laws of the state or any county or municipality thereof.

§30-29-2. Law-enforcement training subcommittee.

1 (a) A subcommittee of the governor’s committee on crime,
2 delinquency and corrections is hereby created and assigned
3 responsibility for review and administration of programs for
4 qualification, training and certification of law-enforcement
5 officers in the state. The subcommittee shall be comprised
6 of nine members of the governor’s committee including one
7 representative of each of the following: the department of
8 public safety, the West Virginia sheriffs association, the West
9 Virginia association of chiefs of police, the West Virginia
10 deputy sheriffs association, the West Virginia fraternal order
11 of police lodge, the West Virginia municipal league, the West
12 Virginia association of county officials, the human rights com-
13 mission and the public at large.

14 (b) The subcommittee shall elect a chairperson and a
15 vice chairperson. Special meetings may be held upon the call
16 of the chairperson, vice chairperson or a majority of the mem-
17 bers of the subcommittee. A majority of the members of
18 the subcommittee constitutes a quorum.

**§30-29-3. Duties of the governor’s committee and the subcom-
mittee.**

1 Upon recommendation of the subcommittee, the governor’s
2 committee shall, by or pursuant to rule or regulation:

3 (a) Provide funding for the establishment and support
4 of law-enforcement training academies in the state;

5 (b) Establish standards governing the establishment and
6 operation of law-enforcement training academies;

- 7 (c) Establish minimum law-enforcement instructor quali-
8 fications;
- 9 (d) Certify qualified law-enforcement instructors;
- 10 (e) Maintain a list of approved law-enforcement instruc-
11 tors;
- 12 (f) Promulgate standards governing the qualification of
13 law-enforcement officers and the entry level law-enforcement
14 training curricula, which shall consist of a minimum of four
15 hundred classroom hours;
- 16 (g) Establish standards governing in-service law-enforce-
17 ment officer training curricula and in-service supervisory level
18 training curricula;
- 19 (h) Certify law-enforcement officers, as provided in sec-
20 tion five of this article;
- 21 (i) Seek supplemental funding for law-enforcement training
22 academies from sources other than the fees collected pursuant
23 to section four of this article; and
- 24 (j) Submit, on or before the thirtieth day of September
25 of each year, to the governor, and upon request to individual
26 members of the Legislature, a report on its activities during
27 the previous year and an accounting of funds paid into and
28 disbursed from the special revenue account established pur-
29 suant to section four of this article.

**§30-29-4. Special revenue account—Collections; disbursements; ad-
ministrative expenses.**

- 1 (a) Beginning on the effective date of this article, a
2 two dollar fee shall be added to the usual court costs of all
3 criminal court proceedings involving violation of any criminal
4 law of the state or any county or municipality thereof, ex-
5 cluding violations of municipal parking ordinances.
- 6 (b) Beginning on the effective date of this article, a two
7 dollar fee shall be added to the amount of any cash or property
8 bond posted for violation of any criminal law of the state
9 or any county municipality thereof, excluding bonds posted
10 solely for violation of municipal parking ordinances. Upon

11 forfeiture of such bond, the two dollar fee shall be deposited
12 as provided in subsection (c) of this section.

13 (c) All fees collected pursuant to subsections (a) and
14 (b) of this section shall be deposited in a separate account
15 by the collecting agency. Within ten calendar days following
16 the beginning of each calendar month, the collecting agency
17 shall forward the amount deposited to the state treasurer.
18 The treasurer shall deposit all fees so received to a special
19 revenue account. Funds in the account shall be disbursed by
20 the governor's committee, upon recommendation by the sub-
21 committee, for the funding of law-enforcement training aca-
22 demies and programs and to pay expenses of the governor's
23 committee in administering the provisions of this article, which
24 expenses may not in any fiscal year exceed ten percent of
25 the funds deposited to said special revenue account during that
26 fiscal year.

§30-29-5. Certification requirements.

1 (a) Except as provided in subsections (b) and (g) below,
2 no person may be employed as a law-enforcement officer by
3 any West Virginia law-enforcement agency on or after the
4 effective date of this article unless the person is certified, or is
5 certifiable in one of the manners specified in subsections
6 (c) through (e) below, by the governor's committee as having
7 met the minimum entry level law-enforcement qualification and
8 training program requirements promulgated pursuant to this
9 article.

10 (b) Except as provided in subsection (g) below, a per-
11 son who is not certified, or certifiable in one of the manners
12 specified in subsections (c) through (e) below, may be
13 conditionally employed as a law-enforcement officer until certi-
14 fied: *Provided*, That, within ninety calendar days of the
15 commencement of employment or the effective date of this
16 article if the person is already employed on the effective date,
17 he or she makes a written application to attend an approved
18 law-enforcement training academy. The academy shall notify
19 the applicant in writing of the receipt of the application and of
20 the tentative date of the applicant's enrollment. Any applicant
21 who, as the result of extenuating circumstances acceptable to

22 his or her law-enforcement official, is unable to attend the
23 scheduled training program to which he or she was admitted
24 may reapply and shall be admitted to the next regularly
25 scheduled training program. An applicant who satisfactorily
26 completes the program shall, within thirty days of completion,
27 make written application to the governor's committee re-
28 questing certification as having met the minimum entry level
29 law-enforcement qualification and training program require-
30 ments. Upon determining that an applicant has met the re-
31 quirements for certification, the governor's committee shall
32 forward to the applicant documentation of certification. An
33 applicant who fails to complete the training program to which
34 he or she is first admitted, or was admitted upon application,
35 may not be certified by the governor's committee.

36 (c) Any person who is employed as a law-enforcement
37 officer on the effective date of this article and is a graduate
38 of the West Virginia basic police training course, the West
39 Virginia department of public safety cadet training program,
40 or other approved law-enforcement training academy, is certi-
41 fiable as having met the minimum entry law-enforcement train-
42 ing program requirements and is exempt from the requirement
43 of attending a law-enforcement training academy. To re-
44 ceive certification, the person shall make written application
45 within ninety calendar days of the effective date of this
46 article to the governor's committee requesting certification.
47 The governor's committee shall review the applicant's relevant
48 scholastic records and, upon determining that the applicant
49 has met the requirements for certification, shall forward to
50 the applicant documentation of certification.

51 (d) Any person who is employed as a law-enforcement
52 officer on the effective date of this article and is not a graduate
53 of the West Virginia basic police training course, the West
54 Virginia department of public safety cadet training program,
55 or other approved law-enforcement training academy, is certi-
56 fiable as having met the minimum entry level law-enforcement
57 training program requirements and is exempt from the require-
58 ment of attending a law-enforcement training academy if the
59 person has attained exempt rank and has been employed as a
60 law-enforcement officer for a period of not less than ten years.

61 To receive certification, the person shall make written appli-
62 cation within ninety calendar days following the effective
63 date of this article to the governor's committee requesting
64 certification. The application shall include notarized state-
65 ments as to the applicant's rank and years of employment
66 as a law-enforcement officer. The governor's committee shall
67 review the application and, upon determining that the applicant
68 has met the requirements for certification, shall forward to the
69 applicant documentation of certification.

70 (e) Any person who begins employment on or after the
71 effective date of this article as a law-enforcement officer is
72 certifiable as having met the minimum entry level law-enforce-
73 ment training program requirements and is exempt from attend-
74 ing a law-enforcement training academy if the person has
75 satisfactorily completed a course of instruction in law-enforce-
76 ment equivalent to or exceeding the minimum applicable law-
77 enforcement training curricula promulgated by the governor's
78 committee. To receive certification, the person shall make
79 written application within ninety calendar days following the
80 commencement of employment to the governor's committee
81 requesting certification. The application shall include a
82 notarized statement of the applicant's satisfactory completion
83 of the course of instruction in law enforcement, a notarized
84 transcript of the applicant's relevant scholastic records, and
85 a notarized copy of the curriculum of the completed course
86 of instruction. The governor's committee shall review the
87 application and, if it finds the applicant has met the re-
88 quirements for certification, shall forward to the applicant
89 documentation of certification.

90 (f) Nothing in this section may be construed as pro-
91 hibiting the chief executive of any West Virginia law-enforce-
92 ment agency from requiring law-enforcement officers in his
93 organization to satisfactorily complete a course of law-enforce-
94 ment instruction which exceeds the minimum entry level law-
95 enforcement training curriculum promulgated by the governor's
96 committee.

97 (g) The requirement of this section for qualification,
98 training and certification of law-enforcement officers shall
99 not be mandatory during the two years next succeeding the

100 effective date of this article for the law-enforcement of-
101 ficers of a law-enforcement agency which employs a civil
102 service system for its law-enforcement personnel, nor shall
103 such provisions be mandatory during the five years next
104 succeeding the effective date of this article for law-enforce-
105 ment officers of a law-enforcement agency which does not
106 employ a civil service system for its law-enforcement per-
107 sonnel: *Provided*, That such requirements shall be mandatory
108 for all such law-enforcement officers until their law-enforce-
109 ment officials apply for their exemption by submitting a written
110 plan to the governor's committee which will reasonably assure
111 compliance of all law-enforcement officers of their agencies
112 within the applicable two or five year period of exemption.

113 (h) Any person aggrieved by a decision of the governor's
114 committee made pursuant to this article may contest such de-
115 cision in accordance with the provisions of article five,
116 chapter twenty-nine-a of this code.

§30-29-6. Review of certification.

1 Certification of each West Virginia law-enforcement officer
2 shall be reviewed annually following the first certification and
3 until such time as the officer may achieve exempt rank. Certi-
4 fication may be revoked or not renewed if any law-enforcement
5 officer fails to attend annually an in-service approved law-
6 enforcement training program, or if a law-enforcement officer
7 achieving exempt rank fails to attend biennially an approved
8 in-service supervisory level training program.

§30-29-7. Compliance.

1 The governor's committee and the executive of each West
2 Virginia law-enforcement agency shall ensure employee com-
3 pliance with this article.

§30-29-8. Agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.

1 A West Virginia law-enforcement agency may elect to pay
2 to employees compensation, including, without limitation,
3 wages, salaries, benefits, tuition, or expenses for the employees'
4 attendance at a law-enforcement training academy. In con-

5 sideration therefor, the agency may require of its employees by
6 written agreement entered into with each of them in advance
7 of such attendance at a training academy that, if an employee
8 should voluntarily discontinue employment anytime within
9 one year immediately following completion of the training cur-
10 riculum, he or she shall be obligated to pay to such agency a
11 pro rata portion of the sum of such compensation equal to that
12 part of such year which the employee has chosen not to remain
13 in the employ of the agency.

CHAPTER 183

(S. B. 81—By Mr. Jones, Mr. Moreland, Mr. Galperin and Mr. Huffman)

[Passed April 9, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to repeal article eleven, chapter fifty-one; to amend and reenact sections one-a and four, article five, chapter twenty-seven; to amend and reenact chapter twenty-nine by adding thereto a new article, designated article twenty-one; to amend and reenact section one, article five, chapter forty-nine; to amend and reenact section three, article four, chapter fifty; to amend and reenact section four, article four-a, chapter fifty-three; and to amend and reenact 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; all relating to the establishment of a public defender system for the representation of indigent persons; amending certain code sections to reflect the repeal of article eleven, chapter fifty-one of the code and resultant code references; setting forth legislative findings and a declaration of purpose; definition establishing the West Virginia public legal services council; defining the membership of the council and providing for the method of appointment, terms of office, and the status of members of the council; providing for selection of a chairman of such council; defining a quorum; allowing for the removal and resignation of members of the council; requiring quarterly meetings; providing for compensation of members; prohibiting participation of

members in certain instances; describing the purpose and duties of the council; describing the position of executive director; providing for the hiring of employees; compensation of executive director and employees; setting forth the powers, duties, and limitations of the council; establishing a criminal law research center, an accounting and auditing division, and an appellate advocacy division; describing the functions of the criminal law research center; creating public defender corporations and providing for the activation of such corporations; establishing regional and local panels of attorneys and describing the method of appointment and order of appointing the public defender office, panel attorneys, and others; requiring notification of intent to apply for financial assistance in certain instances; providing for plans for legal representation and the form and content of such plans; requiring the review of plans by circuit judges; describing the responsibilities of the council upon receipt of applications; providing for approval of program and budget and funding by loans and grants; requiring records and submission of vouchers; describing the method of payment, rates of compensation and limits thereon; describing the contents of vouchers; limiting the use of funds; describing the board of directors of a public defender corporation and the appointment of members thereof; providing for the composition of the board and meetings and duties thereof; allowing expenses of members to be paid; establishing a method of determining maximum income levels and other eligibility guidelines; providing for the use of form affidavits; allowing inquiry by the court and denial of services in some instances; providing for repayment; limiting remedies against affiants; setting forth when public defenders and assistant public defenders are prohibited from outside practice of law; requiring certain records and reports; and providing for audits of public defender corporations.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter fifty-one be repealed; that sections one-a and four, article five, chapter twenty-seven be amended and reenacted; that chapter twenty-nine be amended by adding thereto a new article, designated article twenty-one; that section one, article five, chapter forty-nine be amended and reenacted; that section three, article four, chapter fifty be amended and reenacted;

that section four, article four-a, chapter fifty-three be amended and reenacted; that section one, article three and section twenty-two, article twelve, 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

- 27. Mentally Ill Persons.**
- 29. Miscellaneous Boards and Officers.**
- 49. Child Welfare.**
- 50. Magistrate Courts.**
- 53. Extraordinary Remedies.**
- 62. Criminal Procedure.**

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1a. Appointment of attorney to aid prosecutor; certification of performance; fee.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

§27-5-1a. Appointment of attorney to aid prosecutor; certification of performance; fee.

1 If, in any case, the prosecuting attorney and his assistants in
 2 a county in which there is a state mental health hospital are
 3 unable to act due to a burdensome number of cases brought
 4 under this article, the circuit court shall appoint some
 5 competent practicing attorney to act in that case. The court
 6 shall certify to the director of the administrative office of the
 7 supreme court of appeals the performance of that service
 8 when completed and may allow the attorney a reasonable fee
 9 not to exceed the amount allowed for attorneys in defense of
 10 needy persons as provided in article twenty-one, chapter
 11 twenty-nine of this code. Compensation shall be paid out of
 12 the "mental hygiene fund" provided for in section four of this
 13 article.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

1 (a) *Involuntary commitment.*—Except as provided in
 2 section three of this article, no individual shall be
 3 involuntarily committed to a mental health facility except by
 4 order entered of record at any time by the circuit court of the

5 county wherein such person resides or was found, or if the
6 individual is hospitalized in a mental health facility located in
7 a county other than where he resides or was found, in the
8 county of the mental health facility, and then only after a full
9 hearing on issues relating to the necessity of committing an
10 individual to a mental health facility: *Provided*, That if said
11 individual objects to the hearing being held in the county
12 where the mental health facility is located, the hearing shall
13 be conducted in the county of the individual's residence.

14 (b) *How final commitment proceedings are*
15 *commenced.*—Final commitment proceedings for an
16 individual may be commenced by the filing of a written
17 application under oath and the certificate or affidavit is
18 hereinafter provided with the clerk of the circuit court or
19 mental hygiene commissioner of the county of which the
20 individual is a resident, or where he may be found, or the
21 county of the mental health facility, if he is hospitalized in a
22 mental health facility located in a county other than where he
23 resides or may be found by an adult person having personal
24 knowledge of the facts of the case.

25 (c) *Oath; contents of application; who may inspect*
26 *application; when application cannot be filed.*

27 (1) The person making such application shall do so under
28 oath.

29 (2) The application shall contain statements by the
30 applicant that he believes because of symptoms of mental
31 illness, mental retardation or addiction, the individual is
32 likely to cause serious harm to himself or others and the
33 grounds for such belief, stating in detail the recent overt acts
34 upon which such belief is based: *Provided*, That no such
35 statement of recent overt acts need be made when the
36 applicant alleges the individual is likely to cause serious harm
37 as a result of having a complete inability to care for himself by
38 reason of mental retardation.

39 (3) The written application, certificate, affidavit and any
40 warrants issued pursuant thereto, including any papers and
41 documents related thereto filed with any circuit court or
42 mental hygiene commissioner for the involuntary
43 hospitalization of any individual shall not be open to
44 inspection by any person other than the individual, except

45 upon authorization of the individual or his legal
46 representative or by order of the circuit court, and such
47 records shall not be published except upon the authorization
48 of the individual or his legal representative.

49 (4) Applications shall not be filed with regard to
50 individuals who are merely epileptics, mentally deficient or
51 senile.

52 (d) *Certificate filed with application; contents of*
53 *certificate; affidavit by applicant in place of certificate.*

54 (1) The applicant shall file with his application the
55 certificate of a physician or a psychologist stating that in his
56 opinion the individual is mentally ill, mentally retarded or
57 addicted and that because of his mental illness, mental
58 retardation or addiction, the individual is likely to cause
59 serious harm to himself or others if he is allowed to remain at
60 liberty and therefore he should be hospitalized, stating in
61 detail the recent overt acts upon which such conclusion is
62 based: *Provided*, That no such statement of recent overt acts
63 need be made when the applicant alleges the individual is
64 likely to cause serious harm as a result of having a complete
65 inability to care for himself by reason of mental retardation.

66 (2) A certificate is not necessary only when an affidavit is
67 filed by the applicant showing facts that the individual has
68 refused to submit to examination by a physician or a
69 psychologist.

70 (e) *Notice requirements; eight days' notice*
71 *required.*—Upon receipt of an application, the mental
72 hygiene commissioner or circuit court shall review the
73 application and if it is determined that the facts alleged, if
74 any, are sufficient to warrant involuntary hospitalization,
75 forthwith fix a date for and have the clerk of the circuit court
76 give notice of the hearing (1) to the individual, (2) to the
77 applicant or applicants, (3) to the individual's spouse, one of
78 the parents or guardians, or if the individual does not have a
79 spouse, parents or parent or guardian, to one of the
80 individual's adult next of kin: *Provided*, That such person is
81 not the applicant, (4) to the mental health authorities serving
82 the area, (5) to the circuit court in the county of the
83 individual's residence if the hearing is to be held in a county
84 other than that of such individual's residence, and (6) to the

85 prosecuting attorney of the county in which the hearing is to
86 be held. Such notice shall be served on the individual by
87 personal service of process not less than eight days prior to
88 the date of the hearing, and shall specify the nature of the
89 charges against the individual; the facts underlying and
90 supporting the application of his involuntary commitment;
91 his rights to have counsel appointed for him; his right to
92 consult with and be represented by counsel at every stage of
93 the proceedings; and the time and place of the hearing. The
94 notice to the individual's spouse, parents or parent or
95 guardian, the individual's adult next of kin, or to the circuit
96 court in the county of the individual's residence may be by
97 personal service of process or by certified or registered mail,
98 return receipt requested, and shall state the time and place of
99 the hearing.

100 (f) *Examination of individual by court-appointed*
101 *physician or psychologist; custody for examination; dismissal*
102 *of proceedings.*

103 (1) Except as provided in subsection (3) of this section,
104 within a reasonable time after notice of the commencement of
105 final commitment proceedings is given, the circuit court or
106 mental hygiene commissioner shall appoint a physician or
107 psychologist to examine the individual and report to the
108 circuit court or mental hygiene commissioner his findings as
109 to the mental condition of the individual and the likelihood of
110 his causing serious harm to himself or others.

111 (2) If the designated physician or psychologist reports to
112 the circuit court or mental hygiene commissioner that the
113 individual has refused to submit to an examination, the
114 circuit court or mental hygiene commissioner shall order him
115 to submit to such examination. The circuit court or mental
116 hygiene commissioner may direct that the individual be
117 detained or taken into custody for the purpose of an
118 immediate examination by the designated physician or
119 psychologist. All such orders shall be directed to the sheriff of
120 the county or other appropriate law-enforcement officer.
121 After such examination has been completed, the individual
122 shall be released from custody unless proceedings are
123 instituted pursuant to section three of this article.

124 (3) If the reports of the appointed physician or
125 psychologist do not confirm that the individual is mentally ill,
126 mentally retarded or addicted and might be harmful to
127 himself or others, then the proceedings for his involuntary
128 hospitalization shall be dismissed.

129 (g) *Rights of the individual at the final commitment*
130 *hearing; seven days' notice to counsel required.*

131 (1) The individual shall be present at the final
132 commitment hearing and he, the applicant and all persons
133 entitled to notice of such hearing shall be afforded an
134 opportunity to testify and to present and cross-examine
135 witnesses.

136 (2) In the event that the individual has not retained
137 counsel, the court or mental hygiene commissioner at least
138 six days prior to hearing shall appoint a competent attorney,
139 and shall inform the individual of the name, address and
140 telephone number of his appointed counsel.

141 (3) The individual shall have the right to have an
142 examination by an independent expert of his choice and
143 testimony from such expert as a medical witness on his
144 behalf. The cost of such independent expert shall be borne by
145 the individual unless he is indigent.

146 (4) The individual shall not be compelled to be a witness
147 against himself.

148 (h) *Duties of counsel representing individual; payment of*
149 *counsel representing indigent.*

150 (1) The counsel representing an individual shall conduct a
151 timely interview, make investigation and secure appropriate
152 witnesses, and shall be present at the hearing and protect the
153 interest of the individual.

154 (2) Any counsel representing an individual shall be
155 entitled to copies of all medical reports, psychiatric or
156 otherwise.

157 (3) The circuit court, by order of record, may allow the
158 attorney a reasonable fee not to exceed the amount allowed
159 for attorneys in defense of needy persons as provided in
160 article twenty-one, chapter twenty-nine of this code.

161 (i) *Conduct of hearing; receipt of evidence; no evidentiary*
162 *privilege; record of hearing.*

163 (1) The circuit court or mental hygiene commissioner shall
164 hear evidence from all interested parties in chamber,
165 including testimony from representatives of the community
166 mental health facility.

167 (2) The circuit court or mental hygiene commissioner shall
168 receive all relevant and material evidence which may be
169 offered.

170 (3) The circuit court or mental hygiene commissioner shall
171 be bound by the rules of evidence except that statements
172 made to physicians or psychologists by the individual may be
173 admitted into evidence by the physician's or psychologist's
174 testimony notwithstanding failure to inform the individual
175 that this statement may be used against him. Any
176 psychologist or physician testifying shall bring all records
177 pertaining to said individual to said hearing. Such medical
178 evidence obtained pursuant to an examination under this
179 section, or section two or section three of this article, is not
180 privileged information for purposes of a hearing pursuant to
181 this section.

182 (4) All final commitment proceedings shall be reported or
183 recorded, whether before the circuit court or mental hygiene
184 commissioner, and a transcript shall be made available to the
185 individual, his counsel or the prosecuting attorney within
186 thirty days, if the same is requested for the purpose of further
187 proceedings. In any case wherein an indigent person intends
188 to pursue further proceedings the circuit court shall, by order
189 entered of record, authorize and direct the court reporter to
190 furnish a transcript of the hearings.

191 (j) *Requisite findings by the court.*

192 (1) Upon completion of the final commitment hearing, and
193 the evidence presented therein, the circuit court or mental
194 hygiene commissioner shall make findings as to whether or
195 not the individual is mentally ill, retarded or addicted and
196 because of his illness, retardation or addiction is likely to
197 cause serious harm to himself or to others if allowed to
198 remain at liberty and is a resident of the county in which the
199 hearing is held or currently is a patient at a mental health
200 facility in such county.

201 (2) The circuit court or mental hygiene commissioner shall
202 also make a finding as to whether or not there is a less
203 restrictive alternative than commitment appropriate for the
204 individual. The burden of proof of the lack of a less restrictive
205 alternative than commitment shall be on the person or
206 persons seeking the commitment of the individual.

207 (3) The findings of fact shall be incorporated into the order
208 entered by the circuit court and must be based upon clear,
209 cogent and convincing proof.

210 (k) *Orders issued pursuant to final commitment hearing;*
211 *entry of order; change in order of court; expiration of order.*

212 (1) Upon the requisite findings, the circuit court may
213 order the individual to a mental health facility for an
214 indeterminate period or for a temporary observatory period
215 not exceeding six months.

216 (2) The individual shall not be detained in a mental health
217 facility for a period in excess of ten days after a final
218 commitment hearing pursuant to this section unless an order
219 has been entered and received by the facility.

220 (3) If the order pursuant to a final commitment hearing is
221 for a temporary observation period, the circuit court or
222 mental hygiene commissioner may, at any time prior to the
223 expiration of such period on the basis of a report by the chief
224 medical officer of the mental health facility in which the
225 patient is confined, hold another hearing pursuant to the
226 terms of this section and in the same manner as the hearing
227 was held as if it were an original petition for involuntary
228 hospitalization, to determine whether the original order for a
229 temporary observation period should be modified or changed
230 to an order of indeterminate hospitalization of the patient. At
231 the conclusion of the hearing, the circuit court shall order
232 indeterminate hospitalization of the patient or dismissal of
233 the proceedings.

234 (4) An order for an indeterminate period shall expire of its
235 own terms at the expiration of two years from the date of the
236 last order of commitment unless prior to the expiration, the
237 department of health, upon findings based on an examination
238 of the patient by a physician or a psychologist, extends the
239 order for indeterminate hospitalization: *Provided, That if the*

240 patient or his counsel requests a hearing, then a hearing shall
241 be held by the mental hygiene commissioner; or by the circuit
242 court of the county as provided in subsection (a) of this
243 section.

244 (l) *Dismissal of proceedings.*—If the circuit court or mental
245 hygiene commissioner finds that the individual is not
246 mentally ill, mentally retarded or addicted, the proceedings
247 shall be dismissed. If the circuit court or mental hygiene
248 commissioner finds that the individual is mentally ill,
249 mentally retarded or addicted but is not because of such
250 illness, retardation or addiction likely to cause serious harm
251 to himself or others if allowed to remain at liberty, the
252 proceedings shall be dismissed.

253 (m) *Immediate notification of order of*
254 *hospitalization.*—The clerk of the circuit court in which an
255 order directing hospitalization is entered, if not in the county
256 of the individual's residence, shall immediately upon entry
257 thereof forward a certified copy of same to the clerk of the
258 circuit court of the county of which the individual is a
259 resident.

260 (n) *Consideration of transcript by circuit court of county*
261 *of individual's residence; order of hospitalization; execution*
262 *of order.*

263 (1) If the circuit court or mental hygiene commissioner is
264 satisfied that hospitalization should be ordered but finds that
265 the individual is not a resident of the county in which the
266 hearing is held, and the individual is not currently a resident
267 of a mental health facility, a transcript of the evidence
268 adduced at the final commitment hearing of such individual,
269 certified by the clerk of the circuit court, shall forthwith be
270 forwarded to the clerk of the circuit court of the county of
271 which such individual is a resident, who shall immediately
272 present such transcript to the circuit court or mental hygiene
273 commissioner of said county.

274 (2) If the circuit court or mental hygiene commissioner of
275 the county of the residence of the individual is satisfied from
276 the evidence contained in such transcript that such
277 individual should be hospitalized as determined by the
278 standard set forth above, the circuit court shall order the
279 appropriate hospitalization as though the individual had been

280 brought before the circuit court or its mental hygiene
281 commissioner in the first instance.

282 (3) This order shall be transmitted forthwith to the clerk of
283 the circuit court of the county in which the hearing was held
284 who shall execute said order promptly.

285 (o) *Order of custody to responsible person.*—In lieu of
286 ordering the patient to a mental health facility, the circuit
287 court may order the individual delivered to some responsible
288 person who will agree to take care of the individual and the
289 circuit court may take from such responsible person a bond
290 in an amount to be determined by the circuit court with
291 condition to restrain and take proper care of such individual
292 until further order of the court.

293 (p) *Individual not a resident of this state.*—If the
294 individual found to be mentally ill, mentally retarded or
295 addicted by the circuit court or mental hygiene commissioner
296 is a resident of another state, this information shall be
297 forthwith given to the director of health, who shall make
298 appropriate arrangements for his transfer to the state of his
299 residence conditioned on the agreement of the individual
300 except as qualified by the interstate compact on mental
301 health.

302 (q) *Report to the director of health.*

303 (1) The chief medical officer of a mental health facility
304 admitting a patient pursuant to proceedings under this
305 section shall forthwith make a report of such admission to the
306 director of health.

307 (2) Whenever an individual is released from custody due
308 to the failure of an employee of a mental health facility to
309 comply with the time requirements of this article, the chief
310 medical officer of such mental health facility shall forthwith
311 after the release of the individual make a report to the director
312 of health of the failure to comply.

313 (r) *Payment of some expenses by the state; mental hygiene*
314 *fund established; expenses paid by the county commission.*

315 (1) The state shall pay the commissioner's fee and such
316 court reporter fees as are not paid and reimbursed under
317 article twenty-one, chapter twenty-nine of this code out of a

318 special fund to be established within the supreme court of
 319 appeals of this state, to be known as the "mental hygiene
 320 fund."

321 (2) The county commission shall pay out of the county
 322 treasury all other expenses incurred in the hearings
 323 conducted under the provisions of this article whether or not
 324 hospitalization is ordered, including any fee allowed by the
 325 circuit court by order entered of record for any physician,
 326 psychologist and witness called by the indigent individual.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 21. PUBLIC LEGAL SERVICES.

- §29-21-1. Legislative findings; purpose.
- §29-21-2. Definitions.
- §29-21-3. Establishment of West Virginia public legal services council.
- §29-21-4. Council—Membership; chairman; meetings; compensation; conflicts of interest.
- §29-21-5. Purpose and duties of council.
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- §29-21-11. Public defender corporations—Intent to apply for funding.
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- §29-21-15. Limitation on use of funds; exceptions.
- §29-21-16. Public defender corporations—Boards of directors.
- §29-21-17. Eligibility for public legal representation.
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- §29-21-19. Records and reports.
- §29-21-20. Audits.
- §29-21-21. Appointed counsel immune from liability.

§29-21-1. Legislative findings; purpose.

1 The Legislature finds and declares that in certain
 2 proceedings the state is required to provide high quality legal
 3 assistance to indigent persons who would be otherwise
 4 unable to afford adequate legal counsel; that providing legal
 5 representation to those who face an economic barrier to
 6 adequate legal counsel will serve the ends of justice in
 7 accordance with rights and privileges guaranteed to all

8 citizens by the constitution of the United States of America
9 and the constitution of the state of West Virginia; that the
10 availability of quality legal assistance reaffirms the faith of
11 our citizens in our government of laws; that the present
12 system which utilizes appointed counsel is not operating
13 satisfactorily in some areas of this state and the Legislature is
14 presently unable to determine what system or systems will
15 provide the most efficient means for providing legal
16 representation; that there is a need to explore alternative
17 methods of delivering legal assistance, including the use of
18 salaried public defenders complemented by private panel
19 attorneys; that innovative programs and pilot projects as well
20 as a continuation of the present appointed counsel system are
21 necessary in separate areas of the state to provide information
22 and experience upon which to base future legislative action.

§29-21-2. Definitions.

1 As used in this article:

2 (1) "Council" or "legal services council" means the West
3 Virginia public legal services council established under this
4 article;

5 (2) "Eligible client" means any person who is accused of a
6 serious crime, has been convicted of such crime, is a party in a
7 juvenile court proceeding, or is the respondent in a
8 commitment proceeding, and who is to be afforded legal
9 representation under the provisions of this article;

10 (3) "Legal representation" or "legal assistance" means the
11 provision of any legal services consistent with the purposes
12 and provisions of this article;

13 (4) "Outside practice of law" means the provision of legal
14 assistance to a client who is not entitled to receive legal
15 assistance from the employer of the attorney rendering
16 assistance, but does not include, among other activities,
17 teaching, consulting, or performing evaluation;

18 (5) "Public defender" means the staff attorney employed
19 on a full-time basis by a public defender corporation who, in
20 addition to his direct representation of eligible clients, has
21 administrative responsibility for the operation of the public
22 defender corporation: *Provided*, That the public defender
23 may be a part-time employee if the board of directors of the

24 public defender corporation finds that there are
25 extraordinary circumstances wherein efficient operation
26 requires that no staff attorneys should be employed on a
27 full-time basis, and the council approves such part-time
28 employment;

29 (6) "Assistant public defender" means a staff attorney
30 hired by the public defender to provide direct representation
31 of eligible clients, and whose salary and status as a full-time
32 or part-time employee are fixed by the board of directors of
33 the public defender corporation;

34 (7) "Public defender corporation" or "public defender
35 office" means a corporation created under section nine of this
36 article for the sole purpose of providing legal representation
37 to eligible clients;

38 (8) "Serious crime" means:

39 (a) A felony;

40 (b) A misdemeanor or offense, the penalty for which
41 involves the possibility of confinement or a fine of more than
42 five hundred dollars, or any other offense of a criminal nature
43 which, in the opinion of the court, because of the complexity
44 of the matter, or the youth, inexperience, or mental capacity
45 of the accused, requires representation of the accused by an
46 attorney;

47 (c) An act which, except for the age of the person involved,
48 would otherwise be a serious crime; and

49 (d) Any other charge, including revocation of probation or
50 parole, which involves the possibility of confinement in a
51 penal institution.

**§29-21-3. Establishment of West Virginia public legal services
council.**

1 There is hereby created the West Virginia public legal
2 services council, for the purpose of facilitating required legal
3 representation of indigent persons. The council shall have
4 primary responsibility to administer, coordinate and evaluate
5 programs for the delivery of legal assistance to eligible
6 clients, to monitor the progress of various delivery systems,
7 and to recommend improvements. The council shall maintain
8 its office at the state capital.

§29-21-4. Council—Membership; chairman; meetings; compensation; conflicts of interest.

1 (a) The council shall consist of sixteen members
2 appointed by the governor, by and with the advice and
3 consent of the Senate, one to be appointed from each state
4 senatorial district, exclusive of the seventeenth senatorial
5 district. At least six shall be members of the bar of the
6 supreme court of appeals, at least six shall not be attorneys,
7 and none shall be a full-time employee of the state. The
8 membership of the council shall be appointed so as to be
9 generally representative of the organized bar, panel attorneys,
10 public defenders and assistant public defenders, and the
11 general public. No more than nine members of the council
12 shall be members of the same political party.

13 (b) The term of office of each member of the council shall
14 be four years. Any member appointed to fill a vacancy
15 occurring prior to the expiration of the term for which such
16 member's predecessor was appointed shall be appointed for
17 the remainder of such term.

18 (c) The members of the council shall not, by reason of
19 such membership, be deemed officers or employees of the
20 state of West Virginia.

21 (d) The governor shall select from among the voting
22 members of the council a chairman.

23 (e) Eight members shall constitute a quorum to conduct
24 business.

25 (f) When a member shall fail to appear at three consecutive
26 meetings of the council or at one half of the meetings held
27 during a two-year period, the secretary shall notify the
28 member and the governor of such fact. A member may not be
29 removed unless notice of the basis of removal has been given
30 to such member at least thirty days before an action is taken
31 concerning his removal and the member has been afforded
32 the opportunity to contest his removal by making written
33 submissions to the governor.

34 (g) A member may resign at any time by giving written
35 notice of his resignation to the governor and to the executive
36 director of the council.

37 (h) The council shall meet at least four times during each
38 calendar year at the call of the chairman. The council shall
39 also convene upon the call of a majority of the members.

40 (i) Each member shall receive a salary of fifty dollars per
41 meeting day as compensation and shall be reimbursed for all
42 reasonable and necessary expenses actually incurred in the
43 performance of his duties under this article.

44 (j) No member of the council may participate in any
45 decision, action, or recommendation with respect to any
46 matter which directly benefits such member or pertains
47 specifically to any firm or organization with which such
48 member is then associated or has been associated within a
49 period of two years.

§29-21-5. Purpose and duties of council.

1 (a) The council shall have as its principal purpose the
2 development of concepts for improving programs within the
3 state for the legal representation of eligible clients.

4 (b) The council shall:

5 (1) Provide advice to the executive director of the public
6 legal services council;

7 (2) Review the administrative operations of the council;

8 (3) Evaluate proposed plans of public defender
9 corporations for the provision of legal representation and the
10 implementation of such plans;

11 (4) Provide advisory opinions to the executive director on
12 potential conflicts of interest in the representation of indigent
13 persons;

14 (5) Recommend improvements in the various systems
15 utilized to provide legal representation to eligible clients;

16 (6) Review the operations of alternative systems and
17 compare and evaluate the performance and cost of the
18 various alternative systems.

§29-21-6. Executive director of council; staff.

1 (a) The governor shall appoint the executive director of
2 the council, who shall serve at the will and pleasure of the
3 governor. The executive director shall be a qualified

4 administrator as determined by the governor, and may be a
5 member of the bar of the supreme court of appeals. In
6 addition to the executive director there shall be such other
7 employees hired by the executive director as the council
8 determines to be necessary. The executive director shall have
9 such authority and perform such duties as may be required or
10 necessary to effectuate this article. The executive director
11 shall provide supervision and direction to the other
12 employees of the council in the performance of their duties.

13 (b) The executive director and employees of the council
14 shall be compensated at rates determined by the council:
15 *Provided*, That the annual salary of the executive director
16 shall not be more than the annual salary of the attorney
17 general.

§29-21-7. Powers, duties and limitations of council.

1 (a) Consistent with the provisions of this article, the
2 council is authorized to make loans and grants to and
3 contracts with public defender corporations and with
4 individuals, partnerships, firms, corporations, and nonprofit
5 organizations, for the purpose of providing legal
6 representation to eligible clients under this article, and to
7 make such other loans, grants and contracts as are necessary
8 to carry out the purposes and provisions of this article.

9 (b) The council is authorized to accept, and employ or
10 dispose of in furtherance of the purposes of this article, any
11 money or property, real, personal, or mixed, tangible or
12 intangible, received by gift, devise, bequest, or otherwise.

13 (c) The council shall establish and the executive director
14 or his designate shall operate a criminal law research center
15 as provided for in section eight of this article, and through
16 such center shall undertake directly, or by grant or contract,
17 to serve as a clearinghouse for information, to provide
18 training and technical assistance relating to the delivery of
19 legal representation, and to engage in research, except that
20 broad general legal or policy research unrelated to direct
21 representation of eligible clients may not be undertaken by
22 grant or contract.

23 (d) The council shall establish and the executive director
24 or his designate shall operate an accounting and auditing
25 division to require and monitor the compliance of public

26 defender corporations and their employees with the
27 provisions of this article. This division shall receive all plans
28 and proposals for loans, grants and contracts, and all
29 requisitions for payment, and shall review the same. All such
30 plans and proposals shall be approved or disapproved by the
31 division on the basis of conformity to the provisions of this
32 article, and a recommendation shall then be made to the
33 executive director and the advisory board. After review by
34 the division, the executive director shall draw requisitions on
35 the state auditor for payment to public defender corporations
36 and others, upon proper application under the provisions of
37 this article. The division shall prepare, or cause to be
38 prepared, reports concerning the evaluation, inspection, or
39 monitoring of public defender corporations and other
40 grantees, contractors, or persons or entities receiving
41 financial assistance under this article, and shall further carry
42 out the council's responsibilities for records and reports as set
43 forth in section nineteen of this article.

44 (e) The council shall establish and the executive director
45 or his designate shall operate an appellate advocacy division
46 for the purpose of prosecuting litigation on behalf of eligible
47 clients in the supreme court of appeals. The executive
48 director or a person designated by him shall be the director of
49 the appellate advocacy division and shall represent eligible
50 clients in only those instances where the trial attorney or
51 other local counsel is unwilling or unable to serve as appellate
52 counsel. The executive director is empowered to select and
53 employ staff attorneys to perform the duties prescribed by
54 this subsection, the number of such staff attorneys being
55 fixed by the board. The appellate division shall have its own
56 budget as determined appropriate by the council and shall
57 maintain vouchers and records for representation of eligible
58 clients, for record purposes only.

§29-21-8. Criminal law research center established; functions.

1 (a) Within the council, there shall be a division known as
2 the criminal law research center which may:

3 (1) Undertake research, studies and analyses and act as a
4 central repository, clearinghouse and disseminator of
5 research materials;

6 (2) Prepare and distribute a criminal law manual and other

7 materials and establish and implement standard and
8 specialized training programs for attorneys practicing
9 criminal law;

10 (3) Provide and coordinate continuing legal educational
11 programs and services for attorneys practicing criminal law;
12 and

13 (4) Prepare, supplement and disseminate indices and
14 digests of decisions of the West Virginia supreme court of
15 appeals and other courts, statutes and other legal authorities
16 relating to criminal law.

17 (b) The services of the criminal law research center shall
18 be offered at reasonable rates or by subscription, and such
19 service shall be provided to prosecuting attorneys and their
20 professional staffs, panel attorneys, and private attorneys
21 engaged in the practice of criminal law on the same basis as
22 such services are provided to public defender corporations,
23 public defenders and assistant public defenders.

§29-21-9. Public defender corporations.

1 (a) In each judicial circuit of the state, there is hereby
2 created a public body corporate and politic to be known as
3 the "public defender corporation" of the circuit: *Provided*,
4 That there shall be but one such public defender corporation
5 designated for the twenty-third and thirty-first judicial
6 circuits, which shall serve both circuits. The purpose of such
7 public defender corporations is to provide legal
8 representation in the respective circuits in accordance with
9 the provisions of this article. Except as provided in
10 subsection (b) of this section, a public defender office created
11 by this subsection shall not be activated so as to transact any
12 business or exercise its powers under this article before the
13 first day of April, one thousand nine hundred eighty-two, and
14 until or unless the judge of a single judge circuit or the chief
15 judge of a multi-judge circuit or a majority of the active
16 members of the bar in the circuit, shall determine at any time
17 hereafter that there is a need in the circuit to activate the
18 public defender corporation, shall certify such fact to the
19 council in writing, and shall have the activation of the office
20 recommended by the council and approved by the executive
21 director.

22 (b) The public defender corporations are hereby activated
23 in the first, second, third, seventh, eighth, ninth, eleventh,
24 thirteenth, fourteenth, fifteenth, twenty-third and thirty-first
25 combined, twenty-fifth, twenty-eighth and thirtieth judicial
26 circuits.

27 (c) Public defender offices activated prior to the first day
28 of July, one thousand nine hundred eighty-two, shall be
29 structured so as to provide legal representation through
30 salaried staff attorneys, complemented by panels of private
31 attorneys-at-law. On and after the first day of July, one
32 thousand nine hundred eighty-two, public defender offices
33 activated pursuant to this section shall not be confined to a
34 particular method of providing legal representation, but may
35 submit for consideration and approval by the council,
36 programs and plans which represent novel or innovative
37 approaches for the provision of legal representation for
38 eligible clients.

39 (d) On and after the first day of July, one thousand nine
40 hundred eighty-two, public defender corporations may
41 merge to form multi-circuit or regional public defender
42 corporations. Applications for mergers shall be subject to the
43 review procedures set forth in sections eleven and twelve of
44 this article.

§29-21-10. Panel attorneys.

1 (a) In each circuit of the state, the circuit court shall
2 establish and maintain regional and local panels of private
3 attorneys-at-law who shall be available to serve as counsel for
4 eligible clients. The court shall appoint one or more panel
5 attorneys in accordance with the provisions of this article, to
6 represent eligible clients in situations where the public
7 defender corporation has not been activated or a public
8 defender is not available to represent such eligible clients.

9 (b) An attorney-at-law may become a panel attorney and
10 have his name placed on the regional or local panel, or both,
11 to serve as counsel for eligible clients, by informing the court
12 that he is willing to serve as such. A prospective panel
13 attorney shall inform the court in writing, on forms provided
14 by the executive director, whether or not he will accept
15 appointments generally, and if not, which types of cases
16 described in section fifteen of this article he will not accept

17 appointment in. The attorney shall also indicate whether or
18 not he will accept appointment in adjoining circuits and, if so,
19 the circuits in which he will accept appointments. An
20 agreement to accept cases generally or certain types of cases
21 particularly shall not prevent a panel attorney from declining
22 an appointment in a specific case.

23 (c) In all cases where an attorney-at-law is required to be
24 appointed for an eligible client, the appointment shall be
25 made by the circuit judge. In circuits where the public
26 defender corporation is in operation, the judge shall appoint
27 the public defender office. If the appointment of the public
28 defender or his assistant is not appropriate, the court shall
29 appoint a panel attorney from the local panel. If there is no
30 local panel attorney available, the judge shall appoint a panel
31 attorney from the regional panel. If there is no regional panel
32 attorney available, the judge may appoint a public defender
33 from an adjoining circuit when such public defender agrees
34 to the appointment. In circuits where the public defender
35 corporation is not activated, the judge shall first refer to the
36 local panel and then to the regional panel in making
37 appointments, and if an appointment cannot be made from
38 the panel attorneys, the judge may appoint the public
39 defender of an adjoining circuit when such public defender
40 agrees to the appointment. In any circuit, when there is no
41 public defender or assistant public defender, local panel
42 attorney, regional panel attorney, or public defender of an
43 adjoining circuit available, the judge may appoint a qualified
44 private attorney to provide representation, and such private
45 attorney shall be treated as a panel attorney for that specific
46 case. In any given case, the appointing judge may alter the
47 order in which he considers attorneys available for
48 appointment if, in his discretion, the case requires particular
49 knowledge or experience on the part of the attorney to be
50 appointed.

§29-21-11. Public Defender Corporations—Intent to apply for funding.

1 (a) Any public defender corporation activated after the
2 first day of July, one thousand nine hundred eighty-two, and
3 undertaking to apply to the public legal services council for
4 financial assistance for a novel or innovative program to
5 provide legal representation and any public defender

6 corporation proposing a major substantive modification to an
7 existing program is required to notify the council and the
8 circuit judges in the circuit in which the program will deliver
9 legal representation of the intent to apply for such assistance
10 or modification. Such notice shall be given at least fifteen
11 days prior to the filing of an application or a proposal for
12 modification.

13 (b) Notifications shall include a summary description of
14 the proposed program. The summary description shall
15 contain the following information:

16 (1) The identity of the applicant;

17 (2) The geographical location of the proposed program;

18 (3) A brief description of the proposed program, general
19 size or scale, estimated cost, or other characteristics which
20 will enable the circuit court to determine how the system for
21 representation of indigents within the circuit may be affected
22 by the proposed program; and

23 (4) The estimated date the public defender corporation
24 expects to formally file an application or modification
25 proposal.

**§29-21-12. Public defender corporations—Funding applications;
legal representation plans; review.**

1 (a) Any public defender corporation wishing to take
2 advantage of state financial assistance through the council
3 must submit an application to the council in the form of a
4 plan for providing legal representation to eligible clients.

5 (b) The plan, which is to be submitted in a form prescribed
6 by the executive director, shall contain a specific description
7 of the public defender corporation's program, the plans and
8 policies to be followed in carrying out the program, and other
9 information prescribed by the executive director. The plan
10 shall include, but not be limited to, the following:

11 (1) Information exhibiting compliance with the
12 requirements of this article;

13 (2) A projection of the annual caseload to be handled by
14 the public defender corporation, describing the methods to
15 be used to meet objectives;

16 (3) A description of the staff required for adequate
17 administration of the plan; and

18 (4) A description of the facilities and equipment required
19 to provide adequate legal representation of eligible clients.

20 (c) All applications for state financial assistance through
21 the council under the provisions of this article must be
22 submitted to the circuit judges of the circuit for review prior
23 to their submission to the council.

24 (d) Public defender corporations will include with the
25 completed application as submitted to the agency:

26 (1) All comments and recommendations made by the
27 circuit judges, along with a statement that such comments
28 have been considered prior to submission of the application;
29 or

30 (2) Where no comments have been received from circuit
31 judges, a statement that the procedures outlined in this
32 section have been followed and that no comments or
33 recommendations have been received.

34 (e) Applications for annual renewal or continuation grants
35 are subject to review upon request of the circuit judges; and
36 applications not submitted to or acted upon by the council
37 within six months after completion of the circuit judges'
38 review are subject to re-review upon request.

39 (f) Comments and recommendations made by a circuit
40 judge with respect to any program are for the purpose of
41 assuring maximum consistency of such programs with local
42 needs for legal representation of indigents.

43 (g) If notification is required under section eleven of this
44 article, a circuit judge will complete review of a program
45 notification within fifteen days after receipt by the judge of
46 the notification. Where the public defender corporation has
47 not received a response to the notification from a circuit
48 judge within the fifteen-day period, the public defender
49 corporation may consider the judge to have waived his
50 opportunity to review and comment on the proposed
51 program or program modification. If a public defender
52 corporation submits a completed application to a circuit
53 judge during the fifteen-day notification review period, the

54 judge will complete review within fifteen days plus the
55 number of days remaining in the fifteen-day notification
56 period. If a public defender corporation submits to a circuit
57 judge a completed application without a prior notification,
58 the judge will complete review of the application within
59 thirty days.

60 (h) In cases where notification is not required, the public
61 defender corporation may expect that a circuit judge will
62 complete review of a completed application within fifteen
63 days.

64 (i) If review of an application is not completed within the
65 time periods prescribed in this section the public defender
66 corporation may consider that the application has been
67 favorably reviewed and may submit the application to the
68 public legal services council for consideration.

§29-21-13. Public defender corporation funding applications—Duties of council.

1 (a) If the council receives an application that does not
2 carry evidence that appropriate circuit judges have been
3 given an opportunity to review the application, the council
4 shall return the application to the public defender
5 corporation with instructions to fulfill the requirements of
6 sections eleven and twelve of this article.

7 (b) The council must notify the circuit judges within seven
8 working days of any major action taken on any application
9 that has been reviewed by such judges. Major actions will
10 include program approvals, rejections, returns for
11 amendment, deferrals or withdrawals.

12 (c) Where a judge has recommended against approval, or
13 has recommended approval only with specific and major
14 substantive changes, and the council approves the
15 application substantially as submitted, the council will
16 provide the judge with, along with the approval notice, an
17 explanation therefor.

§29-21-14. Council—Approval of public defender corporation funding applications; funding and compensation of corporations and panel attorneys.

1 (a) Upon approval of a program application by the

2 executive director, the amounts of the approved budget and
3 the loans and grants included therein shall be set forth in an
4 approval notice. The total cost to the council will not exceed
5 the amount set forth in the approval notice and the council
6 shall not be obligated to reimburse the public defender
7 corporation for costs incurred in excess of such amount
8 unless and until a program modification has been approved
9 in accordance with the provisions of this article, revising the
10 total costs of the program.

11 (b) Initial funding of a public defender corporation's
12 program shall be in the form of interest-free loans made by
13 the council to the public defender corporation:

14 (1) An equipment loan in a requested amount of up to five
15 thousand dollars plus such additional amount above five
16 thousand dollars as may be approved by the council; and

17 (2) An operational loan not to exceed the projected
18 operational costs for the first six months of program
19 operation: *Provided*, That upon subsequent application by
20 the public defender corporation, the operational loan shall be
21 increased to an amount not exceeding the projected
22 operational costs for the full twelve-month period of program
23 operation. Operational loan funds shall be forwarded to the
24 public defender corporation in quarterly installments.

25 (c) All public defender corporations shall maintain
26 detailed and accurate records of the time expended by public
27 defenders and assistant public defenders and expenses
28 incurred on behalf of eligible clients. Upon completion of
29 each case, exclusive of appeal, the public defender
30 corporation shall submit to the appointing court a voucher for
31 services which meets the requirements of subsection (h) of
32 this section. After approval by the court, the court shall
33 forward such voucher to the council, with an order of the
34 court approving payment of the amount of the voucher or of
35 such lesser sum to which the court shall believe the public
36 defender corporation to be entitled. Upon receipt of an
37 approved voucher, the council shall credit fifty percent of the
38 face amount of the voucher as a payment on outstanding
39 loans of the public defender corporation: *Provided*, That
40 upon request of the public defender corporation, a larger
41 percentage may be credited against such loans, or, upon

42 request of the public defender corporation and the approval
43 of the executive director, a smaller percentage may be so
44 credited. All amounts reflected by vouchers and not credited
45 to loans shall be tabulated, and at the end of each month, the
46 executive director shall forward to the public defender
47 corporation a grant equal to such monthly total. The total
48 amount of loan credits and monthly grants shall not exceed
49 the total budget approved for the program.

50 (d) All panel attorneys shall maintain detailed and
51 accurate records of the time expended and expenses incurred
52 on behalf of eligible clients, and upon completion of each
53 case, exclusive of appeal, shall submit to the appointing court
54 a voucher for services which meets the requirements of
55 subsection (h) of this section. After approval by the court, the
56 court shall forward such voucher to the council, with an order
57 of the court approving payment of the amount of the voucher
58 or of such lesser sum to which the court shall believe the
59 panel attorney to be entitled. The executive director shall
60 make payment to the panel attorney.

61 (e) In each case in which a public defender corporation or
62 a panel attorney provides legal representation under this
63 article, and in each appeal after conviction in circuit court,
64 compensation for actual and necessary services rendered
65 shall be at the following rates:

66 (1) For work performed out of court, compensation shall
67 be at the rate of twenty dollars per hour, itemized to the
68 nearest quarter-hour. Out-of-court work shall include, but not
69 be limited to, travel, interviews of clients or witnesses,
70 preparation of pleadings, and pre-hearing or pre-trial
71 research.

72 (2) For work performed in court, compensation shall be at
73 the rate of twenty-five dollars per hour, itemized to the
74 nearest quarter-hour. In-court work shall include, but not be
75 limited to, all time spent awaiting hearing or trial if the
76 presence of the attorney is required at the time.

77 (3) Expenses incurred in providing legal representation,
78 including, but not limited to, necessary expenses for travel,
79 transcripts, salaried or contracted investigative services, and
80 expert witnesses shall be reimbursed to a maximum of five
81 hundred dollars unless the court, for good cause shown, shall

82 have given advance approval to incur expenses for a larger
83 sum.

84 (f) The maximum amount of compensation for
85 out-of-court and in-court work under subsection (e) of this
86 section shall be one thousand dollars: *Provided*, That if the
87 eligible client is charged with a felony for which a penalty of
88 life imprisonment may be imposed, upon being advised by
89 counsel that the time expended has reached the one thousand
90 dollar maximum, the court may approve additional
91 compensation for further work at one half the rates provided
92 in subsection (e).

93 (g) For purposes of compensation under this section, an
94 appeal to the supreme court of appeals from a circuit court
95 shall be considered a separate case.

96 (h) Vouchers submitted under this section shall
97 specifically set forth the nature of the service rendered, the
98 stage of proceeding or type of hearing involved, and the date
99 and place the service was rendered. If the charge against the
100 eligible client for which services were rendered is one of
101 several charges involving multiple warrants or indictments,
102 the voucher shall indicate such fact and sufficiently identify
103 the several charges so as to enable the court to avoid a
104 duplication of compensation for services rendered. The
105 voucher shall indicate whether the services were rendered by
106 a public defender corporation, a local panel attorney, a
107 regional panel attorney, or such other private attorney as may
108 have been appointed. A voucher submitted to the council
109 which is not in conformity with the record-keeping and
110 compensation provisions of this article may be returned to
111 the court for further review.

§29-21-15. Limitation on use of funds; exceptions.

1 (a) Funds made available by the council to public
2 defender corporations under this article, either by loan, grant,
3 or contract, shall be used to provide legal representation for
4 persons accused or convicted of serious crimes, except that
5 funds may be used for representation of indigent persons in
6 the following proceedings:

7 (1) Juvenile proceedings, including child neglect and
8 abuse proceedings;

9 (2) Mental hygiene proceedings;

10 (3) Habeas corpus actions brought for the purpose of
11 challenging the validity of confinement arising out of
12 proceedings involving serious crimes, juvenile proceedings,
13 or mental hygiene proceedings;

14 (4) Prohibition actions brought for the purpose of
15 challenging the excessive exercise of authority in a criminal,
16 juvenile, or commitment proceeding by a lower tribunal; and

17 (5) Mandamus actions brought for the purpose of
18 commanding action applicable to criminal, juvenile, or
19 commitment proceedings.

20 (b) Funds received from another source other than the
21 council for the provision of legal representation shall not be
22 used by a public defender corporation for purposes
23 prohibited by this article.

§29-21-16. Public defender corporations—Boards of directors.

1 (a) The governing body of each public defender
2 corporation shall be a board of directors consisting of persons
3 who are residents of the area to be served by the public
4 defender corporation.

5 (1) In multi-county circuits, the county commission of
6 each county within the area served shall appoint a director,
7 who shall not be an attorney-at-law. The president of each
8 county bar association within the area served shall appoint a
9 director, who shall be an attorney-at-law: *Provided*, That in a
10 county where there is not an organized and active bar
11 association, the circuit court shall convene a meeting of the
12 members of the bar of the court resident within the county
13 and such members of the bar shall elect one of their number
14 as a director. The governor shall appoint one director, who
15 shall serve as chairman, who may, but need not be, an
16 attorney-at-law, unless such appointment would result in
17 there being an even number of directors, in which event the
18 governor shall appoint two directors, one of whom may be an
19 attorney-at-law.

20 (2) In single-county circuits, the manner of selecting
21 directors shall be the same as that described in subdivision (1)
22 of this subsection, except that the county commission shall

23 appoint two directors rather than one, and the bar shall
24 appoint two directors rather than one.

25 (b) The board of directors shall have at least four meetings
26 a year. Timely and effective prior public notice of all meetings
27 shall be given, and all meetings shall be public except for
28 those concerned with matters properly discussed in
29 executive session.

30 (c) The board of directors shall establish and enforce
31 broad policies governing the operation of the public defender
32 corporation but shall not interfere with any attorney's
33 professional responsibilities to clients. The duties of the
34 board of directors shall include, but not be limited to, the
35 following:

36 (1) Appointment of the public defender and determination
37 of the number of assistant public defenders as may be
38 necessary to enable the public defender corporation to
39 provide legal representation to eligible clients; and

40 (2) Approval of the public defender corporation's budget
41 and the fixing of professional salaries; and

42 (3) Renewal of the employment contract of the public
43 defender on an annual basis except where such renewal is
44 denied for cause: *Provided*, That the board of directors shall
45 have the power at any time to remove the public defender for
46 misfeasance, malfeasance or nonfeasance;

47 (d) To the extent that the provisions of chapter thirty-one
48 of this code regarding nonprofit corporations are not
49 inconsistent with this article, the provisions of such chapter
50 shall be applicable to the board of directors of the public
51 defender corporation.

52 (e) While serving on the board of directors, no member
53 shall receive compensation from the public defender
54 corporation, but a member may receive payment for normal
55 travel and other out-of-pocket expenses required for
56 fulfillment of the obligations of membership.

§29-21-17. Eligibility for public legal representation.

1 (a) The council shall establish, in consultation with the
2 commissioner of the department of finance and

3 administration, with the chief justice of the supreme court of
4 appeals, and with the judges of the several circuits, maximum
5 annual income levels for individuals eligible for legal
6 representation under this article. The council shall consider
7 such factors as family size, urban and rural differences,
8 substantial cost-of-living variation, and the cost of available
9 private representation.

10 (b) In addition to the maximum annual income level for an
11 area established under subsection (a) of this section, a court
12 shall consider other relevant factors before determining
13 whether a person is eligible to receive legal representation
14 under the provisions of this article. A person whose income
15 exceeds the maximum annual income level may have counsel
16 appointed if the person's circumstances require that
17 eligibility be allowed on the basis of one or more of the
18 following factors:

19 (1) Current income prospects, taking into account
20 seasonal variations in income;

21 (2) Liquid net assets and other assets which may
22 reasonably be available for the employment of private
23 counsel;

24 (3) Fixed debts and obligations, including federal, state
25 and local taxes, and medical expenses;

26 (4) Child care, transportation, and other expenses
27 necessary for employment;

28 (5) Age or physical infirmity of resident family members;

29 (6) The cost of obtaining private legal representation with
30 respect to the particular matter in which assistance is sought;
31 and

32 (7) The consequences for the individual if legal assistance
33 is denied.

34 (c) The council shall adopt a simple form affidavit to be
35 completed by persons seeking legal representation, for use by
36 courts to determine eligibility. The information obtained
37 shall be preserved by the court for audit by the council. If
38 there is substantial reason to doubt the accuracy of
39 information in the affidavit, the circuit court shall make
40 appropriate inquiry upon the record to determine whether a

41 person is an indigent person entitled to all or any of the legal
42 assistance sought and may deny all or any part of such
43 services to the affiant which the court finds to be within the
44 financial resources of the affiant and may revoke any prior
45 appointment of counsel which the court determines to have
46 been improvidently made. No circuit court shall deny all or
47 any part of the services requested by the affiant unless the
48 court shall determine upon the record that such service or
49 services, including counsel, are available to the person
50 seeking them and are within the financial resources of such
51 person. Upon the determination that appointment of counsel
52 previously made should be revoked, or that further provision
53 of any other service should be denied, any attorney
54 previously appointed shall be entitled to compensation under
55 the provisions of law applicable to such appointment for
56 services already rendered and any other officer of the court
57 having previously rendered such services shall likewise be
58 entitled to such compensation, if any, for services already
59 rendered as law may provide.

60 (d) Subject to such rules as the supreme court of appeals
61 shall promulgate, the circuit court shall have plenary power
62 in every case in which services are rendered to an indigent
63 person, whether or not services are thereafter denied under
64 this section, to make such order for the repayment of costs
65 and compensation for services granted to such person, either
66 as condition of probation or otherwise, as the court may
67 determine to be reasonable given the financial circumstances
68 of the affiant.

69 (e) The making of an affidavit subject to inquiry under this
70 section shall not in any event give rise to criminal remedies
71 against the affiant nor occasion any civil action against the
72 affiant except for the recovery of costs as in any other case
73 where costs may be recovered: *Provided*, That a person who
74 has made an affidavit knowing the contents thereof to be false
75 may be prosecuted for false swearing as provided by law.

§29-21-18. Outside practice of law by public defenders.

1 (a) No full-time public defender or full-time assistant
2 public defender shall engage in any outside practice of law
3 except as provided in this section.

4 (b) A board of directors may permit a full-time public
5 defender or full-time assistant public defender to engage in
6 the outside practice of law for compensation if:

7 (1) The public defender or assistant public defender is
8 newly employed and has a professional responsibility to close
9 cases from a previous law practice, and does so as
10 expeditiously as possible; or

11 (2) The public defender or assistant public defender is
12 acting pursuant to an appointment made under a court rule or
13 practice of equal applicability to all attorneys in the
14 jurisdiction, and remits to the public defender corporation all
15 compensation received.

16 (c) A board of directors may permit a public defender or
17 assistant public defender to engage in uncompensated
18 outside practice of law if the public defender or assistant
19 public defender is acting:

20 (1) Pursuant to an appointment made under a court rule or
21 practice of equal applicability to all attorneys in the
22 jurisdiction; or

23 (2) On behalf of a close friend or family member; or

24 (3) On behalf of a religious, community or charitable
25 group.

§29-21-19. Records and reports.

1 (a) The council is authorized to require such reports as it
2 deems necessary from any public defender corporation
3 receiving financial assistance under this article regarding
4 activities carried out pursuant to this article.

5 (b) The council is authorized to prescribe the keeping of
6 records with respect to funds provided by the council and
7 shall have access to such records at all reasonable times for
8 the purpose of ensuring compliance with the terms and
9 conditions upon which financial assistance was provided.

10 (c) The council shall publish an annual report which shall
11 be filed by the council with the governor and the Legislature
12 on or before the thirty-first day of January of each year.

13 (d) Copies of all reports pertinent to the evaluation,

14 inspection, or monitoring of any public defender corporation
15 receiving financial assistance under this article shall be
16 submitted on a timely basis to such public defender
17 corporation and shall be maintained by the council for a
18 period of at least five years subsequent to such evaluation,
19 inspection, or monitoring. Such reports shall be available for
20 public inspection during regular business hours, and copies
21 shall be furnished, upon request, to interested parties upon
22 payment of such reasonable fees as the agency may establish.

§29-21-20. Audits.

1 (a) The accounts of each public defender corporation shall
2 be audited annually. Such audits shall be conducted in
3 accordance with generally accepted auditing standards by
4 the state tax commissioner.

5 (b) The audits shall be conducted at the place or places
6 where the accounts of the public defender corporation are
7 normally kept. All books, accounts, financial records, reports,
8 files, and other papers or property belonging to or in use by
9 the public defender corporation and necessary to facilitate
10 the audits shall be made available to the person or persons
11 conducting the audits; and full facilities for verifying
12 transactions with the balances and securities held by
13 depositories, fiscal agents, and custodians shall be afforded to
14 any such person.

15 (c) The report of the annual audit shall be filed with the
16 council and shall be available for public inspection during
17 business hours at the principal office of the public defender
18 corporation. The report of each such audit shall be
19 maintained for a period of at least five years at the office of the
20 council.

§29-21-21. Appointed counsel immune from liability.

1 Any attorney who shall provide legal representation under
2 the provisions of this article following his appointment by a
3 circuit court, and whose only compensation therefor is paid
4 under the provisions of this article, shall be immune from
5 liability arising from his services in the same manner and to
6 the same extent that prosecuting attorneys are immune from
7 liability.

CHAPTER 49. CHILD WELFARE.**ARTICLE 5. JUVENILE PROCEEDINGS.****§49-5-1. Jurisdiction of circuit courts over persons under eighteen years of age; constitutional guarantees; right to counsel; hearings.**

1 (a) The circuit court of the county shall have original
2 jurisdiction in proceedings brought under this article.

3 If during a criminal proceeding against a person in any
4 court, it shall be ascertained or shall appear that the person is
5 under the age of nineteen years and was under the age of
6 eighteen years at the time of the alleged offense, the matter
7 shall be immediately certified to the juvenile jurisdiction of
8 the circuit court, and the circuit court shall assume
9 jurisdiction of the case in the same manner as cases originally
10 instituted in the circuit court by petition: *Provided*, That for
11 violation of a traffic law of West Virginia, magistrate courts
12 shall have concurrent jurisdiction with the circuit court, and
13 persons under the age of eighteen years shall be liable for
14 punishment for violation of such traffic laws in the same
15 manner as adults except that magistrate courts shall have no
16 jurisdiction to impose a sentence of confinement for the
17 violation of traffic laws.

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

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

30 (c) The child shall have the right to be effectively
31 represented by counsel at all stages of proceedings under the
32 provisions of this article. If the child, parent or custodian
33 executes an affidavit showing that he cannot pay for an
34 attorney appointed by the court or referee, the court shall

35 appoint counsel, to be paid as provided for in article
36 twenty-one, chapter twenty-nine of this code.

37 (d) In all proceedings under this article, the child shall be
38 afforded a meaningful opportunity to be heard, including the
39 opportunity to testify and to present and cross-examine
40 witnesses. In all such proceedings the general public shall be
41 excluded except persons whose presence is requested by a
42 child or respondent and other persons the court finds to have
43 a legitimate interest.

44 Except as herein modified, at all adjudicatory hearings, the
45 rules of evidence applicable in criminal cases shall apply,
46 including the rule against written reports based upon
47 hearsay. Unless otherwise specifically provided in this
48 chapter, all procedural rights afforded adults in criminal
49 proceedings shall be applicable. Extra-judicial statements
50 other than res gestae statements by a child under sixteen
51 years of age, made to law-enforcement officials or while the
52 child is in custody and outside the presence of the child's
53 counsel shall not be admissible. A transcript or recording
54 shall be made of all transfer, adjudicatory and dispositional
55 hearings. At the conclusion of any hearing, the court shall
56 make findings of fact and conclusions of law, and the same
57 shall appear of record.

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

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 which
2 the applicable statutes authorize a sentence of confinement
3 the magistrate shall forthwith advise a defendant of his right
4 to counsel and his right to have counsel appointed if such
5 defendant cannot afford to retain counsel. In the event a
6 defendant requests that counsel be appointed and executes
7 an affidavit that he is unable to afford counsel, the magistrate
8 shall stay further proceedings and shall request the judge of

9 the circuit court, or the chief judge thereof if there is more
10 than one judge of the circuit court, to appoint counsel. Such
11 judge shall thereupon appoint counsel. If there is no judge
12 sitting in the county at the time of the request then the clerk
13 of the circuit court shall appoint counsel from a list of
14 attorneys in accordance with the rules established by such
15 judge of the circuit court. Counsel shall be paid for his
16 services and expenses in accordance with the provisions of
17 article twenty-one, chapter twenty-nine 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 may
2 allege facts to show that the petitioner is unable to pay the
3 costs of the proceeding or to employ counsel, may request
4 permission to proceed in forma pauperis and may request the
5 appointment of counsel. If the court to which the writ is
6 returnable (hereinafter for convenience of reference referred
7 to simply as "the court," unless the context in which used
8 clearly indicates that some other court is intended) is satisfied
9 that the facts alleged in this regard are true, and that the
10 petition was filed in good faith, and has merit or is not
11 frivolous, the court shall order that the petitioner proceed in
12 forma pauperis, and the court shall appoint counsel for the
13 petitioner. If it shall appear to the court that the record in the
14 proceedings which resulted in the conviction and sentence,
15 including, but not limited to, a transcript of the testimony
16 therein, or the record or records in a proceeding or
17 proceedings on a prior petition or petitions filed under the
18 provisions of this article, or the record or records in any other
19 proceeding or proceedings instituted by the petitioner to
20 secure relief from his conviction or sentence, or all of such
21 records, or any part or parts thereof, are necessary for a
22 proper determination of the contention or contentions and
23 grounds (in fact or law) advanced in the petition, the court
24 shall, by order entered of record, direct the state to make

25 arrangements for copies of any such record or records, or all
26 of such records, or such part or parts thereof as may be
27 sufficient, to be obtained for examination and review by the
28 court, the state and the petitioner. The state may on its own
29 initiative obtain copies of any record or records, or all of the
30 records, or such part or parts thereof as may be sufficient, as
31 aforesaid, for its use and for examination and review by the
32 court and the petitioner. If, after judgment is entered under
33 the provisions of this article, an appeal or writ of error is
34 sought by the petitioner in accordance with the provisions of
35 section nine of this article, and the court which rendered the
36 judgment is of opinion that the review is being sought in good
37 faith and the grounds assigned therefor have merit or are not
38 frivolous, and such court finds that the petitioner is unable to
39 pay the costs incident thereto or to employ counsel, the court
40 shall, upon the petitioner's request, order that the petitioner
41 proceed in forma pauperis and shall appoint counsel for the
42 petitioner. If an appeal or writ of error is allowed, whether
43 upon application of the petitioner or the state, the reviewing
44 court shall, upon the requisite showing the request as
45 aforesaid, order that the petitioner proceed in forma pauperis
46 and shall appoint counsel for the petitioner. If it is
47 determined that the petitioner has the financial means with
48 which to pay the costs incident to any proceedings hereunder
49 and to employ counsel, or that the petition was filed in bad
50 faith or is without merit or is frivolous, or that review is being
51 sought or prosecuted in bad faith or the grounds assigned
52 therefor are without merit or are frivolous, the request to
53 proceed in forma pauperis and for the appointment of
54 counsel shall be denied and the court making such
55 determination shall enter an order setting forth the findings
56 pertaining thereto and such order shall be final.

57 (b) Whenever it is determined that a petitioner shall
58 proceed in forma pauperis, all necessary costs and expenses
59 incident to proceedings hereunder, originally, or on appeal
60 pursuant to section nine of this article, or both, including, but
61 not limited to, all court costs, and the cost of furnishing
62 transcripts, shall, upon certification by the court to the state
63 auditor, be paid out of the treasury of the state from the
64 appropriation for criminal charges. Any attorney appointed
65 in accordance with the provisions of this section shall be paid
66 for his services and expenses in accordance with the

67 provisions of article twenty-one, chapter twenty-nine of the
68 code. All costs and expenses incurred incident to obtaining
69 copies of any record or records, or all of the records, or such
70 part or parts thereof as may be sufficient, as aforesaid, for
71 examination and review by the court, the state and the
72 petitioner, shall, where the petitioner is proceeding in forma
73 pauperis, and the court orders the state to make
74 arrangements for the obtaining of same or the state obtains
75 the same on its own initiative, be paid out of the treasury of
76 the state, upon certification by the court to the state auditor,
77 from the appropriation for criminal charges. All such costs,
78 expenses and fees shall be paid as provided in this subsection
79 (b) notwithstanding the fact that all proceedings under the
80 provisions of this article are civil and not criminal in
81 character. In the event a petitioner who is proceeding in
82 forma pauperis does not substantially prevail, all such costs,
83 expenses and fees shall be and constitute a judgment of the
84 court against the petitioner to be recovered as any other
85 judgment for costs.

86 (c) In the event a petitioner who is not proceeding in
87 forma pauperis does not substantially prevail, all costs and
88 expenses incurred incident to obtaining copies of any record
89 or records, or all of the records, or such part or parts thereof as
90 may be sufficient, as aforesaid, for examination and review by
91 the court, the state and the petitioner, shall, where the court
92 orders the state to make arrangements for the obtaining of
93 same or the state obtains the same on its own initiative, be
94 and constitute a judgment of the court against the petitioner
95 to be recovered as any other judgment for costs. In any case
96 where the petitioner does not proceed in forma pauperis, the
97 court shall adjudge all costs and expenses to be paid as shall
98 seem to the court to be right, consistent with the immediately
99 preceding sentence of this subsection (c) and with the
100 provisions of chapter fifty-nine of this 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 a
2 person for a felony or misdemeanor, the accused, if in
3 custody, or if he appear in discharge of his recognizance, or
4 voluntarily, shall, unless good cause be shown for a
5 continuance, be tried at the same term. If any witness for the
6 accused be a nonresident of the state, or absent therefrom in
7 any service or employment, so that service of a subpoena
8 cannot be had upon him in this state, or is aged or infirm so
9 that he cannot attend upon the court at the trial, the accused
10 may present to the court in which the case is pending, or to
11 the judge thereof in vacation, an affidavit showing such facts,
12 and stating therein what he expects to prove by any such
13 witness, his name, residence, or place of service or
14 employment; and if such court or judge be of the opinion that
15 the evidence of any such witness, as stated in such affidavit, is
16 necessary and material to the defense of the accused on his
17 trial, an order may be made by such court or judge for the
18 taking of the deposition of any such witness upon such notice
19 to the prosecuting attorney, of the time and place of taking
20 the same, as the court or judge may prescribe; and in such
21 order the court or judge may authorize the employment of
22 counsel, practicing at or near the place where the deposition
23 is to be taken, to cross-examine the witness on behalf of the
24 state, the reasonable expense whereof shall be paid out of the
25 treasury of the state, upon certificate of the court wherein the
26 case is pending. Every deposition so taken may, on the
27 motion of the defendant, so far as the evidence therein
28 contained is competent and proper, be read to the jury on the
29 trial of the case as evidence therein. A court of record may
30 appoint counsel to assist an accused in criminal cases at any
31 time upon request. A copy of the indictment and of the list of
32 the jurors selected or summoned for his trial, as provided in
33 section three of this article, shall be furnished him, upon his
34 request, at any time before the jury is impaneled. In every
35 case where the court appoints counsel for the accused and the
36 accused presents an affidavit showing that he cannot pay
37 therefor, the attorney so appointed shall be paid for his

38 services and expenses in accordance with the provisions of
39 article twenty-one, chapter twenty-nine of this code.

ARTICLE 12. PROBATION AND PAROLE.

**§62-12-22. Appointment of counsel for parole violators;
authority to appoint; payment of counsel.**

1 Any person accused of a violation of his parole, as set forth
2 in this article, may be represented by counsel at any hearing
3 held for the purpose of determining whether his parole
4 should be revoked. In the event the person accused of a
5 violation of his parole is unable to pay for counsel and desires
6 to have counsel appointed for him, he shall present his
7 application for the appointment of counsel and an affidavit
8 reflecting his inability to pay for such counsel to the circuit
9 court in the county in which such person is confined or in the
10 county in which the hearing is to be held for the purpose of
11 determining whether his parole should be revoked, or to the
12 judge thereof in vacation. If it appears to the satisfaction of
13 the court or judge that such person is in fact unable to pay for
14 counsel, such court or judge may appoint counsel to
15 represent such person. Counsel so appointed shall be paid for
16 his services and expenses in accordance with the provisions
17 of article twenty-one, chapter twenty-nine of this code.

CHAPTER 184

(S. B. 456—By Mr. McGraw, Mr. President, Mr. Williams, Mr. Nelson, Mr. Gilligan,
Mr. Heck, Mr. Colombo, Mr. Jones, Mrs. Spears, Mr. Boettner, Mr. Tonkovich,
Mr. Holliday and Mr. Galperin)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six-h, article seven-a, chapter eighteen of said code, all relating to the state public employees retirement act and the state teachers retirement system; providing a supplemental benefit for certain annuitants

receiving less than a specified annual annuity, contingent on legislative budgetary action; and specifying factors for eligibility and computation thereof.

Be it enacted by the Legislature of West Virginia:

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

Chapter

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

18. Education.

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22b. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of
2 less than seven thousand two hundred dollars annually on
3 the effective date of this section, shall receive, upon appli-
4 cation, a supplemental benefit, prospectively, under this
5 section in any fiscal year for which the Legislature provides
6 by line item appropriation for the payment of such benefit:
7 *Provided*, That the effective date of retirement for such
8 annuitant was prior to July one, one thousand nine hun-
9 dred seventy-seven, and he had ten years or more of cred-
10 ited service at the time of such retirement. For the pur-
11 poses of this section, "effective date of retirement" means
12 the last day of actual employment, or the last day carried
13 on the payroll of the employer, whichever is later, to-
14 gether with a meeting fully of all eligibility requirements
15 for retirement prior to the aforesaid effective date. Any
16 annuitant retired pursuant to the disability provisions of
17 this article shall be considered to have had ten years or
18 more credited service at the time of such retirement.

19 Each such annuitant shall receive as his supplemental
20 benefit an increased annual amount which is the product
21 of the sum of fifteen dollars multiplied by his years of
22 credited service: *Provided*, That the total annuity of any
23 annuitant affected by the provisions of this section, to-
24 gether with any of the other provisions of this article or
25 any other article or chapter of this code, shall not exceed
26 seven thousand two hundred dollars annually.

27 For the purpose of calculating the supplemental benefit
28 provided in this section, fractional parts of a service cred-
29 it year are to be disregarded unless in excess of one half
30 of a credited service year, in which event the same shall
31 constitute a full year of service credit.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26h. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of
2 less than seven thousand two hundred dollars annually
3 on the effective date of this section shall receive a supple-
4 mental benefit, prospectively, under this section in any
5 fiscal year for which the Legislature provides by line
6 item appropriation for the payment of such benefit:
7 *Provided*, That the effective date of retirement for such
8 annuitant was prior to July one, one thousand nine hun-
9 dred seventy-seven, and he had ten years or more of
10 credited service at the time of such retirement. For the
11 purposes of this section, "effective date of retirement"
12 means the last day of actual employment, or the last day
13 carried on the payroll of the employer, whichever is later,
14 together with a meeting fully of all eligibility require-
15 ments for retirement prior to the aforesaid effective date.
16 Any annuitant retired pursuant to the disability provi-
17 sions of this article shall be considered to have had ten
18 years or more of credited service at the time of such re-
19 tirement.

20 Each such annuitant shall receive as his supplemental
21 benefit an increased annual amount which is the product
22 of the sum of fifteen dollars multiplied by his years of
23 credited service: *Provided*, That the total annuity of any

24 annuitant affected by the provisions of this section, to-
25 gether with any of the other provisions of this article,
26 shall not exceed seven thousand two hundred dollars
27 annually.

28 For the purpose of calculating the supplemental bene-
29 fit provided in this section, fractional parts of a service
30 credit year are to be disregarded unless in excess of one
31 half of a credited service year, in which event the same
32 shall constitute a full year of service credit.

CHAPTER 185

(S. B. 155—By Mr. Boettner)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reemployment by retirants under the public employees retirement act; compensation received from temporary employment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement.

1 In the event a retirant becomes employed by a partici-
2 pating public employer, payment of his annuity shall be
3 suspended during the period of his reemployment and he
4 shall become a contributing member to the retirement
5 system. If his reemployment is for a period of one year
6 or longer, his annuity shall be recalculated and he shall
7 be granted an increased annuity due to such additional
8 employment, said annuity to be computed according to
9 section twenty-two of this article. A retirant may accept
10 temporary employment from a participating employer so
11 long as he shall not receive compensation in excess of
12 six thousand dollars.

CHAPTER 186

(Com. Sub. for H. B. 1018—By Mr. Riffle)

[Passed April 9, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to the creation of the public employee suggestion award board and for cash or honorary awards for state employees whose adopted suggestions result in savings or improvement in state operations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. EMPLOYEE SUGGESTION AWARD BOARD.

§5A-1A-1. Employee suggestion award program created.

§5A-1A-2. Board created.

§5A-1A-3. Duties of board; excluded employees.

§5A-1A-4. Awards.

§5A-1A-1. Employee suggestion award program created.

1 There is hereby established an employee suggestion award
2 program for employees of state government. Under this
3 program cash or honorary awards may be made to state
4 employees whose adopted suggestions will result in substantial
5 savings or improvement in state operations.

§5A-1A-2. Board created.

1 There is hereby established an employee suggestion award
2 board which shall be composed of the commissioner of finance
3 and administration, the commissioner of the department of
4 labor, the president of the Senate, the speaker of the House
5 of Delegates, one member of the House of Delegates to be
6 appointed by the speaker of the House, one member of the
7 Senate to be appointed by the president of the Senate, and

8 the director of the department of employment security. The
9 terms of the members of the board shall be consistent with
10 the terms of the offices to which they have been elected or
11 appointed.

§5A-1A-3. Duties of board; excluded employees.

1 It shall be the duty of the board to adopt rules governing
2 its proceedings, to elect a chairman and secretary, to keep
3 permanent and accurate records of its proceedings, to establish
4 criteria for making awards, to adopt rules and regulations to
5 carry out the provisions of this article, and to approve each
6 award made.

7 In establishing criteria for making awards, the board may
8 exclude certain levels of positions from participation in the
9 program, but in no event shall the following levels of manage-
10 ment be eligible to receive cash awards under the program:

11 (1) Governor's staff, departmental commissioners and their
12 equivalent.

13 (2) Assistant or deputy commissioner, assistant to com-
14 missioner, major fiscal and administrative policy departmental
15 staff or their equivalent.

16 (3) Director or division chief, including the division chief
17 or director of a statewide program, and which includes a
18 chief of a division supervising several service units or their
19 equivalent.

20 (4) Assistant to director or division chief, section chief or
21 head of major departmental function or their equivalent.

§5A-1A-4. Awards.

1 The maximum cash award approved shall be limited to
2 twenty percent of the first year's estimated savings, as estab-
3 lished by the head of the affected spending unit, or two
4 thousand dollars whichever is less. Any cash awards approved
5 by the board shall be charged by the head of the affected
6 spending unit against the appropriation item or items to which
7 such estimated savings apply.

CHAPTER 187

(Com. Sub. for H. B. 1553—By Mr. Speaker, Mr. See)

[Passed April 7, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the maximum supplemental payment to state policemen in lieu of overtime; and increasing salaries.

Be it enacted by the Legislature of West Virginia:

That section five, 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.

§15-2-5. Salaries; exclusion from wage and hour law; bond; leave time for members called to duty in 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 twenty-six thousand seven hundred sixty dollars; any major
6 shall receive an annual salary of twenty-four thousand two
7 hundred sixteen dollars; any captain shall receive an annual
8 salary of twenty-two thousand two hundred sixty dollars;
9 any lieutenant shall receive an annual salary of twenty thousand
10 nine hundred sixteen dollars; any master sergeant or first
11 sergeant shall receive an annual salary of nineteen thousand
12 six hundred twenty dollars; any sergeant shall receive an an-
13 nual salary of eighteen thousand six hundred sixty dollars; any
14 corporal shall receive an annual salary of seventeen thousand
15 six hundred sixty-four dollars; any trooper first class shall
16 receive an annual salary of sixteen thousand six hundred thirty-
17 two dollars; and any newly enlisted trooper shall receive a
18 salary of one thousand two hundred dollars monthly during
19 the period of his basic training, and upon the satisfactory com-
20 pletion of such training and assignment to active duty each

21 such trooper shall receive, during the remainder of his first
22 year's service a salary of one thousand two hundred ninety-
23 seven dollars monthly. During the second year of his service in
24 the department each trooper shall receive an annual salary of
25 fifteen thousand nine hundred twelve dollars; during the third
26 year of his service each such trooper shall receive an annual
27 salary of sixteen thousand one hundred seventy-six dollars;
28 and during the fourth and fifth year of such trooper's service
29 and for each year thereafter he shall receive an annual salary
30 of sixteen thousand three hundred ninety-two dollars. Each
31 member of the department whose salary is specified herein
32 shall receive and be entitled to an increase in salary over that
33 hereinbefore set forth, for grade in rank, based on length of
34 service, including that heretofore and hereafter served with
35 the department, as follows: At the end of five years of service
36 with the department, such member shall receive a salary in-
37 crease of three hundred dollars to be effective during his
38 next three years of service and a like increase at three-year
39 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
45 receive under the provisions hereof.

46 The Legislature finds and declares that there is litigation
47 pending in the circuit court of Kanawha County on the ques-
48 tion whether members of the department of public safety are
49 covered by the provisions of the state wage and hour law,
50 article five-c, chapter twenty-one of this code. The Legislature
51 further finds and declares that because of the unique duties
52 of members of the department, it is not appropriate to apply
53 said wage and hour provisions to them. Accordingly, members
54 of the department of public safety are hereby excluded from
55 the provisions of said wage and hour law. The express ex-
56 clusion hereby enacted shall not be construed as any indica-
57 tion that such members were or were not heretofore covered
58 by said wage and hour law.

59 In lieu of any overtime pay they might otherwise have re-

60 ceived under the wage and hour law, and in addition to their
61 salaries and increases for length of service, members who have
62 completed basic training may receive supplemental pay as
63 hereinafter provided.

64 The superintendent shall, within thirty days after the effec-
65 tive date hereof, promulgate a rule or regulation to establish the
66 number of hours per month which shall constitute the standard
67 work month for the members of the department. Such rule or
68 regulation shall further establish, on a graduated hourly basis,
69 the criteria for receipt of a portion or all of such supplemental
70 payment when hours are worked in excess of said standard
71 work month. Such rule or regulation shall be promulgated
72 pursuant to the provisions of chapter twenty-nine-a of the
73 code. The superintendent shall certify monthly to the de-
74 partment's payroll officer the names of those members who
75 have worked in excess of the standard work month and the
76 amount of their entitlement to supplemental payment.

77 The supplemental payment shall be in an amount equal to
78 one and one-half percent of the annual salary of a trooper
79 during his second year of service, not to exceed two hundred
80 dollars monthly. The superintendent and civilian employees
81 of the department shall not be eligible for any such supple-
82 mental payments.

83 Each member of the department, except the superintendent
84 and civilian employees, shall execute, before entering upon the
85 discharge of his duties, a bond with security in the sum of five
86 thousand dollars payable to the state of West Virginia, con-
87 ditioned upon the faithful performance of his duties, and
88 such bond shall be approved as to form by the attorney general
89 and to sufficiency by the governor.

90 Any member of the department who is called to perform
91 active duty for training or inactive duty training in the national
92 guard or any reserve component of the armed forces of the
93 United States annually shall be granted upon request leave
94 time not to exceed thirty calendar days for the purpose of per-
95 forming such active duty for training or inactive duty training,
96 and the time so granted shall not be deducted from any leave
97 accumulated as a member of the department.

CHAPTER 188

(Com. Sub. for H. B. 749—By Mr. Brenda)

[Passed March 10, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-b, relating to the regulation of public utilities by the public service commission; transitional suspension of schedules and deferring the use of rates, charges, classifications, regulations or practices; legislative findings and procedure.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-3b. Transitional suspension of schedule; legislative findings; procedure.

1 The Legislature finds that in anticipation of the operative
2 date of the provisions of section four-a of this article, certain
3 regulated utilities have presented to the public service com-
4 mission a large number of proceedings pursuant to section
5 four of this article. In the public interest, the commission
6 should be granted sufficient authority to make disposition of
7 those cases in an orderly and just manner, consistent with the
8 duties of the commission requiring conversion of its proce-
9 dure from that provided in section four of this article to that
10 provided in section four-a. In view of the increased demands
11 upon the commission, it is in the public interest to grant to
12 the public service commission additional authority for the
13 suspension of rates in cases filed pursuant to section four of
14 this article.

15 In any proceeding commenced pursuant to the provisions of
16 section four of this article which is pending on the effective

17 date of this section or is thereafter commenced, the commission
18 may at the commencement of, or during the pendency of, any
19 period of suspension provided for in section four, further
20 suspend the operation of any such schedule and defer the use
21 of such rate, charge, classification, regulation or practice for a
22 further and additional period of one hundred fifty days or
23 such shorter further and additional period as the commission
24 may order. The total period of suspension including the origin-
25 al suspension and the suspension resulting from the application
26 of this section shall not exceed a period equal to the maximum
27 suspension prescribed for the public utility as it is classified in
28 section four-a of this article, according to the number of cus-
29 tomers. The statement of reasons adopted pursuant to section
30 four of this article shall be a sufficient statement of reasons
31 for such further and additional period under this section. Any
32 such order for a further and additional period of suspension
33 shall be effective upon its service upon the utility affected
34 thereby, and may make provision for interim rate relief or
35 may provide only for such rates as have been fully approved
36 previously. At the expiration of any such additional period
37 of suspension, the commission shall authorize rates under
38 bond under the provisions of section four of this article,
39 or shall make a final order: *Provided*, That proceedings in
40 which such further and additional period of suspension have
41 commenced but not expired on the first day of July, one
42 thousand nine hundred eighty-one, shall not be treated as filed
43 anew on the first day of July, one thousand nine hundred
44 eighty-one, pursuant to section four of this article.

CHAPTER 189

(S. B. 226—By Mr. Susman)

[Passed April 8, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section four-b, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to procedures for changing rates of municipally operated public utilities; filing requirements; limited public service commission authority.

Be it enacted by the Legislature of West Virginia:

That section four-b, 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.

§24-2-4b. Procedures for changing rates of municipally operated public utilities.

1 (a) Municipally operated public utilities are not subject to
2 the rate approval provisions of section four or four-a of this
3 article but are subject to the limited rate provisions of this
4 section.

5 (b) All rates and charges set by municipally operated
6 public utilities shall be just, reasonable, applied without
7 unjust discrimination or preference and based primarily on
8 the costs of providing these services. Such rates and charges
9 shall be adopted by municipal ordinance to be effective not
10 sooner than forty-five days after adoption. Such rates and
11 charges shall be filed with the commission together with such
12 information showing the basis of such rates and charges and
13 such other information as the commission considers
14 necessary. Any change in such rates and charges with
15 updated information shall be filed with the commission. If a
16 petition, as set out in subdivision (1), (2) or (3), subsection (c)
17 of this section, is received and the municipality has failed to
18 file with the commission such rates and charges with such
19 information showing the basis of rates and charges and such
20 other information as the commission considers necessary, the
21 suspension period limitation of one hundred twenty days and
22 the one hundred day period limitation for issuance of an
23 order by a hearing examiner, as contained in subsections (d)
24 and (e) of this section, is tolled until the necessary
25 information is filed. The municipality shall set the date when
26 any new rate or charge is to go into effect.

27 (c) The commission shall review and approve or modify
28 such rates upon the filing of a petition within thirty days of
29 the adoption of the ordinance changing said rates or charges
30 by:

31 (1) Any customer aggrieved by the changed rates or
32 charges who presents to the commission a petition signed by

33 not less than twenty-five percent of the customers served by
34 such municipally operated public utility; or

35 (2) Any customer who is served by a municipally operated
36 public utility and who resides outside the corporate limits
37 and who is affected by the change in said rates or charges and
38 who presents to the commission a petition alleging
39 discrimination between customers within and without the
40 municipal boundaries. Said petition shall be accompanied by
41 evidence of discrimination; or

42 (3) Any customer or group of customers who are affected
43 by said change in rates who reside within the municipal
44 boundaries and who present a petition to the commission
45 alleging discrimination between said customer or group of
46 customers and other customers of the municipal utility. Said
47 petition shall be accompanied by evidence of discrimination.

48 (d) (1) The filing of a petition with the commission signed
49 by not less than twenty-five percent of the customers served
50 by the municipally operated public utility under subdivision
51 (1), subsection (c) of this section shall suspend the adoption of
52 the rate change contained in the ordinance for a period of one
53 hundred twenty days from the date said rates or charges
54 would otherwise go into effect, or until an order is issued as
55 provided herein.

56 (2) Upon sufficient showing of discrimination by
57 customers outside the municipal boundaries, or a customer
58 or group of customers within the municipal boundaries,
59 under a petition filed under subdivision (2) or (3), subsection
60 (c) of this section the commission shall suspend the adoption
61 of the rate change contained in the ordinance for a period of
62 one hundred twenty days from the date said rates or charges
63 would otherwise go into effect or until an order is issued as
64 provided herein.

65 (e) The commission shall forthwith appoint a hearing
66 examiner from its staff to review the grievances raised by the
67 petitioners. Said hearing examiner shall conduct a public
68 hearing, and shall within one hundred days from the date, the
69 said rates or charges would otherwise go into effect, unless
70 otherwise tolled as provided in subsection (b) of this section,
71 issue an order approving, disapproving or modifying in whole
72 or in part, the rates or charges contained in the ordinance.

73 (f) Upon receipt of a petition for review of the rates under
74 the provisions of subsection (c)' of this section, the
75 commission may exercise the power granted to it under the
76 provisions of section three of this article. The commission
77 may determine the method by which such rates are reviewed
78 and may grant and conduct a de novo hearing on the matter if
79 the customer or municipality requests such a hearing.

CHAPTER 190

(S. B. 225—By Mr. Susman)

[Passed April 9, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to grant by the public service commission of a certificate of public convenience and necessity; allowing waiver of formal hearing after specified notice; and allowing waiver of the notice requirement before filing for such certificate.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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.

§24-2-11. Requirements for certificate of public convenience and necessity.

1 No public utility, person or corporation shall begin the
2 construction of any plant, equipment, property or facility for
3 furnishing to the public any of the services enumerated in
4 section one, article two of this chapter, nor apply for, nor
5 obtain any franchise, license or permit from any municipality
6 or other governmental agency, except ordinary extensions of
7 existing systems in the usual course of business, unless and
8 until it shall obtain from the public service commission a

9 certificate of public convenience and necessity requiring
10 such construction, franchise, license or permit. Upon the
11 filing of any application for such certificate, and after hearing,
12 the commission may, in its discretion, issue or refuse to issue,
13 or issue in part and refuse in part, such certificate of
14 convenience and necessity: *Provided*, That the commission,
15 after it gives proper notice and if no protest is received within
16 thirty days after the notice is given, may waive formal hearing
17 on the application. Notice shall be given by publication which
18 shall state that a formal hearing may be waived in the absence
19 of protest, made within thirty days, to the application. The
20 notice shall be published as a Class I legal advertisement in
21 compliance with the provisions of article three, chapter
22 fifty-nine of this code. The publication area shall be the
23 proposed area of operation. Any public utility, person or
24 corporation subject to the provisions of this section shall give
25 the commission at least thirty days' notice of the filing of any
26 such application for a certificate of public convenience and
27 necessity under this section: *Provided*, That the commission
28 may modify or waive the thirty-day notice requirement. The
29 commission shall render its final decision on any application
30 filed after the thirtieth day of June, one thousand nine
31 hundred eighty-one, under the provisions of this section or
32 section eleven-a of this article within two hundred seventy
33 days of the filing of the application and within ninety days
34 after final submission of any such application for decision
35 following a hearing: *Provided*, That if the projected total cost
36 of the project is greater than fifty million dollars, the
37 commission shall render its final decision on any such
38 application filed under the provisions of this section or
39 section eleven-a of this article within four hundred days of the
40 filing of the application and within ninety days after final
41 submission of any such application for decision after a
42 hearing. If such decision is not rendered within the
43 aforementioned two hundred seventy days, four hundred
44 days or ninety days, the commission shall issue a certificate of
45 convenience and necessity as applied for in the application.
46 The commission shall prescribe such rules and regulations as
47 it may deem proper for the enforcement of the provisions of
48 this section; and, in establishing that public convenience and
49 necessity do exist, the burden of proof shall be upon the
50 applicant.

CHAPTER 191

(S. B. 571—Originating in the Senate Committee on Finance)

[Passed, April 2, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seven, relating to the authority of the public service commission to buy and hold real estate and undertake the construction or remodeling and furnishing of a building for the headquarters of the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. HEADQUARTERS.

§24-7-1. Legislative findings; commission authorized to acquire headquarters.

§24-7-2. Exclusive authority for purchase of headquarters.

§24-7-3. Management and control of public service commission headquarters building.

§24-7-1. Legislative findings; commission authorized to acquire headquarters.

1 (a) The Legislature hereby finds that the public service
2 commission's present physical facilities impede the efficient
3 operation of the commission in that many offices are severely
4 overcrowded, several divisions are physically isolated from
5 the main offices of the commission at the capitol building,
6 and only one hearing room is available internally. The
7 Legislature further finds that pursuant to section twenty,
8 article one, chapter four of the code of West Virginia, it has
9 assigned and set aside for the exclusive use of the Legislature
10 all of the space on the second floor of the east wing of the
11 capitol building, which location is presently occupied by the
12 public service commission.

13 The Legislature further adopts the recommendation
14 presented to the subcommittee on the public service

15 commission of the joint committee on government and
16 finance in a final report dated February, one thousand nine
17 hundred seventy-nine and entitled "A Plan for Regulatory
18 Reform and Management Improvement" that the public
19 service commission should be authorized to buy or lease
20 suitable office, hearing and other facilities in the Charleston
21 area in order to consolidate its operations, and that existing
22 surplus funds should be used to pay the one-time costs
23 incurred in relocation.

24 (b) Accordingly, the Legislature hereby authorizes and
25 directs the public service commission:

26 (1) To contract to acquire and to acquire, in the name of
27 the commission or of the state, a suitable site in or near the
28 seat of government for a public service commission
29 headquarters building that will consolidate all of its
30 operations, related facilities and grounds, including real
31 property, rights and easements necessary for this purpose, or
32 to use any suitable site which may be owned by the state and
33 available and designated for this purpose and to construct a
34 public service commission headquarters building on such
35 site and equip and furnish said building.

36 (2) To contract to acquire and to acquire and hold, in the
37 name of the commission or of the state, services, materials,
38 furnishings and equipment required in connection with the
39 location, design, construction, furnishing and equipping of
40 the public service commission building.

41 (3) To employ architects to prepare plans for the public
42 service commission headquarters building, to assist and
43 advise the architects in the preparation of those plans and to
44 approve on behalf of the state all plans for the public service
45 commission headquarters building.

46 (4) To make all contracts and execute all instruments
47 necessary or convenient to effectuate the intent of, and to
48 exercise the powers granted to it by the provisions of this
49 article.

50 (5) To supervise generally the location, construction,
51 furnishing and equipping of the public service commission
52 headquarters building.

§24-7-2. Exclusive authority for purchase of headquarters.

1 The authority granted to the public service commission in
2 section one is made notwithstanding other provisions of law
3 relating to the authority of the state of West Virginia, or its
4 agencies, departments, boards and commissions, to contract
5 to acquire and to acquire real property and to hold, improve
6 and dispose of same, including, but not limited to, article five,
7 chapter one, article six, chapter five, and section fifteen,
8 article one, chapter twenty of this code: *Provided*, That
9 nothing in this article shall be construed to grant to the public
10 service commission the power of eminent domain.

§24-7-3. Management and control of public service commission headquarters building.

1 Notwithstanding the provisions of section eleven, article
2 six, chapter five of this code, the commission shall properly
3 maintain, repair, manage, operate and control the public
4 service commission headquarters building, and may make
5 and enter into all contracts or agreements necessary and
6 incidental for the performance of its duties and the execution
7 of its powers under this article.

CHAPTER 192

(S. B. 34—By Mr. Steptoe)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring a fiscal note to accompany proposed rules and regulations filed in the state register, with the governor and the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. RULE MAKING.**§29A-3-7. Filing of proposed rules and regulations; fiscal note required.**

1 (a) If a proposed rule or regulation fixes rules of
2 procedure, practice or evidence for dealings with or
3 proceedings before the agency a copy thereof shall be filed in
4 the state register.

5 (b) All other proposed rules or regulations shall be filed in
6 the state register, with the governor, and with the legislative
7 rule-making committee in accordance with section eleven of
8 this article except as otherwise provided in this chapter.

9 (c) All proposed rules and regulations to be filed under
10 subsections (a) and (b) of this section shall have a fiscal note
11 attached itemizing the costs of implementing the rules and
12 regulations as they relate to this state and to persons affected
13 by the rules and regulations. The objectives of the rules and
14 regulations shall be clearly and separately stated in the fiscal
15 note by the agency issuing the proposed rules and
16 regulations. No rule or regulation shall be void or voidable by
17 virtue of noncompliance with this subsection.

CHAPTER 193

(Com. Sub. for H. B. 1157--By Mr. Speaker, Mr. See)

[Passed April 6, 1981; in effect July 1, 1981. 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 increasing the salaries of certain state appointive 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 con-
2 trary, each of the appointive state officers named in this section
3 shall be appointed by the governor, by and with the advice
4 and consent of the Senate. Each of such appointive state
5 officers shall serve at the will and pleasure of the governor for
6 the term for which the governor was elected and until the
7 respective state officers' successors have been appointed and
8 qualified. Each of such appointive state officers shall here-
9 after be subject to the existing qualifications for holding each
10 such respective office and each shall have and is hereby
11 granted all of the powers and authority and shall perform
12 all of the functions and services heretofore vested in and
13 performed by virtue of existing law respecting each such office.
14 Beginning on the first day of July, one thousand nine hundred
15 eighty-one, the annual salary of each such named appointive
16 state officer shall be as follows:

17 The commissioner of highways, forty-three thousand eight
18 hundred seventy-five dollars; commissioner of finance and
19 administration, forty-two thousand one hundred ninety-two
20 dollars; tax commissioner, forty-three thousand eight hundred
21 seventy-five dollars; director of department of health, fifty
22 thousand six hundred twenty-five dollars; director of the de-
23 partment of natural resources, forty-two thousand one hundred
24 ninety-two dollars; commissioner of the department of welfare,
25 forty-two thousand one hundred ninety-two dollars; superin-
26 tendent of department of public safety, thirty-nine thousand
27 three hundred seventy-five dollars; alcohol beverage control
28 commissioner, thirty-three thousand seven hundred fifty dol-
29 lars; commissioner of banking, thirty-three thousand seven
30 hundred fifty dollars; director of the department of mines,
31 thirty-nine thousand, three hundred seventy-five dollars; state
32 workmen's compensation commissioner, thirty-three thousand
33 seven hundred fifty dollars; director of personnel, civil service
34 commission, thirty-three thousand seven hundred fifty dollars;
35 commissioner of corrections, thirty-three thousand seven
36 hundred fifty dollars; commissioner of culture and history,

37 thirty-three thousand seven hundred fifty dollars; labor com-
38 missioner, thirty-one thousand five hundred dollars; commis-
39 sioner of employment security, thirty-one thousand five
40 hundred dollars; insurance commissioner, thirty-one thousand
41 five hundred dollars, commissioner of motor vehicles, thirty-
42 three thousand seven hundred fifty dollars; adjutant general,
43 thirty-one thousand five hundred dollars; director of emergency
44 services, twenty-eight thousand one hundred twenty-five dol-
45 lars; nonintoxicating beer commissioner, twenty-eight thou-
46 sand one hundred twenty-five dollars; director of veterans af-
47 fairs, twenty-eight thousand one hundred twenty-five dollars;
48 members of the board of review of employment security and
49 members of workmen's compensation appeal board, fifteen
50 thousand seven hundred fifty dollars; and members of the
51 board of probation and parole, twenty-five thousand dollars.

CHAPTER 194

(Com. Sub. for S. B. 606—By Mr. Tomblin)

[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight; to amend article seven, chapter seven of said code by adding thereto a new section, designated section sixteen-a; to amend article five, chapter eight of said code by adding thereto a new section, designated section twelve-a; to amend article two-a, chapter seventeen of said code by adding thereto a new section, designated section eight-c; and to amend and reenact section thirteen, article five, chapter eighteen of said code, all relating to providing that state officials and employees may be granted the use of publicly provided carriage for going from their residences to their workplaces and return; state officials including, but not limited to, the departments of public safety, natural resources, state fire marshal, board of regents, corrections, county sheriffs, deputies, county officials and employees may be granted

the use of publicly provided carriage for going to and from their place of residence to their workplaces and return; municipal officials and employees may be granted the use of publicly provided carriage for going from their residences to their workplaces and return; providing for payment of travel expenses incurred by interviewees for employment by county boards of education; officials and employees of county boards of education may be granted the use of publicly provided carriage for going from their residences, to their workplaces and return; employees of the department of highways may be granted the use of publicly provided carriage for going from their residences to their workplaces and return.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter six 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; that article seven, chapter seven of said code be amended by adding thereto a new section, designated section sixteen-a; that article five, chapter eight of said code be amended by adding thereto a new section, designated section twelve-a; that article two-a, chapter seventeen of said code be amended by adding thereto a new section, designated section eight-c; and that section thirteen, article five, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

6. **General Provisions Respecting Officers.**
7. **County Commissions and Officers.**
8. **Municipal Law, Municipalities and Counties; Intergovernmental Relations.**
17. **Roads and Highways.**
18. **Education.**

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-8. Public carriage for state officials and employees and the state board of regents.

- 1 State law-enforcement officials, including, but not limit-

2 ed to, the director of the department of public safety, the
3 adjutant general of the West Virginia national guard, the
4 director of the office of emergency services, the director
5 of the department of natural resources, the commissioner
6 of the department of corrections, the state fire marshal,
7 state fire administrator and officials of the state board of
8 regents, at the discretion of the chancellor thereof, shall
9 have the authority to use, and permit and allow or dis-
10 allow their designated employees to use, publicly pro-
11 vided carriage to travel from their residences to their
12 workplace and return: *Provided*, That such usage is
13 subject to the supervision of such official and is directly
14 connected with and required by the nature and in the
15 performance of such official's or designated employee's
16 duties and responsibilities.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC., COMPENSATION OF ELECTED COUNTY OF- FICIALS; COUNTY ASSISTANTS, DEPUTIES AND EM- PLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-16a. Public carriage.

1 The sheriff of each county and his deputies who are
2 engaged in law-enforcement activities may, in the dis-
3 cretion of the sheriff, use publicly provided carriage to
4 travel from his residence to his workplace and return.
5 Any other county official or employee may, or may not, in
6 the discretion of the county commission, be furnished
7 with the use of publicly provided carriage to travel from
8 his residence to his workplace and return: *Provided*, That
9 such usage is subject to the supervision of said sheriff or
10 commission and is directly connected with and required
11 by the nature and in the performance of such sheriff's,
12 deputy's, county official or employee's duties and respon-
13 sibilities.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-12a. Public carriage for officers and employees.

1 Any municipal officer or employee may, or may not, in
2 the discretion of the city manager, mayor or the govern-
3 ing body, be furnished with the use of publicly provided
4 carriage to travel from his residence to his workplace and
5 return: *Provided*, That such usage is subject to the super-
6 vision of such city manager, mayor or governing body
7 and is directly connected with and required by the nature
8 and in the performance of such officer's or employee's
9 duties and responsibilities.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-8c. Use of public carriage for designated employees.

1 In addition to the other powers given and assigned to
2 him in this chapter, the commissioner of highways shall
3 have authority to use, and permit and allow or disallow
4 his designated employees to use, publicly provided car-
5 riage to travel from their residences to their workplace
6 and return. *Provided*, That such usage is subject to the
7 supervision of such official and is directly connected with
8 and required by the nature and in the performance of
9 such official's or designated employee's duties and respon-
10 sibilities.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

1 The boards, subject to the provisions of this chapter
2 and the rules and regulations of the state board, shall
3 have authority:

4 (1) To control and manage all of the schools and school
5 interests for all school activities and upon all school prop-
6 erty, whether owned or leased by the county, including
7 the authority to require that records be kept of all re-
8 cepts and disbursements of all funds collected or received
9 by any principal, teacher, student or other person in con-
10 nection therewith, any programs, activities or other en-
11 deavors of any nature operated or carried on by or in the
12 name of the school, or any organization or body directly
13 connected with the school, to audit such records and to
14 conserve such funds, which shall be deemed quasi-public
15 moneys, including securing surety bonds by expenditure
16 of board moneys;

17 (2) To establish schools, from preschool through high
18 school, inclusive of vocational schools; and to establish
19 schools and programs, or both, for post high school in-
20 struction, subject to approval of the state board of edu-
21 cation;

22 (3) To close any school which is unnecessary and to
23 assign the pupils thereof to other schools: *Provided*, That
24 such closing shall be officially acted upon and teachers
25 and service personnel involved notified on or before the
26 first Monday in May, in the same manner as provided in
27 section four of this article, except in an emergency, sub-
28 ject to the approval of the state superintendent, or under
29 subdivision (5) of this section;

30 (4) To consolidate schools;

31 (5) To close any elementary school whose average
32 daily attendance falls below twenty pupils for two months
33 in succession and send the pupils to other schools in the
34 district or to schools in adjoining districts. If the teachers
35 in the school so closed are not transferred or reassigned
36 to other schools, they shall receive one month's salary;

37 (6) (a) To provide at public expense adequate means of
38 transportation, including transportation across county
39 lines, for all children of school age who live more than
40 two miles distance from school by the nearest available
41 road; to provide at public expense and according to such

42 regulations as the board may establish, adequate means
43 of transportation for school children participating in
44 board-approved curricular and extracurricular activities;
45 and to provide in addition thereto, at public expense, by
46 rules and regulations and within the available revenues,
47 transportation for those within two miles distance; to
48 provide in addition thereto, at no cost to the board and
49 according to rules and regulations established by the
50 board, transportation for participants in projects oper-
51 ated, financed, sponsored or approved by the commission
52 on aging: *Provided*, That all costs and expenses incident
53 in any way to transportation for projects connected with
54 the commission on aging shall be borne by such commis-
55 sion, or the local or county chapter thereof: *Provided*,
56 *however*, That in all cases the buses or other transporta-
57 tion facilities owned by the board of education shall be
58 driven or operated only by drivers regularly employed by
59 the board of education: *Provided further*, That buses shall
60 be used for extracurricular activities as herein provided
61 only when the insurance provided for by this section
62 shall have been effected;

63 (b) To enter into agreements with one another to pro-
64 vide, on a cooperative basis, adequate means of transpor-
65 tation across county lines for children of school age sub-
66 ject to the conditions and restrictions of subdivisions (6)
67 and (7) of this section;

68 (7) To provide at public expense for insurance against
69 the negligence of the drivers of school buses, trucks or
70 other vehicles operated by the board; and if the trans-
71 portation of pupils be contracted, then the contract there-
72 for shall provide that the contractor shall carry insurance
73 against negligence in such an amount as the board shall
74 specify;

75 (8) To provide solely from county funds for all regular
76 full-time employees of the board all or any part of the
77 cost of a group plan or plans of insurance coverage not
78 provided or available under the West Virginia public
79 employees insurance act;

80 (9) To employ and to provide in-service training for

81 teacher aides, the training to be in accordance with rules
82 and regulations of the state board;

83 (10) To establish and conduct a self-supporting dormi-
84 tory for the accommodation of the pupils attending a high
85 school or participating in a post high school program and
86 of persons employed to teach therein;

87 (11) To employ legal counsel;

88 (12) To provide appropriate uniforms for school service
89 personnel;

90 (13) To provide at public expense and under regula-
91 tions as established by any county board of education for
92 the payment of traveling expenses incurred by any per-
93 son invited to appear to be interviewed concerning pos-
94 sible employment by such county board of education;

95 (14) To allow or disallow their designated employees
96 to use publicly provided carriage to travel from their
97 residences to their workplace and return: *Provided*, That
98 such usage is subject to the supervision of such board and
99 is directly connected with and required by the nature and
100 in the performance of such employee's duties and respon-
101 sibilities; and

102 (15) To provide, at public expense, adequate public
103 liability insurance, including professional liability insur-
104 ance for board employees.

105 No policy or contract of public liability insurance pro-
106 viding coverage for public liability shall be purchased as
107 provided herein, unless it shall contain a provision or
108 endorsement whereby the company issuing such policy
109 waives, or agrees not to assert as a defense to any claim
110 covered by the terms of such policy, the defense of gov-
111 ernmental immunity. In any action against the board,
112 its officers, agents or employees, in which there is in effect
113 liability insurance coverage in an amount equal to or
114 greater than the amount sued for, the attorney for such
115 board, the attorney for such insurance carrier, or any
116 other attorney who may appear on behalf of the board,

117 its agents, officers or employees shall not set up the de-
118 fense of governmental immunity in any such action.

119 "Quasi-public funds" as used herein means any money
120 received by any principal, teacher, student or other person
121 for the benefit of the school system as a result of curric-
122 ular or noncurricular activities.

123 The board of each county shall expend under such regu-
124 lations as it establishes for each child an amount not to
125 exceed the proportion of all school funds of the district
126 that each child would be entitled to receive if all the
127 funds were distributed equally among all the children of
128 school age in the district upon a per capita basis.

CHAPTER 195

(S. B. 279—By Mr. Ash and Mr. Gilligan)

[Passed April 10, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding additional agencies to be terminated and rescheduling agencies scheduled for termination on the first day of July, one thousand nine hundred eighty-one.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs shall be
2 terminated on the date indicated but no governmental entity
3 or program shall be terminated under this article unless a
4 performance audit has been conducted of such entity or
5 program, except as authorized under section fourteen of this
6 article:

7 (1) On the first day of July, one thousand nine hundred
8 eighty-one: Judicial council of West Virginia; geological and
9 economic survey commission; motor vehicle certificate
10 appeal board; child welfare licensing board.

11 (2) On the first day of July, one thousand nine hundred
12 eighty-two: Ohio River basin commission; Ohio River valley
13 water sanitation commission; commission on postmortem
14 examination; state commission on manpower, training and
15 technology; southern regional education board; department
16 of corrections.

17 (3) On the first day of July, one thousand nine hundred
18 eighty-three: Office of the workmen's compensation
19 commissioner; state building commission; anatomical board;
20 reclamation commission; economic opportunity advisory
21 commission; community development authority board.

22 (4) On the first day of July, one thousand nine hundred
23 eighty-four: The following divisions of the programs of the
24 department of agriculture: Soil conservation committee, rural
25 resource division, meat inspection; and the following
26 divisions of programs of the department of natural resources:
27 Water resources, U. S. geological survey, rabies control, work
28 incentive program; West Virginia alcoholic beverage control
29 licensing advisory board; driver's licensing advisory board;
30 oil and gas inspectors' examining board; women's
31 commission.

32 (5) On the first day of July, one thousand nine hundred
33 eighty-five: Department of welfare; beautification
34 commission; labor management advisory council;
35 employment security advisory council; oil and gas
36 conservation commission.

37 (6) On the first day of July, one thousand nine hundred
38 eighty-six: Division of archives and history; state board of
39 insurance; interstate commission on the Potomac River
40 basin; public service commission; health resources advisory
41 council; welfare advisory council; board of banking and
42 financial institutions: *Provided*, That in the case of the public
43 service commission, the study by the committee required by
44 this article shall be completed on or before the first day of
45 July, one thousand nine hundred eighty-five, and shall be by
46 such date transmitted to the joint committee on government

47 and finance for review by the joint committee or its
48 subcommittee designated pursuant to section one, article
49 one, chapter twenty-four of this code for review, examination
50 and study of the operations of the public service commission.

51 (7) On the first day of July, one thousand nine hundred
52 eighty-seven: The geological and economic survey; the
53 commission on uniform state laws; department of labor; civil
54 service commission advisory board; council of finance and
55 administration; motorcycle safety standards and
56 specifications board.

57 (8) On the first day of July, one thousand nine hundred
58 eighty-eight: Information system advisory commission;
59 veteran's council; labor management relations board; board
60 of investments; records management and preservation
61 advisory committee; minimum wage rate board.

62 (9) On the first day of July, one thousand nine hundred
63 eighty-nine: Mental retardation advisory committee;
64 interagency committee on pesticides; commission on
65 charitable organizations; board of school finance; veteran's
66 affairs advisory council; emergency medical services
67 advisory council; pesticides board of review.

68 (10) On the first day of July, one thousand nine hundred
69 ninety: Consumer affairs advisory council; savings and loan
70 association; forest industries industrial foundation.

CHAPTER 196

(S. B. 102—By Mr. Galperin and Mr. Huffman)

[Passed March 25, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to reestablishing the commission on uniform state laws until the first day of July, one thousand nine hundred eighty-seven.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. COMMISSION ON UNIFORM STATE LAWS.

§29-1A-5. Reestablishment of commission.

1 After having conducted a performance and fiscal audit
2 through its joint committee on government operations,
3 pursuant to section nine, article ten, chapter four of this code,
4 the Legislature hereby finds and declares that the
5 commission on uniform state laws should be continued and
6 reestablished. Accordingly, notwithstanding the provisions
7 of section four, article ten, chapter four of this code, the
8 commission on uniform state laws shall continue to exist
9 until the first day of July, one thousand nine hundred
10 eighty-seven.

CHAPTER 197

(S. B. 670—By Mr. McGraw, Mr. President, and Mr. Williams)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to repeal section twenty-one, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter eleven by adding thereto a new article, designated article six-b, all relating generally to the ad valorem property tax homestead exemption; defining terms; providing for allowance of exemption to persons age sixty-five or older or who are permanently and totally disabled; requiring the filing of claim for exemption and annual certification of permanent and total disability; providing for waiver of exemption for failure to timely file; providing procedures for review of claims and for determination and payment of reimbursements; creating the homestead property tax exemption fund; providing for criminal penalties, severability and effective date.

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 repealed; and that said chapter eleven be amended by adding thereto a new article, designated article six-b, all to read as follows:

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

- §11-6B-1. Purpose.
- §11-6B-2. Definitions.
- §11-6B-3. Ten thousand dollar homestead exemption allowed.
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- §11-6B-9. Forms, instructions and regulations.
- §11-6B-10. Criminal penalties.
- §11-6B-11. Severability.
- §11-6B-12. Effective date.

§11-6B-1. Purpose.

- 1 This article is enacted to implement the amendment to
- 2 article X, section one-b of the constitution increasing the ad
- 3 valorem property tax homestead exemption, which was
- 4 ratified by the people at the general election held on the
- 5 fourth day of November, one thousand nine hundred eighty.

§11-6B-2. Definitions.

- 1 For purposes of this article, the term:
- 2 (1) "Assessed value" means the value of property as
- 3 determined under article three of this chapter.
- 4 (2) "Claimant" means a person who is age sixty-five or
- 5 older or who is certified as being permanently and totally
- 6 disabled, and who owns a homestead that is used and
- 7 occupied by the owner thereof exclusively for residential
- 8 purposes.
- 9 (3) "Homestead" means a single family residential house,
- 10 including a modular home, and the land surrounding such
- 11 structure; or a mobile home regardless of whether the land
- 12 upon which such mobile home is situated is owned or leased.
- 13 (4) "Owner" means the person who is possessed of the

14 homestead, whether in fee or for life. A person seized or
15 entitled in fee subject to a mortgage or deed of trust securing
16 a debt or liability shall be deemed the owner until the
17 mortgagee or trustee takes possession, after which such
18 mortgagee or trustee shall be deemed the owner. A person
19 who has an equitable estate of freehold, or is a purchaser of a
20 freehold estate who is in possession before transfer of legal
21 title shall also be deemed the owner. Personal property
22 mortgaged or pledged shall, for the purpose of taxation, be
23 deemed the property of the party in possession.

24 (5) "Permanently and totally disabled" means a person
25 who is unable to engage in any substantial gainful activity by
26 reason of any medically determinable physical or mental
27 condition which can be expected to result in death or which
28 has lasted or can be expected to last for a continuous period
29 of not less than twelve months.

30 (6) "Sixty-five years of age or older" includes a person
31 who attains the age of sixty-five on or before the thirtieth day
32 of June following the July first assessment date.

33 (7) "Used and occupied exclusively for residential
34 purposes" means that the property is used as an abode,
35 dwelling or habitat for more than one half of the year by the
36 owner and that the property is used only as an abode,
37 dwelling or habitat to the exclusion of any commercial use.

38 (8) "Tax year" means the calendar year following the July
39 first assessment day.

§11-6B-3. Ten thousand dollar homestead exemption allowed.

1 (a) *General.*—An exemption from ad valorem property
2 taxes shall be allowed for the first ten thousand dollars of
3 assessed value of a homestead that is used and occupied by
4 the owner thereof exclusively for residential purposes, when
5 such owner is sixty-five years of age or older or is certified as
6 being permanently and totally disabled. Only one exemption
7 shall be allowed for each homestead used and occupied
8 exclusively for residential purposes by the owner thereof,
9 regardless of the number of qualified owners residing therein.

10 (b) *Attachment of exemption.*—This exemption shall
11 attach to the homestead occupied by the qualified owner on
12 the July first assessment date and shall be applicable to taxes

13 for the following tax year. An exemption shall not be
14 transferred to another homestead until the following July
15 first. If the homestead of an owner qualified under this article
16 is transferred by deed, will or otherwise, the ten thousand
17 dollar exemption shall be removed from the property on the
18 next July first assessment date unless the new owner
19 qualifies for the exemption.

§11-6B-4. Claim for exemption; renewals; waiver of exemption.

1 (a) *General.*—No exemption shall be allowed under this
2 article unless a claim of exemption is filed with the assessor
3 of the county in which the homestead is located, on or before
4 the first day of October following the July first assessment
5 day. In the case of sickness, absence or other disability of the
6 claimant, the claim may be filed by the claimant or his duly
7 authorized agent.

8 (b) *Certification of disability.*—Any doctor of osteopathy
9 or doctor of medicine licensed to practice medicine and
10 surgery is a proper authority to certify that an individual is
11 permanently and totally disabled. A written certification
12 signed by a licensed doctor must accompany each claim for
13 exemption that is based on the permanent and total disability
14 of the claimant.

15 (c) *Renewals.*

16 (1) *Senior citizens.*—If the claimant is age sixty-five or
17 older, then after the claimant has filed for the exemption once
18 with his assessor, there shall be no need for that claimant to
19 refile unless the claimant moves to a new homestead.

20 (2) *Disabled.*—If the claimant is permanently and totally
21 disabled, then after the claimant has filed for the exemption
22 once with his assessor, entitlement to the exemption shall be
23 maintained by annually filing, between July first and October
24 first of each year, a certification of continued permanent and
25 total disability.

26 (3) *Waiver of exemption.*—Any person not filing his claim
27 for exemption or certification of continued permanent and
28 total disability with the assessor of his county on or before the
29 first day of October shall be deemed to have waived his right
30 to exemption for the next tax year.

§11-6B-5. Determination; notice of denial of claim.

1 The assessor shall as soon as practicable after a claim for
2 exemption is filed or a certification of continued permanent
3 and total disability is filed, review that claim or certificate and
4 either approve or deny it. If the exemption is denied, the
5 assessor shall promptly, but not later than the first day of
6 November, serve the claimant with written notice explaining
7 why the exemption was denied, and furnish a form for filing
8 with the county commission should the claimant desire to
9 take an appeal. This notice shall be served on the claimant or
10 his authorized representative either by personal service or by
11 certified mail.

§11-6B-6. Appeals procedure.

1 (a) *Notice of appeal; thirty days.*—Any claimant aggrieved
2 by the denial of his claim for exemption, may appeal to the
3 county commission, within thirty days after receipt of written
4 notice explaining why the exemption was denied.

5 (b) *Review; determination; appeal.*—The county
6 commission shall complete its review and issue its
7 determination within sixty days after receipt of the notice of
8 appeal from the claimant. In conducting its review, the
9 county commission may hold a hearing on the claim. The
10 assessor or the claimant may apply to the circuit court of the
11 county for review of the determination of the county
12 commission in the same manner as is provided for appeals
13 from the county commission in section twenty-five, article
14 three of this chapter.

§11-6B-7. Property tax books.

1 (a) *Property book entry.*—The exemption of the first ten
2 thousand dollars of assessed value shall be shown on the
3 property books as a deduction from the total assessed value
4 of the homestead.

5 (b) *Levy; statement to homestead owner.*—When the ten
6 thousand dollar exemption is greater than the total assessed
7 value of the eligible homestead, no taxes shall be levied. The
8 sheriff shall issue a statement to the owner showing that no
9 taxes are due.

§11-6B-8. State reimbursement of localities.

1 (a) *Annual appropriation.*—The Legislature shall
2 annually appropriate to the homestead property tax
3 exemption fund, general revenues of sufficient amount to
4 reimburse local levying bodies for the amount of ad valorem
5 property tax revenues lost by reason of the increase in the
6 homestead property tax exemption: *Provided*, That no
7 reimbursement shall be made for the amount of ad valorem
8 property tax revenues lost by reason of the exemption of the
9 first five thousand dollars of assessed value of real property
10 owned and occupied by a person who is age sixty-five or
11 older.

12 (b) *Report of assessor.*—On or before the first day of
13 November following the July first assessment day, the
14 assessor of each county shall forward to the tax commissioner
15 a written report showing the assessed value of property
16 eligible for the homestead exemption, the amount of such
17 assessed value exempt from ad valorem property taxes
18 because of the homestead exemption, the estimated loss in
19 revenue to each levying body in his county because of the
20 homestead exemption, the portion of such estimated loss
21 eligible for reimbursement by the state and such other
22 information as the tax commissioner may require. A copy of
23 this report, or the pertinent portions thereof, shall also be
24 filed with each levying body in his county.

25 (c) *Request for appropriation.*—On or before the last day
26 of November following the July first assessment day, the tax
27 commissioner shall submit to the commissioner of finance
28 and administration a request for appropriations to the
29 homestead property tax exemption fund to reimburse local
30 levying bodies for the amount of ad valorem property tax
31 revenues lost due to the increase in the homestead property
32 tax exemption.

33 (d) *Homestead property tax exemption fund.*—In order to
34 provide the reimbursement to local levying bodies as
35 required by this article, there is hereby created in the state
36 treasurer's office a special fund to be known as the
37 "homestead property tax exemption fund." The moneys in
38 such fund shall be paid to the county sheriff as agent for the
39 local levying bodies between the first and thirty-first day of

40 January of each calendar year to reimburse them for the
41 amount of tax revenue lost during the preceding calendar
42 year by reason of the homestead tax exemption increase.

43 (e) *Local levying bodies; account receivable.*—Each local
44 levying body shall on the first day of July of each fiscal year
45 establish and show as a revenue receivable the amount of
46 revenue lost by reason of the homestead property tax
47 exemption increase and for which they will be reimbursed by
48 the state in the subsequent calendar year.

49 (f) *Request for payment; sheriff.*—The sheriff of each
50 county shall in August of each year send the tax
51 commissioner a request for payment of the amount of ad
52 valorem property tax revenue lost by the local governmental
53 units in his county due to the homestead tax exemption
54 increase. In January of each year and after review and
55 approval by him, the tax commissioner shall issue his
56 requisition for the amount payable and the auditor shall issue
57 his warrant on the treasurer. The treasurer shall pay the
58 warrant out of the “homestead property tax exemption fund.”

§11-6B-9. Forms, instructions and regulations.

1 The tax commissioner shall prescribe and supply all
2 necessary instructions and forms for administration of this
3 article. Additionally, the tax commissioner may make all
4 necessary rules and regulations for this article as provided in
5 the state administrative procedure act in chapter
6 twenty-nine-a of this code.

§11-6B-10. Criminal penalties.

1 (a) *False or fraudulent claim for exemption.*—Any
2 claimant who willfully files a fraudulent claim for exemption,
3 and any person who knowingly assisted in the preparation or
4 filing of such fraudulent claim for exemption or who
5 knowingly supplied information upon which the fraudulent
6 claim was prepared or allowed, shall be guilty of a
7 misdemeanor, and, upon conviction thereof, shall be fined
8 not less than fifty nor more than one hundred and fifty
9 dollars, or imprisoned in the county jail for not more than six
10 months, or both fined and imprisoned.

11 (b) *Fraudulent assessments.*—(1) An assessor or
12 employee of a county who, with intent to defraud the state,

13 assesses the value of the eligible claimant's homestead for an
14 amount which is in excess of its true and actual value or is in
15 excess of the assessed value of similar property in his county,
16 in order to increase the cost of the homestead exemption to
17 his county and to thereby secure a larger reimbursement
18 from the state, shall be guilty of a misdemeanor, and, upon
19 conviction thereof, shall be fined not less than one hundred
20 dollars nor more than five hundred dollars, or imprisoned in
21 the county jail for not more than one year, or both fined and
22 imprisoned. Each violation of this subsection shall constitute
23 a separate offense.

24 (2) An assessor or employee of a county who, with intent
25 to defraud a claimant, assesses the value of the eligible
26 claimant's homestead for an amount which is in excess of its
27 true and actual value or is in excess of the assessed value of
28 similar property in his county, shall be guilty of a
29 misdemeanor, and, upon conviction thereof, shall be fined
30 not less than one hundred dollars nor more than five hundred
31 dollars, or imprisoned in the county jail for not more than one
32 year, or both fined and imprisoned. Each violation of this
33 subsection shall constitute a separate offense.

34 (c) *Failure to notify assessor.*—A claimant or his legal
35 representative, who prior to the next first day of July, fails to
36 notify the assessor of the county wherein property subject to
37 the homestead property tax exemption is located, that title to
38 that property or a portion thereof was transferred by deed,
39 grant, sale, gift, will or by the laws of this state regulating
40 descent and distribution or that the property is no longer
41 used and occupied for residential purposes exclusively by the
42 claimant, shall be guilty of a misdemeanor, and, upon
43 conviction, shall be fined not more than one thousand dollars
44 or imprisoned for not more than one year or both.

§11-6B-11. Severability.

1 If any provision of this article or the application thereof to
2 any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not affect,
4 impair or invalidate other provisions or applications of the
5 article, and to this end the provisions of this article are
6 declared to be severable.

§11-6B-12. Effective date.

- 1 The provisions of this article shall take effect on the first
- 2 day of July, one thousand nine hundred eighty-one.

CHAPTER 198

(H. B. 1109—By Mr. Teets and Mr. Shiflet)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section five, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing criteria for the determination of the market value of certain property for inheritance tax purposes.

Be it enacted by the Legislature of West Virginia:

That section five, article eleven, 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 11. INHERITANCE AND TRANSFER TAXES.**§11-11-5. Determination of market value.**

- 1 The market value of property is its actual market value
- 2 after deducting debts and encumbrances for which the same
- 3 is liable, and to the payment of which it shall actually be
- 4 subjected, except that the market value of all property
- 5 owned, used and occupied by the decedent at the time of his
- 6 death exclusively for residential purposes shall be arrived
- 7 at by giving primary, but not exclusive, consideration to
- 8 the fair and reasonable amount of income which the same
- 9 might be expected to earn, under normal conditions in the
- 10 locality wherein situated, if rented: *Provided*, That the market
- 11 value of all farms used, occupied and cultivated by decedents
- 12 at the time of their death or bona fide tenants shall be
- 13 arrived at according to the fair and reasonable value of the
- 14 property for the purpose for which it is actually used regard-

15 less of what the value of the property would be if used for
16 some other purpose and that the market value shall be
17 arrived at by giving consideration to the fair and reasonable
18 income which the same might be expected to earn under
19 normal conditions in the locality wherein situated, if rented.
20 In fixing such market value, allowances shall not be made
21 for debts incurred by the decedent, or encumbrances made
22 by him, unless such debts or encumbrances were incurred
23 or created in good faith for an adequate consideration, nor
24 for any debt in respect whereof there is a right to reimburse-
25 ment from any other estate or person, unless such reimburse-
26 ment from any other estate or person cannot be obtained.

27 For the purpose of the tax there shall be deducted from
28 the market value of the property transferred the value at
29 which it was assessed for any inheritance or transfer tax paid
30 to the state of West Virginia upon a transfer to the decedent
31 at any time within three years prior to the death of the
32 decedent. That part of the value of property which was
33 allowed as an exemption and upon which the tax was not
34 actually measured and paid shall not be deducted as pre-
35 viously taxed property. This paragraph shall apply only to
36 transferees designated in subdivisions (a) and (b), section
37 two of this article.

CHAPTER 199

H. B. 1794—By Mr. Swann)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hearings and appeals when a business franchise registration certificate is canceled, not issued or not renewed.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article twelve, 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 12. BUSINESS FRANCHISE REGISTRATION TAX.

§11-12-14. Hearing; appeal.

1 Any person adversely affected by refusal of the tax com-
2 missioner, or his representative, to issue a business franchise
3 registration certificate or to renew this certificate may request
4 a hearing before the tax commissioner, or his examiner, if
5 such request is made within sixty days from receipt of written
6 notice of the refusal.

7 The hearing provided for in this section and section five
8 of this article shall be held as provided in section nine, article
9 ten of this chapter and the taxpayer may take an appeal as
10 provided in section ten of said article ten.

CHAPTER 200

(H. B. 1236—By Mr. Speaker, Mr. See)

[Passed March 31, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-d; to amend said chapter eleven by adding thereto a new article, designated article thirteen-d; and to amend and reenact section eight, article twenty-one and section nine, article twenty-four of said chapter eleven, all relating generally to the credit against business and occupation taxes for eligible investment in existing industrial facilities for the purpose of their revitalization; providing for regulations; stating legislative findings and purpose; defining terms; allowing credit to eligible industrial taxpayers for revitalization of existing industrial facilities; defining eligible investment for industrial revitalization; providing for forfeiture and recapture of credit; and providing that the business and occupation tax credit allowed under the per-

sonal income tax and the corporation net income tax shall not be reduced by the tax credit for industrial revitalization.

Be it enacted by the Legislature of West Virginia:

1 That article thirteen, chapter eleven of the code of West
2 Virginia, one thousand nine hundred thirty-one, as amended,
3 be amended by adding thereto a new section, designated
4 section three-d; that said chapter eleven be amended by adding
5 thereto a new article, designated article thirteen-d; and that
6 section eight, article twenty-one and section nine, article
7 twenty-four of said chapter eleven be amended and reenacted,
8 all to read as follows:

Article

13. Business and Occupation Tax.

13D. Business and Occupation Tax Credit For Industrial Revitalization.

21. Personal Income Tax.

24. Corporation Net Income Tax.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3d. Tax credit for industrial revitalization.

1 (1) There shall be allowed as a credit against the tax
2 imposed by this article, the amount determined under article
3 thirteen-d of this chapter, relating to tax credit for industrial
4 revitalization.

5 (2) The tax commissioner shall prescribe such regula-
6 tions as may be necessary to carry out the purposes of this
7 section and article thirteen-d of this chapter.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL REVITALIZATION.

§11-13D-1. Legislative finding and purpose.

§11-13D-2. Definitions.

§11-13D-3. Amount of credit allowed for industrial revitalization.

§11-13D-4. Eligible investment.

§11-13D-5. Forfeiture of unused tax credits, redetermination of credit allowed.

§11-13D-6. Transfer of eligible investment to successors.

§11-13D-1. Legislative finding and purpose.

1 The Legislature finds that the encouragement of growth
2 and revitalization of existing industrial facilities in this

3 state is in the public interest and promotes the general
4 welfare of the people of this state. In order to encourage capi-
5 tal investment in this state and thereby increase employment
6 and economic development, there is hereby provided a busi-
7 ness and occupation tax credit for industrial revitalization.

§11-13D-2. Definitions.

1 (a) Any term used in this article shall have the same mean-
2 ing as when used in a comparable context in article thirteen
3 of this chapter, unless a different meaning is clearly required
4 by the context of its use or by definition in this article.

5 (b) For purpose of this article, the term:

6 (1) "Eligible industrial taxpayer" means an industrial tax-
7 payer who purchases new property for the purpose of indus-
8 trial revitalization of an industrial facility located in this state
9 on the first day of July, one thousand nine hundred eighty-one.

10 (2) "Industrial business" means any privilege taxable under
11 section two-b, article thirteen of this chapter and includes a
12 manufacturing service taxable under section two-h of said
13 article.

14 (3) "Industrial facility" means any factory, mill, plant, re-
15 finery, warehouse, buildings or complex of buildings located
16 within this state on the first day of July, one thousand nine
17 hundred eighty-one, including the land on which it is located,
18 and all machinery, equipment and other real and tangible per-
19 sonal property located at or within such facility used in con-
20 nection with the operation of such facility in an industrial
21 business.

22 (4) "Industrial revitalization" means capital investment in
23 an industrial facility located in this state on the first day of
24 July, one thousand nine hundred eighty-one, to replace or
25 modernize buildings, equipment, machinery and other tangible
26 personal property used in connection with the operation of
27 such facility in an industrial business of the taxpayer, including
28 the acquisition of any real property necessary to the industrial
29 revitalization.

30 (5) "Industrial taxpayer" means any person liable for busi-

31 ness and occupation tax under article thirteen of this chapter,
32 exercising any privilege taxable under section two-b of said
33 article thirteen or providing a manufacturing service taxable
34 under section two-h of said article thirteen.

35 (6) "Manufacturing service" means a privilege that would
36 be taxable under section two-b, article thirteen of this chap-
37 ter, if title to the raw materials used in the manufacturing pro-
38 cess was vested in the taxpayer exercising the privilege tax-
39 able under section two-h of said article thirteen.

40 (7) "Property purchased for industrial revitalization" means
41 real property and improvements thereto and new tangible per-
42 sonal property, but only if such property is constructed or
43 purchased for use as a component part of an ongoing indus-
44 trial facility located within this state on the first day of July,
45 one thousand nine hundred eighty-one. This term includes only
46 tangible personal property with respect to which depreciation,
47 or amortization in lieu of depreciation, is allowable in deter-
48 mining the personal income tax or corporation net income tax
49 due under article twenty-one or twenty-four of this chapter,
50 and has a useful life at the time the property is placed in
51 service or use in this state of four years or more. Property
52 acquired by lease for a term of ten years or longer if used as a
53 component part of an industrial revitalization, shall be in-
54 cluded within this definition. "Property purchased for in-
55 dustrial revitalization" shall not include:

56 (A) Property which qualifies or was qualified for credit
57 under article thirteen-c of this chapter;

58 (B) Repair costs including materials used in making the
59 repair;

60 (C) Motor vehicles licensed by the department of motor
61 vehicles;

62 (D) Airplanes;

63 (E) Off premise transportation equipment;

64 (F) Property which is primarily used outside this state;

65 (G) Property purchased prior to the first day of July, one

66 thousand nine hundred eighty-one. Property shall be deemed
67 to have been purchased prior to said date only if:

68 (i) The physical construction, reconstruction or erec-
69 tion of the property was begun prior to said first day of July,
70 or such property was constructed, reconstructed, erected or
71 acquired pursuant to a written contract existing on or before
72 the thirtieth day of June, one thousand nine hundred eighty-
73 one, and limited to the provision of such contract as of such
74 date, binding on the taxpayer;

75 (ii) The machinery or equipment was owned by the tax-
76 payer on or before the thirtieth day of June, one thousand
77 nine hundred eighty-one, or was acquired by the taxpayer
78 pursuant to a binding purchase contract which was in effect on
79 such date;

80 (iii) In the case of leased property, there was a binding lease
81 or contract to lease identifiable equipment in effect on or be-
82 fore the thirtieth day of June, one thousand nine hundred
83 eighty-one;

84 (H) Property which is acquired incident to the purchase of
85 the stock or assets of an industrial taxpayer which property
86 was or had been used by the seller in his industrial business in
87 this state, or which property was previously designated "prop-
88 erty purchased for industrial expansion" under article thirteen-
89 c of this chapter and used to qualify for the tax credit provided
90 by that article.

§11-13D-3. Amount of credit allowed for industrial revitalization.

1 There shall be allowed to eligible industrial taxpayers a
2 credit against the business and occupation taxes imposed
3 by article thirteen of this chapter, for industrial revitali-
4 zation. The amount of this credit shall be equal to ten
5 percent of the cost of eligible investment made for industrial
6 revitalization and shall reduce the business and occupation
7 tax imposed under sections two-b and two-h, article thirteen
8 of this chapter, subject to the following conditions and limita-
9 tions:

10 (1) The allowable credit shall be applied over a ten-year
11 period at the rate of one tenth of the amount thereof per

12 taxable year, beginning with the taxable year in which the
13 eligible investment is first placed in service or use in this
14 state.

15 (2) The amount of annual credit allowed shall not reduce
16 the business and occupation taxes imposed on the business
17 of manufacturing, compounding or preparing for sale under
18 section two-b, article thirteen of this chapter, and on the
19 providing of a manufacturing service under section two-h,
20 article thirteen of this chapter, below fifty percent of the
21 amount which would be imposed for the taxable year in the
22 absence of the annual exemption allowed by section three,
23 article thirteen of this chapter.

24 (3) When in any taxable year the eligible industrial tax-
25 payer is entitled to claim credit under both this article and
26 article thirteen-c of this chapter, the total amount of credits
27 allowed shall not exceed the fifty percent rule outlined in sub-
28 division (2) of this section.

29 (4) No carryover to a subsequent tax year or carryback
30 to a prior tax year shall be allowed for the amount of any
31 unused portion of the credit allowed under this article for the
32 taxable year. Any unused credit shall be forfeited.

33 (5) No credit shall be allowed under this article for any
34 property purchased for industrial revitalization prior to the
35 first day of July, one thousand nine hundred eighty-one.

§11-13D-4. Eligible investment.

1 (a) *General.*—The eligible investment in property pur-
2 chased for industrial revitalization shall be the applicable
3 percentage of the cost of each property purchased for the
4 purpose of industrial revitalization which is placed in service
5 or use in this state by the industrial taxpayer during the tax-
6 able year.

7 (b) *Applicable percentage.*—For the purpose of subsec-
8 tion (a), the applicable percentage for any property shall be
9 determined under the following table:

10 If useful life is—The applicable percentage is—

11	4 years or more but less than	
12	6 years	33 1/3
13	6 years or more but less than	
14	8 years	66 2/3
15	8 years or more	100

16 The useful life of any property for purposes of this section
 17 shall be determined as of the date such property is first
 18 placed in service or use in this state by the taxpayer.

19 (c) *Cost*.—For purposes of subsection (a), the cost of
 20 each property purchased for industrial revitalization shall be
 21 determined under the following rules:

22 (1) *Trade-ins*.—Cost shall not include the value of any
 23 property given in trade or exchange for the property pur-
 24 chased for industrial revitalization.

25 (2) *Damaged, destroyed or stolen property*.—If property
 26 is damaged or destroyed by fire, flood, storm or other casualty
 27 or is stolen, then the cost of replacement property shall not
 28 include any insurance proceeds received in compensation for
 29 the loss.

30 (3) *Rental property*.—The cost of property acquired by
 31 lease for a term of ten years or longer shall be one hundred
 32 percent of the rent reserved for the primary term of the
 33 lease, not to exceed twenty years.

34 (4) *Property purchased for multiple use*.—The cost of
 35 property purchased for multiple business use including use as
 36 a component part of a revitalized industrial business together
 37 with some other business or activity not eligible for credit under
 38 this article, shall be apportioned between such businesses and
 39 occupations. The amount apportioned to the revitalized in-
 40 dustrial business shall be considered as an eligible investment
 41 subject to the conditions and limitations of this section.

42 (5) *Self-constructed property*.—In the case of self-con-
 43 structed property, the cost thereof shall be the amount properly
 44 charged to the capital account for purposes of depreciation.

§11-13D-5. Forfeiture of unused tax credits, redetermination of credit allowed.

1 (a) *Disposition of property or cessation of use.*—If during
2 any taxable year, property with respect to which a tax
3 credit has been allowed under this article:

4 (1) Is disposed of prior to the end of its useful life, as
5 determined under section three of this article; or

6 (2) Ceases to be used in the industrial business of the tax-
7 payer in this state prior to the end of its useful life, as deter-
8 mined under said section three, then the unused portion of
9 the credit allowed for such property shall be forfeited for the
10 taxable year and all ensuing years. Additionally, except when
11 the property is damaged or destroyed by fire, flood, storm or
12 other casualty or is stolen the taxpayer shall redetermine the
13 amount of credit allowed in all earlier years by reducing the
14 applicable percentage of cost of such property allowed under
15 said section three, to correspond with the percentage of cost
16 allowable for the period of time that the property was actually
17 used in this state in the industrial business of the taxpayer.
18 Taxpayer shall then file a reconciliation statement with its
19 annual business and occupation tax return for the year in which
20 the forfeiture occurs and pay any additional business and oc-
21 cupation taxes, plus interest and any applicable penalties.

22 (b) *Cessation of operation of industrial facility.*—If during
23 any taxable year the industrial taxpayer ceases operation of an
24 industrial facility in this state for which revitalization credit
25 was allowed under this article before expiration of the useful
26 life of property with respect to which tax credit has been
27 allowed under this article, then the unused portion of the
28 allowed credit shall be forfeited for the taxable year and all
29 ensuing years. Additionally, except when the cessation is due
30 to fire, flood, storm or other casualty, the taxpayer shall re-
31 determine the amount of credit allowed in earlier years by
32 reducing the applicable percentage of cost of such property
33 allowed under section three, to correspond with the percentage
34 of cost allowable for the period of time that the property was
35 actually used in this state in the industrial business of the tax-
36 payer. Taxpayer shall then file a reconciliation statement with

37 its annual business and occupation tax return for the year in
38 which the forfeiture occurs and pay any additional business
39 and occupation taxes, plus interest and any applicable penalties.

§11-13D-6. Transfer of eligible investment to successors.

1 (a) *Mere change in form of business.*—Property shall not
2 be treated as disposed of under section five of this article by
3 reason of a mere change in the form of conducting the industrial
4 business as long as the property is retained in an industrial
5 business in this state and the taxpayer retains a substantial
6 interest in the successor business. In this event, the suc-
7 cessor business shall be allowed to claim the amount of
8 credit still available with respect to the industrial facility
9 or facilities transferred and the taxpayer (transferor) shall
10 not be required to redetermine the amount of credit allowed
11 in earlier years.

12 (b) *Sale to successor.*—Property shall not be treated as
13 disposed of under section five by reason of any sale to a
14 successor business which continues to operate the industrial
15 facility in this state. Upon sale the successor shall acquire
16 the amount of credit that remains available under this article
17 for each subsequent taxable year and the taxpayer (transferor)
18 shall not be required to redetermine the amount of credit al-
19 lowed in earlier years.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8. Credits against tax.

1 (a) *Business and occupation tax credit.*—A credit shall
2 be allowed against the tax imposed by section three of this
3 article equal to the amount of the liability of the taxpayer
4 for the taxable year for any tax imposed under article thirteen,
5 chapter eleven of this code: *Provided*, That the amount of
6 such business and occupation tax credit shall not exceed the
7 portion of the tax imposed by this article which is attributable
8 to the West Virginia taxable income derived by the taxpayer
9 for the taxable year from the business or occupation with re-
10 spect to which said tax under article thirteen was imposed. In
11 case the West Virginia taxable income of a taxpayer includes
12 income from a partnership, estate, trust or a corporation

13 electing to be taxed under subchapter S of the Internal
14 Revenue Code of 1954, as amended, a part of any tax liability
15 of the partnership, estate, trust or corporation under said
16 article thirteen shall be allowed to the taxpayer, in computing
17 the credit provided for by this section, in an amount propor-
18 tionate to the income of such partnership, estate, trust or
19 corporation, which is included in the taxpayer's West Virginia
20 taxable income.

21 For purposes of this section, the tax imposed under article
22 thirteen, chapter eleven of this code shall be the amount
23 of the liability of the taxpayer for such tax under said article
24 thirteen computed without reduction for the tax credit for
25 industrial expansion or revitalization allowed for such year.

26 (b) *Carrier income tax credit.*—A credit shall be allowed
27 against the tax imposed by section three of this article equal to
28 the amount of the liability of the taxpayer for the taxable
29 year for any tax imposed on the taxpayer under article twelve-a,
30 chapter eleven of this code: *Provided*, That the amount of such
31 credit shall not exceed the portion of the tax imposed by this
32 article which is attributable to the West Virginia taxable
33 income derived by the taxpayer for the taxable year from
34 the activities with respect of which said income tax under article
35 twelve-a was imposed. In case the West Virginia taxable in-
36 come of a taxpayer includes income from a partnership, estate,
37 trust or a corporation electing to be taxed under subchapter S of
38 the Internal Revenue Code of 1954, as amended, a part of any
39 tax liability of the partnership, estate, trust or corporation
40 under said article twelve-a shall be allowed to the taxpayer,
41 in computing the credit provided for by this section in an
42 amount proportionate to the income of such partnership, es-
43 tate, trust or corporation, which is included in the taxpayer's
44 West Virginia taxable income.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-9. Credits against tax.

1 (a) *Credit for taxes imposed under article thirteen, chapter*
2 *eleven of this code.*—A credit shall be allowed against the tax
3 imposed by this article equal to the amount of the liability of
4 the taxpayer for the taxable year for any tax imposed under
5 article thirteen, chapter eleven of this code: *Provided*, That

6 the amount of such business and occupation tax credit shall
7 not exceed the portion of the tax imposed by this article which
8 is attributable to the West Virginia taxable income derived by
9 the taxpayer for the taxable year from the business or occu-
10 pation with respect to which said tax under article thirteen was
11 imposed and shall not in any event exceed the tax imposed by
12 this article for such taxable year: *Provided, however,* That no
13 such credit shall be allowed for any tax imposed under article
14 thirteen with respect to any period prior to the first day of
15 July, one thousand nine hundred sixty-seven.

16 For purposes of this section, the tax imposed under article
17 thirteen, chapter eleven of this code shall be the amount of
18 the liability of the taxpayer for such tax under said article
19 thirteen computed without reduction for the tax credit for
20 industrial expansion or revitalization allowed for such year.

21 (b) *Credit for taxes imposed under article twelve-a, chap-*
22 *ter eleven of this code.*—A credit shall be allowed against
23 the tax imposed by this article equal to the amount of the
24 liability of the taxpayer for the taxable year for any tax
25 imposed on the taxpayer under article twelve-a, chapter eleven
26 of this code: *Provided,* That the amount of such credit shall
27 not exceed the portion of the tax imposed by this article
28 which is attributable to the West Virginia taxable income
29 derived by the taxpayer for the taxable year from any source
30 with respect to which said tax under article twelve-a was
31 imposed and shall not in any event exceed the tax imposed by
32 this article for such taxable year: *Provided, however,* That no
33 such credit shall be allowed for any tax imposed under article
34 twelve-a with respect to any period prior to the first day of
35 July, one thousand nine hundred sixty-seven.

CHAPTER 201

(H. B. 1084—By Mr. Burdette and Mr. Wells)

[Passed April 6, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to allowing quarterly returns when consumers sales and service tax liability does not exceed fifty dollars for any month.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-20. Quarterly return.

- 1 When the total tax for which a person is liable does not
- 2 exceed fifty dollars for any month, he may make a quarterly
- 3 return on or before the fifteenth day of the first month in the
- 4 next succeeding quarter in lieu of monthly returns.

CHAPTER 202

(Com. Sub. for S. B. 77—By Mr. Steptoe)

{Passed April 11, 1981; in effect from passage. Approved by the Governor.}

AN ACT to amend and reenact section six, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nonintoxicating beer and requiring brewers and distributors to file reports and pay barrel tax on estimated monthly sales and purchases; requiring brewers and distributors to file monthly reports of actual sales and purchases; providing a penalty for underestimation of monthly sales and purchases; and requiring brewers and distributors to keep records of all beer sales and purchases for a period of three years.

Be it enacted by the Legislature of West Virginia:

That section six, article sixteen, 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 16. NONINTOXICATING BEER.**§11-16-6. Barrel tax.**

1 (a) There is hereby levied and imposed, in addition
2 to the license taxes provided for in this article, a tax of
3 five dollars and fifty cents on each barrel of thirty-one
4 gallons and in like ratio on each part barrel of nonintoxi-
5 cating beer manufactured in this state for sale within this
6 state, whether contained or sold in barrels, bottles or
7 other containers, and a like tax is hereby levied and im-
8 posed upon all nonintoxicating beer manufactured out-
9 side of this state and brought into this state for sale
10 within this state; but no nonintoxicating beer manufac-
11 tured, sold or distributed in this state is subject to more
12 than one barrel tax. The brewer manufacturing or pro-
13 ducing nonintoxicating beer within this state for sale
14 within this state shall pay the barrel tax on such nonin-
15 toxicating beer, and, except as provided otherwise, the
16 distributor who is the original consignee of nonintoxicat-
17 ing beer manufactured or produced outside of this state,
18 or who brings such nonintoxicating beer into this state,
19 shall pay the barrel tax on such nonintoxicating beer
20 manufactured or produced outside of this state.

21 (b) On or before the tenth day of each month during
22 the license period, every brewer who manufactures or
23 produces nonintoxicating beer within this state shall file
24 a report in writing, under oath, to the nonintoxicating
25 beer commissioner, in the form prescribed by the com-
26 missioner, stating its total estimated sales of nonintoxi-
27 cating beer to distributors within this state during that
28 month, and at the same time shall pay the tax levied by
29 this article on such estimated monthly sales. On or before
30 the tenth day of each month during the license period,
31 every distributor who is the original consignee of nonin-
32 toxicating beer manufactured or produced outside this
33 state or who brings such beer into this state for sale shall
34 file a report in writing, under oath, to the nonintoxicating
35 beer commissioner, in the form prescribed by the com-
36 missioner, stating its total estimated purchases of such
37 nonintoxicating beer during that month, and at the same
38 time shall pay the tax thereon levied by this article for

39 such estimated monthly purchase: *Provided*, That the
40 commissioner may allow, or require, a brewer who manu-
41 factures or produces nonintoxicating beer outside this
42 state to file the required report and pay the required tax
43 on behalf of its distributor or distributors. Any brewer or
44 distributor who files a report under this subsection may
45 adjust its monthly estimated sales or purchases report
46 or reports by filing amended reports by the twenty-fifth
47 day of the reporting month.

48 (c) Every brewer or distributor who files a report
49 under subsection (b) of this section shall file a final
50 monthly report of said sales or purchases, in a form and
51 at a time prescribed by the commissioner, stating actual
52 nonintoxicating beer sales and purchases and any other
53 information which the commissioner may require, and
54 shall include a remittance for any barrel tax owed for
55 actual sales or purchases made in excess of the amount
56 estimated for that month.

57 (d) Any brewer or distributor who files a report pur-
58 suant to subsection (b) of this section reflecting an
59 underestimation of twenty-five percent or more of actual
60 sales or purchases of nonintoxicating beer as shown by
61 the report filed pursuant to subsection (c) of this section
62 shall be assessed a penalty of one percent of the total
63 taxes due in such prior month.

64 (e) Brewers and distributors shall keep all records
65 which relate to the sale or purchase in this state of non-
66 intoxicating beer for a period of three years unless writ-
67 ten approval for earlier disposal is granted by the com-
68 missioner.

CHAPTER 203

(S. B. 168—By Mr. Williams)

[Passed March 2, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to updating the meaning of 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 meaning
2 as when used in a comparable context in the laws of the
3 United States relating to income taxes, unless a different
4 meaning is clearly required. Any reference in this article to
5 the laws of the United States shall mean the provisions of the
6 Internal Revenue Code of 1954, as amended, and such other
7 provisions of the laws of the United States as relate to the
8 determination of income for federal income tax purposes. All
9 amendments made to the laws of the United States prior to
10 the first day of January, one thousand nine hundred
11 eighty-one, shall be given effect in determining the taxes
12 imposed by this article for the tax period beginning the first
13 day of January, one thousand nine hundred eighty, and
14 thereafter, but no amendment to the laws of the United States
15 made on or after the first day of January, one thousand nine
16 hundred eighty-one, shall be given effect.

CHAPTER 204

(S. B. 169—By Mr. Williams)

[Passed March 2, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of 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 the
2 same meaning as when used in a comparable context in the
3 laws of the United States relating to federal income taxes,
4 unless a different meaning is clearly required by the context
5 or by definition in this article. Any reference in this article to
6 the laws of the United States or to the Internal Revenue Code
7 or to the federal income tax law shall mean the provisions of
8 the laws 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 day of
11 January, one thousand nine hundred eighty-one, shall be
12 given effect in determining the taxes imposed by this article
13 for the tax period beginning the first day of January, one
14 thousand nine hundred eighty, and thereafter, but no
15 amendment to laws of the United States made on or after the
16 first day of January, one thousand nine hundred eighty-one,
17 shall be given effect.

18 (b) *Certain terms defined.*—For purposes of this article:

19 (1) The term “tax commissioner” means the tax
20 commissioner of the state of West Virginia or his delegate.

21 (2) The term “corporation” means and includes a
22 joint-stock company or any association which is taxable as a
23 corporation under the federal income tax law.

24 (3) The term “domestic corporation” means any
25 corporation organized under the laws of West Virginia.

26 (4) The term “foreign corporation” means any corporation
27 other than a domestic corporation.

28 (5) The term “state” means any state of the United States,
29 the District of Columbia, the Commonwealth of Puerto Rico,

30 any territory or possession of the United States, and any
31 foreign country or political subdivision thereof.

32 (6) The term “taxable year” means the taxable year for
33 which the taxable income of the taxpayer is computed under
34 the federal income tax law.

35 (7) The term “taxpayer” means a corporation subject to
36 the tax imposed by this article.

37 (8) The term “tax” includes, within its meaning, interest
38 and penalties unless the intention to give it a more limited
39 meaning is disclosed by the context.

40 (9) The term “commercial domicile” means the principal
41 place from which the trade or business of the taxpayer is
42 directed or managed.

43 (10) The term “compensation” means wages, salaries,
44 commissions and any form of remuneration paid to
45 employees for personal services.

46 (11) The term “West Virginia taxable income” means the
47 taxable income of a corporation as defined by the laws of the
48 United States for federal income tax purposes, adjusted as
49 provided in section six of this article: *Provided*, That in the
50 case of a corporation having income from business activity
51 which is taxable without this state, its “West Virginia taxable
52 income” shall be such portion of its taxable income as so
53 defined and adjusted as is allocated or apportioned to this
54 state under the provisions of section seven of this article.

55 (12) The term “business income” means income arising
56 from transactions and activity in the regular course of the
57 taxpayer’s trade or business and includes income from
58 tangible and intangible property if the acquisition and
59 disposition of the property constitute integral parts of the
60 taxpayer’s regular trade or business operations.

61 (13) The term “nonbusiness income” means all income
62 other than business income.

63 (14) The term “public utility” means any business activity
64 to which the jurisdiction of the public service commission of
65 West Virginia extends under section one, article two, chapter
66 twenty-four of the code of West Virginia.

67 (15) The term "this code" means the code of West Virginia,
68 one thousand nine hundred thirty-one, as amended.

69 (16) The term "this state" means the state of West Virginia.

CHAPTER 205

(Com. Sub. for H. B. 932—By Mr. Tompkins and Mr. McCuskey)

[Passed April 6, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-one, article six, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for interest on judgments or decrees entered by any court of this state and establishing the rate of such interest.

Be it enacted by the Legislature of West Virginia:

That section thirty-one, article six, 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 6. TRIAL.

§56-6-31. Interest on judgment or decree.

1 Except where it is otherwise provided by law, every judg-
2 ment or decree for the payment of money entered by any court
3 of this state shall bear interest from the date thereof, whether
4 it be so stated in the judgment or decree or not: *Provided,*
5 That if the judgment or decree, or any part thereof, is for
6 special damages, as defined below, or for liquidated damages,
7 the amount of such special or liquidated damages shall bear
8 interest from the date the right to bring the same shall have
9 accrued, as determined by the court. Special damages in-
10 cludes lost wages and income, medical expenses, damages to
11 tangible personal property, and similar out-of-pocket ex-
12 penditures, as determined by the court. The rate of interest
13 shall be ten dollars upon one hundred dollars per annum,
14 and proportionately for a greater or lesser sum, or for a

15 longer or shorter time, notwithstanding any other provisions
16 of law.

CHAPTER 206

(Com. Sub. for H. B. 1255—By Mr. Speaker, Mr. See)

[Passed April 8, 1981; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections nine and ten-a, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article one of said chapter; to amend and reenact sections five, seven and ten, article five of said chapter; to amend and reenact sections one, three and eleven, article six of said chapter; to amend and reenact sections one and five, article six-a of said chapter; to amend and reenact section seven, article seven of said chapter; and to amend and reenact section seven, article ten of said chapter; all relating to unemployment compensation; definitions; increasing the taxable wage base; initial rate of contribution; increasing rates of contribution; exceptions; adjustment of accounts and rates; experience ratings; debit balance account rates; charging of surtax of one percent retroactive to the first day of January, one thousand nine hundred eighty-one; providing for termination of the surtax; qualification for benefits; disqualification for benefits for leaving work voluntarily without good cause involving fault on the part of the employer, misconduct, failing to apply for or accept suitable work; receiving annuity, pension or other retirement pay from base period or chargeable employer; knowingly making false statements to obtain benefits; partial unemployment; extended unemployment compensation benefits; definitions; disqualification for extended benefits in certain instances until individual has returned to covered employment and has been employed for at least thirty working days; comprehensive provision ineligibility for extended benefits where individual has failed to accept or apply for suitable work or has failed to actively engage in seeking work; limiting extended benefits to two weeks for person residing in a state where ex-

tended benefits are not in effect; increasing criminal penalties for false representations; and changing examiner's title to administrative law judge.

Be it enacted by the Legislature of West Virginia:

That sections nine and teen-a, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three, article one of said chapter be amended and reenacted; that sections five, seven and ten, article five of said chapter be amended and reenacted; that sections one, three and eleven, article six of said chapter be amended and reenacted; that sections one and five, article six-a of said chapter be amended and reenacted; that section seven, article seven of said chapter be amended and reenacted; and that section seven, article ten of said chapter be amended and reenacted, all to read as follows:

Article

1. **Department of Employment Security.**
5. **Employer Coverage and Responsibility.**
6. **Employee Eligibility; Benefits.**
- 6A. **Extended Benefits Program.**
7. **Claim Procedure.**
10. **General Provisions.**

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.

§21A-1-3. Definitions.

1 As used in this chapter, unless the context clearly requires
2 otherwise:

3 "Administration fund" means the employment security ad-
4 ministration fund, from which the administrative expenses
5 under this chapter shall be paid.

6 "Annual payroll" means the total amount of wages for em-
7 ployment paid by an employer during a twelve-month period
8 ending with June thirty of any calendar year.

9 "Average annual payroll" means the average of the last three
10 annual payrolls of an employer.

11 "Base period" means the first four out of the last five com-
12 pleted calendar quarters immediately preceding the first day
13 of the individual benefit year.

14 "Base period employer" means any employer who in the
15 base period for any benefit year paid wages to an individual
16 who filed claim for unemployment compensation within such
17 benefit year.

18 "Base period wages" means wages paid to an individual
19 during the base period by all his base period employers.

20 "Benefit year" with respect to an individual means the
21 fifty-two-week period beginning with the first day of the
22 calendar week in which a valid claim is effective, and thereafter
23 the fifty-two-week period beginning with the first day of the
24 calendar week in which such individual next files a valid claim
25 for benefits after the termination of his last preceding benefit
26 year. An initial claim for benefits filed in accordance with the
27 provisions of this chapter shall be deemed to be a valid claim
28 within the purposes of this definition if the individual has been
29 paid wages in his base period sufficient to make him eligible
30 for benefits under the provisions of this chapter.

31 "Benefits" means the money payable to an individual with
32 respect to his unemployment.

33 "Board" means board of review.

34 "Calendar quarter" means the period of three consecutive
35 calendar months ending on March thirty-one, June thirty,
36 September thirty or December thirty-one, or the equivalent
37 thereof as the commissioner may by regulation prescribe.

38 "Commissioner" means the employment security commis-
39 sioner.

40 "Computation date" means June thirty of the year immedi-
41 ately preceding the January one on which an employer's con-
42 tribution rate becomes effective.

43 "Employing unit" means an individual, or type of
44 organization, including any partnership, association, trust
45 estate, joint-stock company, insurance company, corp-
46 oration (domestic or foreign), state or political sub-
47 division thereof, or their instrumentalities, as provid-
48 ed in subdivision (9) (b) of the definition of "em-

49 ployment" in this section, institution of higher edu-
50 cation, or the receiver, trustee in bankruptcy, trustee or
51 successor thereof, or the legal representative of a de-
52 ceased person, which has on January first, one thou-
53 sand nine hundred thirty-five, or subsequent thereto,
54 had in its employ one or more individuals performing
55 service within this state.

56 "Employer" means:

57 (1) Until January one, one thousand nine hundred seventy-
58 two, any employing unit which for some portion of a day, not
59 necessarily simultaneously, in each of twenty different calendar
60 weeks, which weeks need not be consecutive, within either
61 the current calendar year, or the preceding calendar year,
62 has had in employment four or more individuals irrespective
63 of whether the same individuals were or were not employed
64 on each of such days;

65 (2) Any employing unit which is or becomes a liable em-
66 ployer under any federal unemployment tax act;

67 (3) Any employing unit which has acquired or acquires the
68 organization, trade or business, or substantially all the assets
69 thereof, of an employing unit which at the time of such acquisi-
70 tion was an employer subject to this chapter;

71 (4) Any employing unit which, after December thirty-one,
72 one thousand nine hundred sixty-three, and until January one,
73 one thousand nine hundred seventy-two, in any one calendar
74 quarter, in any calendar year, has in employment four or more
75 individuals and has paid wages for employment in the total
76 sum of five thousand dollars or more, or which, after such
77 date, has paid wages for employment in any calendar year in
78 the sum total of twenty thousand dollars or more;

79 (5) Any employing unit which, after December thirty-one,
80 one thousand nine hundred sixty-three, and until January one,
81 one thousand nine hundred seventy-two, in any three-week
82 period, in any calendar year, has in employment ten or more
83 individuals;

84 (6) For the effective period of its election pursuant to

85 section three, article five of this chapter, any employing unit
86 which has elected to become subject to this chapter;

87 (7) Any employing unit which, after December thirty-one,
88 one thousand nine hundred seventy-one, (i) in any calendar
89 quarter in either the current or preceding calendar year paid
90 for service in employment wages of one thousand five hundred
91 dollars or more, or (ii) for some portion of a day in each of
92 twenty different calendar weeks, whether or not such weeks
93 were consecutive, in either the current or the preceding
94 calendar year had in employment at least one individual
95 (irrespective of whether the same individual was in employ-
96 ment in each such day) except as provided in subdivisions
97 eleven and twelve hereof;

98 (8) Any employing unit for which service in employment,
99 as defined in subdivision (9) of the definition of "employ-
100 ment" in this section, is performed after December thirty-one,
101 one thousand nine hundred seventy-one;

102 (9) Any employing unit for which service in employment,
103 as defined in subdivision (10) of the definition of "employ-
104 ment" in this section, is performed after December thirty-one,
105 one thousand nine hundred seventy-one;

106 (10) Any employing unit for which service in employ-
107 ment, as defined in paragraphs (b) and (c) of subdivision (9)
108 of the definition of "employment" in this section, is performed
109 after December thirty-one, one thousand nine hundred
110 seventy-seven;

111 (11) Any employing unit for which agricultural labor,
112 as defined in subdivision (12) of the definition of "employ-
113 ment" in this section, is performed after December thirty-one,
114 one thousand nine hundred seventy-seven;

115 (12) Any employing unit for which domestic service in em-
116 ployment, as defined in subdivision (13) of the definition of
117 "employment" in this section, is performed after December
118 thirty-one, one thousand nine hundred seventy-seven.

119 "Employment," subject to the other provisions of this sec-
120 tion, means:

- 121 (1) Service, including service in interstate commerce, per-
122 formed for wages or under any contract of hire, written or oral,
123 express or implied;
- 124 (2) Any service performed prior to January one, one
125 thousand nine hundred seventy-two, which was employment
126 as defined in this section prior to such date and, subject to the
127 other provisions of this section, service performed after Decem-
128 ber thirty-one, one thousand nine hundred seventy-one, by an
129 employee, as defined in section 3306(i) of the Federal Unem-
130 ployment Tax Act, including service in interstate commerce;
- 131 (3) Any service performed prior to January one, one
132 thousand nine hundred seventy-two, which was employment
133 as defined in this section prior to such date and, subject to
134 the other provisions of this section, service performed after
135 December thirty-one, one thousand nine hundred seventy-one,
136 including service in interstate commerce, by any officer of a
137 corporation;
- 138 (4) An individual's entire service, performed within or both
139 within and without this state if: (a) The service is localized
140 in this state; or (b) the service is not localized in any state but
141 some of the service is performed in this state and (i) the base
142 of operations, or, if there is no base of operations, then the place
143 from which such service is directed or controlled, is in this
144 state; or (ii) the base of operations or place from which such
145 service is directed or controlled is not in any state in which
146 some part of the service is performed but the individual's resi-
147 dence is in this state;
- 148 (5) Service not covered under paragraph four of this sub-
149 division and performed entirely without this state with respect
150 to no part of which contributions are required and paid under
151 an unemployment compensation law of any other state or of
152 the federal government, shall be deemed to be employment
153 subject to this chapter if the individual performing such services
154 is a resident of this state and the commissioner approves the
155 election of the employing unit for whom such services are
156 performed that the entire service of such individual shall be
157 deemed to be employment subject to this chapter;
- 158 (6) Service shall be deemed to be localized within a state,

159 if: (a) The service is performed entirely within such state; or
160 (b) the service is performed both within and without such
161 state, but the service performed without such state is incidental
162 to the individual's service within this state, as, for example,
163 is temporary or transitory in nature or consists of isolated trans-
164 actions;

165 (7) Services performed by an individual for wages shall be
166 deemed to be employment subject to this chapter unless and
167 until it is shown to the satisfaction of the commissioner that:
168 (a) Such individual has been and will continue to be free from
169 control or direction over the performance of such services,
170 both under his contract of service and in fact; and (b) such
171 service is either outside the usual course of the business
172 for which such service is performed or that such service is
173 performed outside of all the places of business of the enter-
174 prise for which such service is performed; and (c) such in-
175 dividual is customarily engaged in an independently established
176 trade, occupation, profession or business;

177 (8) All service performed by an officer or member of the
178 crew of an American vessel (as defined in section three
179 hundred five of an act of Congress entitled Social Security
180 Act Amendment of 1946, approved August tenth, one thou-
181 sand nine hundred forty-six) on or in connection with such
182 vessel, provided that the operating office, from which the
183 operations of such vessel operating on navigable waters within
184 and without the United States is ordinarily and regularly super-
185 vised, managed, directed and controlled, is within this state;

186 (9) (a) Service performed after December thirty-one, one
187 thousand nine hundred seventy-one, by an individual in the
188 employ of this state or any of its instrumentalities (or in the
189 employ of this state and one or more other states or their in-
190 strumentalities) for a hospital or institution of higher education
191 located in this state: *Provided*, That such service is excluded
192 from "employment" as defined in the Federal Unemployment
193 Tax Act solely by reason of section 3306 (c) (7) of that act and
194 is not excluded from "employment" under subdivision (11) of
195 the exclusion from employment;

196 (b) Service performed after December thirty-one, one

197 thousand nine hundred seventy-seven, in the employ of this
198 state or any of its instrumentalities or political subdivisions
199 thereof or any of its instrumentalities or any instrumentality of
200 more than one of the foregoing or any instrumentality of any
201 foregoing and one or more other states or political subdivisions:
202 *Provided*, That such service is excluded from "employment" as
203 defined in the Federal Unemployment Tax Act by section
204 3306 (c) (7) of that act and is not excluded from "em-
205 ployment" under subdivision (15) of the exclusion from em-
206 ployment in this section; and

207 (c) Service performed after December thirty-one, one
208 thousand nine hundred seventy-seven, in the employ of a
209 nonprofit educational institution which is not an institution of
210 higher education;

211 (10) Service performed after December thirty-one, one
212 thousand nine hundred seventy-one, by an individual in the
213 employ of a religious, charitable, educational or other or-
214 ganization but only if the following conditions are met:

215 (a) The service is excluded from "employment" as de-
216 fined in the Federal Unemployment Tax Act solely by rea-
217 son of section 3306 (c) (8) of that act; and

218 (b) The organization had four or more individuals in em-
219 ployment for some portion of a day in each of twenty dif-
220 ferent weeks, whether or not such weeks were consecutive,
221 within either the current or preceding calendar year, regardless
222 of whether they were employed at the same moment of time;

223 (11) Service of an individual who is a citizen of the United
224 States, performed outside the United States after December
225 thirty-one, one thousand nine hundred seventy-one (except in
226 Canada and in the case of Virgin Islands after December thirty-
227 one, one thousand nine hundred seventy-one, and before Jan-
228 uary one of the year following the year in which the secretary of
229 labor approves for the first time an unemployment insurance
230 law submitted to him by the Virgin Islands for approval) in the
231 employ of an American employer (other than service which
232 is deemed "employment" under the provisions of subdivision
233 (4), (5) or (6) of this definition of "employment" or the paral-
234 lel provisions of another state's law) if:

235 (a) The employer's principal place of business in the
236 United States is located in this state; or

237 (b) The employer has no place of business in the United States,
238 but (i) the employer is an individual who is a resident of this
239 state; or (ii) the employer is a corporation which is organized
240 under the laws of this state; or (iii) the employer is a partnership
241 or a trust and the number of the partners or trustees who are
242 residents of this state is greater than the number who are resi-
243 dents of any one other state; or

244 (c) None of the criteria of subparagraphs (a) and (b) of
245 this subdivision (11) is met but the employer has elected
246 coverage in this state or, the employer having failed to elect
247 coverage in any state, the individual has filed a claim for
248 benefits, based on such service, under the law of this state.

249 An "American employer," for purposes of this subdivision
250 (11), means a person who is (i) an individual who is a resident
251 of the United States; or (ii) a partnership if two thirds or more
252 of the partners are residents of the United States; or (iii) a trust,
253 if all of the trustees are residents of the United States; or (iv) a
254 corporation organized under the laws of the United States or of
255 any state;

256 (12) Service performed after December thirty-one, one
257 thousand nine hundred seventy-seven, by an individual in
258 agricultural labor as defined in subdivision (5) of the exclu-
259 sions from employment in this section when:

260 (a) Such service is performed for a person who (i) during
261 any calendar quarter in either the current or the preceding cal-
262 endar year paid remuneration in cash of twenty thousand dol-
263 lars or more to individuals employed in agricultural labor [not
264 taking into account service in agricultural labor performed be-
265 fore January one, one thousand nine hundred eighty, by an alien
266 referred to in subparagraph (b) of this subdivision (12)] or (ii)
267 for some portion of a day in each of twenty different calendar
268 weeks, whether or not such weeks were consecutive, in either
269 the current or the preceding calendar year, employed in agricul-
270 tural labor (not taking into account service in agricultural labor
271 performed before January one, one thousand nine hundred eigh-
272 ty, by an alien referred to in division (ii) of this subparagraph)

273 ten or more individuals, regardless of whether they were em-
274 ployed at the same moment of time;

275 (b) Such service is not performed in agricultural labor if
276 performed before January one, one thousand nine hundred
277 eighty, by an individual who is an alien admitted to the United
278 States to perform service in agricultural labor pursuant to
279 sections 214 (c) and 101 (a) (15) (H) of the Immigration
280 and Nationality Act;

281 (c) For the purposes of the definition of employment, any
282 individual who is a member of a crew furnished by a crew
283 leader to perform service in agricultural labor for any other
284 person shall be treated as an employee of such crew leader
285 (i) if such crew leader holds a valid certificate of registration
286 under the Farm Labor Contractor Registration Act of 1963;
287 or substantially all the members of such crew operate or main-
288 tain tractors, mechanized harvesting or crop-dusting equip-
289 ment, or any other mechanized equipment, which is provided
290 by such crew leader; and (ii) if such individual is not an
291 employee of such other person within the meaning of sub-
292 division (7) of the definition of employer;

293 (d) For the purposes of this subdivision (12), in the case
294 of any individual who is furnished by a crew leader to per-
295 form service in agricultural labor for any other person and
296 who is not treated as an employee of such crew leader under
297 subparagraph (c) of this subdivision (12), (i) such other
298 person and not the crew leader shall be treated as the em-
299 ployer of such individual; and (ii) such other person shall be
300 treated as having paid cash remuneration to such individual
301 in an amount equal to the amount of cash remuneration paid to
302 such individual by the crew leader (either on his own behalf
303 or on behalf of such other person) for the service in agricul-
304 tural labor performed for such other person;

305 (e) For the purposes of this subdivision (12), the term
306 "crew leader" means an individual who (i) furnishes indi-
307 duals to perform service in agricultural labor for any other
308 person, (ii) pays (either on his own behalf or on behalf of
309 such other person) the individuals so furnished by him for
310 the service in agricultural labor performed by them, and (iii)

311 has not entered into a written agreement with such other
312 person under which such individual is designated as an em-
313 ployee of such other person;

314 (13) The term "employment" shall include domestic ser-
315 vice after December thirty-one, one thousand nine hundred
316 seventy-seven, in a private home, local college club or local
317 chapter of a college fraternity or sorority performed for a
318 person who paid cash remuneration of one thousand dollars
319 or more after December thirty-one, one thousand nine hun-
320 dred seventy-seven, in any calendar quarter in the current
321 calendar year or the preceding calendar year to individuals
322 employed in such domestic service.

323 Notwithstanding the foregoing definition of "employment,"
324 if the services performed during one half or more of any pay
325 period by an employee for the person employing him con-
326 stitute employment, all the services of such employee for such
327 period shall be deemed to be employment; but if the services
328 performed during more than one half of any such pay period
329 by an employee for the person employing him do not con-
330 stitute employment, then none of the services of such employee
331 for such period shall be deemed to be employment.

332 The term "employment" shall not include:

333 (1) Service performed in the employ of this state or any
334 political subdivision thereof, or any instrumentality of this
335 state or its subdivisions, except as otherwise provided herein
336 until December thirty-one, one thousand nine hundred seventy-
337 seven;

338 (2) Service performed directly in the employ of another
339 state, or its political subdivisions, except as otherwise provided
340 in subdivision (9) (a) of the definition of "employment,"
341 until December thirty-one, one thousand nine hundred seventy-
342 seven;

343 (3) Service performed in the employ of the United States
344 or an instrumentality of the United States exempt under the
345 Constitution of the United States from the payments imposed
346 by this law, except that to the extent that the Congress of the
347 United States shall permit states to require any instru-

348 mentalities of the United States to make payments into an
349 unemployment fund under a state unemployment compensa-
350 tion law, all of the provisions of this law shall be applicable to
351 such instrumentalities, and to service performed for such in-
352 strumentalities, in the same manner, to the same extent and
353 on the same terms as to all other employers, employing units,
354 individuals and services: *Provided*, That if this state shall
355 not be certified for any year by the secretary of labor under
356 section 1603(c) of the Federal Internal Revenue Code, the
357 payments required of such instrumentalities with respect to
358 such year shall be refunded by the commissioner from the
359 fund in the same manner and within the same period as is
360 provided in section nineteen, article five of this chapter, with
361 respect to payments erroneously collected;

362 (4) Service performed after June thirty, one thousand nine
363 hundred thirty-nine, with respect to which unemployment
364 compensation is payable under the Railroad Unemployment In-
365 surance Act and service with respect to which unemployment
366 benefits are payable under an unemployment compensation
367 system for maritime employees established by an act of Con-
368 gress. The commissioner may enter into agreements with
369 the proper agency established under such an act of Congress
370 to provide reciprocal treatment to individuals who, after acquir-
371 ing potential rights to unemployment compensation under
372 an act of Congress, or who have, after acquiring potential
373 rights to unemployment compensation under an act of Con-
374 gress, acquired rights to benefit under this chapter. Such
375 agreement shall become effective ten days after such publica-
376 tions which shall comply with the general rules of the depart-
377 ment;

378 (5) Service performed by an individual in agricultural
379 labor, except as provided in subdivision (12) of the definition
380 of "employment" in this section. For purposes of this sub-
381 division (5), the term "agricultural labor" includes all services
382 performed:

383 (a) On a farm, in the employ of any person, in connection
384 with cultivating the soil, or in connection with raising or
385 harvesting any agricultural or horticultural commodity, in-
386 cluding the raising, shearing, feeding, caring for, training,

387 and management of livestock, bees, poultry, and fur-bearing
388 animals and wildlife;

389 (b) In the employ of the owner or tenant or other opera-
390 tor of a farm, in connection with the operation, management,
391 conservation, improvement or maintenance of such farm and
392 its tools and equipment, or in salvaging timber or clearing land
393 of brush and other debris left by a hurricane, if the major part
394 of such service is performed on a farm;

395 (c) In connection with the production or harvesting of
396 any commodity defined as an agricultural commodity in section
397 fifteen (g) of the Agricultural Marketing Act, as amended,
398 or in connection with the ginning of cotton, or in connection
399 with the operation or maintenance of ditches, canals, reser-
400 vairs or waterways, not owned or operated for profit, used ex-
401 clusively for supplying and storing water for farming purposes;

402 (d) (i) In the employ of the operator of a farm in handling,
403 planting, drying, packing, packaging, processing, freezing,
404 grading, storing or delivering to storage or to market or to a
405 carrier for transportation to market, in its unmanufactured
406 state, any agricultural or horticultural commodity; but only if
407 such operator produced more than one half of the commodity
408 with respect to which such service is performed; or (ii) in
409 the employ of a group of operators of farms (or a cooperative
410 organization of which such operators are members) in the
411 performance of service described in subparagraph (i), but
412 only if such operators produced more than one half of the
413 commodity with respect to which such service is performed;
414 but the provisions of subparagraphs (i) and (ii) shall not be
415 deemed to be applicable with respect to service performed in
416 connection with commercial canning or commercial freezing
417 or in connection with any agricultural or horticultural com-
418 modity after its delivery to a terminal market for distribution
419 for consumption;

420 (e) On a farm operated for profit if such service is not in
421 the course of the employer's trade or business or is domestic
422 service in a private home of the employer. As used in this
423 subdivision (5), the term "farm" includes stock, dairy, poultry,
424 fruit, fur-bearing animals, and truck farms, plantations,

425 ranches, greenhouses, ranges and nurseries, or other similar
426 land areas or structures used primarily for the raising of any
427 agricultural or horticultural commodities;

428 (6) Domestic service in a private home, except as pro-
429 vided in subdivision (13) of the definition of "employment"
430 in this section;

431 (7) Service performed by an individual in the employ of his
432 son, daughter or spouse;

433 (8) Service performed by a child under the age of eighteen
434 years in the employ of his father or mother;

435 (9) Service as an officer or member of a crew of an
436 American vessel, performed on or in connection with such
437 vessel, if the operating office, from which the operations of the
438 vessel operating on navigable water within or without the
439 United States are ordinarily and regularly supervised, managed,
440 directed and controlled, is without this state;

441 (10) Service performed by agents of mutual fund broker-
442 dealers or insurance companies, exclusive of industrial in-
443 surance agents, or by agents of investment companies, who
444 are compensated wholly on a commission basis;

445 (11) Service performed (i) in the employ of a church or
446 convention or association of churches, or an organization
447 which is operated primarily for religious purposes and which
448 is operated, supervised, controlled or principally supported
449 by a church or convention or association of churches; or
450 (ii) by a duly ordained, commissioned or licensed minister of
451 a church in the exercise of his ministry or by a member of
452 a religious order in the exercise of duties required by such
453 order; or (iii) prior to January one, one thousand nine hundred
454 seventy-eight, in the employ of a school which is not an in-
455 stitution of higher education; or (iv) in a facility conducted for
456 the purpose of carrying out a program of rehabilitation for
457 individuals whose earning capacity is impaired by age or physi-
458 cal or mental deficiency or injury or providing remunerative
459 work for individuals who because of their impaired physical
460 or mental capacity cannot be readily absorbed in the competi-
461 tive labor market by an individual receiving such rehabilitation

462 or remunerative work; or (v) as part of an unemployment
463 work-relief or work-training program assisted or financed
464 in whole or in part by any federal agency or an agency of a
465 state or political subdivision thereof, by an individual receiving
466 such work relief or work training; or (vi) prior to January one,
467 one thousand nine hundred seventy-eight, for a hospital in a
468 state prison or other state correctional institution by an inmate
469 of the prison or correctional institution, and after December
470 thirty-one, one thousand nine hundred seventy-seven, by an
471 inmate of a custodial or penal institution;

472 (12) Service performed in the employ of a school, college
473 or university, if such service is performed (i) by a student who
474 is enrolled and is regularly attending classes at such school,
475 college or university, or (ii) by the spouse of such a student, if
476 such spouse is advised, at the time such spouse commences
477 to perform such service, that (I) the employment of such
478 spouse to perform such service is provided under a program
479 to provide financial assistance to such student by such school,
480 college or university, and (II) such employment will not be
481 covered by any program of unemployment insurance;

482 (13) Service performed by an individual under the age of
483 twenty-two who is enrolled at a nonprofit or public educational
484 institution which normally maintains a regular faculty and cur-
485 riculum and normally has a regularly organized body of
486 students in attendance at the place where its educational
487 activities are carried on as a student in a full-time program,
488 taken for credit at such institution, which combines academic
489 instruction with work experience, if such service is an integral
490 part of such program, and such institution has so certified
491 to the employer, except that this subdivision shall not apply to
492 service performed in a program established for or on behalf of
493 an employer or group of employers;

494 (14) Service performed in the employ of a hospital, if such
495 service is performed by a patient of the hospital, as defined in
496 this section;

497 (15) Service in the employ of a governmental entity re-
498 ferred to in subdivision (9) of the definition of "employment"
499 in this section if such service is performed by an individual in

500 the exercise of duties (i) as an elected official; (ii) as a
501 member of a legislative body, or a member of the judiciary,
502 of a state or political subdivision; (iii) as a member of the state
503 national guard or air national guard; (iv) as an employee
504 serving on a temporary basis in case of fire, storm, snow,
505 earthquake, flood or similar emergency; (v) in a position
506 which, under or pursuant to the laws of this state, is designated
507 as (I) a major nontenured policy-making or advisory position,
508 or (II) a policy-making or advisory position the performance
509 of the duties of which ordinarily does not require more than
510 eight hours per week.

511 Notwithstanding the foregoing exclusions from the definition
512 of "employment," services, except agricultural labor and
513 domestic service in a private home, shall be deemed to be in
514 employment if with respect to such services a tax is required
515 to be paid under any federal law imposing a tax against which
516 credit may be taken for contributions required to be paid into
517 a state unemployment compensation fund, or which as a con-
518 dition for full tax credit against the tax imposed by the
519 Federal Unemployment Tax Act are required to be covered
520 under this chapter.

521 "Employment office" means a free employment office or
522 branch thereof, operated by this state, or any free public em-
523 ployment office maintained as a part of a state controlled
524 system of public employment offices in any other state.

525 "Fund" means the unemployment compensation fund estab-
526 lished by this chapter.

527 "Hospital" means an institution which has been licensed,
528 certified or approved by the state department of health as
529 a hospital.

530 "Institution of higher education" means an educational in-
531 stitution which:

532 (1) Admits as regular students only individuals having a
533 certificate of graduation from a high school, or the recognized
534 equivalent of such a certificate;

535 (2) Is legally authorized in this state to provide a pro-
536 gram of education beyond high school;

537 (3) Provides an educational program for which it awards
538 a bachelor's or higher degree, or provides a program which is
539 acceptable for full credit toward such a degree, or provides a
540 program of post-graduate or post-doctoral studies, or pro-
541 vides a program of training to prepare students for gainful
542 employment in a recognized occupation; and

543 (4) Is a public or other nonprofit institution.

544 Notwithstanding any of the foregoing provisions of this
545 definition all colleges and universities in this state are in-
546 stitutions of higher education for purposes of this section.

547 "Payments" means the money required to be paid or that
548 may be voluntarily paid into the state unemployment com-
549 pensation fund as provided in article five of this chapter.

550 "Separated from employment" means, for the purposes of
551 this chapter, the total severance, whether by quitting, dis-
552 charge or otherwise, of the employer-employee relationship.

553 "State" includes, in addition to the states of the United
554 States, Puerto Rico, District of Columbia and the Virgin
555 Islands.

556 "Total and partial unemployment" means:

557 (1) An individual shall be deemed totally unemployed in
558 any week in which such individual is separated from em-
559 ployment for an employing unit and during which he performs
560 no services and with respect to which no wages are payable
561 to him.

562 (2) An individual who has not been separated from em-
563 ployment shall be deemed to be partially unemployed in any
564 week in which due to lack of full time work wages payable
565 to him are less than his weekly benefit amount plus twenty-
566 five dollars: *Provided*, That said individual must have earnings
567 of at least twenty-six dollars.

568 "Wages" means all remuneration for personal service, in-
569 cluding commissions and bonuses and the cash value of all
570 remuneration in any medium other than cash except for
571 agricultural labor and domestic service: *Provided*, That the
572 term "wages" shall not include:

573 (1) That part of the remuneration which, after remunera-
574 tion equal to three thousand dollars has been paid to an
575 individual by an employer with respect to employment during
576 any calendar year, is paid after December thirty-one, one
577 thousand nine hundred thirty-nine, and prior to January one,
578 one thousand nine hundred forty-seven, to such individual by
579 such employer with respect to employment during such
580 calendar year; or that part of the remuneration which, after
581 remuneration equal to three thousand dollars with respect to
582 employment after one thousand nine hundred thirty-eight, has
583 been paid to an individual by an employer during any
584 calendar year after one thousand nine hundred forty-six, is
585 paid to such individual by such employer during such calendar
586 year, except that for the purposes of sections one, ten,
587 eleven and thirteen, article six of this chapter, all remunera-
588 tion earned by an individual in employment shall be credited
589 to the individual and included in his computation of base
590 period wages: *Provided*, That notwithstanding the foregoing
591 provisions, on and after January one, one thousand nine
592 hundred sixty-two, the term "wages" shall not include:

593 That part of the remuneration which, after remuneration
594 equal to three thousand six hundred dollars has been paid to
595 an individual by an employer with respect to employment
596 during any calendar year, is paid during any calendar year after
597 one thousand nine hundred sixty-one; and shall not include
598 that part of remuneration which, after remuneration equal to
599 four thousand two hundred dollars is paid during a calendar
600 year after one thousand nine hundred seventy-one; and shall
601 not include that part of remuneration which, after remuneration
602 equal to six thousand dollars is paid during a calendar year
603 after one thousand nine hundred seventy-seven; and shall not
604 include that part of remuneration which, after remuneration
605 equal to eight thousand dollars is paid during a calendar
606 year after one thousand nine hundred eighty, to an individual by
607 an employer or his predecessor with respect to employment
608 during any calendar year, is paid to such individual by such em-
609 ployer during such calendar year unless that part of the re-
610 muneration is subject to a tax under a federal law imposing a
611 tax against which credit may be taken for contributions re-
612 quired to be paid into a state unemployment fund. For the

613 purposes of this subdivision (1), the term "employment" shall
614 include service constituting employment under any unemploy-
615 ment compensation law of another state; or which as a con-
616 dition for full tax credit against the tax imposed by the
617 Federal Unemployment Tax Act is required to be covered
618 under this chapter; and, except, that for the purposes of
619 sections one, ten, eleven and thirteen, article six of this chapter,
620 all remuneration earned by an individual in employment shall
621 be credited to the individual and included in his computation
622 of base period wages: *Provided, however,* That the remunera-
623 tion paid to an individual by an employer with respect to
624 employment in another state or other states upon which con-
625 tributions were required of and paid by such employer under
626 an unemployment compensation law of such other state or
627 states shall be included as a part of the remuneration equal to
628 the amounts of three thousand six hundred dollars or four
629 thousand two hundred dollars or six thousand dollars, or eight
630 thousand dollars herein referred to. In applying such limitation
631 on the amount of remuneration that is taxable, an employer
632 shall be accorded the benefit of all or any portion of such
633 amount which may have been paid by its predecessor or pre-
634 decessors: *Provided further,* That if the definition of the term
635 "wages" as contained in section 3306(b) of the Internal Reve-
636 nue Code of 1954 as amended: (a) Effective prior to January
637 one, one thousand nine hundred sixty-two, to include re-
638 muneration in excess of three thousand dollars, or (b) effec-
639 tive on or after January one, one thousand nine hundred sixty-
640 two, to include remuneration in excess of three thousand six
641 hundred dollars, or (c) effective on or after January one, one
642 thousand nine hundred seventy-two, to include remuneration in
643 excess of four thousand two hundred dollars, or (d) effective
644 on or after January one, one thousand nine hundred seventy-
645 eight, to include remuneration in excess of six thousand dollars,
646 or (e) effective on or after January one, one thousand nine
647 hundred eighty, to include remuneration in excess of eight
648 thousand dollars, paid to an individual by an employer under
649 the Federal Unemployment Tax Act during any calendar year,
650 wages for the purposes of this definition shall include remun-
651 eration paid in a calendar year to an individual by an em-
652 ployer subject to this article or his predecessor with respect

653 to employment during any calendar year up to an amount
654 equal to the amount of remuneration taxable under the Federal
655 Unemployment Tax Act;

656 (2) The amount of any payment made after December
657 thirty-one, one thousand nine hundred fifty-two (including any
658 amount paid by an employer for insurance or annuities, or
659 into a fund, to provide for any such payment), to, or on be-
660 half of, an individual in its employ or any of his dependents,
661 under a plan or system established by an employer which
662 makes provision for individuals in its employ generally (or
663 for such individuals and their dependents), or for a class or
664 classes of such individuals (or for a class or classes of such
665 individuals and their dependents), on account of (A) retire-
666 ment, or (B) sickness or accident disability, or (C) medical or
667 hospitalization expenses in connection with sickness or acci-
668 dent disability, or (D) death;

669 (3) Any payment made after December thirty-one, one
670 thousand nine hundred fifty-two, by an employer to an indi-
671 vidual in its employ (including any amount paid by an em-
672 ployer for insurance or annuities, or into a fund, to provide
673 for any such payment) on account of retirement;

674 (4) Any payment made after December thirty-one, one
675 thousand nine hundred fifty-two, by an employer on account
676 of sickness or accident disability, or medical or hospitalization
677 expenses in connection with sickness or accident disability, to,
678 or on behalf of, an individual in its employ after the expiration
679 of six calendar months following the last calendar month in
680 which such individual worked for such employer;

681 (5) Any payment made after December thirty-one, one thou-
682 sand nine hundred fifty-two, by an employer to, or on behalf
683 of, an individual in its employ or his beneficiary (A) from or
684 to a trust described in section 401(a) which is exempt from tax
685 under section 501(a) of the Federal Internal Revenue Code at
686 the time of such payments unless such payment is made to
687 such individual as an employee of the trust as remuneration for
688 services rendered by such individual and not as a beneficiary
689 of the trust, or (B) under or to an annuity plan which, at the

690 time of such payment, is a plan described in section 403(a) of
691 the Federal Internal Revenue Code;

692 (6) The payment by an employer of the tax imposed upon
693 an employer under section 3101 of the Federal Internal Reve-
694 nue Code with respect to remuneration paid to an employee
695 for domestic service in a private home of the employer or
696 agricultural labor;

697 (7) Remuneration paid by an employer after December
698 thirty-one, one thousand nine hundred fifty-two, in any med-
699 ium other than cash to an individual in its employ for service
700 not in the course of the employer's trade or business;

701 (8) Any payment (other than vacation or sick pay) made
702 by an employer after December thirty-one, one thousand nine
703 hundred fifty-two, to an individual in its employ after the
704 month in which he attains the age of sixty-five, if he did not
705 work for the employer in the period for which such payment
706 is made;

707 (9) Payments, not required under any contract of hire, made
708 to an individual with respect to his period of training or ser-
709 vice in the armed forces of the United States by an employer
710 by which such individual was formerly employed;

711 (10) Vacation pay, severance pay, or savings plans received
712 by an individual before or after becoming totally or partially
713 unemployed but earned prior to becoming totally or partially
714 unemployed: *Provided*, That the term totally or partially un-
715 employed shall not be interpreted to include (1) employees
716 who are on vacation by reason of the request of the employees
717 or their duly authorized agent, for a vacation at a specific
718 time, and which request by the employees or their agent is
719 acceded to by their employer (2) employees who are on vaca-
720 tion by reason of the employer's request provided they are so
721 informed at least ninety days prior to such vacation, or (3)
722 employees who are on vacation by reason of the employer's
723 request where such vacation is in addition to the regular vaca-
724 tion and the employer compensates such employee at a rate
725 equal to or exceeding their regular daily rate of pay during
726 the vacation period.

727 Gratuities customarily received by an individual in the
728 course of his employment from persons other than his em-
729 ploying unit shall be treated as wages paid by his employing
730 unit, if accounted for and reported to such employing unit.

731 The reasonable cash value of remuneration in any medium
732 other than cash shall be estimated and determined in accord-
733 ance with rules prescribed by the commisisoner, except for
734 remuneration other than cash for services performed in agri-
735 cultural labor and domestic service.

736 "Week" means a calendar week, ending at midnight Satur-
737 day, or the equivalent thereof, as determined in accordance
738 with the regulations prescribed by the commissioner.

739 "Weekly benefit rate" means the maximum amount of bene-
740 fit an eligible individual will receive for one week of total
741 unemployment.

742 "Year" means a calendar year or the equivalent thereof, as
743 determined by the commissioner.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-5. Rate of contribution.

§21A-5-7. Joint and separate accounts.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

§21A-5-5. Rate of contribution.

1 On and after January first, one thousand nine hundred forty-
2 one, an employer shall make payments to the unemployment
3 compensation fund equal to two and seven-tenths percent of
4 wages paid by him with respect to employment during each
5 calendar year beginning with the calendar year one thousand
6 nine hundred forty-one, subject, however, to other provisions
7 of this article; except that on and after January first, one thou-
8 sand nine hundred seventy-two, each employer subject to this
9 chapter shall pay contributions at the rate of one and five-
10 tenths percent of wages paid by him with respect to employ-
11 ment during each calendar year until he has been an employer
12 for not less than thirty-six consecutive months ending on the
13 computation date; thereafter, his contribution rate shall be
14 determined in accordance with the provisions of section ten of
15 this article.

16 On and after July one, one thousand nine hundred eighty-
17 one, each employer subject to this chapter shall pay contri-
18 butions at the rate of two and seven-tenths percent of wages
19 paid by him with respect to employment during each calendar
20 year until he has been an employer for not less than thirty-six
21 consecutive months ending on the computation date; thereafter,
22 his contribution rate shall be determined in accordance with
23 the provisions of section ten of this article.

24 Notwithstanding any other provision of this chapter to the
25 contrary, on or after the first day of July, one thousand nine
26 hundred seventy-eight, any foreign corporation or business
27 entity engaged in the construction trades shall pay contributions
28 at the rate of two and seven-tenths percent of wages paid by
29 him with respect to employment during each calendar year.

30 Notwithstanding any other provision of this chapter to the
31 contrary, on or after the first day of July, one thousand nine
32 hundred eighty-one, any foreign corporation or business entity
33 engaged in the construction trades shall pay contribution at the
34 rate of seven and five-tenths percent of wages paid by him
35 with respect to employment during each calendar year until
36 he has been an employer for not less than thirty-six consecu-
37 tive months ending on the computation date; thereafter, his
38 contribution rate shall be determined in accordance with the
39 provisions of section ten of this article: *Provided*, That any
40 corporation or business entity engaged in the construction
41 trades shall make payments to the fund at the rates applicable
42 to such employer as of January first, one thousand nine hun-
43 dred eighty-one, for wages paid with respect to employment on
44 construction contracts entered into or for which bids are sub-
45 mitted in this state prior to April fifteenth, one thousand nine
46 hundred eighty-one: *Provided, however*, That the burden shall
47 be on such corporation or business entity to prove that any such
48 contract was executed or that any such bid was submitted
49 therefor prior to April fifteenth, one thousand nine hundred
50 eighty-one.

§21A-5-7. Joint and separate accounts.

- 1 (1) The commissioner shall maintain a separate account for
- 2 each employer, and shall credit his account with all contri-
- 3 butions paid by him prior to July first, one thousand nine

4 hundred sixty-one. On and after July first, one thousand nine
5 hundred sixty-one, the commissioner shall maintain a separate
6 account for each employer, and shall credit said employer's
7 account with all contributions of such employer in excess of
8 seven tenths of one percent of taxable wages; and on and after
9 July first, one thousand nine hundred seventy-one, the com-
10 missioner shall maintain a separate account for each employer,
11 and shall credit said employer's account with all contributions
12 of such employer in excess of four tenths of one percent of tax-
13 able wages: *Provided*, That any adjustment made in an em-
14 ployer's account after the computation date shall not be
15 used in the computation of the balance of an employer until
16 the next following computation date: *Provided, however*, That
17 nothing in this chapter shall be construed to grant an employer
18 or individual in his service prior claims or rights to the amounts
19 paid by him into the fund, either on his behalf or on behalf
20 of such individuals. The account of any employer which has
21 been inactive for a period of four consecutive calendar years
22 shall be terminated for all purposes.

23 (2) Benefits paid to an eligible individual for regular and ex-
24 tended total or partial unemployment beginning after the effec-
25 tive date of this article shall be charged to the account of the last
26 employer with whom he has been employed as much as thirty
27 working days, whether or not such days are consecutive:
28 *Provided*, That no employer's account shall be charged with
29 benefits paid to any individual who has been separated from a
30 noncovered employing unit in which he was employed as much
31 as thirty days, whether or not such days are consecutive:
32 *Provided, however*, That no employer's account shall be charg-
33 ed with more than fifty percent of the benefits paid to an
34 eligible individual as extended benefits under the provisions of
35 article six-a of this chapter: *Provided further*, That state and
36 local government employers shall be charged with one hun-
37 dred percent of the benefits paid to an eligible individual as
38 extended benefits.

39 (3) The commissioner shall, for each calendar year here-
40 after, classify employers in accordance with their actual ex-
41 perience in the payment of contributions on their own behalf
42 and with respect to benefits charged against their accounts,
43 with a view of fixing such contribution rates as will reflect such

44 experiences. For the purpose of fixing such contribution rates
45 for each calendar year, the books of the department shall be
46 closed on July thirty-one of the preceding calendar year, and
47 any contributions thereafter paid, as well as benefits there-
48 after paid with respect to compensable weeks ending on or
49 before June thirty of the preceding calendar year, shall not be
50 taken into account until the next annual date for fixing con-
51 tribution rates: *Provided*, That if an employer has failed to
52 furnish to the commissioner on or before July thirty-one of
53 such preceding calendar year the wage information for all past
54 periods necessary for the computation of the contribution rate,
55 such employer's rate shall be, if it is immediately prior to such
56 July thirty-one, less than three and three-tenths percent, in-
57 creased to three and three-tenths percent: *Provided, however*,
58 That any payment made or any information necessary for the
59 computation of a reduced rate furnished on or before the
60 termination of an extension of time for such payment or re-
61 porting of such information granted pursuant to a regulation
62 of the commissioner authorizing such extension, shall be taken
63 into account for the purposes of fixing contribution rates:
64 *Provided further*, That when the time for filing any report or
65 making any payment required hereunder falls on Saturday, Sun-
66 day, or a legal holiday, the due date shall be deemed to be the
67 next succeeding business day: *And provided further*, That
68 whenever, through mistake or inadvertence, erroneous credits
69 or charges are found to have been made to or against the re-
70 served account of any employer, the rate shall be adjusted as of
71 January one of the calendar year in which such mistake or
72 inadvertence is discovered, but payments made under any
73 rate assigned prior to January one of such year shall not be
74 deemed to be erroneously collected.

75 (4) The commissioner may prescribe regulations for the
76 establishment, maintenance and dissolution of joint accounts
77 by two or more employers, and shall, in accordance with such
78 regulations and upon application by two or more employers
79 to establish such an account, or to merge their several indi-
80 vidual accounts in a joint account, maintain such joint account
81 as if it constituted a single employer's account.

82 (5) State and local government employers are hereby autho-

83 rized to enter into joint accounts and to maintain such joint
84 account or accounts as if it or they constituted a single em-
85 ployer's account or accounts.

86 (6) Effective on and after July one, one thousand nine
87 hundred eighty-one, if an employer has failed to furnish to the
88 commissioner on or before July thirty-one of one thousand nine
89 hundred eighty, and each year thereafter, the wage information
90 for all past periods necessary for the computation of the con-
91 tribution rate, such employer's rate shall be, if it is immediately
92 prior to July one, one thousand nine hundred eighty-one, less
93 than seven and five-tenths percent, increased to seven and five-
94 tenths percent.

**§21A-5-10. Experience ratings; decreased rates; adjustment of ac-
counts and rates; debit balance account rates.**

1 On and after July one, one thousand nine hundred eighty-
2 one, an employer's payment shall remain two and seven-tenths
3 percent, until:

4 (1) There have elapsed thirty-six consecutive months im-
5 mediately preceding the computation date throughout which
6 an employer's account was chargeable with benefits.

7 (2) His payments credited to his account for all past years
8 exceed the benefits charged to his account by an amount equal
9 to at least the percent of his average annual payroll as shown
10 in Column B of Table II. His rate shall be the amount ap-
11 pearing in Column C of Table II on line with the percentage
12 in Column B.

13 When the total assets of the fund as of January one of a
14 calendar year equal or exceed one hundred percent but are
15 less than one hundred twenty-five percent of the average
16 benefit payments from the trust fund for the three preceding
17 calendar years, an employer's rate shall be the amount appear-
18 ing in Column D of Table II on line with the percentage in
19 Column B.

20 When the total assets of the fund as of January one of a
21 calendar year equal or exceed one hundred twenty-five per-
22 cent but are less than one hundred fifty percent, an employer's

23 rate shall be the amount appearing in Column E of Table II
24 on line with the percentage in Column B.

25 When the total assets of the fund as of January one of a
26 calendar year equal or exceed one hundred fifty percent, an
27 employer's rate shall be the amount appearing in Column F
28 of Table II on line with the percentage in Column B.

29

TABLE II

	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F
		Percentage of Average Annual Pay- roll By Which Credits Exceed Employer's Charges	Employer's Rate			
	Rate Class					
30	(1)	0.0 to 6.0	4.5	3.5	2.5	1.5
31	(2)	6.0	4.1	3.1	2.1	1.1
32	(3)	7.0	3.9	2.9	1.9	0.9
33	(4)	8.0	3.7	2.7	1.7	0.7
34	(5)	9.0	3.5	2.5	1.5	0.5
35	(6)	10.0	3.3	2.3	1.3	0.3
36	(7)	10.5	3.1	2.1	1.1	0.1
37	(8)	11.0	2.9	1.9	0.9	0.0
38	(9)	11.5	2.7	1.7	0.7	0.0
39	(10)	12.0	2.5	1.5	0.5	0.0
40	(11)	12.5	2.3	1.3	0.3	0.0
41	(12)	13.0	2.1	1.1	0.1	0.0
42	(13)	14.0	1.9	0.9	0.0	0.0
43	(14)	16.0	1.7	0.7	0.0	0.0
44	(15)	18.0 and over	1.5	0.5	0.0	0.0

45 All employer accounts in which charges for all past years
46 exceed credits for such past years shall be adjusted effective
47 June thirty, one thousand nine hundred sixty-seven, so that
48 as of said date, for the purpose of determining such employer's
49 rate of contribution, the credits for all past years shall be
50 deemed to equal the charges to such accounts.

51 Effective on and after the computation date of June thirty,
52 one thousand nine hundred sixty-eight, and notwithstanding the
53 provisions of subsection (1), section seven of this article relat-

54 ing to the noncrediting of employers' accounts with the first
55 seven-tenths or with the first four-tenths of one percent of
56 contributions paid; for the purpose of determining whether
57 or not an employer shall pay contributions at a rate in excess
58 of two and seven-tenths percent as hereinafter set forth, but
59 not for the purpose of determining such rate, the department
60 shall, only for the purpose set forth herein and not as a
61 credit to such account, add to the accounts of all employers
62 having a debit balance, contribution payments made by such
63 employers on and after July one, one thousand nine hundred
64 sixty-seven, which payments are not credited to employers'
65 accounts by reason of the provisions contained in subsection
66 (1), section seven of this article. If, after such contribution
67 payments have been added to such employers' accounts, such
68 accounts continue to show a debit balance, such employers
69 shall make payments at a rate in excess of four and five-
70 tenths percent. If, after such contribution payments have
71 been added to such employers' accounts, such accounts show
72 a credit balance, such employers shall make payments at the
73 rate of four and five-tenths percent. If, under the conditions
74 set forth in this paragraph, it is determined that an employer
75 shall pay contributions at a rate in excess of four and five-
76 tenths percent, the rate in excess of four and five-tenths percent
77 at which an employer shall pay contributions shall then be
78 determined solely under the conditions set forth in the follow-
79 ing paragraphs of this section. The provisions contained in
80 this paragraph shall in no way be considered as providing
81 for the crediting to an employer's account, of amounts of
82 employer contribution payments which are expressly not
83 credited to employers' accounts in subsection (1), section seven
84 of this article.

85 Effective on and after the computation date of June thirty,
86 one thousand nine hundred sixty-seven, all employers with
87 a debit balance account in which the benefits charged to their
88 account for all past years exceed the payments credited to their
89 account for such past years by an amount up to and includ-
90 ing ten percent of their average annual payroll, shall make
91 payments to the unemployment compensation fund at the
92 rate of three percent of wages paid by them with respect to

93 employment; except that effective on and after July one, one
94 thousand nine hundred eighty-one, all employers with a debit
95 balance account in which the benefits charged to their account
96 for all past years exceed the payments credited to their ac-
97 count for such past years by an amount up to and including
98 five percent of their average annual payroll, shall make
99 payments to the unemployment compensation fund at the rate
100 of five and five-tenths percent of wages paid by them with
101 respect to employment.

102 Effective on or after July one, one thousand nine hundred
103 eighty-one, all employers with a debit balance account in
104 which the benefits charged to their account for all past years
105 exceed the payments credited to their account for such past
106 years by an amount in excess of five percent but less than ten
107 percent of their average annual payroll, shall make payments
108 to the unemployment compensation fund at the rate of six
109 and five-tenths percent of wages paid by them with respect
110 to employment.

111 Effective on and after the computation date of June thirty,
112 one thousand nine hundred sixty-seven, all employers with a
113 debit balance account in which the benefits charged to their
114 account for all past years exceed the payments credited to
115 their account for such past years by an amount of ten percent
116 or above of their average annual payroll, shall make payments
117 to the unemployment compensation fund at the rate of three
118 and three-tenths percent of wages paid by them with respect
119 to employment; except that effective on and after July one,
120 one thousand nine hundred eighty-one, such payments to the
121 unemployment compensation fund shall be at the rate of
122 seven and five-tenths percent of wages paid by them with
123 respect to employment or at such other rate authorized by
124 this article.

125 "Debit balance account" for the purpose of this section
126 means an account in which the benefits charged for all past
127 years exceed the payments credited for such past years.

128 "Credit balance account" for the purposes of this section
129 means an account in which the payments credited for all past
130 years exceed the benefits charged for such past years.

131 Once a debit balance account rate is established for an
132 employer's account for a year, it shall apply for the entire year.

133 "Due date" means the last day of the month next following
134 a calendar quarter. In determining the amount in the fund on
135 any due date, contributions received, but not benefits paid,
136 for such month next following the end of a calendar quarter
137 shall be included.

138 (b) Notwithstanding any other provision of this section,
139 every employer subject to the provisions of this chapter shall,
140 in addition to any other tax provided for in this section, pay
141 contributions at the rate of one percent surtax on wages paid
142 by him with respect to employment, beginning January first,
143 one thousand nine hundred eighty-one, until such time that
144 the commissioner determines that the fund assets equal or
145 exceed the average benefits payments from the fund for the
146 preceding three calendar years at which time such surtax
147 shall be discontinued, and the commissioner shall so notify
148 the employers subject to the provisions of this chapter.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

§21A-6-3. Disqualification for benefits.

§21A-6-11. Benefit rate—Partial unemployment.

§21A-6-1. Eligibility qualifications.

1 An unemployed individual shall be eligible to receive bene-
2 fits only if the commissioner finds that:

3 (1) He has registered for work at and thereafter continues
4 to report at an employment office in accordance with the
5 regulations of the commissioner.

6 (2) He has made a claim for benefits in accordance with
7 the provisions of article seven of this chapter.

8 (3) He is able to work and is available for full-time work
9 for which he is fitted by prior training or experience and is
10 doing that which a reasonably prudent person in his circum-
11 stances would do in seeking work.

12 (4) He has been totally or partially unemployed during
13 his benefit year for a waiting period of one week prior to
14 the week for which he claims benefits for total or partial
15 unemployment.

16 (5) He has within his base period earned wages for em-
17 ployment equal to not less than one thousand one hundred fifty
18 dollars and must have earned wages in more than one quarter
19 of his base period.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner,
2 an individual shall be disqualified for benefits:

3 (1) For the week in which he left his most recent work
4 voluntarily without good cause involving fault on the part of
5 the employer and until the individual returns to covered em-
6 ployment and has been employed in covered employment at
7 least thirty working days.

8 For the purpose of this subdivision (1), an individual shall
9 not be deemed to have left his most recent work voluntarily
10 without good cause involving fault on the part of the employer,
11 if such individual leaves his work with an employer with
12 whom he has been employed at least thirty working days or
13 more for the purpose of returning to, and if he in fact, within
14 a fourteen-day calendar period, does return to, employment
15 with the last preceding employer with whom he was previously
16 employed within the past year prior to his return to work
17 day, and which last preceding employer, after having previously
18 employed such individual for thirty working days or more,
19 laid off such individual because of lack of work, which layoff
20 occasioned the payment of benefits under this chapter or
21 could have occasioned the payment of benefits under this
22 chapter had such individual applied for such benefits. It is the
23 intent of this paragraph to cause no disqualification for bene-
24 fits for such an individual who complies with the foregoing
25 set of requirements and conditions. Benefits paid to such
26 individual under the provisions of this chapter shall, notwith-
27 standing the provisions of subsection (2), section seven, article
28 five of this chapter, and of subdivision (12) of this section
29 three, be charged to the account of such last preceding em-
30 ployer with whom such individual was previously employed
31 for thirty working days.

32 (2) For the week in which he was discharged from his
33 most recent work for misconduct and the six weeks immediately

34 following such week; or for the week in which he was dis-
35 charged from his last thirty-day employing unit for mis-
36 conduct and the six weeks immediately following such week.
37 Such disqualification shall carry a reduction in the maximum
38 benefit amount equal to six times the individual's weekly
39 benefit. However, if the claimant returns to work in covered
40 employment for thirty days during his benefit year, whether
41 or not such days are consecutive, the maximum benefit
42 amount shall be increased by the amount of the decrease
43 imposed under the disqualification; except that:

44 If he were discharged from his most recent work for one of
45 the following reasons; or if he were discharged from his last
46 thirty day employing unit for one of the following reasons:
47 Misconduct consisting of willful destruction of his employer's
48 property, assault upon the person of his employer or any em-
49 ployee of his employer, if such assault is committed at such
50 individual's place of employment or in the course of employ-
51 ment; reporting to work in an intoxicated condition, or being
52 intoxicated while at work; arson, theft, larceny, fraud or em-
53 bezzlement in connection with his work; or any other gross
54 misconduct; he shall be and remain disqualified for benefits
55 until he has thereafter worked for at least thirty days in cover-
56 ed employment: *Provided*, That for the purpose of this sub-
57 division the words "any other gross misconduct" shall include,
58 but not be limited to, any act or acts of misconduct where the
59 individual has received prior written warning that termination
60 of employment may result from such act or acts.

61 (3) For the week in which he failed without good cause to
62 apply for available, suitable work, accept suitable work when
63 offered, or return to his customary self-employment when di-
64 rected to do so by the commissioner, and for the four weeks
65 which immediately follow for such additional period as any
66 offer of suitable work shall continue open for his acceptance.
67 Such disqualification shall carry a reduction in the maximum
68 benefit amount equal to four times the individual's weekly
69 benefit amount.

70 (4) For a week in which his total or partial unemployment
71 is due to a stoppage of work which exists because of a labor
72 dispute at the factory, establishment or other premises at

73 which he was last employed, unless the commissioner is satis-
74 fied that he was not (one) participating, financing, or directly
75 interested in such dispute, and (two) did not belong to a grade
76 or class of workers who were participating, financing, or di-
77 rectly interested in the labor dispute which resulted in the
78 stoppage of work. No disqualification under this subdivision
79 shall be imposed if the employees are required to accept wages,
80 hours or conditions of employment substantially less favorable
81 than those prevailing for similar work in the locality, or if
82 employees are denied the right of collective bargaining under
83 generally prevailing conditions, or if an employer shuts down
84 his plant or operation or dismisses his employees in order to
85 force wage reduction, changes in hours or working conditions.

86 For the purpose of this subdivision, if any stoppage of work
87 continues longer than four weeks after the termination of the
88 labor dispute which caused stoppage of work, there shall be a
89 rebuttable presumption that that part of the stoppage of work
90 which exists after said period of four weeks after the termination
91 of said labor dispute did not exist because of said labor dispute;
92 and in such event the burden shall be upon the employer or other
93 interested party to show otherwise.

94 (5) For a week with respect to which he is receiving or has
95 received:

96 (a) Wages in lieu of notice;

97 (b) Compensation for temporary total disability under the
98 workmen's compensation law of any state or under a similar
99 law of the United States;

100 (c) Unemployment compensation benefits under the laws of
101 the United States or any other state.

102 (6) For the week in which an individual has voluntarily quit
103 employment to marry or to perform any marital, parental or
104 family duty, or to attend to his or her personal business or
105 affairs and until the individual returns to covered employment
106 and has been employed in covered employment at least thirty
107 working days.

108 (7) Benefits shall not be paid to any individual on the basis
109 of any services, substantially all of which consist of partici-

110 pating in sports or athletic events or training or preparing to
111 so participate, for any week which commences during the per-
112 iod between two successive sport seasons (or similar periods)
113 if such individual performed such services in the first of such
114 seasons (or similar periods) and there is a reasonable assurance
115 that such individual will perform such services in the later of
116 such seasons (or similar periods).

117 (8) (a) Benefits shall not be paid on the basis of services
118 performed by an alien unless such alien is an individual who
119 has been lawfully admitted for permanent residence or other-
120 wise is permanently residing in the United States under color
121 of law (including an alien who is lawfully present in the United
122 States as a result of the application of the provisions of section
123 203 (a) (7) or section 212 (d) (5) of the Immigration and
124 Nationality Act: *Provided*, That any modifications to the pro-
125 visions of section 3304 (a) (14) of the Federal Unemployment
126 Tax Act as provided by Public Law 94-566 which specify other
127 conditions or other effective date than stated herein for the
128 denial of benefits based on services performed by aliens and
129 which modifications are required to be implemented under
130 state law as a condition for full tax credit against the tax im-
131 posed by the Federal Unemployment Tax Act shall be deemed
132 applicable under the provisions of this section;

133 (b) Any data or information required of individuals apply-
134 ing for benefits to determine whether benefits are not payable
135 to them because of their alien status shall be uniformly re-
136 quired from all applicants for benefits;

137 (c) In the case of an individual whose application for bene-
138 fits would otherwise be approved, no determination that bene-
139 fits to such individual are not payable because of his alien
140 status shall be made except upon a preponderance of the
141 evidence.

142 (9) For each week in which an individual is unemployed
143 because, having voluntarily left employment to attend a school,
144 college, university or other educational institution, he is at-
145 tending such school, college, university or other educational
146 institution, or is awaiting entrance thereto or is awaiting the
147 starting of a new term or session thereof, and until the indi-
148 vidual returns to covered employment.

73 which he was last employed, unless the commissioner is satis-
74 fied that he was not (one) participating, financing, or directly
75 interested in such dispute, and (two) did not belong to a grade
76 or class of workers who were participating, financing, or di-
77 rectly interested in the labor dispute which resulted in the
78 stoppage of work. No disqualification under this subdivision
79 shall be imposed if the employees are required to accept wages,
80 hours or conditions of employment substantially less favorable
81 than those prevailing for similar work in the locality, or if
82 employees are denied the right of collective bargaining under
83 generally prevailing conditions, or if an employer shuts down
84 his plant or operation or dismisses his employees in order to
85 force wage reduction, changes in hours or working conditions.

86 For the purpose of this subdivision, if any stoppage of work
87 continues longer than four weeks after the termination of the
88 labor dispute which caused stoppage of work, there shall be a
89 rebuttable presumption that that part of the stoppage of work
90 which exists after said period of four weeks after the termination
91 of said labor dispute did not exist because of said labor dispute;
92 and in such event the burden shall be upon the employer or other
93 interested party to show otherwise.

94 (5) For a week with respect to which he is receiving or has
95 received:

96 (a) Wages in lieu of notice;

97 (b) Compensation for temporary total disability under the
98 workmen's compensation law of any state or under a similar
99 law of the United States;

100 (c) Unemployment compensation benefits under the laws of
101 the United States or any other state.

102 (6) For the week in which an individual has voluntarily quit
103 employment to marry or to perform any marital, parental or
104 family duty, or to attend to his or her personal business or
105 affairs and until the individual returns to covered employment
106 and has been employed in covered employment at least thirty
107 working days.

108 (7) Benefits shall not be paid to any individual on the basis
109 of any services, substantially all of which consist of partici-

110 pating in sports or athletic events or training or preparing to
111 so participate, for any week which commences during the per-
112 iod between two successive sport seasons (or similar periods)
113 if such individual performed such services in the first of such
114 seasons (or similar periods) and there is a reasonable assurance
115 that such individual will perform such services in the later of
116 such seasons (or similar periods).

117 (8) (a) Benefits shall not be paid on the basis of services
118 performed by an alien unless such alien is an individual who
119 has been lawfully admitted for permanent residence or other-
120 wise is permanently residing in the United States under color
121 of law (including an alien who is lawfully present in the United
122 States as a result of the application of the provisions of section
123 203 (a) (7) or section 212 (d) (5) of the Immigration and
124 Nationality Act: *Provided*, That any modifications to the pro-
125 visions of section 3304 (a) (14) of the Federal Unemployment
126 Tax Act as provided by Public Law 94-566 which specify other
127 conditions or other effective date than stated herein for the
128 denial of benefits based on services performed by aliens and
129 which modifications are required to be implemented under
130 state law as a condition for full tax credit against the tax im-
131 posed by the Federal Unemployment Tax Act shall be deemed
132 applicable under the provisions of this section;

133 (b) Any data or information required of individuals apply-
134 ing for benefits to determine whether benefits are not payable
135 to them because of their alien status shall be uniformly re-
136 quired from all applicants for benefits;

137 (c) In the case of an individual whose application for bene-
138 fits would otherwise be approved, no determination that bene-
139 fits to such individual are not payable because of his alien
140 status shall be made except upon a preponderance of the
141 evidence.

142 (9) For each week in which an individual is unemployed
143 because, having voluntarily left employment to attend a school,
144 college, university or other educational institution, he is at-
145 tending such school, college, university or other educational
146 institution, or is awaiting entrance thereto or is awaiting the
147 starting of a new term or session thereof, and until the indi-
148 vidual returns to covered employment.

149 (10) For each week in which he is unemployed because of
150 his request, or that of his duly authorized agent, for a vaca-
151 tion period at a specified time that would leave the employer no
152 other alternative but to suspend operations.

153 (11) For each week in which he is receiving or has re-
154 ceived benefits under Title II of the Social Security Act or
155 similar payments under any act of Congress and/or remunera-
156 tion in the form of an annuity, pension, or other retirement
157 pay from a base period and/or chargeable employer or from
158 any trust or fund contributed to by a base period and/or
159 chargeable employer. But if such remuneration for any week
160 is less than the benefits which would otherwise be due him for
161 such week under this chapter, he shall be entitled to receive
162 for such week, if otherwise eligible, benefits reduced by the
163 amount of such remuneration: *Provided*, That if such amount
164 of benefits is not a multiple of one dollar, it shall be com-
165 puted to the next higher multiple of one dollar: *Provided*,
166 *however*, That there shall be no disqualification if in the
167 individual's base period there are no wages which were paid
168 by the base period and/or chargeable employer paying such
169 remuneration, or by a fund into which the employer has paid
170 during said base period. Claimant may be required to certify
171 as to whether or not he is receiving or has been receiving re-
172 muneration in the form of an annuity, pension, or other retire-
173 ment pay from a base period and/or chargeable employer or
174 from a trust fund contributed to by a base period and/or
175 chargeable employer.

176 (12) For fifty-two weeks, beginning with the date of the
177 decision, if the commissioner finds such individual who within
178 twenty-four calendar months immediately preceding such de-
179 cision, has made a false statement or representation knowing
180 it to be false or knowingly fails to disclose a material fact, to
181 obtain or increase any benefit or payment under this article:
182 *Provided*, That disqualification under this subdivision shall not
183 preclude prosecution under section seven, article ten of this
184 chapter.

185 (13) For the purposes of this section, an employer's account
186 shall not be charged under any of the following conditions:
187 When benefits are paid for unemployment immediately after

188 the expiration of a period of disqualification for (a) discharge
189 for any of the causes set forth in subdivision (2) of this sec-
190 tion, or (b) failing without good cause to apply for available
191 suitable work, accept suitable work, when offered, or to return
192 to his customary self-employment when directed to do so by
193 the commissioner.

§21A-6-11. Benefit rate—Partial unemployment.

1 An eligible individual who is partially unemployed in any
2 week shall, upon claim therefor filed within such time and in
3 such manner as the commissioner may by regulation prescribe,
4 be paid benefits for such partial unemployment in an amount
5 equal to his weekly benefits rate, as determined in accordance
6 with section ten of this article, less that part of wages from
7 any source payable to him with respect to such week which
8 is in excess of twenty-five dollars (notwithstanding the refer-
9 ence to fifteen dollars in the definition of partial unemploy-
10 ment contained in section three, article one of this chapter):
11 *Provided*, That such amount of benefits if not a multiple of
12 one dollar shall be computed to the next higher multiple of one
13 dollar. Such partial benefits shall be paid to such individual
14 for the week for which he is claiming benefits without regard to
15 the provisions of subdivision one, section one of this article.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-1. Definitions.

§21A-6A-5. Total extended benefit amount.

§21A-6A-1. Definitions.

1 As used in this article, unless the context clearly requires
2 otherwise:
3 (1) "Extended benefit period" means a period which:
4 (A) Begins with the third week after whichever of the fol-
5 lowing weeks occurs first:
6 (i) A week for which there is a national "on" indicator; or
7 (ii) A week for which there is a state "on" indicator; and
8 (B) Ends with either of the following weeks, whichever oc-
9 curs later:
10 (i) The third week after the first week for which there is

11 both a national "off" indicator and a state "off" indicator; or
12 (ii) The thirteenth consecutive week of such period.

13 Notwithstanding the foregoing provisions of this section, no
14 extended benefit period may begin by reason of a state "on"
15 indicator before the fourteenth week following the end of a
16 prior extended benefit period which was in effect with respect
17 to this state, and no extended benefits period may become ef-
18 fective in this state prior to the sixty-first day following the
19 date of enactment of the Federal-State Extended Unemploy-
20 ment Compensation Act of 1970, and, within the period be-
21 ginning on such sixty-first day and ending on December thirty-
22 one, one thousand nine hundred seventy-one, an extended bene-
23 fit period may become effective and be terminated in this state
24 solely by reason of a state "on" and state "off" indicator, re-
25 spectively.

26 (2) There is a national "on" indicator for a week if, for the
27 period consisting of such week and the immediately preceding
28 twelve weeks, the rate of insured unemployment (seasonally ad-
29 justed) for all states equaled or exceeded four and five-tenths
30 percent. The rate of insured unemployment, for the purposes
31 of this subsection, shall be determined by the secretary of labor
32 by reference to the average monthly covered employment for
33 the first four of the most recent six calendar quarters ending be-
34 fore the close of such period.

35 (3) There is a national "off" indicator for a week if, for the
36 period consisting of such week and the immediately preceding
37 twelve weeks, the rate of insured unemployment (seasonally ad-
38 justed) for all states was less than four and five-tenths percent.
39 The rate of insured unemployment, for the purposes of this
40 subsection, shall be determined by the secretary of labor by
41 reference to the average monthly covered employment for the
42 first four of the more recent six calendar quarters ending before
43 the close of such period.

44 (4) There is a "state 'on' indicator" for this state for a
45 week if the commissioner determines, in accordance with the
46 regulations of the United States secretary of labor, that for the
47 period consisting of such week and the immediately preceding

48 twelve weeks, the rate of insured unemployment (not season-
49 ally adjusted) under this article:

50 (A) Equaled or exceeded one hundred twenty percent of
51 the average of such rates for the corresponding thirteen-week
52 period ending in each of the preceding two calendar years, and

53 (B) Equaled or exceeded four percent.

54 (5) There is a "state 'off' indicator" for this state for a week
55 if the commissioner determines, in accordance with the regu-
56 lations of the United States secretary of labor, that for the
57 period consisting of such week and the immediately preceding
58 twelve weeks, the rate of insured unemployment (not season-
59 ally adjusted) under this article:

60 (A) Was less than one hundred twenty percent of the average
61 of such rates for the corresponding thirteen-week period ending
62 in each of the preceding two calendar years, or

63 (B) Was less than four percent.

64 (6) "Rate of insured unemployment," for purposes of sub-
65 divisions (4) and (5) of this section, means the percentage de-
66 rived by dividing

67 (A) The average weekly number of individuals filing claims
68 in this state for weeks of unemployment with respect to the
69 most recent thirteen-consecutive-week period, as determined
70 by the commissioner on the basis of his reports to the United
71 States secretary of labor, by

72 (B) The average monthly employment covered under this
73 chapter for the first four of the most recent six completed cal-
74 endar quarters ending before the end of such thirteen-week
75 period.

76 (7) "Regular benefits" means benefits payable to an indi-
77 vidual under this chapter or under any other state law (includ-
78 ing benefits payable to federal civilian employees and to ex-
79 servicemen pursuant to 5 U.S.C., chapter 85) other than ex-
80 tended benefits.

81 (8) "Extended benefits" means benefits (including benefits
82 payable to federal civilian employees and to ex-servicemen

83 pursuant to 5 U.S.C., chapter 85) payable to an individual
84 under the provisions of this article for weeks of unemployment
85 in his eligibility period.

86 (9) "Eligibility period" of an individual means the period
87 consisting of the weeks in his benefit year which begin in an
88 extended benefit period and, if his benefit year ends within
89 such extended benefit period, any weeks thereafter which be-
90 gin in such period.

91 (10) "Exhaustee" means an individual who, with respect
92 to any week of unemployment in his eligibility period:

93 (A) Has received, prior to such week, all of the regular
94 benefits which were available to him under this chapter or any
95 other state law (including dependents' allowances and benefits
96 payable to federal civilian employees and ex-servicemen under
97 5 U.S.C., chapter 85) in his current benefit year that includes
98 such week: *Provided*, That for the purposes of this subdivision,
99 an individual shall be deemed to have received all of the regu-
100 lar benefits which were available to him although (i) as a re-
101 sult of a pending appeal with respect to wages and/or em-
102 ployment which were not considered in the original monetary
103 determination in his benefit year, he may subsequently be de-
104 termined to be entitled to added regular benefits, or (ii) he
105 may be entitled to regular benefits with respect to future weeks
106 of unemployment, but such benefits are not payable with re-
107 spect to such week of unemployment by reason of the pro-
108 visions of section one-a, article six of this chapter; or

109 (B) His benefit year having expired prior to such week, has
110 no, or insufficient, wages and/or employment on the basis of
111 which he could establish a new benefit year which would in-
112 clude such week; and

113 (C) Has no right to unemployment benefits or allowances,
114 as the case may be, under the Railroad Unemployment Insur-
115 ance Act, the Trade Expansion Act of 1962, the Automotive
116 Products Trade Act of 1965 and such other federal laws as are
117 specified in regulations issued by the United States secretary of
118 labor; and has not received and is not seeking unemployment
119 benefits under the unemployment compensation law of the
120 Virgin Islands or of Canada; but if he is seeking such bene-

121 fits and the appropriate agency finally determines that he is
122 not entitled to benefits under such law he is considered an
123 exhaustee.

124 (11) "State law" means the unemployment insurance law of
125 any state, approved by the United States secretary of labor
126 under section 3304 of the Internal Revenue Code of 1954.

127 (12) No individual shall be entitled to extended benefits
128 during a period of unemployment if he was disqualified under
129 the provisions of subdivision (1), (2) or (3) of section three,
130 article six of this chapter, which disqualification shall not be
131 terminated until such individual has returned to covered em-
132 ployment and has been employed in covered employment for
133 at least thirty working days

134 (13) (A) Notwithstanding any other provisions of this sec-
135 tion, an individual shall be ineligible for payment of extended
136 benefits for any week of unemployment in his eligibility period
137 if the commissioner finds that during such period:

138 (i) He failed to accept any offer of suitable work or failed
139 to apply for any suitable work (as defined under subdivision
140 (13) (C) of this section) to which he was referred by the com-
141 missioner; or

142 (ii) He failed to actively engage in seeking work as prescrib-
143 ed under subdivision (13) (E).

144 (B) Any individual who has been found ineligible for ex-
145 tended benefits by reason of the provisions in subdivision (13)
146 (A) of this section shall also be denied benefits beginning with
147 the first day of the week following the week in which such
148 failure occurred and until he has been employed in each of four
149 subsequent weeks (whether or not consecutive) and has earned
150 remuneration equal to not less than four times the extended
151 weekly benefit amount;

152 (C) For purposes of this subdivision (13) (A) (i) of this
153 section, the term "suitable work" means, with respect to any
154 individual, any work which is within such individual's capa-
155 bilities: *Provided, however,* That the gross average weekly re-
156 muneration payable for the work must exceed the sum of:

157 (i) the individual's average weekly benefit amount (as de-
158 termined under subdivision 13 (D) of this section plus.

159 (ii) the amount, if any, of supplemental unemployment bene-
160 fits (as defined in section 501 (c) (17) (D) of the Internal
161 Revenue Code of 1954) payable to such individual for such
162 week; and further,

163 (iii) pays wages equal to the higher of:

164 (I) the minimum wages provided by section (6) (a) (1) of the
165 Fair Labor Standards Act of 1938, without regard to any
166 exemption; or

167 (II) the state or local minimum wage;

168 (iv) Provided that no individual shall be denied extended
169 benefits for failure to accept an offer or referral to any job
170 which meets the definition of suitability as described above if:

171 (I) the position was not offered to such individual in writ-
172 ing and was not listed with the employment service; or

173 (II) such failure could not result in a denial of benefits
174 under the definition of suitable work for regular benefit claim-
175 ants in section five, article six of this chapter, to the extent
176 that the criteria of suitability in that section are not inconsis-
177 tent with the provisions of this subdivision (13) (C) of this
178 section; or

179 (III) The individual furnishes satisfactory evidence to the
180 commissioner that his or her prospects for obtaining work in
181 his or her customary occupation within a reasonably short
182 period are good. If such evidence is deemed satisfactory for
183 this purpose, the determination of whether any work is suitable
184 with respect to such individual shall be made in accordance
185 with the definition of suitable work in section five, article six
186 of this chapter, without regard to the definition specified by
187 subdivision (13) (C) of this section.

188 (D) Notwithstanding the provisions of this section to the
189 contrary, no work shall be deemed to be suitable work for an
190 individual which does not accord with the labor standard pro-
191 visions required by section 3304 (a) (5) of the Internal Revenue

192 Code of 1954 and set forth herein under subdivision (13) (C)
193 (iii) (I) of this section.

194 (E) For the purposes of subdivision (13) (A) (II) of this
195 section an individual shall be treated as actively engaged in
196 seeking work during any week if:

197 (i) The individual has engaged in a systematic and sustained
198 effort to obtain work during such week, and

199 (ii) The individual furnishes tangible evidence that he has
200 engaged in such effort during such week.

201 (F) The employment service shall refer any claimant entitled
202 to extended benefits under this article to any suitable work
203 which meets the criteria prescribed in subdivision (13) (C).

204 (G) An individual shall not be eligible to receive extended
205 benefits with respect to any week of unemployment in his
206 eligibility period if such individual has been disqualified for
207 regular benefits under this chapter because he or she voluntarily
208 left work, was discharged for misconduct or refused an offer
209 of suitable work unless the disqualification imposed for such
210 reasons has been terminated in accordance with specific con-
211 ditions established under this subdivision requiring the indi-
212 vidual to perform service for remuneration subsequent to the
213 date of such disqualification.

§21A-6A-5. Total extended benefit amount.

1 The total extended benefit amount payable to any eligible
2 individual with respect to his applicable benefit year shall be
3 the least of the following amounts:

4 (1) Fifty percent of the total amount of regular benefits
5 which were payable to him under this chapter in his applicable
6 benefit year;

7 (2) Eleven times his weekly benefit amount which was
8 payable to him under this chapter for a week of total unem-
9 ployment in the applicable benefit year: *Provided*, That an
10 individual filing for extended benefits through the Interstate
11 Benefit Payment Plan and residing in a state where an extended
12 benefit period is not in effect shall be limited to payment for
13 only the first two weeks of such extended benefits.

ARTICLE 7. CLAIM PROCEDURE.**§21A-7-7. Appeal tribunals.**

1 The board shall determine the manner of hearing cases trans-
2 ferred or appealed from a decision of a deputy. All cases re-
3 lating to labor disputes or to disqualification under subdivi-
4 sion (4), section three, article six of this chapter, and trans-
5 ferred to an appeal tribunal for initial determination, shall be
6 heard by an appeal tribunal composed either of three adminis-
7 trative law judges assigned by the board, or the board itself,
8 as the board may direct in particular cases or in particular
9 areas. All other appeals from the decision of a deputy shall be
10 heard by an appeal tribunal composed, as the board may direct
11 in particular cases or in particular areas, of a single adminis-
12 trative law judge; a tribunal of three administrative law judges
13 assigned by the board; a member of the board; or the board
14 itself.

ARTICLE 10. GENERAL PROVISIONS.**§21A-10-7. False representations; penalties.**

1 A person who makes a false statement or representation
2 knowing it to be false or who knowingly fails to disclose a ma-
3 terial fact in order to obtain or increase a benefit, either for
4 himself or another, under this chapter, or under an employ-
5 ment security law of any other state or of the federal govern-
6 ment for either of which jurisdictions this state is acting as an
7 agent, shall be guilty of a misdemeanor, and, upon conviction,
8 punished by a fine of not less than one hundred dollars nor
9 more than five hundred dollars, or by imprisonment for not
10 longer than thirty days, or both. Each false statement or re-
11 presentation, or failure to disclose a material fact, shall con-
12 stitute a separate offense.

CHAPTER 207

(Com. Sub. for H. B. 785--By Mr. Harman, 33rd Dist.)

[Passed March 31, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-eight of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding

thereto a new article, designated article ten, relating to the jurisdiction of courts to determine child custody; setting certain requirements to be satisfied before a custody decree may issue; requiring notice to contestants and others; providing for methods of notice; procedures when simultaneous proceedings take place in foreign jurisdictions; allowing a court to refuse jurisdiction or stay proceedings under specified circumstances; requiring certain information from party or parties before the court; allowing for joinder of additional parties by order of the court; giving the court power to order personal appearances and to require another to pay the expenses of such appearances; providing for the admission of psychological testimony and assessing the cost thereof; setting forth res judicata effect of custody decrees; requiring recognition of decrees from foreign jurisdictions meeting requirements of this article; allowing modification of foreign decrees under certain circumstances; providing procedures for enforcement of foreign decrees; requiring a registry thereof and requiring certified copies upon request; allowing taking of testimony in foreign jurisdictions by request of a party or by the court sua sponte; providing for cooperation between jurisdictions concerning evidence and appearance of parties; requiring preservation of documents for use in foreign jurisdictions; requiring procurement of foreign decrees; providing for international application; requiring priority of questions of jurisdiction; and citation form.

Be it enacted by the Legislature of West Virginia:

That chapter forty-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 ten, to read as follows:

ARTICLE 10. UNIFORM CHILD CUSTODY JURISDICTION ACT.

- §48-10-1. Purposes; construction.
- §48-10-2. Definitions.
- §48-10-3. Jurisdiction.
- §48-10-4. Notice and opportunity to be heard.
- §48-10-5. Notice to persons outside state; submission to jurisdiction.
- §48-10-6. Simultaneous proceedings in other states.
- §48-10-7. Inconvenient forum.
- §48-10-8. Jurisdiction declined by reason of conduct.
- §48-10-9. Information under oath to be submitted to the court.

- §48-10-10. Additional parties.
- §48-10-11. Appearance of parties and the child.
- §48-10-12. Psychological evidence.
- §48-10-13. Binding force and res judicata effect of custody decree.
- §48-10-14. Recognition of out-of-state custody decrees.
- §48-10-15. Modification of custody decree of another state.
- §48-10-16. Filing and enforcement of custody decree of another state.
- §48-10-17. Registry of out-of-state custody decrees and proceedings.
- §48-10-18. Certified copies of custody decree.
- §48-10-19. Taking testimony in another state.
- §48-10-20. Hearings and studies in another state; orders to appear.
- §48-10-21. Assistance to courts of other states.
- §48-10-22. Preservation of documents for use in other states.
- §48-10-23. Request for court records of another state.
- §48-10-24. International application.
- §48-10-25. Priority.
- §48-10-26. Short title.

§48-10-1. Purposes; construction.

- 1 (a) The general purposes of this article are to:
 - 2 (1) Avoid jurisdictional competition and conflict with
3 courts of other states in matters of child custody which have
4 in the past resulted in the shifting of children from state to
5 state with harmful effects on their well-being;
 - 6 (2) Promote cooperation with the courts of other states
7 to the end that a custody decree is rendered in that state
8 which can best decide the case in the interest of the child;
 - 9 (3) Assure that litigation concerning the custody of a child
10 takes place ordinarily in the state with which the child and his
11 family have the closest connection and where significant evi-
12 dence concerning his care, protection, training, and personal
13 relationships is most readily available, and that courts of this
14 state decline the exercise of jurisdiction when the child and his
15 family have a closer connection with another state;
 - 16 (4) Discourage continuing controversies over child custody
17 in the interest of greater stability of home environment and of
18 secure family relationships for the child;
 - 19 (5) Deter abductions and other unilateral removals of
20 children undertaken to obtain custody awards;
 - 21 (6) Avoid relitigation of custody decisions of other states
22 in this state insofar as feasible;

23 (7) Facilitate the enforcement of custody decrees of other
24 states;

25 (8) Promote and expand the exchange of information and
26 other forms of mutual assistance between the courts of this
27 state and those of other states concerning the same child; and

28 (9) Make uniform the law of those states which enact it.

29 (b) This article shall be construed to promote the general
30 purposes stated in this section.

§48-10-2. Definitions.

1 As used in this article:

2 (1) "Contestant" means a person, including a parent, who
3 claims a right to custody or visitation rights with respect to
4 a child;

5 (2) "Custody determination" means a court decision and
6 court orders and instructions providing for the custody of a
7 child, including visitation rights; it does not include a decision
8 relating to child support or any other monetary obligation of
9 any person;

10 (3) "Custody proceeding" includes proceedings in which a
11 custody determination is one of several issues, such as an
12 action for divorce or separation, and includes child neglect
13 and dependency proceedings;

14 (4) "Decree" or "custody decree" means a custody deter-
15 mination contained in a judicial decree or order made in a
16 custody proceeding and includes an initial decree and a modi-
17 fication decree;

18 (5) "Home state" means the state in which the child im-
19 mediately preceding the time involved lived with his parents,
20 a parent or a person acting as parent for at least six
21 consecutive months and, in the case of a child less than
22 six months old, the state in which the child lived from birth
23 with any of the persons named. Periods of temporary absence
24 of any of the named persons are counted as part of the
25 six-month or other period;

26 (6) "Initial decree" means the first custody decree con-
27 cerning a particular child;

28 (7) "Modification decree" means a custody decree which
29 modifies or replaces a prior decree, whether made by the
30 court which rendered the prior decree or by another court;

31 (8) "Physical custody" means actual possession and control
32 of a child;

33 (9) "Person acting as parent" means a person, other than
34 a parent, who has physical custody of a child and who has
35 either been awarded custody by a court or claims a right to
36 custody; and

37 (10) "State" means any state, territory or possession of
38 the United States, the Commonwealth of Puerto Rico and the
39 District of Columbia.

§48-10-3. Jurisdiction.

1 (a) A court of this state which is competent to decide
2 child custody matters has jurisdiction to make a child custody
3 determination by initial or modification decree if:

4 (1) This state (i) is the home state of the child at the time
5 of commencement of the proceeding or (ii) has been the
6 child's home state within six months before commencement of
7 the proceeding, the child is absent from this state because
8 of his removal or retention by a person claiming his custody
9 or for other reasons and a parent or person acting as parent
10 continues to live in this state; or

11 (2) It is in the best interest of the child that a court of
12 this state assume jurisdiction because (i) the child and his
13 parents, or the child and at least one contestant, have a
14 significant connection with this state, and (ii) there is avail-
15 able in this state substantial evidence concerning the child's
16 present or future care, protection, training and personal
17 relationships; or

18 (3) The child is physically present in this state, and (i)
19 the child has been abandoned, or (ii) it is necessary in an
20 emergency to protect the child because he has been subjected

21 to or threatened with mistreatment or abuse or is otherwise
22 neglected or dependent; or

23 (4) (i) It appears that no other state would have jurisdiction
24 under prerequisites substantially in accordance with subdivi-
25 sion (1), (2) or (3) of this subsection, or another state
26 has declined to exercise jurisdiction on the ground that this
27 state is the more appropriate forum to determine the custody
28 of the child, and (ii) it is in the best interest of the child that
29 this court assume jurisdiction.

30 (b) Except under subdivisions (3) and (4) of subsection
31 (a), physical presence in this state of the child, or of the
32 child and one of the contestants, is not alone sufficient to
33 confer jurisdiction on a court of this state to make a child
34 custody determination.

35 (c) Physical presence of the child, while desirable, is
36 not a prerequisite for jurisdiction to determine his custody.

§48-10-4. Notice and opportunity to be heard.

1 Before making a decree under this article, reasonable
2 notice and opportunity to be heard shall be given to the con-
3 testants, any parent whose parental rights have not been pro-
4 viously terminated and any person who has physical custody
5 of the child. If any of these persons is outside this state, notice
6 and opportunity to be heard shall be given pursuant to section
7 five of this article.

**§48-10-5. Notice to persons outside state; submission to juris-
diction.**

1 (a) Notice required for the exercise of jurisdiction over a
2 person outside this state shall be given in a manner reason-
3 ably calculated to give actual notice and may be:

4 (1) By personal delivery outside this state in the manner
5 prescribed for service of process within this state;

6 (2) In the manner prescribed by the law of the place in
7 which the service is made for service of process in that place
8 in an action in any of its courts of general jurisdiction;

9 (3) By any form of mail addressed to the person to be
10 served and requesting a receipt; or

11 (4) As directed by the court, including publication, if other
12 means of notification are ineffective.

13 (b) Notice under this section shall be served, mailed, or
14 delivered, or last published at least twenty days before any
15 hearing in this state.

16 (c) Proof of service outside this state may be made by affi-
17 davit of the individual who made the service, or in the manner
18 prescribed by the law of this state, by the order pursuant to
19 which the service is made or by the law of the place in which
20 the service is made. If service is made by mail, proof may be
21 a receipt signed by the addressee or other evidence of de-
22 livery to the addressee.

23 (d) Notice is not required if a person submits to the juris-
24 diction of the court.

§48-10-6. Simultaneous proceedings in other states.

1 (a) A court of this state shall not exercise its jurisdiction
2 under this article if at the time of filing the petition a proceed-
3 ing concerning the custody of the child was pending in a court
4 of another state exercising jurisdiction substantially in con-
5 formity with this article, unless the proceeding is stayed by
6 the court of the other state because this state is a more appro-
7 priate forum or for other reasons.

8 (b) Before hearing the petition in a custody proceeding, the
9 court shall examine the pleadings and other information sup-
10 plied by the parties under section nine of this article and shall
11 consult the child custody registry established under section
12 sixteen of this article concerning the pendency of proceedings
13 with respect to the child in other states. If the court has reason
14 to believe that proceedings may be pending in another state,
15 it shall direct an inquiry to the state court administrator or
16 other appropriate official of the other state.

17 (c) If the court is informed during the course of the pro-
18 ceeding that a proceeding concerning the custody of the child
19 was pending in another state before the court assumed juris-

20 diction, it shall stay the proceeding and communicate with the
21 court in which the other proceeding is pending to the end that
22 the issue may be litigated in the more appropriate forum and
23 that information be exchanged in accordance with sections
24 nineteen, twenty, twenty-one and twenty-two of this article.
25 If a court of this state has made a custody decree before being
26 informed of a pending proceeding in a court of another state,
27 it shall immediately inform that court of the fact. If the court
28 is informed that a proceeding was commenced in another state
29 after it assumed jurisdiction, it shall likewise inform the other
30 court to the end that the issues may be litigated in the more
31 appropriate forum.

§48-10-7. Inconvenient forum.

1 (a) A court which has jurisdiction under this article to
2 make an initial or modification decree may decline to
3 exercise its jurisdiction any time before making a decree if
4 it finds that it is an inconvenient forum to make a custody
5 determination under the circumstances of the case and that a
6 court of another state is a more appropriate forum.

7 (b) A finding of inconvenient forum may be made upon
8 the court's own motion or upon motion of a party or a guardian
9 ad litem or other representative of the child.

10 (c) In determining if it is an inconvenient forum, the
11 court shall consider if it is in the interest of the child
12 that another state assume jurisdiction. For this purpose it
13 may take into account the following factors, among others:

14 (1) If another state is or recently was the child's home
15 state;

16 (2) If another state has a closer connection with the
17 child and his family or with the child and one or more of
18 the contestants;

19 (3) If substantial evidence concerning the child's present
20 or future care, protection, training and personal relationships
21 is more readily available in another state;

22 (4) If parties have agreed on another forum which is no
23 less appropriate; and

24 (5) If the exercise of jurisdiction by a court of this state
25 would contravene any of the purposes stated in section one
26 of this article.

27 (d) Before determining whether to decline or retain juris-
28 diction, the court may communicate with a court of another
29 state and exchange information pertinent to the assumption
30 of jurisdiction by either court with a view to assuring that
31 jurisdiction will be exercised by the more appropriate court
32 and that a forum will be available to the parties.

33 (e) If the court finds that it is an inconvenient forum
34 and that a court of another state is a more appropriate
35 forum, it may dismiss the proceedings, or it may stay pro-
36 ceedings upon condition that a custody proceeding be promptly
37 commenced in another named state or upon any other condi-
38 tions which may be just and proper, including the condition
39 that a moving party stipulate his consent and submission to
40 the jurisdiction of the other forum.

41 (f) The court may decline to exercise its jurisdiction under
42 this article if a custody determination is incidental to an action
43 for divorce or another proceeding while retaining jurisdiction
44 over the divorce or other proceeding.

45 (g) If it appears to the court that it is clearly an inap-
46 propriate forum, it may require the party who commenced
47 the proceedings to pay, in addition to the costs of the pro-
48 ceedings in this state, necessary travel and other expenses,
49 including attorneys' fees, incurred by other parties or their
50 witnesses. Payment is to be made to the clerk of the court
51 for remittance to the proper party.

52 (h) Upon dismissal or stay of proceedings under this
53 section the court shall inform the court found to be the
54 more appropriate forum of this fact or, if the court which
55 would have jurisdiction in the other state is not certainly
56 known, shall transmit the information to the court administra-
57 tor or other appropriate official for forwarding to the ap-
58 propriate court.

59 (i) Any communication received from another state in-
60 forming this state of a finding of inconvenient forum be-

61 cause a court of this state is the more appropriate forum
62 shall be filed in the custody registry of the appropriate court.
63 Upon assuming jurisdiction the court of this state shall in-
64 form the original court of this fact.

§48-10-8. Jurisdiction declined by reason of conduct.

1 (a) If the petitioner for an initial decree has wrongfully
2 taken the child from another state or has engaged in similar
3 reprehensible conduct, the court may decline to exercise
4 jurisdiction if this is just and proper under the circumstances.

5 (b) Unless required in the interest of the child, the court
6 shall not exercise its jurisdiction to modify a custody decree
7 of another state if the petitioner, without consent of the
8 person entitled to custody, has improperly removed the child
9 from the physical custody of the person entitled to custody
10 or has improperly retained the child after a visit or other
11 temporary relinquishment of physical custody. If the petitioner
12 has violated any other provision of a custody decree of another
13 state, the court may decline to exercise its jurisdiction if this
14 is just and proper under the circumstances.

15 (c) In appropriate cases a court dismissing a petition under
16 this section may charge the petitioner with necessary travel
17 and other expenses, including attorneys' fees, incurred by
18 other parties or their witnesses.

§48-10-9. Information under oath to be submitted to the court.

1 (a) Every party in a custody proceeding in his first pleading
2 or in an affidavit attached to that pleading shall give informa-
3 tion under oath as to the child's present address, the places
4 where the child has lived within the last five years, and the
5 names and present addresses of the persons with whom the
6 child has lived during that period. In this pleading or affidavit
7 every party shall further declare under oath whether:

8 (1) He has participated (as a party, witness or in any
9 other capacity) in any other litigation concerning the custody
10 of the same child in this or any other state;

11 (2) He has information of any custody proceeding concern-
12 ing the child pending in a court of this or any other state;
13 and

14 (3) He knows of any person not a party to the proceedings
15 who has physical custody of the child or claims to have
16 custody or visitation rights with respect to the child.

17 (b) If the declaration as to any of the above items is in
18 the affirmative, the declarant shall give additional information
19 under oath as required by the court. The court may examine
20 the parties under oath as to details of the information furn-
21 ished and as to other matters pertinent to the court's juris-
22 diction and the disposition of the case.

23 (c) Each party has a continuing duty to inform the court
24 of any custody proceeding concerning the child in this or
25 any other state of which he obtained information during this
26 proceeding.

§48-10-10. Additional parties.

1 If the court learns from information furnished by the par-
2 ties pursuant to section nine of this article or from other
3 sources that a person not a party to the custody proceeding
4 has physical custody of the child or claims to have custody
5 or visitation rights with respect to the child, it shall order that
6 person to be joined as a party and to be duly notified of the
7 pendency of the proceeding and of his joinder as a party. If
8 the person joined as a party is outside this state, he shall be
9 served with process or otherwise notified in accordance with
10 section five of this article.

§48-10-11. Appearance of parties and the child.

1 (a) The court may order any party to the proceeding who
2 is in this state to appear personally before the court. If that
3 party has physical custody of the child, the court may order
4 that he appear personally with the child.

5 (b) If a party to the proceeding whose presence is desired by
6 the court is outside this state with or without the child, the
7 court may order that the notice given under section five of this
8 article include a statement directing that party to appear per-
9 sonally with or without the child and declaring that failure
10 to appear may result in a decision adverse to that party.

11 (c) If a party to the proceeding who is outside this state is

12 directed to appear under subsection (b) of this section or desires
13 to appear personally before the court with or without the
14 child, the court may require another party to pay to the clerk
15 of the court travel and other necessary expenses of the party
16 so appearing and of the child if this is just and proper under
17 the circumstances.

§48-10-12. Psychological evidence.

1 In a proceeding under this article in which a circuit court
2 in this state must determine or advise upon the issue of
3 custody, testimony by a licensed psychologist relevant to a
4 child's (a) academic skills and progress, (b) socialization,
5 (c) physical well-being, and (d) emotional and mental status
6 shall be admissible, subject however to all the rules of
7 evidence ordinarily applicable to such testimony: *Provided*,
8 That for the sole purpose of evidence relevant to the child's
9 academic skills and progress, the testimony of a school
10 psychologist shall be admissible. Any party may move for
11 a psychological evaluation of the child at such reasonable
12 time and place as the court shall, for good cause, order, for
13 the purpose of preparing such testimony. Unless it appears
14 that all the parties litigating the issue of custody desire to
15 adduce evidence resulting from such an evaluation, the court
16 may, on its own motion, order an independent evaluation
17 by a licensed psychologist selected by agreement of the
18 parties or, in the absence of such agreement, by the court.
19 The court may assess as a cost of the proceeding the reason-
20 able costs of transportation to the place of such evaluation,
21 the evaluation, and the attendance in court by the psychologist
22 for the giving of evidence, including expert witness fees.
23 Costs shall be allocated among the parties as equity may,
24 in the discretion of the court, require.

§48-10-13. Binding force and res judicata effect of custody decree.

1 A custody decree rendered by a court of this state which
2 had jurisdiction under section three of this article binds all
3 parties who have been served in this state or notified in ac-
4 cordance with section five of this article or who have sub-
5 mitted to the jurisdiction of the court, and who have been
6 given an opportunity to be heard. As to these parties the cus-

7 tody decree is conclusive as to all issues of law and fact de-
8 cided and as to the custody determination made unless and
9 until that determination is modified pursuant to law, including
10 the provisions of this article.

§48-10-14. Recognition of out-of-state custody decrees.

1 The courts of this state shall recognize and enforce an
2 initial or modification decree of a court of another state which
3 had assumed jurisdiction under statutory provisions substan-
4 tially in accordance with this article or which was made under
5 factual circumstances meeting the jurisdictional standards of
6 this article, so long as this decree has not been modified in
7 accordance with jurisdictional standards substantially similar
8 to those of this article.

§48-10-15. Modification of custody decree of another state.

1 (a) If a court of another state has made a custody decree, a
2 court of this state shall not modify that decree unless (1) it
3 appears to the court of this state that the court which rendered
4 the decree does not now have jurisdiction under jurisdictional
5 prerequisites substantially in accordance with this article or
6 has declined to assume jurisdiction to modify the decree and
7 (2) the court of this state has jurisdiction.

8 (b) If a court of this state is authorized under subsection
9 (a) of this section and section eight of this article to modify a
10 custody decree of another state, it shall give due consideration
11 to the transcript of the record and other documents of all
12 previous proceedings submitted to it in accordance with sec-
13 tion twenty-two of this article.

§48-10-16. Filing and enforcement of custody decree of another state.

1 (a) A certified copy of a custody decree of another state
2 may be filed in the office of the clerk of any circuit court of
3 this state. The clerk shall treat the decree in the same manner
4 as a custody decree of a circuit court, or of any court of this
5 state of competent jurisdiction. A custody decree so filed has
6 the same effect and shall be enforced in like manner as a
7 custody decree rendered by a court of this state.

8 (b) A person violating a custody decree of another state
9 which makes it necessary to enforce the decree in this state
10 may be required to pay necessary travel and other expenses, in-
11 cluding attorneys' fees, incurred by the party entitled to the
12 custody or his witnesses.

§48-10-17. Registry of out-of-state custody decrees and proceedings.

1 The clerk of each circuit court shall maintain a registry in
2 which he shall enter the following:

3 (1) Certified copies of custody decrees of other states, re-
4 ceived for filing;

5 (2) Communications as to the pendency of custody pro-
6 ceedings of other states;

7 (3) Communications concerning a finding of inconvenient
8 forum by a court of another state; and

9 (4) Other communications or documents concerning custody
10 proceedings in another state which may affect the jurisdiction
11 of a court of this state or the disposition to be made by it in
12 a custody proceeding.

§48-10-18. Certified copies of custody decree.

1 The clerk of the circuit court of this state, at the request of
2 the court of another state or at the request of any person who
3 is affected by or has a legitimate interest in a custody decree,
4 shall certify and forward a copy of the decree to that court or
5 person.

§48-10-19. Taking testimony in another state.

1 In addition to other procedural devices available to a party,
2 any party to the proceeding or a guardian ad litem or other rep-
3 resentative of the child may adduce testimony of witnesses,
4 including parties and the child, by deposition or otherwise, in
5 another state. The court on its own motion may direct that
6 the testimony of a person be taken in another state and may
7 prescribe the manner in which and the terms upon which the
8 testimony shall be taken.

§48-10-20. Hearings and studies in another state; orders to appear.

1 (a) A court of this state may request the appropriate
2 court of another state to hold a hearing to adduce evidence,
3 to order a party to produce or give evidence under other
4 procedures of that state, or to have social studies made with
5 respect to the custody of a child involved in proceedings
6 pending in the court of this state; and to forward to the
7 court of this state certified copies of the transcript of the record
8 of the hearing, the evidence otherwise adduced or any social
9 studies prepared in compliance with the request. The cost of
10 the services may be assessed against the parties or, if necessary,
11 ordered paid out of the treasury of the state upon certificate
12 of the court wherein the case is pending.

13 (b) A court of this state may request the appropriate
14 court of another state to order a party to custody proceedings
15 pending in the court of this state to appear in the proceedings
16 and, if that party has physical custody of the child, to appear
17 with the child. The request may state that travel and other
18 necessary expenses of the party and of the child whose appear-
19 ance is desired will be assessed against another party or will
20 otherwise be paid.

§48-10-21. Assistance to courts of other states.

1 (a) Upon request of the court of another state, the courts
2 of this state which are competent to hear custody matters
3 may order a person in this state to appear at a hearing to
4 adduce evidence or to produce or give evidence under other
5 procedures available in this state or may order social studies
6 to be made for use in a custody proceeding in another state.
7 A certified copy of the transcript of the record of the hearing
8 or the evidence otherwise adduced and any social studies pre-
9 pared shall be forwarded by the clerk of the court to the
10 requesting court.

11 (b) A person within this state may voluntarily give his
12 testimony or statement in this state for use in a custody pro-
13 ceeding outside this state.

14 (c) Upon request of the court of another state a competent
15 court of this state may order a person in this state to appear

16 alone or with the child in a custody proceeding in another
17 state. The court may condition compliance with the request
18 upon assurance by the other state that state travel and other
19 necessary expenses will be advanced or reimbursed.

§48-10-22. Preservation of documents for use in other states.

1 In any custody proceeding in this state the court shall
2 preserve the pleadings, orders and decrees, any record that
3 has been made of its hearings, social studies and other perti-
4 nent documents until the child reaches eighteen years of age.
5 Upon appropriate request of the court of another state the
6 court shall forward to the other court certified copies of any
7 or all of such documents.

§48-10-23. Request for court records of another state.

1 If a custody decree has been rendered in another state
2 concerning a child involved in a custody proceeding pending
3 in a court of this state, the court of this state upon taking
4 jurisdiction of the case shall request of the court of the other
5 state a certified copy of the transcript of any court record and
6 other documents mentioned in section twenty-one of this article.

§48-10-24. International application.

1 The general policies of this article extend to the internation-
2 al area. The provisions of this article relating to the recogni-
3 tion and enforcement of custody decrees of other states apply
4 to custody decrees and decrees involving legal institutions
5 similar in nature to custody institutions rendered by appro-
6 priate authorities of other nations if reasonable notice and
7 opportunity to be heard were given to all affected persons.

§48-10-25. Priority.

1 Upon request of a party to a custody proceeding which
2 raises a question of existence or exercise of jurisdiction under
3 this article, the case shall be given calendar priority and
4 handled expeditiously.

§48-10-26. Short title.

1 This article may be cited as the "Uniform Child Custody
2 Jurisdiction Act."

CHAPTER 208

(H. B. 987—By Mr. Brenda and Mr. Gilliam)

[Passed April 6, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighty-two, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article nine, chapter forty-seven of said code, relating to revising the uniform limited partnership act; definitions; name of limited partnership and reservation thereof; specifying office and agent to be maintained by limited partnership; requiring records to be kept and availability thereof; nature of partnership business; business transactions of partner with partnership; execution, amendment, cancellation, filing, notice, and delivery of certificate of limited partnership; liability for false statement in certificate; admission of additional limited partners; voting by limited partners; liability of limited partner to third parties; person erroneously believing himself a limited partner; right of limited partner to information; admission of additional general partners; events of withdrawal of general partners; general powers and liabilities of general partners; contributions by general partner; voting by general partners; liability for contribution; sharing of profits, losses and distributions; interim distributions; withdrawal of general or limited partner; distribution upon withdrawal; distribution in kind; right to distribution; limitations on distribution; liability upon return of contribution; nature of partnership interest; assignment of partnership interest; rights of creditor; right of assignee to become limited partner; power of estate of deceased or incompetent partner; nonjudicial and judicial dissolution; winding up of affairs; distribution of assets; law governing foreign limited partnerships; registration of foreign limited partnerships and names thereof; issuance of registration; changes and amendments to registration; cancellation of registration; transaction of business without registration; action by the secretary of state to restrain a foreign limited partnership; right of action by limited partner; proper plaintiff; pleading; expenses; construction and application of article; short title of

article; effective date of article; and rules for cases not provided for in article.

Be it enacted by the Legislature of West Virginia:

That section eighty-two, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article nine, chapter forty-seven of said code be amended and reenacted, all to read as follows:

Chapter

- 11. Taxation.**
- 47. Regulation of Trade.**

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS FRANCHISE REGISTRATION CERTIFICATE TAX.

§11-12-82. Annual fee of secretary of state as attorney-in-fact.

1 Every foreign corporation, every foreign limited partnership,
 2 every domestic corporation whose principal place of business
 3 or chief works is located without the state, and every domestic
 4 limited partnership whose principal place of business is located
 5 without the state, shall pay an annual fee of ten dollars for
 6 the services of the secretary of state as attorney-in-fact for
 7 such corporation or limited partnership, which fee shall be due
 8 and payable at the same time, collected by the same officers,
 9 and accounted for in the same way, as the annual license tax
 10 imposed on corporations under this article, payable to the
 11 secretary of state as statutory attorney-in-fact.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

- §49-9-1. Definitions.
- §47-9-2. Name of limited partnership.
- §47-9-3. Reservation of name.
- §47-9-4. Secretary of state as attorney-in-fact.
- §47-9-5. Office and records.
- §47-9-6. Nature of business.
- §47-9-7. Business transactions of partner with partnership.
- §47-9-8. Certificate and formation of limited partnership.
- §47-9-9. Amendment to certificate.
- §47-9-10. Cancellation of certificate.

- §47-9-11. Execution of certificates.
- §47-9-12. Judicial amendment or cancellation of certificate.
- §47-9-13. Filing of certificate.
- §47-9-14. Liability for false statement in certificate.
- §47-9-15. Notice.
- §47-9-16. Delivery of certificates to limited partners.
- §47-9-17. Admission of additional limited partners.
- §47-9-18. Voting by limited partners.
- §47-9-19. Liability to third parties.
- §47-9-20. Person erroneously believing himself limited partner.
- §47-9-21. Right of limited partner to information.
- §47-9-22. Admission of additional general partners.
- §47-9-23. Events of withdrawal of general partner.
- §47-9-24. General powers and liabilities of general partner.
- §47-9-25. Contributions by general partner.
- §47-9-26. Voting by general partners.
- §47-9-27. Form of contribution.
- §47-9-28. Liability for contributions.
- §47-9-29. Sharing of profits and losses.
- §47-9-30. Sharing of distributions.
- §47-9-31. Interim distributions.
- §47-9-32. Withdrawal of general partner.
- §47-9-33. Withdrawal of limited partner.
- §47-9-34. Distribution upon withdrawal.
- §47-9-35. Distribution in kind.
- §47-9-36. Right to distribution.
- §47-9-37. Limitations on distribution.
- §47-9-38. Liability upon return of contribution.
- §47-9-39. Nature of partnership interest.
- §47-9-40. Assignment of partnership interest.
- §47-9-41. Rights of creditor.
- §47-9-42. Right of assignee to become limited partner.
- §47-9-43. Power of estate of deceased or incompetent partner.
- §47-9-44. Nonjudicial dissolution.
- §47-9-45. Judicial dissolution.
- §47-9-46. Winding up of affairs.
- §47-9-47. Distribution of assets.
- §47-9-48. Law governing foreign limited partnerships.
- §47-9-49. Registration of foreign limited partnership.
- §47-9-50. Issuance of registration; filing in the office of the clerk of the county commission.
- §47-9-51. Registration of name of foreign limited partnership.
- §47-9-52. Foreign limited partnership—Changes and amendments to registration.
- §47-9-53. Foreign limited partnership—Cancellation of registration.
- §47-9-54. Foreign limited partnership—Transaction of business without registration.

- §47-9-55. Action by attorney general to restrain a foreign limited partnership.
- §47-9-56. Right of action by limited partner.
- §47-9-57. Proper plaintiff in derivative action.
- §47-9-58. Pleading in derivative action.
- §47-9-59. Expenses in derivative action.
- §47-9-60. Construction and application of article.
- §47-9-61. Short title of article.
- §47-9-62. Effective date of article.
- §57-9-63. Rules for cases not provided for in article.

§47-9-1. Definitions.

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

2 (1) "Certificate of limited partnership" means the certificate
3 referred to in section eight of this article and the certificate
4 as amended;

5 (2) "Contribution" means any cash, property, services
6 rendered, or a promissory note or other binding obligation
7 to contribute cash or property or to perform services, which
8 a partner contributes to a limited partnership in his capacity
9 as a partner;

10 (3) "Event of withdrawal of a general partner" means an
11 event that causes a person to cease to be a general partner
12 as provided in section twenty-three of this article;

13 (4) "Foreign limited partnership" means a partnership
14 formed under the laws of any state other than this state and
15 having as partners one or more general partners and one or
16 more limited partners;

17 (5) "General partner" means a person who has been ad-
18 mitted to a limited partnership as a general partner in accord-
19 ance with the partnership agreement and named in the certifi-
20 cate of limited partnership as a general partner;

21 (6) "Limited partner" means a person who has been ad-
22 mitted to a limited partnership as a limited partner in accord-
23 ance with the partnership agreement and named in the certifi-
24 cate of limited partnership as a limited partner;

25 (7) "Limited partnership" and "domestic limited partner-
26 ship" means a partnership formed by two or more persons

27 under the laws of this state and having one or more general
28 partners and one or more limited partners;

29 (8) "Partner" means a limited or general partner;

30 (9) "Partnership agreement" means any valid agreement,
31 written or oral, of the partners as to the affairs of a limited
32 partnership and the conduct of its business;

33 (10) "Partnership interest" means a partner's share of the
34 profits and losses of a limited partnership and the right to re-
35 ceive distributions of partnership assets;

36 (11) "Person" means a natural person, partnership, limited
37 partnership (domestic or foreign), trust, estate, association or
38 corporation; and

39 (12) "State" means a state, territory or possession of the
40 United States, the District of Columbia or the Commonwealth
41 of Puerto Rico.

§47-9-2. Name of limited partnership.

1 The name of each limited partnership as set forth in its
2 certificate of limited partnership:

3 (1) Shall contain without abbreviation the words "limited
4 partnership";

5 (2) May not contain the name of a limited partner unless
6 (i) it is also the name of a general partner or the corporate
7 name of a corporate general partner, or (ii) the business of the
8 limited partnership had been carried on under the name before
9 the admission of that limited partner;

10 (3) May not contain any word or phrase indicating or im-
11 plying that it is organized other than for a purpose stated in
12 its certificate of limited partnership;

13 (4) May not be the same as, or deceptively similar to the
14 name of any corporation or limited partnership organized
15 under the laws of this state or licensed or registered as a
16 foreign corporation or limited partnership in this state; and

17 (5) May not include the words "engineer," "engineers,"
18 "engineering" or any combination of those words unless the

19 purpose of the corporation is to practice professional engineer-
20 ing as defined in article thirteen, chapter thirty of this code, as
21 amended, and one or more of the incorporators is a registered
22 professional engineer as defined therein.

§47-9-3. Reservation of name.

1 (a) The exclusive right to the use of a name may be re-
2 served by:

3 (1) Any person intending to organize a limited partnership
4 under this article and to adopt that name;

5 (2) Any domestic limited partnership or any foreign limited
6 partnership registered in this state which, in either case, intends
7 to adopt that name;

8 (3) Any foreign limited partnership intending to register
9 in this state and adopt that name; and

10 (4) Any person intending to organize a foreign limited
11 partnership and intending to have it registered in this state and
12 adopt that name.

13 (b) The reservation shall be made by filing with the secre-
14 tary of state an application, executed by the applicant, to
15 reserve a specified name. If the secretary of state finds that the
16 name is available for use by a domestic or foreign limited
17 partnership, he shall reserve that name for the exclusive use
18 of the applicant for a period of one hundred twenty days. The
19 right to the exclusive use of a reserved name may be transferred
20 to any other person by filing in the office of the secretary of
21 state a notice of the transfer, executed by the applicant for
22 whom the name was reserved and specifying the name and
23 address of the transferee.

§47-9-4. Secretary of state as attorney-in-fact.

1 (a) The secretary of state is hereby constituted the attorney-
2 in-fact for and on behalf of every limited partnership created
3 by virtue of the laws of this state, with authority to accept
4 service of notice and process on behalf of every such limited
5 partnership and upon whom service of notice and process
6 may be made in this state for and upon every such limited
7 partnership.

8 No act of such limited partnership appointing the secretary
9 of state such attorney-in-fact shall be necessary. Immediately
10 after being served with or accepting any such process or notice,
11 of which process or notice two copies for each defendant shall
12 be furnished the secretary of state with the original notice or
13 process, together with a fee of two dollars, the secretary of
14 state shall file in his office a copy of such process or notice,
15 with a note thereon endorsed of the time of service, or accep-
16 tance, as the case may be, and transmit one copy of such pro-
17 cess or notice by registered or certified mail, return receipt
18 requested, to the person to whom notice and process shall be
19 sent, whose name and address were last furnished to the state
20 officer at the time authorized by statute to accept service of
21 notice and process and upon whom notice and process may be
22 served; and if no such person has been named, to the principal
23 office of the limited partnership at the address last furnished
24 to the state officer at the time authorized by statute to accept
25 service of process and upon whom process may be served,
26 as required by law. No process or notice shall be served on the
27 secretary of state or accepted by him fewer than ten days
28 before the return day thereof. Such limited partnership shall
29 pay the annual fee prescribed by section eighty-two, article
30 twelve, chapter eleven of this code for the services of the
31 secretary of state as its attorney-in-fact.

32 (b) Any foreign limited partnership that conducts affairs
33 or does or transacts business in this state is conclusively
34 presumed to have appointed the secretary of state as its
35 attorney-in-fact with authority to accept service of notice
36 and process on its behalf and upon whom service of notice
37 and process may be made in this state for and upon every
38 such limited partnership in any action or proceeding de-
39 scribed in the next following paragraph of this subsection.
40 No act of such foreign limited partnership appointing the
41 secretary of state as its attorney-in-fact shall be necessary. Im-
42 mediately after being served with or accepting any such pro-
43 cess or notice, of which process or notice two copies for each
44 defendant shall be furnished the secretary of state with the
45 original notice or process, together with a fee of two dollars,
46 the secretary of state shall file in his office a copy of such
47 process or notice, with a note thereon endorsed of the time

48 of service or acceptance, as the case may be, and transmit one
49 copy of such process or notice by registered or certified mail,
50 return receipt requested, to such foreign limited partnership
51 at the address of its principal office, which address shall be
52 stated in such process or notice. Such service or acceptance of
53 such process or notice shall be sufficient if such return receipt
54 is signed by an agent or employee of such foreign limited part-
55 nership, or the registered or certified mail so sent by the sec-
56 retary of state is refused by the addressee and the registered or
57 certified mail is returned to the secretary of state, or to
58 his office, showing thereon the stamp of the United States
59 postal service that delivery thereof has been refused, and such
60 return receipt or registered or certified mail is appended to
61 the original process or notice and filed therewith in the clerk's
62 office of the court from which such process or notice was
63 issued. No process or notice may be served on the secretary
64 of state or accepted by him fewer than ten days before the
65 return date thereof. The court may order such continuances
66 as may be reasonable to afford each defendant opportunity
67 to defend the action or proceedings.

68 For the purpose of this section, a foreign limited partnership
69 shall be deemed to be conducting affairs or doing or trans-
70 acting business herein (1) if such foreign limited partnership
71 makes a contract to be performed, in whole or in part, by any
72 party thereto, in this state, (2) if such foreign limited partner-
73 ship commits a tort in whole or in part in this state, or (3) if
74 such foreign limited partnership manufactures, sells, offers for
75 sale or supplies any product in a defective condition and such
76 product causes injury to any person or property within this
77 state notwithstanding the fact that such foreign limited part-
78 nership had no agents, servants or employees or contacts
79 within this state at the time of said injury. The making of such
80 contract, the committing of such tort or the manufacture or
81 sale, offer of sale or supply of such defective product as here-
82 inabove described shall be deemed to be the agreement of such
83 foreign limited partnership that any notice or process served
84 upon, or accepted by, the secretary of state pursuant to the
85 next preceding paragraph of this section in any action or pro-
86 ceeding against such foreign limited partnership arising from,
87 or growing out of, such contract, tort, or manufacture or sale,

88 offer of sale or supply of such defective product shall be of
89 the same legal force and validity as process duly served on
90 such a foreign limited partnership in this state.

§47-9-5. Office and records.

1 (a) Each limited partnership shall continuously maintain
2 in this state an office, which may but need not be a place of its
3 business in this state, at which shall be kept the following
4 records:

5 (1) A current list of the full name and last known business
6 address of each partner set forth in alphabetical order;

7 (2) A copy of the certificate of limited partnership and
8 all certificates of amendment thereto, together with executed
9 copies of any power of attorney pursuant to which any
10 certificate has been executed;

11 (3) A copy of the limited partnership's federal, state and
12 local income tax returns and reports, if any, for the three most
13 recent years; and

14 (4) A copy of any then effective written partnership agree-
15 ments and of any financial statements of the limited partnership
16 for the three most recent years.

17 (b) Such records shall be available for inspection and
18 copying at the reasonable request, and at the expense, of
19 any partner during ordinary business hours.

§47-9-6. Nature of business.

1 A limited partnership may carry on any business which a
2 partnership without limited partners may carry on, except the
3 business of banking, brokerage or making insurance.

§47-9-7. Business transactions of partner with partnership.

1 Except as provided in the partnership agreement, a partner
2 may lend money to and transact other business with the limited
3 partnership and, subject to other applicable law, has the same
4 rights and obligations with respect thereto as a person who is
5 not a partner.

§47-9-8. Certificate and formation of limited partnership.

1 (a) In order to form a limited partnership, two or more
2 persons must execute a certificate of limited partnership. The
3 certificate shall be filed in the office of the secretary of state
4 and set forth:

5 (1) The name of the limited partnership;

6 (2) The general character of its business;

7 (3) The address of the office and the name and address of
8 the agent for service of process required to be maintained by
9 section four of this article;

10 (4) The name and the business address of each partner,
11 specifying separately the general partners and limited partners;

12 (5) The amount of cash and a description and statement of
13 the agreed value of the other property or services contributed
14 by each partner and which each partner has agreed to con-
15 tribute in the future;

16 (6) The times at which or events on the happening of which
17 any additional contributions agreed to be made by each part-
18 ner are to be made;

19 (7) Any power of a limited partner to grant the right to be-
20 come a limited partner to an assignee of any part of his part-
21 nership interest, and the terms and conditions of the power;

22 (8) If agreed upon, the time at which or the events on the
23 happening of which a partner may terminate his membership in
24 the limited partnership and the amount of, or the method of
25 determining, the distribution to which he may be entitled re-
26 specting his partnership interest, and the terms and conditions
27 of the termination and distribution;

28 (9) Any right of a partner to receive distributions of prop-
29 erty, including cash from the limited partnership;

30 (10) Any right of a partner to receive, or of a general
31 partner to make, distributions to a partner which include a
32 return of all or any part of the partner's contribution;

33 (11) Any time at which or events upon the happening of

34 which the limited partnership is to be dissolved and its affairs
35 wound up;

36 (12) Any right of the remaining general partners to con-
37 tinue the business on the happening of an event of withdrawal
38 of a general partner; and

39 (13) Any other matters the partners determine to include
40 therein.

41 (b) A limited partnership is formed at the time of the filing
42 of the certificate of limited partnership in the office of the
43 secretary of state or at any later time specified in the certificate
44 of limited partnership if, in either case, there has been sub-
45 stantial compliance with the requirements of this section.

§47-9-9. Amendment to certificate.

1 (a) A certificate of limited partnership is amended by filing
2 a certificate of amendment thereto in the office of the secre-
3 tary of state. The certificate shall set forth:

4 (1) The name of the limited partnership;

5 (2) The date of the filing of the certificate; and

6 (3) The amendment to the certificate.

7 (b) Within thirty days after the happening of any of the
8 following events, an amendment to a certificate of limited part-
9 nership reflecting the occurrence of the event or events shall
10 be filed:

11 (1) A change in the amount or character of the contribution
12 of any partner, or in any partner's obligation to make a contri-
13 bution;

14 (2) The admission of a new partner;

15 (3) The withdrawal of a partner; or

16 (4) The continuation of the business under section forty-
17 four of this article after an event of withdrawal of a general
18 partner.

19 (c) A general partner who becomes aware that any state-
20 ment in a certificate of limited partnership was false when

21 made or that any arrangements or other facts described have
22 changed, making the certificate inaccurate in any respect, shall
23 promptly amend the certificate, but an amendment to show
24 a change of address of a limited partner need be filed only
25 once every twelve months.

26 (d) A certificate of limited partnership may be amended
27 at any time for any other proper purpose the general partners
28 determine.

29 (e) No person has any liability because an amendment to
30 a certificate of limited partnership has not been filed to reflect
31 the occurrence of any event referred to in subsection (b) of
32 this section if the amendment is filed within the thirty-day
33 period specified in subsection (b).

§47-9-10. Cancellation of certificate.

1 A certificate of limited partnership shall be cancelled upon
2 the dissolution and the commencement of winding up of the
3 partnership or at any other time there are no limited partners.
4 A certificate of cancellation shall be filed in the office of the
5 secretary of state and set forth:

6 (1) The name of the limited partnership;

7 (2) The date of filing of its certificate of limited partner-
8 ship;

9 (3) The reason for filing the certificate of cancellation;

10 (4) The effective date, which shall be a date certain, of
11 cancellation if it is not to be effective upon the filing of the
12 certificate; and

13 (5) Any other information the general partners filing the
14 certificate determine.

§47-9-11. Execution of certificates.

1 (a) Each certificate required by this article to be filed in
2 the office of the secretary of state shall be executed in the
3 following manner:

4 (1) An original certificate of limited partnership must
5 be signed by all partners named therein;

6 (2) A certificate of amendment must be signed by at least
7 one general partner and by each other partner designated in the
8 certificate as a new partner or whose contribution is described
9 as having been increased; and

10 (3) A certificate of cancellation must be signed by all
11 general partners;

12 (b) Any person may sign a certificate by an attorney-in-
13 fact, but a power of attorney to sign a certificate relating to
14 the admission, or increased contribution, of a partner must
15 specifically describe the admission or increase.

16 (c) The execution of a certificate by a general partner
17 constitutes an affirmation under the penalties of perjury that
18 the facts stated therein are true.

§47-9-12. Judicial amendment or cancellation of certificate.

1 If a person required by section eleven of this article to
2 execute a certificate of amendment or cancellation fails or
3 refuses to do so, any other partner, and any assignee of
4 a partnership interest, who is adversely affected by the
5 failure or refusal, may petition the appropriate circuit court
6 to direct the amendment or cancellation. If the court finds
7 that the amendment or cancellation is proper and that any
8 person so designated has failed or refused to execute the
9 certificate, it shall order the secretary of state to record an
10 appropriate certificate of amendment or cancellation.

§47-9-13. Filing of certificate.

1 (a) Two signed copies of the certificate of limited partner-
2 ship and of any certificates of amendment or cancellation, or
3 of any judicial decree of amendment or cancellation, shall be
4 delivered to the secretary of state. No photostatic copies may
5 be used. A person who executes a certificate as an agent or
6 fiduciary need not exhibit evidence of his authority as a
7 prerequisite to filing. Unless the secretary of state finds that
8 any certificate does not conform to law, upon receipt of all
9 filing fees required by law he shall:

10 (1) Endorse on each duplicate original the word "Filed"
11 and the day, month and year of the filing thereof;

- 12 (2) File one duplicate original in his office; and
- 13 (3) Return the other duplicate original to the person who
14 filed it or his representative.
- 15 (b) Upon the filing of a certificate of amendment, or
16 judicial decree of amendment, in the office of the secretary
17 of state the certificate of limited partnership shall be amended
18 as set forth therein, and upon the effective date of a certificate
19 of cancellation, or a judicial decree thereof, the certificate of
20 limited partnership is cancelled.
- 21 (c) The certificate of limited partnership and any certifi-
22 cates of amendment or cancellation or of any judicial decree
23 of amendment or cancellation, or a duly certified copy thereof,
24 shall be recorded in the office of the clerk of the county com-
25 mission of the county in which such office, as required by
26 section five of this article, is located.

§47-9-14. Liability for false statement in certificate.

- 1 If any certificate of limited partnership or certificate of
2 amendment or cancellation contains a false statement, one who
3 suffers loss by reliance on the statement may recover damages
4 for the loss from:
- 5 (1) Any person who executes the certificate, or causes
6 another to execute it on his behalf, and knew, and any
7 general partner who knew or should have known, the statement
8 to be false at the time the certificate was executed; and
- 9 (2) Any general partner who thereafter knows or should
10 have known that any arrangement or other fact described in
11 the certificate has changed, making the statement inaccurate
12 in any respect within a sufficient time before the statement
13 was relied upon reasonably to have enabled that general
14 partner to cancel or amend the certificate, or to file a peti-
15 tion for its cancellation or amendment under section twelve of
16 this article.

§47-9-15. Notice.

- 1 The fact that a certificate of limited partnership is on
2 file in the office of the secretary of state is notice that the
3 partnership is a limited partnership and the persons designated

4 therein as limited partners are limited partners, but it is not
5 notice of any other fact.

§47-9-16. Delivery of certificates to limited partners.

1 Upon the return by the secretary of state pursuant to section
2 thirteen of this article of a certificate marked "Filed," the
3 general partners shall promptly deliver or mail a copy of the
4 certificate of limited partnership and each certificate to each
5 limited partner unless the partnership agreement provides
6 otherwise.

§47-9-17. Admission of additional limited partners.

1 (a) After the filing of a limited partnership's original
2 certificate of limited partnership, a person may be admitted
3 as an additional limited partner:

4 (1) In the case of a person acquiring a partnership in-
5 terest directly from the limited partnership, upon the com-
6 pliance with the partnership agreement or, if the partnership
7 agreement does not so provide, upon the written consent of
8 all partners; and

9 (2) In the case of an assignee of a partnership interest
10 of a partner who has the power as provided in section
11 forty-two of this article to grant the assignee the right to
12 become a limited partner, upon the exercise of that power
13 and compliance with any conditions limiting the grant or
14 exercise of the power.

15 (b) In each case under subsection (a) of this section,
16 the person acquiring the partnership interest becomes a limited
17 partner only upon amendment of the certificate of limited
18 partnership reflecting that fact.

§47-9-18. Voting by limited partners.

1 Subject to section nineteen of this article, the partnership
2 agreement may grant to all or a specified group of the limited
3 partners the right to vote, on a per capita or other bases,
4 upon any matter.

§47-9-19. Liability to third parties.

1 (a) Except as provided in subsection (d) of this section,

2 a limited partner is not liable for the obligations of a limited
3 partnership unless he is also a general partner or, in addition
4 to the exercise of his rights and powers as a limited partner,
5 he takes part in the control of the business: *Provided*, That if
6 the limited partner's participation in the control of the business
7 is not substantially the same as the exercise of the powers
8 of a general partner, he is liable only to persons who transact
9 business with the limited partnership with actual knowledge
10 of his participation in control.

11 (b) A limited partner does not participate in the control
12 of the business within the meaning of subsection (a) of this
13 section solely by doing one or more of the following:

14 (1) Being a contractor for or an agent or employee of the
15 limited partnership or of a general partner;

16 (2) Consulting with and advising a general partner with
17 respect to the business of the limited partnership;

18 (3) Acting as surety for the limited partnership;

19 (4) Approving or disapproving an amendment to the part-
20 nership agreement; or

21 (5) Voting on one or more of the following matters:

22 (i) The dissolution and winding up of the limited partner-
23 ship;

24 (ii) The sale, exchange, lease, mortgage, pledge or other
25 transfer of all or substantially all of the assets of the limited
26 partnership other than in the ordinary course of its business;

27 (iii) The incurrence of indebtedness by the limited partner-
28 ship other than in the ordinary course of its business;

29 (iv) A change in the nature of the business; or

30 (v) The removal of a general partner.

31 (c) The enumeration in subsection (b) of this section does
32 not mean that the possession or exercise of any other powers
33 by a limited partner constitutes participation by him in the
34 business of the limited partnership.

35 (d) A limited partner who knowingly permits his name to

36 be used in the name of the limited partnership, except under
37 circumstances permitted by subdivision (2), section two of
38 this article, is liable to creditors who extend credit to the
39 limited partnership without actual knowledge that the limited
40 partner is not a general partner.

§47-9-20. Person erroneously believing himself limited partner.

1 (a) Except as provided in subsection (b) of this section,
2 a person who makes a contribution to a business enterprise
3 and erroneously but in good faith believes that he has become
4 a limited partner in the enterprise is not a general partner
5 in the enterprise and is not bound by its obligations by reason
6 of making the contribution, receiving distributions from the
7 enterprise, or exercising any rights of a limited partner, if,
8 on ascertaining the mistake, he:

9 (1) Causes an appropriate certificate of limited partnership
10 or a certificate of amendment to be executed and filed; or

11 (2) Withdraws from future equity participation in the enter-
12 prise.

13 (b) A person who makes a contribution of the kind de-
14 scribed in subsection (a) of this section, is liable as a general
15 partner to any third party who transacts business with the
16 enterprise (i) before the person withdraws and an appropriate
17 certificate is filed to show withdrawal, or (ii) before an appro-
18 priate certificate is filed to show his status as a limited partner
19 and, in the case of an amendment, after expiration of the
20 thirty day period for filing an amendment relating to the person
21 as a limited partner under section nine of this article, but in
22 either case only if the third party actually believed in good
23 faith that the person was a general partner at the time of the
24 transaction.

§47-9-21. Right of limited partner to information.

1 Each limited partner has the right to:

2 (1) Inspect and copy any of the partnership records re-
3 quired to be maintained by section five of this article;

4 (2) Obtain from the general partners from time to time

5 upon reasonable demand (i) true and full information re-
6 garding the state of the business and financial condition of the
7 limited partnership, (ii) promptly after becoming available,
8 a copy of the limited partnership's federal, state and local in-
9 come tax returns from each year, and (iii) other information
10 regarding the affairs of the limited partnership as is just and
11 reasonable.

§47-9-22. Admission of additional general partners.

1 After the filing of a limited partnership's original certificate
2 of limited partnership, additional general partners may be ad-
3 mitted only with the specific written consent of each partner.

§47-9-23. Events of withdrawal of general partner.

1 Except as approved by the specific written consent of all
2 partners at the time, a person ceases to be a general partner
3 of a limited partnership upon the happening of any of the
4 following events:

5 (1) The general partner withdraws from the limited part-
6 nership as provided in section thirty-two of this article;

7 (2) The general partner ceases to be a member of the limit-
8 ed partnership as provided in section forty of this article;

9 (3) The general partner is removed as a general partner in
10 accordance with the partnership agreement;

11 (4) Unless otherwise provided for in the certificate of limited
12 partnership, the general partner (i) makes an assignment for
13 the benefit of creditors; (ii) files a voluntary petition in bank-
14 ruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files
15 a petition or answer seeking for himself any reorganization,
16 arrangement, composition, readjustment, liquidation, dissolu-
17 tion or similar relief under any statute, law or regulation;
18 (v) files an answer of other pleading admitting to failing to
19 contest the material allegations of a petition filed against
20 him in any proceeding of this nature; or (vi) seeks, consents
21 to, or acquiesces in the appointment of a trustee, receiver or
22 liquidator of the general partner or of all or any substantial
23 part of his properties;

24 (5) Unless otherwise provided in the certificate of limited
25 partnership, one hundred twenty days after the commence-
26 ment of any proceeding against the general partner seeking re-
27 organization, arrangement, composition, readjustment, liqui-
28 dation, dissolution or similar relief under any statute, law or
29 regulation, the proceeding has not been dismissed, or if with-
30 in ninety days after the appointment without his consent or
31 acquiescence of a trustee, receiver or liquidator of the general
32 partner or of all or any substantial part of his properties, the
33 appointment is not vacated or stayed or within ninety days
34 after the expiration of any such stay, the appointment is not
35 vacated;

36 (6) In the case of a general partner who is a natural per-
37 son, (i) his death; or (ii) the entry by a court of competent
38 jurisdiction adjudicating him incompetent to manage his per-
39 son or his estate;

40 (7) In the case of a general partner who is acting as a
41 general partner by virtue of being a trustee of a trust, the
42 termination of the trust, but not merely the substitution of a
43 new trustee;

44 (8) In the case of a general partner that is a separate part-
45 nership, the dissolution and commencement of winding up of
46 the separate partnership;

47 (9) In the case of a general partner that is a corporation,
48 the filing of a certificate of dissolution, or its equivalent, for
49 the corporation or the revocation of its charter; or

50 (10) In the case of an estate, the distribution by the fidu-
51 ciary of the estate's entire interest in the partnership.

§47-9-24. General powers and liabilities of general partner.

1 Except as provided in this article or in the partnership agree-
2 ment, a general partner of a limited partnership has the rights
3 and powers and is subject to the restrictions and liabilities of
4 a partner in a partnership without limited partners.

§47-9-25. Contributions by general partner.

1 A general partner of a limited partnership may make contri-
2 butions to the partnership and share in the profits and losses

3 of and in distributions from the limited partnership as a gen-
4 eral partner. A general partner also may make contributions
5 to and share in profits, losses and distributions as a limited
6 partner. A person who is both a general partner and a limited
7 partner has the rights and powers and is subject to the restric-
8 tions and liabilities of a general partner and, except as pro-
9 vided in the partnership agreement, also has the powers and is
10 subject to the restrictions of a limited partner to the extent of
11 his participation in the partnership as a limited partner.

§47-9-26. Voting by general partners.

1 The partnership agreement may grant to all or certain
2 identified general partners the right to vote, on a per capita
3 or any other basis, separately or with all or any class of the
4 limited partners on any matter.

§47-9-27. Form of contribution.

1 The contribution of a partner may be in cash, property,
2 or services rendered, or a promissory note or other obligation
3 to contribute cash or property or to perform services.

§47-9-28. Liability for contribution.

1 (a) Except as provided in the certificate of limited partner-
2 ship, a partner is obligated to the limited partnership to
3 perform any promise to contribute cash or property or to
4 perform services, even if he is unable to perform because of
5 death, disability or any other reason. If a partner does not
6 make the required contribution of property or services, he is
7 obligated at the option of the limited partnership to contribute
8 cash equal to the portion of the value, as stated in the certificate
9 of limited partnership, of the stated contribution that has not
10 been made.

11 (b) Unless otherwise provided in the partnership agreement,
12 the obligation of a partner to make a contribution or return
13 money or other property paid or distributed in violation of
14 this article may be compromised only by consent of all the
15 partners. Notwithstanding the compromise, a creditor of a
16 limited partnership who extends credit or whose claim arises
17 after the filing of the certificate of limited partnership or an

18 amendment thereto which, in either case, reflects the obliga-
19 tion, and before the amendment or cancellation thereof to
20 reflect the compromise, may enforce the original obligation.

§47-9-29. Sharing of profits and losses.

1 The profits and losses of a limited partnership shall be
2 allocated among the partners, and among classes of partners,
3 in the manner provided in the partnership agreement. If the
4 partnership agreement does not so provide, profits and
5 losses shall be allocated on the basis of the value, as stated
6 in the certificate of limited partnership, of the contributions
7 made by each partner to the extent they have been received
8 by the partnership and have not been returned.

§47-9-30. Sharing of distributions.

1 Distributions of cash or other assets of a limited partner-
2 ship shall be allocated among the partners and classes of
3 partners in the manner provided in the partnership agreement.
4 If the partnership agreement does not so provide, distributions
5 shall be made on the basis of the value, as stated in the cer-
6 tificate of limited partnership, of the contributions made by
7 each partner to the extent they have been received by the
8 partnership and have not been returned.

§47-9-31. Interim distributions.

1 Except as provided in this article, a partner is entitled
2 to receive distributions from a limited partnership before his
3 withdrawal from the limited partnership and before the
4 dissolution and winding up thereof:

5 (1) To the extent and at the times or upon the happening
6 of the events specified in the partnership agreement; and

7 (2) If any distribution constitutes a return of part of his
8 contribution under subsection (b), section thirty-eight of this
9 article, to the extent and at the times or upon the happening
10 of the events specified in the certificate of limited partnership.

§47-9-32. Withdrawal of general partner.

1 A general partner may withdraw from a limited partnership
2 at any time by giving written notice to the other partners, but

3 if the withdrawal violates the partnership agreement, the
4 limited partnership may recover from the withdrawing general
5 partner damages for breach of the partnership agreement and
6 offset the damages against the amount otherwise distributable
7 to him.

§47-9-33. Withdrawal of limited partner.

1 A limited partner may withdraw from a limited partnership
2 at any time or upon the happening of events specified in the
3 certificate of limited partnership and in accordance with the
4 partnership agreement. If the certificate does not specify
5 the time or the events upon the happening of which a limited
6 partner may withdraw or a definite time for the dissolution
7 and winding up of the limited partnership, a limited partner
8 may withdraw upon not less than six months' prior written
9 notice to each general partner at his address on the books
10 of the limited partnership at its office in this state.

§47-9-34. Distribution upon withdrawal.

1 Except as provided in this article, upon withdrawal any
2 withdrawing partner is entitled to receive any distribution to
3 which he is entitled under the partnership agreement, and, if
4 not otherwise provided in the agreement, he is entitled to re-
5 ceive within a reasonable time after withdrawal the fair value
6 of his interest in the limited partnership as of the date of
7 withdrawal based upon his right to share in distributions from
8 the limited partnership.

§47-9-35. Distribution in kind.

1 Except as provided in the certificate of limited partnership,
2 a partner, regardless of the nature of his contribution, has
3 no right to demand and receive any distribution from a limited
4 partnership in any form other than cash. Except as provided
5 in the partnership agreement, a partner may not be compelled
6 to accept a distribution of any asset in kind from a limited
7 partnership to the extent that the percentage of the asset
8 distributed to him exceeds a percentage of that asset which
9 is equal to the percentage in which he shares in distributions
10 from the limited partnership.

§47-9-36. Right to distribution.

1 At the time a partner becomes entitled to receive a distribu-
2 tion, he has the status of, and is entitled to all remedies
3 available to, a creditor of the limited partnership with respect
4 to the distribution.

§47-9-37. Limitations on distribution.

1 A partner may not receive a distribution from a limited
2 partnership to the extent that, after giving effect to the
3 distribution, all liabilities of the limited partnership, other
4 than liabilities to partners on account of their partnership
5 interests, exceed the fair value of the partnership assets.

§47-9-38. Liability upon return of contribution.

1 (a) If a partner has received the return of any part of his
2 contribution without violation of the partnership agreement
3 or this article, he is liable to the limited partnership for a
4 period of one year thereafter for the amount of the returned
5 contribution, but only to the extent necessary to discharge the
6 limited partnership's liabilities to creditors who extended
7 credit to the limited partnership during the period the con-
8 tribution was held by the partnership.

9 (b) If a partner has received the return of any part of his
10 contribution in violation of the partnership agreement or this
11 article, he is liable to the limited partnership for a period of
12 six years thereafter for the amount of the contribution wrong-
13 fully returned.

14 (c) A partner receives a return of his contribution to the
15 extent that a distribution to him reduces his share of the fair
16 value of the net assets of the limited partnership below the
17 value, as set forth in the certificate of limited partnership, of
18 his contribution which has not been distributed to him.

§47-9-39. Nature of partnership interest.

1 A partnership interest is personal property.

§47-9-40. Assignment of partnership interest.

1 Except as provided in the partnership agreement, a part-
2 nership interest is assignable in whole or in part. An assign-

3 ment of a partnership interest does not dissolve a limited part-
4 nership or entitle the assignee to become or to exercise any
5 rights of a partner. An assignment entitles the assignee to re-
6 ceive, to the extent assigned, only the distribution to which the
7 assignor would be entitled. Except as provided in the partner-
8 ship agreement, a partner ceases to be a partner upon assign-
9 ment of all his partnership interest.

§47-9-41. Rights of creditor.

1 On application to a court of competent jurisdiction by any
2 judgment creditor of a partner, the court may charge the
3 partnership interest of the partner with payment of the unsat-
4 isfied amount of the judgment with interest. To the extent so
5 charged, the judgment creditor has only the rights of an as-
6 signee of the partnership interest. This article does not deprive
7 any partner of the benefit of any exemption laws applicable
8 to his partnership interest.

§47-9-42. Right of assignee to become limited partner.

1 (a) An assignee of a partnership interest, including an as-
2 signee of a general partner, may become a limited partner if
3 and to the extent that (1) the assignor gives the assignee that
4 right in accordance with authority described in the certificate
5 of limited partnership, or (2) all other partners consent.

6 (b) An assignee who has become a limited partner has, to
7 the extent assigned, the rights and powers and is subject to the
8 restrictions and liabilities of a limited partner under the part-
9 nership agreement and this article. An assignee who becomes
10 a limited partner also is liable for the obligations of his assignor
11 to make and return contributions as provided in section thirty-
12 eight of this article: *Provided*, That the assignee is not obli-
13 gated for liabilities unknown to the assignee at the time he be-
14 came a limited partner and which could not be ascertained
15 from the certificate of limited partnership.

16 (c) If an assignee of a partnership interest becomes a limit-
17 ed partner, the assignor is not released from his liability to the
18 limited partnership under sections fourteen and twenty-eight
19 of this article.

§47-9-43. Power of estate of deceased or incompetent partner.

1 If a partner who is an individual dies or a court of com-
2 petent jurisdiction adjudges him to be incompetent to manage
3 his person or his property, the partner's executor, administra-
4 tor, guardian, conservator, or other legal representative may
5 exercise all the partner's rights for the purpose of settling
6 his estate or administering his property, including any power
7 the partner had to give an assignee the right to become a
8 limited partner. If a partner is a corporation, trust, or other
9 entity and is dissolved or terminated, the powers of that part-
10 ner may be exercised by its legal representative or successor.

§47-9-44. Nonjudicial dissolution.

1 A limited partnership is dissolved and its affairs shall be
2 wound up upon the happening of the first to occur of the fol-
3 lowing:

4 (1) At the time or upon the happening of events specified
5 in the certificate of limited partnership;

6 (2) The written consent of all partners;

7 (3) An event of withdrawal of a general partner, unless
8 at the time there is at least one other general partner and the
9 certificate of limited partnership permits the business of the
10 limited partnership to be carried on by the remaining general
11 partner and that partner does so, but the limited partnership
12 is not dissolved and is not required to be wound up by reason
13 of any event of withdrawal if, within ninety days after the
14 withdrawal, all partners agree in writing to continue the busi-
15 ness of the limited partnership and to the appointment of one
16 more additional general partners if necessary or desired; or

17 (4) Entry of a decree of judicial dissolution under section
18 forty-five of this article.

§47-9-45. Judicial dissolution.

1 On application by or for a partner, the appropriate circuit
2 court may decree dissolution of a limited partnership when-
3 ever it is not reasonably practicable to carry on the business
4 in conformity with the partnership agreement.

§47-9-46. Winding up of affairs.

1 Except as provided in the partnership agreement, the general
2 partners who have not wrongfully dissolved a limited partner-
3 ship or, if none, the limited partners, may wind up the limited
4 partnership's affairs: *Provided*, That the appropriate circuit
5 court may wind up the limited partnership's affairs upon
6 application of any partner, his legal representative or assignee.

§47-9-47. Distribution of assets.

1 Upon the winding up of a limited partnership, the assets
2 shall be distributed as follows:

3 (1) To creditors, including partners who are creditors, to
4 the extent permitted by law, in satisfaction of liabilities of
5 the limited partnership other than liabilities for distributions
6 to partners under section thirty-one or thirty-four of this
7 article;

8 (2) Except as provided in the partnership agreement, to
9 partners and former partners in satisfaction of liabilities
10 for distributions under said section thirty-one or thirty-four;
11 and

12 (3) Except as provided in the partnership agreement, to
13 partners first for the return of their contributions and secondly
14 respecting their partnership interests, in the proportions in
15 which the partners share in distributions.

§47-9-48. Law governing foreign limited partnerships.

1 Subject to the Constitution of this state, (1) the laws of
2 the state under which a foreign limited partnership is organized
3 govern its organization and internal affairs and the liability of
4 its limited partners, and (2) a foreign limited partnership may
5 not be denied registration by reason of any difference between
6 those laws and the laws of this state.

§47-9-49. Registration of foreign limited partnership.

1 Before transacting business in this state, a foreign limited
2 partnership shall register with the secretary of state. In order
3 to register, a foreign limited partnership shall submit to the
4 secretary of state, in duplicate, an application for registration

5 as a foreign limited partnership, signed and sworn to by a
6 general partner and setting forth:

7 (1) The name of the foreign limited partnership and, if
8 different, the name under which it proposes to register and
9 transact business in this state;

10 (2) The state and date of its formation;

11 (3) The general character of the business it proposes to
12 transact in this state;

13 (4) The name and address of any agent for service of
14 process on the foreign limited partnership whom the foreign
15 limited partnership elects to appoint: *Provided*, That the
16 agent must be an individual resident of this state, a domestic
17 corporation, or a foreign corporation having a place of business
18 in and authorized to do business in this state;

19 (5) A statement that the secretary of state is appointed
20 the agent of the foreign limited partnership for service of
21 process if no agent has been appointed under subdivision (4)
22 of this section or, if appointed, the agent's authority has been
23 revoked or if the agent cannot be found or served with the
24 exercise of reasonable diligence;

25 (6) The address of the office required to be maintained
26 in the state of its organization by the laws of that state or,
27 if not so required, of the principal office of the foreign
28 limited partnership; and

29 (7) If the certificate of limited partnership filed in the
30 foreign limited partnership's state of organization is not re-
31 quired to include the names and business addresses of the
32 partners, a list of such names and addresses.

**§47-9-50. Issuance of registration; filing in the office of the clerk
of the county commission.**

1 (a) If the secretary of state finds that an application for
2 registration conforms to law and all requisite fees have been
3 paid, he shall:

4 (1) Endorse on the application the word "filed", and the
5 month, day and year of the filing thereof;

6 (2) File in his office a duplicate original of the application;
7 and

8 (3) Issue a certificate of registration to transact business in
9 this state.

10 (b) The certificate of registration, together with a duplicate
11 original of the application, shall be returned to the person who
12 filed the application or his representative.

13 (c) The certificate of registration, or a duly certified copy
14 thereof, shall be recorded in the office of the clerk of the county
15 commission of the county where the principal office of the
16 limited partnership in this state is located. If such limited
17 partnership does not maintain a principal office in this state,
18 the recordation may be completed in any county in which the
19 limited partnership is conducting its affairs or doing or trans-
20 acting business.

§47-9-51. Registration of name of foreign limited partnership.

1 A foreign limited partnership may register with the secretary
2 of state under any name, whether or not it is the name under
3 which it is registered in its state of organization, that includes
4 without abbreviation the words "limited partnership" and that
5 could be registered by a domestic limited partnership.

§47-9-52. Foreign limited partnership—Changes and amendments to registration.

1 If any statement in the application for registration of a
2 foreign limited partnership was false when made or any ar-
3 rangements or other facts described have changed, making the
4 application inaccurate in any respect, the foreign limited part-
5 nership shall promptly file in the office of the secretary of
6 state a certificate, signed and sworn to by a general partner,
7 correcting such statement.

**§47-9-53. Foreign limited partnership—Cancellation of registra-
tion.**

1 A foreign limited partnership may cancel its registration by
2 filing with the secretary of state a certificate of cancellation
3 signed and sworn to by a general partner. A cancellation does

4 not terminate the authority of the secretary of state to accept
5 service of process on the foreign limited partnership with re-
6 spect to claims for relief or causes of action arising out of the
7 transaction of business in this state.

§49-9-54. Foreign limited partnership—Transaction of business without registration.

1 (a) A foreign limited partnership transacting business in
2 this state may not maintain any action, suit, or proceeding in
3 any court of this state until it has registered in this state.

4 (b) The failure of a foreign limited partnership to register
5 in the state does not impair the validity of any contract or act
6 of the foreign limited partnership or prevent the foreign limited
7 partnership from defending any action, suit, or proceeding in
8 any court of this state.

9 (c) A limited partner of a foreign limited partnership is not
10 liable as a general partner of the foreign limited partnership
11 solely by reason of having transacted business in this state
12 without registration.

13 (d) A foreign limited partnership, by transacting business
14 in the state without registration, appoints the secretary of
15 state as its agent for service of process with respect to claim
16 for relief or cause of action arising out of the transaction or
17 business in this state.

§47-9-55. Action by attorney general to restrain a foreign limited partnership.

1 The attorney general may bring an action to restrain a
2 foreign limited partnership from transacting business in this
3 state in violation of this article.

§47-9-56. Right of action by limited partner.

1 A limited partner may bring an action in the right of a
2 limited partnership to recover a judgment in its favor if general
3 partners with authority to do so have refused to bring the
4 action or if an effort to cause those general partners to bring
5 the action is not likely to succeed.

§47-9-57. Proper plaintiff in derivative action.

1 In a derivative action, the plaintiff must be a partner at the
2 time of bringing the action and (1) at the time of the trans-
3 action of which he complains or (2) his status as a partner
4 had devolved upon him by operation of law or pursuant to the
5 terms of the partnership agreement from a person who was a
6 partner at the time of the transaction.

§47-9-58. Pleading in derivative action.

1 In a derivative action, the complaint shall set forth with
2 particularity the effort of the plaintiff to secure initiation of the
3 action by a general partner or the reasons for not making the
4 effort.

§49-9-59. Expenses in derivative action.

1 If a derivative action is successful in whole or in part or if
2 anything is received by the plaintiff as a result of a judgment,
3 compromise or settlement of an action or claim, the court may
4 award the plaintiff reasonable expenses, including reasonable
5 attorney's fees, and shall direct him to remit to the limited
6 partnership the remainder of those proceeds received by him.

§47-9-60. Construction and application of article.

1 This article shall be applied and construed to effectuate
2 its general purpose to make uniform the law with respect to
3 the subject of this article among states enacting the same.

§47-9-61. Short title of article.

1 This article may be cited as the "Uniform Limited Part-
2 nership Act."

§47-9-62. Effective date of article.

1 The provisions of this article become effective on the first
2 day of January, one thousand nine hundred eighty-two.

§47-9-63. Rules for cases not provided for in article.

1 In any case not provided for in this article, the provisions
2 of the uniform partnership act, article eight-a of this chapter,
3 shall apply.

CHAPTER 209

(S. B. 457—By Mrs. Spears and Mr. McCune)

[Passed April 10, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing admissions standards for veterans' homes.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter nine-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. STATE HOMES FOR VETERANS.

§9A-2-1. State homes for veterans.

1 In consultation with the governor and other appropriate
2 state agencies, the department of veterans' affairs shall
3 establish and maintain throughout the state a home or homes
4 for qualified veterans. The present soldiers home at Weston
5 state hospital shall be reidentified as veterans unit of Weston
6 state hospital and continued as formerly constituted. As used
7 in this article the term "qualified veteran" means a disabled
8 veteran as determined by the department of veterans' affairs,
9 who: (a) Is ambulatory and is able to attend to his personal
10 needs, dress himself and attend a general mess; (b) served on
11 active duty in the armed forces of the United States of
12 America or a nation allied therewith during wartime; (c) is a
13 resident of the state of West Virginia for one year or more
14 prior to the filing for admission; and (d) who was discharged
15 or separated with an honorable discharge or with a general
16 discharge under honorable conditions.

17 In the event that the veteran served during peacetime and
18 attained the age of sixty-five years, he shall be deemed a
19 qualified veteran if he has met conditions (a), (c) and (d).

20 In the event that the veteran is under sixty-five years of age
21 with a service incurred or aggravated disability and is eligible
22 for hospital-domiciliary benefits administered by the

23 veterans' administration pursuant to the provisions of Title
24 38, United States Code, he shall be deemed a qualified
25 veteran if he has met conditions (a), (c) and (d).

CHAPTER 210

(H. B. 1673—By Mr. Whitlow and Mr. Frazier)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing certain volunteer fire departments in the state to purchase certain obsolete, unused, expendable, unneeded or otherwise surplus property of the state.

Be it enacted by the Legislature of West Virginia:

That section three-a, article eight, 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 8. STATE AGENCY FOR SURPLUS PROPERTY.

§5A-8-3a. Disposition by director of surplus state property; semi-annual report by director; application of proceeds from sale.

1 The director shall have the exclusive power and authority
2 to make disposition of commodities or expendable com-
3 modities now owned or in the future acquired by the state
4 when, in the opinion of the director, any such commodities
5 are or become obsolete or unusable or are not being used
6 or should be replaced.

7 The director shall determine what commodities or ex-
8 pendable commodities should be disposed of and he shall
9 make such disposition in the manner which in his opinion will
10 be most advantageous to the state, either by transferring the
11 particular commodities or expendable commodities between

12 departments, by selling such commodities to county commis-
13 sions, county boards of education, municipalities or volunteer
14 fire departments in this state when such volunteer fire de-
15 partments have been held exempt from taxation under section
16 101 (6) of the United States Internal Revenue Code, by
17 trading in such commodities as a part payment on the pur-
18 chase of new commodities, or by sale thereof to the highest
19 bidder by means of public auctions or sealed bids, after having
20 first advertised the time, terms and place of such sale as a
21 Class II legal advertisement in compliance with the provisions
22 of article three, chapter fifty-nine of this code, and the pub-
23 lication area for such publication shall be the county wherein
24 the sale is to be conducted. The sale may also be advertised
25 in such other advertising media as the director may deem ad-
26 visable. The director may sell to the highest bidder or to
27 any one or more of the highest bidders, if there is more than
28 one, or, if in his opinion the best interest of the state will be
29 served, reject all bids.

30 Upon the transfer of commodities or expendable com-
31 modities between departments, or upon the sale thereof to
32 a county commission, county board of education, municipality
33 or qualified volunteer fire department, the director shall set the
34 price to be paid by the receiving department, county commis-
35 sion, county board of education, municipality or volunteer
36 fire department, with due consideration given to current
37 market prices.

38 The director may sell expendable, obsolete or unused motor
39 vehicles owned by the state to county commissions, county
40 boards of education or municipalities. In addition, the director
41 may sell expendable, obsolete or unused motor vehicles owned
42 by the state with a gross weight in excess of four thousand
43 pounds to volunteer fire departments in this state when such
44 volunteer fire departments have been held exempt from taxa-
45 tion under section 101 (6) of the United States Internal
46 Revenue Code. The director, with due consideration given to
47 current market prices, shall set the price to be paid by the
48 receiving county commission, county board of education, muni-
49 cipality or qualified volunteer fire department for motor
50 vehicles sold pursuant to this provision: *Provided*, That in no

51 event shall the sale price of any motor vehicle sold to a
52 county commission, county board of education, municipality
53 or qualified volunteer fire department be less than the
54 "average loan" value, as published in the most recent available
55 eastern edition of the National Automotive Dealer's Associa-
56 tion (N.A.D.A.) Official Used Car Guide, if such a value
57 is available. If no such value is available, the director shall
58 set the price to be paid by the receiving county commission,
59 county board of education, municipality or volunteer fire de-
60 partment with due consideration given to current market
61 prices.

62 The director shall report to the legislative auditor, semi-
63 annually, all sales of commodities or expendable commodities
64 made during the preceding six months to county commis-
65 sions, county boards of education, municipalities and qualified
66 volunteer fire departments. The report shall include a descrip-
67 tion of the commodities sold, the price paid by the commission,
68 board or governing body or fire department which received
69 the commodities; and the report shall show to whom each
70 commodity was sold.

71 The proceeds of such sales or transfers shall be deposited
72 in the state treasury to the credit on a pro rata basis of the
73 fund or funds out of which the purchase of the particular com-
74 modities or expendable commodities was made: *Provided,*
75 That the director may charge and assess fees reasonably
76 related to the costs of care and handling with respect to the
77 transfer, warehousing, sale and distribution of state property
78 disposed of or sold pursuant to the provisions of this section.

CHAPTER 211

(S. B. 308—By Mr. Colombo)

[Passed April 11, 1981: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to child labor; and permitting children ages sixteen through eighteen to work,

with certain limitations, for volunteer fire departments, if they have proper training and the written consent of their parents or guardians.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CHILD LABOR.

§21-6-2. Employment of children under eighteen in certain occupations; determination as to other occupations; appeal to supreme court.

1 No child under eighteen years of age shall be employed,
2 permitted or suffered to work in any mine, quarry or tunnel;
3 or in, about, or in connection with any of the following:

4 (1) Stone cutting or polishing;

5 (2) The manufacture or transportation of explosives or
6 highly inflammable substances;

7 (3) Ore reduction works, smelters, hot rolling mills,
8 furnaces, foundries, forging shops, or in any other place in
9 which the heating, melting or heat treatment of metals is
10 carried on;

11 (4) Machinery used in the cold rolling of heavy metal
12 stock, metal plate bending machines, or power-driven metal
13 planing machines.

14 No child under eighteen years of age shall be employed or
15 permitted to work in a public poolroom or billiard room, or be
16 permitted, employed or suffered to sell, dispense or serve
17 beer, in any place or establishment where beer is served, sold
18 or dispensed, if dancing is permitted or allowed in the same
19 room in which such beer is served, sold or dispensed, or in
20 any indecent, obscene or immoral exhibition or practice.

21 The state commissioner of labor, the state director of
22 health, and the state superintendent of free schools may, from
23 time to time, after hearing duly had, determine whether or not
24 any particular trade, process of manufacturing, or occupation
25 in which the employment of children under eighteen years of
26 age is not already forbidden by law, or any particular method

27 of carrying on such trade, process of manufacture, or
28 occupation, is sufficiently dangerous to the lives or limbs, or
29 injurious to the health or morals of children under eighteen
30 years of age to justify their exclusion therefrom. There shall
31 be a right of appeal to the supreme court of appeals from any
32 such determination. No child under eighteen years of age
33 shall be employed or permitted to work in any occupation
34 thus determined to be dangerous or injurious to such
35 children: *Provided*, That a child between the ages of sixteen
36 and eighteen years who has completed the minimum training
37 requirements of the West Virginia University fire service
38 extension fire-fighter training section one, or its equivalent,
39 and who has the written consent of his parents or guardian
40 may be employed by or elected as a member of a volunteer
41 fire department to perform fire-fighting functions without
42 any such determination: *Provided, however*, That no such
43 child may be permitted to operate any fire-fighting vehicles,
44 enter a burning building in the course of his employment or
45 work or enter into any area determined by the fire chief or
46 fireman in charge at the scene of a fire or other emergency to
47 be an area of danger exposing the child to physical harm by
48 reason of impending collapse of a building or explosion,
49 unless such child is under the immediate supervision of a fire
50 line officer.

CHAPTER 212

(Com. Sub. for H. B. 1058—By Mr. Moore and Mr. Cook)

[Passed April 9, 1981, in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, six and seven, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections fourteen, fifteen and sixteen, all relating to providing definitions; requiring certain employers to post bond to secure the payment of wages and fringe benefits; empowering the state commissioner of labor to waive the bonding requirement;

giving employees a direct claim against the bond; providing for termination of the bond; providing notice to the commissioner; and prescribing certain violations and criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

That sections one, six and seven, article five, chapter twenty-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 three new sections, designated sections fourteen, fifteen and sixteen, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

§21-5-6. Refusal to pay wages or redeem orders.

§21-5-7. Prime contractor's responsibility for wages and benefits.

§21-5-14. Employer's bond for wages and benefits.

§21-5-15. Violations; criminal penalties.

§21-5-16. Contractors and subcontractors to notify commissioner.

§21-5-1. Definitions.

1 As used in this article:

2 (a) The term "firm" includes any partnership, association,
3 joint-stock company, trust, division of a corporation, the ad-
4 ministrator or executor of the estate of a deceased individual,
5 or the receiver, trustee, or successor of any of the same, or
6 officer thereof, employing any person.

7 (b) The term "employee" or "employees" includes any per-
8 son suffered or permitted to work by a person, firm or cor-
9 poration.

10 (c) The term "wages" means compensation for labor or
11 services rendered by an employee, whether the amount is
12 determined on a time, task, piece, commission or other basis
13 of calculation. As used in sections four, five, eight-a, ten
14 and twelve of this article, the term "wages" shall also include
15 then accrued fringe benefits capable of calculation and pay-
16 able directly to an employee: *Provided*, That nothing herein
17 contained shall require fringe benefits to be calculated con-
18 trary to any agreement between an employer and his em-
19 ployees which does not contradict the provisions of this article.

20 (d) The term "commissioner" means commissioner of labor
21 or his designated representative.

22 (e) The term "railroad company" includes any firm or cor-
23 poration engaged primarily in the business of transportation
24 by rail.

25 (f) The term "special agreement" means an arrangement
26 filed with and approved by the commissioner whereby a per-
27 son, firm or corporation is permitted upon a compelling show-
28 ing of good cause to establish regular paydays less frequently
29 than once in every two weeks, provided that in no event
30 shall the employee be paid in full less frequently than once
31 each calendar month on a regularly established schedule.

32 (g) The term "deductions" includes amounts required by
33 law to be withheld, and amounts authorized for union or club
34 dues, pension plans, payroll savings plans, credit unions, chari-
35 ties and hospitalization and medical insurance.

36 (h) The term "officer" shall include officers or agents in
37 the management of a corporation or firm, who knowingly
38 permits the corporation or firm to violate the provisions of
39 this article.

40 (i) The term "amount due" shall include at least all wages
41 earned up to and including the fifth day immediately preceding
42 the regular payday.

43 (j) The term "construction" means the furnishing of work in
44 the fulfillment of a contract for the construction, alteration,
45 decoration, painting or improvement of a new or existing
46 building, structure, roadway or pipeline, or any part thereof,
47 or for the alteration, improvement or development of real
48 property: *Provided*, That construction performed for the owner
49 or lessee of a single family dwelling or a family farming enter-
50 prise is excluded.

51 (k) The term "minerals" means clay, coal, flagstone, gravel,
52 limestone, manganese, sand, sandstone, shale, iron ore and
53 any other metallurgical ore.

54 (l) The term "fringe benefits" means any benefit provided
55 an employee or group of employees by an employer, or which

56 is required by law, and includes regular vacation, graduated
57 vacation, floating vacation, holidays, sick leave, personal leave,
58 production incentive bonuses, sickness and accident benefits
59 and benefits relating to medical and pension coverage.

60 (m) The term "employer" means any person, firm or
61 corporation employing any employee.

§21-5-6. Refusal to pay wages or redeem orders.

1 If any person, firm or corporation shall refuse for the period
2 of five days to settle with and pay any of its employees at
3 the intervals of time as provided in section three of this article,
4 or to provide fringe benefits after the same are due, or shall
5 neglect or refuse to redeem any cash orders provided for in
6 this article, within the time specified, if presented, and suit
7 be brought for the amount overdue and unpaid, judgment for
8 the amount of such claim proven to be due and unpaid, with
9 legal interest thereon until paid, shall be rendered in favor
10 of the plaintiff in such action; and, if the employee continues
11 to hold the cash order herein provided for, given for payment
12 of labor, in case of the insolvency of the person, firm or cor-
13 poration giving same, such employee shall not lose his lien
14 and preference under existing laws.

§21-5-7. Prime contractor's responsibility for wages and benefits.

1 Whenever any person, firm or corporation shall contract
2 with another for the performance of any work which the prime
3 contracting person has undertaken to perform for another,
4 the prime contractor shall become civilly liable to employees
5 engaged in the performance of work under such contract for
6 the payment of wages and fringe benefits, exclusive of liqui-
7 dated damages as provided in subsection (e), section four of
8 this article, to the extent that the employer of such employee
9 fails to pay such wages and fringe benefits: *Provided*, That
10 such employees have exhausted all feasible remedies contained
11 in this article against such employer, but if the prime con-
12 tractor has failed to notify the commissioner as required by
13 section sixteen of this article, then the employee shall not be
14 required to exhaust any remedies against the employer:
15 *Provided, however*, That such employer shall become civilly

16 liable to such prime contractor for any sum of money paid by
17 him under this section.

§21-5-14. Employer's bond for wages and benefits.

1 (a) With the exception of those who have been doing business
2 in this state for at least five consecutive years, every person,
3 firm or corporation engaged in or about to engage in con-
4 struction work, or the severance, production or transportation
5 (excluding railroads and water transporters) of minerals, shall
6 furnish a bond on a form prescribed by the commissioner,
7 payable to the state of West Virginia with the condition that
8 the person, firm or corporation pay the wages and fringe bene-
9 fits of his or its employees when due. The amount of the
10 bond shall be equal to the total of the employer's gross pay-
11 roll for four weeks at full capacity or production, plus fifteen
12 percent of the said total of the employer's gross payroll
13 for four weeks at full capacity or production. The amount
14 of the bond shall increase or decrease as the employer's payroll
15 increases or decreases: *Provided*, That the amount of the bond
16 shall not be decreased, except with the commissioner's ap-
17 proval and determination that there are not outstanding claims
18 against the bond.

19 (b) The commissioner may waive the posting of any bond
20 required by subsection (a) of this section upon his determina-
21 tion that an employer is of sufficient financial responsibility
22 to pay wages and fringe benefits. The commissioner shall
23 promulgate rules and regulations according to the provisions of
24 chapter twenty-nine-a of this code which prescribe standards
25 for the granting of such waivers.

26 (c) The bond may include, with the approval of the com-
27 missioner, surety bonding, collateral bonding (including cash
28 and securities), establishment of an escrow account or a combi-
29 nation of these methods. If collateral bonding is used, the em-
30 ployer may deposit cash, or collateral securities or certificates
31 as follows: Bonds of the United States of America or its posses-
32 sions, or of the federal land bank, or of the homeowner's loan
33 corporation; full faith and credit general obligation bonds of the
34 state of West Virginia or other states, and of any county, district
35 or municipality of the state of West Virginia or other states; or

36 certificates of deposit in a bank in this state, which certificates
37 shall be in favor of the state. The cash deposit or market value
38 of such securities or certificates shall be equal to or greater than
39 the sum of the bond. The commissioner shall, upon receipt of
40 any such deposit of cash, securities or certificates, promptly
41 place the same with the state treasurer whose duty it shall be to
42 receive and hold the same in the name of the state in trust for
43 the purpose for which such deposit is made. The employer mak-
44 ing the deposit shall be entitled from time to time to receive
45 from the state treasurer, upon the written approval of the com-
46 missioner, the whole or any portion of any cash, securities or
47 certificates so deposited, upon depositing with him in lieu there-
48 of, cash or other securities or certificates of the classes herein
49 specified having value equal to or greater than the sum of the
50 bond.

51 (d) Notwithstanding any other provision in this article, any
52 employee, whose wages and fringe benefits are secured by the
53 bond, as specified in subsection (c) of this section, has a direct
54 cause of action against the bond for wages and fringe benefits
55 that are due and unpaid.

56 (e) Any employee having wages and fringe benefits unpaid,
57 may inform the commissioner of the claim for unpaid wages
58 and fringe benefits and request certification thereof. If the com-
59 missioner, upon notice to the employer and investigation finds
60 that such wages and fringe benefits or a portion thereof are un-
61 paid, he shall make demand of such employer for the payment
62 of such wages and fringe benefits. If payment for such wages
63 and fringe benefits is not forthcoming within the time specified
64 by the commissioner, not to exceed thirty days, the commission-
65 er shall certify such claim or portion thereof, and forward the
66 certification to the bonding company or the state treasurer, who
67 shall provide payment to the affected employee within fourteen
68 days of receipt of such certification. The bonding company,
69 or any person, firm or corporation posting a bond, thereafter
70 shall have the right to proceed against a defaulting employer
71 for that part of the claim of the employee paid.

72 (f) With the exception of those exempt under subsection
73 (a) of this section, any employer who is engaged in construc-
74 tion work or the severance, production or transportation (ex-

75 cluding railroad and water transporters) of minerals shall post
76 one of the following in a place accessible to his or its em-
77 ployees: A copy of the bond provided under subsection (a)
78 of this section, or notification that the posting of a bond has
79 been waived by the commissioner.

80 (g) The bond may be terminated, with the approval of the
81 commissioner, after an employer submits a statement, under
82 oath or affirmation lawfully administered, to the commissioner
83 that the following has occurred: The employer has ceased
84 doing business and all wages and fringe benefits have been
85 paid, or the employer has been doing business in this state for
86 at least five consecutive years and has paid all wages and
87 fringe benefits. The bond may also be terminated upon a
88 determination by the commissioner that an employer is of
89 sufficient financial responsibility to pay wages and fringe
90 benefits.

§21-5-15. Violations; criminal penalties.

1 (a) Any person, firm or corporation who knowingly, will-
2 fully, and with intent to deprive employees of their wages and
3 fringe benefits fails to provide and maintain a bond as required
4 by section fourteen of this article is guilty of a misdemeanor,
5 and, upon conviction thereof, shall be fined not less than two
6 hundred dollars nor more than five thousand dollars, or im-
7 prisoned in the county jail not more than one month, or both
8 fined and imprisoned.

9 (b) Any person, firm or corporation who knowingly, will-
10 fully and fraudulently disposes of or relocates assets with in-
11 tent to deprive employees of their wages and fringe benefits
12 is guilty of a felony, and, upon conviction thereof, shall be
13 fined not less than five thousand dollars nor more than thirty
14 thousand dollars, or imprisoned in the penitentiary not less than
15 one nor more than three years, or both fined and imprisoned.

§21-5-16. Contractors and subcontractors to notify commissioner.

1 Whenever a person, firm or corporation contracts or sub-
2 contracts with an employer, which such contract or subcontract
3 contemplates the performance of construction work or the
4 severance, production or transportation (excluding railroads

5 or water transporters) of minerals, then the prime contractor or
6 subcontractor shall notify the commissioner in writing by certi-
7 fied mail, return receipt requested, of such contract or sub-
8 contract as to the employer's name, the location of the job
9 site and the employer's principal business location.

CHAPTER 213

(H. B. 1033—By Mr. Albright)

[Passed March 6, 1981: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum wage and maximum hours standards for employees generally and setting forth definitions with respect thereto; and excluding certain individuals employed by the Legislature of West Virginia within the definition of "employee."

Be it enacted by the Legislature of West Virginia:

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

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

***§21-5C-1. Definitions.**

1 As used in this article:

2 (a) "Commissioner" means the commissioner of labor or
3 his duly authorized representatives.

4 (b) "Wage and hour director" means the wage and hour
5 director appointed by the commissioner of labor as chief of the
6 wage and hour division.

*Clerk's Note: This section was identically amended by S. B. 240 which passed April 11, 1981.

7 (c) "Wage" means compensation due an employee by
8 reason of his employment.

9 (d) "Employ" means to hire or permit to work.

10 (e) "Employer" includes the state of West Virginia, its
11 agencies, departments and all its political subdivisions, any
12 individual, partnership, association, public or private corpor-
13 ation, or any person or group of persons acting directly or in-
14 directly in the interest of any employer in relation to an em-
15 ployee; and who employs during any calendar week six or more
16 employees as herein defined in any one separate, distinct and
17 permanent location or business establishment: *Provided*, That
18 the term "employer" shall not include any individual, partner-
19 ship, association, corporation, person or group of persons or
20 similar unit if eighty percent of the persons employed by him
21 are subject to any federal act relating to minimum wage,
22 maximum hours and overtime compensation.

23 (f) "Employee" includes any individual employed by an
24 employer but shall not include: (1) Any individual employed
25 by the United States; (2) any individual engaged in the activi-
26 ties of an educational, charitable, religious, fraternal or non-
27 profit organization where the employer-employee relationship
28 does not in fact exist, or where the services rendered to such
29 organizations are on a voluntary basis; (3) newsboys, shoe-
30 shine boys, golf caddies, pinboys and pin chasers in bowling
31 lanes; (4) traveling salesmen and outside salesmen; (5) services
32 performed by an individual in the employ of his parent, son,
33 daughter or spouse; (6) any individual employed in a bona fide
34 professional, executive or administrative capacity; (7) any
35 person whose employment is for the purpose of on-the-job
36 training; (8) any person having a physical or mental handicap
37 so severe as to prevent his employment or employment train-
38 ing in any training or employment facility other than a non-
39 profit sheltered workshop; (9) any individual employed in a
40 boys or girls summer camp; (10) any person sixty-two years of
41 age or over who receives old-age or survivors benefits from
42 the social security administration; (11) any individual em-
43 ployed in agriculture as the word agriculture is defined in the
44 Fair Labor Standards Act of 1938, as amended; (12) any

45 individual employed as a firefighter by the state or agency
46 thereof; (13) ushers in theaters; (14) any individual employed
47 on a part-time basis who is a student in any recognized school
48 or college; (15) any individual employed by a local or inter-
49 urban motorbus carrier; (16) so far as the maximum hours and
50 overtime compensation provisions of this article are concerned,
51 any salesman, partsman or mechanic primarily engaged in sell-
52 ing or servicing automobiles, trailers, trucks, farm implements
53 or aircraft if employed by a nonmanufacturing establishment
54 primarily engaged in the business of selling such vehicles to ulti-
55 mate purchasers; (17) any employee with respect to whom
56 the United States department of transportation has statutory
57 authority to establish qualifications and maximum hours of
58 service; or (18) any person employed on a per diem basis by the
59 Senate, the House of Delegates, or the joint committee on gov-
60 ernment and finance of the Legislature of West Virginia, other
61 employees of the Senate or House of Delegates designated by
62 the presiding officer thereof, and additional employees of the
63 joint committee on government and finance designated by
64 such joint committee.

65 (g) "Workweek" means a regularly recurring period of one
66 hundred sixty-eight hours in the form of seven consecutive
67 twenty-four hour periods, need not coincide with the calendar
68 week, and may begin any day of the calendar week and any
69 hour of the day.

70 (h) "Hours worked," in determining for the purposes of
71 sections two and three of this article, the hours for which an
72 employee is employed, there shall be excluded any time spent
73 in changing clothes or washing at the beginning or end of each
74 workday, time spent in walking, riding or traveling to and
75 from the actual place of performance of the principal activity
76 or activities which such employee is employed to perform and
77 activities which are preliminary to or postliminary to said
78 principal activity or activities, subject to such exceptions as
79 the commissioner may by rules and regulations define.

CHAPTER 214

(S. B. 240—By Mr. Heck)

[Passed April 11, 1981; in effect January 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the minimum wage; and exempting certain legislative employees.

Be it enacted by the Legislature of West Virginia:

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

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

§21-5C-1. Definitions.

§21-5C-2. Minimum wages.

*§21-5C-1. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the commissioner of labor or
3 his duly authorized representatives.

4 (b) "Wage and hour director" means the wage and hour
5 director appointed by the commissioner of labor as chief of
6 the wage and hour division.

7 (c) "Wage" means compensation due an employee by
8 reason of his employment.

9 (d) "Employ" means to hire or permit to work.

10 (e) "Employer" includes the state of West Virginia, its
11 agencies, departments and all its political subdivisions, any
12 individual, partnership, association, public or private
13 corporation, or any person or group of persons acting directly
14 or indirectly in the interest of any employer in relation to an
15 employee; and who employs during any calendar week six or
16 more employees as herein defined in any one separate,

17 distinct and permanent location or business establishment:
18 *Provided*, That the term "employer" shall not include any
19 individual, partnership, association, corporation, person or
20 group of persons or similar unit if eighty percent of the
21 persons employed by him are subject to any federal act
22 relating to minimum wage, maximum hours and overtime
23 compensation.

24 (f) "Employee" includes any individual employed by an
25 employer but shall not include: (1) Any individual employed
26 by the United States; (2) any individual engaged in the
27 activities of an educational, charitable, religious, fraternal or
28 nonprofit organization where the employer-employee
29 relationship does not in fact exist, or where the services
30 rendered to such organizations are on a voluntary basis; (3)
31 newsboys, shoeshine boys, golf caddies, pinboys and pin
32 chasers in bowling lanes; (4) traveling salesmen and outside
33 salesmen; (5) services performed by an individual in the
34 employ of his parent, son, daughter or spouse; (6) any
35 individual employed in a bona fide professional, executive or
36 administrative capacity; (7) any person whose employment is
37 for the purpose of on-the-job training; (8) any person having a
38 physical or mental handicap so severe as to prevent his
39 employment or employment training in any training or
40 employment facility other than a nonprofit sheltered
41 workshop; (9) any individual employed in a boys or girls
42 summer camp; (10) any person sixty-two years of age or over
43 who receives old-age or survivors benefits from the social
44 security administration; (11) any individual employed in
45 agriculture as the word agriculture is defined in the Fair
46 Labor Standards Act of 1938, as amended; (12) any individual
47 employed as a firefighter by the state or agency thereof; (13)
48 ushers in theaters; (14) any individual employed on a
49 part-time basis who is a student in any recognized school or
50 college; (15) any individual employed by a local or interurban
51 motorbus carrier; (16) so far as the maximum hours and
52 overtime compensation provisions of this article are
53 concerned, any salesman, parts man or mechanic primarily
54 engaged in selling or servicing automobiles, trailers, trucks,
55 farm implements, or aircraft if employed by a
56 nonmanufacturing establishment primarily engaged in the
57 business of selling such vehicles to ultimate purchasers; (17)
58 any employee with respect to whom the United States

59 department of transportation has statutory authority to
60 establish qualifications and maximum hours of service; or
61 (18) any person employed on a per diem basis by the Senate,
62 the House of Delegates, or the joint committee on
63 government and finance of the Legislature of West Virginia,
64 other employees of the Senate or House of Delegates
65 designated by the presiding officer thereof, and additional
66 employees of the joint committee on government and finance
67 designated by such joint committee.

68 (g) "Workweek" means a regularly recurring period of one
69 hundred sixty-eight hours in the form of seven consecutive
70 twenty-four-hour periods, need not coincide with the
71 calendar week, and may begin any day of the calendar week
72 and any hour of the day.

73 (h) "Hours worked," in determining for the purposes of
74 sections two and three of this article, the hours for which an
75 employee is employed, there shall be excluded any time
76 spent in changing clothes or washing at the beginning or end
77 of each workday, time spent in walking, riding or traveling to
78 and from the actual place of performance of the principal
79 activity or activities which such employee is employed to
80 perform and activities which are preliminary to or
81 postliminary to said principal activity or activities, subject to
82 such exceptions as the commissioner may by rules and
83 regulations define.

§21-5C-2. Minimum wages.

1 After the thirty-first day of December, one thousand nine
2 hundred eighty-one, every employer shall pay to each of his
3 employees wages at a rate not less than three dollars and five
4 cents per hour.

* Clerk's Note: This section was identically amended by H. B. 1033 which passed March 6, 1981.

CHAPTER 215

(Com. Sub. for S. B. 121—By Mr. Shaw)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding

thereto a new article, designated article six, relating to social services for adults; authorizing the department of welfare to provide such services; providing definitions; establishing a comprehensive protective services system; providing for emergency services; providing for promulgation of rules and regulations allowing for payment of services to incapacitated persons as defined; termination or reduction of assistance; providing for remedies in circuit court; order of attachment for and commitment of incapacitated person; requiring appointment of guardian ad litem; prohibiting compelling of acceptance of services and discriminating against those who refuse to accept services; and providing for the confidentiality of records.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

§9-6-2. Adult protective services; rules and regulations; organization and duties.

§9-6-3. Cooperation among agencies; termination and reduction of assistance by commissioner.

§9-6-4. Action to abate abuse, neglect or emergency.

§9-6-5. Emergency; immediate remedial treatment procedure.

§9-6-6. Payment and termination of payment for services to incapacitated adult.

§9-6-7. Comprehensive system of adult protective services; compulsory assistance prohibited.

§9-6-8. Confidentiality of records.

§9-6-1. Definitions.

1 The following words and terms, when used in this article,
2 shall have the same meaning hereafter ascribed to them
3 unless the context clearly indicates a different meaning:

4 (1) "Adult protective services agency" shall mean any
5 public or nonprofit private agency, corporation, board or
6 organization furnishing protective services to adults;

7 (2) "Abuse" shall mean the infliction or threat to inflict
8 physical pain or injury on or the imprisonment of any
9 incapacitated adult;

10 (3) "Neglect" shall mean the (i) failure to provide the

11 necessities of life to an incapacitated adult with intent to
12 coerce or physically harm such incapacitated adult or (ii) the
13 unlawful expenditure or willful dissipation of the funds or
14 other assets owned or paid to or for the benefit of an
15 incapacitated adult;

16 (4) "Incapacitated adult" shall mean any person who by
17 reason of physical, mental or other infirmity is unable to
18 independently carry on the daily activities of life necessary to
19 sustaining life and reasonable health;

20 (5) "Emergency" or "emergency situation" shall mean a
21 situation or set of circumstances which presents a substantial
22 and immediate risk of death or serious permanent injury to an
23 incapacitated adult.

**§9-6-2. Adult protective services; rules and regulations;
organization and duties.**

1 There is hereby established and continued within the
2 department of welfare the system of adult protective services
3 heretofore existing. Within sixty days of the effective date of
4 this article, the commissioner shall prescribe the organization
5 and duties of and procedures which shall be used by the
6 department to effectuate the purposes of this article, which
7 regulations may be amended and supplemented from time to
8 time. The commissioner shall design and arrange such
9 regulations to attain, or move toward the attainment of the
10 following goals, to the extent that the commissioner believes
11 feasible under the provisions of this article within the state
12 appropriations and other funds available:

13 (1) Achieving or maintaining self-sufficiency and
14 self-support,

15 (2) Preventing, reducing and eliminating dependency on
16 the state,

17 (3) Preventing, reducing and eliminating neglect, abuse
18 and exploitation of adults who are unable to protect their own
19 interests,

20 (4) Preventing and reducing institutional care by
21 providing less intensive forms of care, preferably in the home,

22 (5) Referring and admitting adults to institutional care
23 only where other available services are inappropriate, and

24 (6) Providing services and monitoring to adults in
25 institutions designed to assist adults in returning to
26 community settings.

27 Such regulations shall provide for the means by which the
28 department shall cooperate with federal, state and other
29 agencies to fulfill the objectives of the system of adult
30 protective services.

**§9-6-3. Cooperation among agencies; termination and reduction
of assistance by commissioner.**

1 The department may cooperate with any adult protective
2 services agency and may at any time establish or increase,
3 and reduce or terminate any assistance granted to or through
4 any adult protective services agency: *Provided*, That no
5 reduction or termination shall be made unless the
6 commissioner, in his discretion, first determines that such
7 protective services agency unreasonably fails or refuses to
8 use or apply such assistance in a manner which promotes the
9 goals established under section two of this article: *Provided*,
10 *however*, That assistance granted to a recipient client of the
11 department shall not be withheld or reduced but shall instead
12 be paid in whole or in part to some other protective services
13 agency, which the commissioner finds will better serve the
14 interests of the recipient client or to the person having actual
15 custody of such recipient client.

16 In the case of a refusal to establish, maintain, increase,
17 reduce or terminate any assistance to a protective services
18 agency client or person having custody, such agency, client or
19 person may within thirty days thereof demand a hearing on
20 such failure which hearing shall be conducted in accord with
21 the provisions of law relating to hearings upon a refusal of
22 assistance by the department in any other case and shall
23 include the right of appeal to an appropriate circuit court as in
24 such cases of refusal of assistance.

§9-6-4. Action to abate abuse, neglect or emergency

1 The department or any reputable person may bring and
2 maintain an action against any person having actual care,
3 custody or control of an incapacitated adult, for injunctive
4 relief, including a preliminary injunction, to restrain and
5 abate any abuse or neglect of an incapacitated adult or to

6 abate an emergency situation. In any such proceeding the
7 court shall appoint a guardian ad litem, to protect the
8 interests of the incapacitated adult, who shall not be an
9 employee of the state nor be a party to the proceeding nor be
10 selected by or in the employ of any party to the proceeding:
11 *Provided*, That the court may by order terminate assistance
12 granted or paid to any person found to have abused or
13 neglected an incapacitated adult and order any such
14 assistance to be paid to another person solely for the use and
15 benefit of such abused or neglected person, and grant such
16 other equitable relief as may be appropriate in the
17 circumstances to restrain and abate such abuse or neglect:
18 *Provided, however*, That in the case of an action to abate an
19 emergency situation, the court may grant the relief
20 authorized in section five of this article.

§9-6-5. Emergency immediate remedial treatment; procedure.

1 Whenever a circuit court shall find in an action to abate an
2 emergency situation that there is probable cause to believe
3 that an incapacitated adult is in an emergency situation and
4 that the person or persons having the immediate care,
5 custody and control of such incapacitated adult refuses to
6 take necessary steps to alleviate such emergency or that such
7 incapacitated adult is without the actual care, custody and
8 control of any person, it may issue an order of attachment for
9 such incapacitated adult and direct that the peace officer
10 executing the same deliver such incapacitated adult in his
11 custody to a hospital or other safe place except a jail, for
12 immediate remedial treatment to reduce or avoid the risk of
13 death or serious permanent injury. Any peace officer and
14 such employees of the department the peace officer directs to
15 accompany him may enter into the place of abode to remove
16 such incapacitated person, notwithstanding the residence
17 therein of other persons.

18 If any employee or officer of the department shall by direct
19 observation of an incapacitated adult not in the immediate
20 care, custody or control of another have reasonable cause to
21 believe that such incapacitated person is then and there in an
22 emergency situation, then such officer or employee may offer
23 transportation to a hospital or other safe place, other than a
24 jail, to such incapacitated adult for immediate remedial
25 treatment to reduce or avoid the risk of death or serious
26 permanent injury.

27 Immediately upon delivery of any incapacitated person to
28 such hospital or other safe place, such officer or employee
29 shall apply to the circuit court for and the court shall appoint,
30 and in the case of an attachment the court shall
31 contemporaneously with its issuance appoint, a guardian ad
32 litem, who shall not be an employee of the state, nor be an
33 interested party nor be selected by nor in the employ of any
34 interested party, to represent the interests of such
35 incapacitated adult, and the court shall fix a time, not later
36 than one judicial day later, to determine if such remedial
37 treatment shall continue or such incapacitated adult should
38 be released. A copy of that attachment and notice of such
39 hearing shall be served on any person in whose actual care,
40 custody and control such incapacitated adult is found. If
41 further remedial treatment is required, application shall be
42 promptly made to the county commission or such other
43 proper tribunal for appropriate relief: *Provided*, That the
44 commitment for further remedial treatment may be
45 continued until proceedings for such appropriate relief be
46 concluded: *Provided, however*, That application for release
47 from such remedial treatment may be made and granted at
48 any time that the emergency ceases.

**§9-6-6. Payment and termination of payment for services to
incapacitated adult.**

1 If any incapacitated adult (1) requires and is granted
2 remedial treatment for an emergency or the department
3 determines that an incapacitated adult is (2) abused, or (3)
4 neglected, the department may pay any assistance granted for
5 the use and benefit of such incapacitated adult to the person
6 actually providing care for such adult, and terminate
7 payments to any person alleged or shown to have abused or
8 neglected such incapacitated adult, or to whom such
9 payments were made prior to such remedial treatment, for so
10 long ~~as~~ ~~as~~ such remedial treatment continues, or until such
11 abuse or neglect is abated, and such incapacitated adult
12 continues to be in the immediate care, custody and control of
13 such person.

**§9-6-7. Comprehensive system of adult protective services;
compulsory assistance prohibited.**

1 The department may develop a plan for a comprehensive

2 system of adult protective services including social case
3 work, medical and psychiatric services, home care, day care,
4 counseling, research and others.

5 It shall offer such services as are available and appropriate
6 in the circumstances to persons who, other than for
7 compensation, have or intend to have the actual, physical
8 custody and control of an incapacitated adult and to such
9 incapacitated adults or to adults who may request and be
10 entitled to such protective services: *Provided*, That except as
11 expressly provided in this article, the department may not
12 directly or indirectly compel the acceptance of such services
13 by any person or discriminate against a person who refuses
14 such services.

§9-6-8. Confidentiality of records.

1 All records of the department and all protective services
2 agencies concerning an adult under this article shall be kept
3 confidential and shall not be released: *Provided*, That such
4 records may be shared with other state agencies and
5 appropriate federal agencies where all such agencies limit the
6 use and distribution of information contained in such records
7 internally for the same purpose or purposes for which the
8 information was recorded: *Provided, however*, That such
9 information shall be released upon the written consent of the
10 adult or someone authorized to act on behalf of the adult:
11 *Provided further*, That a court may subpoena such records:
12 *And provided further*, That nonidentifying information may
13 be released for legitimate statistical purposes.

CHAPTER 216

(Com. Sub. for S. B. 627—By Mr. Boettner)

(Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seven; providing for purposes and findings of the Legislature; providing for the continuance of the medicaid fraud control unit within the department of welfare; providing definitions; relating to

powers and duties of the unit; providing for investigations, subpoenas and confidentiality; relating to false statements or representations on applications; prohibiting bribery, false claims and conspiracy; providing criminal penalties; providing for civil remedies, triple damages and legal services; providing for Class A registration plates for vehicles of the unit; relating to other remedies and penalties and severability of the provision.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.

- §9-7-1. Legislative purpose and findings; powers and duties of fraud control unit.
- §9-7-2. Definitions.
- §9-7-3. Investigations; procedure.
- §9-7-4. Applications for medical assistance; false statements or representations; criminal penalties.
- §9-7-5. Bribery; false claims; conspiracy; criminal penalties.
- §9-7-6. Civil remedies.
- §9-7-7. Licensing of vehicles for use by the medicaid fraud control unit.
- §9-7-8. Remedies and penalties not exclusive.
- §9-7-9. Severability.

§9-7-1. Legislative purpose and findings; powers and duties of fraud control unit.

1 (a) It is the purpose of the Legislature to continue the
 2 medicaid fraud control unit previously established within the
 3 West Virginia department of welfare and to provide it with
 4 the responsibility and authority for investigating and
 5 controlling fraud and abuse of the medical programs of the
 6 state department of welfare which have been established
 7 pursuant to section two, article four of this chapter. It is the
 8 finding of the Legislature that substantial sums of money
 9 have been lost to the state and federal government in the
 10 operation of the medical programs of the state due to the
 11 overpayment of moneys to medical providers. Such
 12 overpayments have been the result of both the abuse of and
 13 fraud in the reimbursement process.

14 (b) The medicaid fraud control unit of the state
 15 department of welfare shall be continued and shall have the
 16 following powers and duties:

17 (1) The investigation and referral for prosecution of all
18 violations of applicable state and federal laws pertaining to
19 the provision of goods or services under the medical
20 programs of the state including the medicaid program and
21 the program known as handicapped children's services.

22 (2) The investigation of complaints alleging abuse or
23 neglect of patients in health care facilities which receive
24 payments under the medical programs of the state.

25 (3) To cooperate with the federal government in all
26 programs designed to detect and deter fraud and abuse in the
27 medical programs of the state.

28 (4) To employ and train personnel to achieve the purposes
29 of this article and to employ legal counsel, investigators,
30 auditors and clerical support personnel and such other
31 personnel as are deemed necessary from time to time to
32 accomplish the purposes herein.

§9-7-2. Definitions.

1 For the purposes of this article:

2 (1) "Assistance" means money payments, medical care,
3 transportation and other goods and services necessary for the
4 health or welfare of individuals, including guidance,
5 counseling and other welfare services and shall include all
6 items of any nature contained within the definition of
7 "welfare assistance" in section two, article one of this chapter.

8 (2) "Benefits" means money payments, goods, services, or
9 any other thing of value.

10 (3) "Claim" means an application for payment for goods or
11 services provided under the medical programs of the
12 department of welfare.

13 (4) "Medicaid" means that assistance provided under a
14 state plan implemented pursuant to the provisions of
15 subchapter nineteen, chapter seven, Title 42, United States
16 Code, as that chapter has been and may hereafter be
17 amended.

18 (5) "Provider" means any individual or entity furnishing
19 goods or services under the medical programs of the
20 department of welfare.

21 (6) "Unit" means the medicaid fraud control unit
22 established under section one of this article.

§9-7-3. Investigations; procedure.

1 (a) When the unit has probable cause to believe that a
2 person has engaged in an act or activity which is subject to
3 prosecution under this article, the unit shall make an
4 investigation to determine if the act has been committed and,
5 to the extent necessary for such purpose, the commissioner,
6 or an employee of the unit designated by the commissioner,
7 shall have the power to administer oaths or affirmations, and
8 issue subpoenas for witnesses and documents relevant to the
9 investigation, including information concerning the
10 existence, description, nature, custody, condition and
11 location of any book, record, documents or other tangible
12 thing and the identity and location of persons having
13 knowledge of relevant facts or any matter reasonably
14 calculated to lead to the discovery of admissible evidence.

15 (b) If documents necessary to an investigation of the unit
16 shall appear to be located outside the state, such documents
17 shall be made available by the person or entity within the
18 jurisdiction of the state having control over such documents
19 either at a convenient location within the state or, upon
20 payment of reasonable and necessary expenses to the unit for
21 transportation and inspection, at the place outside the state
22 where such documents are maintained.

23 (c) Upon failure of a person to comply with a subpoena or
24 subpoena duces tecum or failure of a person to give testimony
25 without lawful excuse and upon reasonable notice to all
26 persons affected thereby, the unit may apply to the circuit
27 court of the county in which compliance is sought for
28 appropriate orders to compel obedience with the provisions
29 of this section.

30 (d) The unit shall not make public the name or identity of
31 a person whose acts or conduct is investigated pursuant to
32 this section or the facts disclosed in such investigation except
33 as the same may be used in any legal action or enforcement
34 proceeding brought pursuant to this article or any other
35 provision of this code.

§9-7-4. Applications for medical assistance; false statements or representations; criminal penalties.

1 (a) A person shall not knowingly make or cause to be
2 made a false statement or false representation of any material
3 fact in an application for medical assistance under the
4 medical programs of the department of welfare.

5 (b) A person shall not knowingly make or cause to be
6 made a false statement or false representation of any material
7 fact necessary to determine the rights of any other person to
8 medical assistance under the medical programs of the
9 department of welfare.

10 (c) A person shall not knowingly and intentionally conceal
11 or fail to disclose any fact with the intent to obtain medical
12 assistance under the medical programs of the department of
13 welfare to which the person or any other person is not
14 entitled.

15 (d) Any person found to be in violation of subsection (a),
16 (b) or (c) of this section shall be guilty of a felony, and, upon
17 conviction, shall be confined in the penitentiary not less than
18 one nor more than ten years, or shall be fined not to exceed
19 ten thousand dollars or both fined and imprisoned as
20 provided.

§9-7-5. Bribery; false claims; conspiracy; criminal penalties.

1 (a) A person shall not solicit, offer or receive any
2 remuneration, including any kickback, rebate or bribe,
3 directly or indirectly, with the intent of causing an
4 expenditure of moneys from the medical services fund
5 established pursuant to section two, article four of this
6 chapter which expenditure is not authorized by applicable
7 laws or rules and regulations governing said medical services
8 fund.

9 (b) A person shall not make or present or cause to be made
10 or presented to the department of welfare a claim under the
11 medical programs of the department of welfare knowing the
12 claim to be false, fraudulent or fictitious.

13 (c) A person shall not enter into an agreement,
14 combination or conspiracy to obtain or aid another to obtain
15 the payment or allowance of a false, fraudulent or fictitious

16 claim under the medical programs of the department of
17 welfare.

18 (d) Any person found to be in violation of subsection (a),
19 (b) or (c) of this section shall be guilty of a felony, and, upon
20 conviction, shall be confined in the penitentiary not less than
21 one nor more than ten years or shall be fined not to exceed ten
22 thousand dollars, or both fined and imprisoned as provided.

§9-7-6. Civil remedies.

1 (a) Any person, firm, corporation or other entity which
2 willfully, by means of a false statement or representation, or
3 by concealment of any material fact, or by other fraudulent
4 scheme, devise or artifice on behalf of himself, itself, or
5 others, obtains or attempts to obtain benefits or payments or
6 allowances under the medical programs of the department of
7 welfare to which he or it is not entitled, or, in a greater amount
8 than that to which he or it is entitled, shall be liable to the
9 department of welfare in an amount equal to three times the
10 amount of such benefits, payments or allowances to which he
11 or it is not entitled, and shall be liable for the payment of
12 reasonable attorney fees and all other fees and costs of
13 litigation.

14 (b) No criminal action or indictment need be brought
15 against any person, firm, corporation or other entity as a
16 condition for establishing civil liability hereunder.

17 (c) A civil action under this section may be prosecuted and
18 maintained on behalf of the department of welfare by the
19 attorney general and his assistants or a prosecuting attorney
20 and his assistants or by any attorney in contract with or
21 employed by the department of welfare to provide such
22 representation.

§9-7-7. Licensing of vehicles for use by the medicaid fraud control unit.

1 For purposes of the responsibilities assigned the unit
2 pursuant to this article, personnel of the unit shall be
3 permitted to operate vehicles owned or leased for the state
4 displaying Class A registration plates.

§9-7-8. Remedies and penalties not exclusive.

1 The remedies and penalties provided in this article

- 2 governing the operation of the medical programs of the
- 3 department of welfare are in addition to those remedies and
- 4 penalties provided elsewhere by law.

§9-7-9. Severability.

- 1 If any provision of this article be found by a court of
- 2 competent jurisdiction to be unenforceable under the
- 3 constitution of this state or the laws and constitution of the
- 4 United States, the remaining provisions of this article shall be
- 5 deemed severable and shall continue in full force and effect.

CHAPTER 217

(Com. Sub. for H. B. 1111—By Miss Shuman)

[Passed March 26, 1981; in effect ninety days from passage. Disapproved by the Governor, and repassed notwithstanding his objections.]

AN ACT to amend and reenact section seven, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend section four, article one; sections one and nine-d, article three; section twenty-two, article four; section thirteen, article six; and section eleven, article seven, all of chapter sixty of said code; and to further amend said chapter sixty by adding thereto a new article, designated article eight, all relating to the retail sale of wine to the public by private licensees; providing the definition of certain terms used with respect thereto; requiring the licensure of certain persons selling to the alcohol beverage control commissioner or to certain distributors and the eligibility of certain persons for licensure; the fees applicable to such licensure; suspension or revocation of such license; prohibiting certain acts for such licensed persons and providing penalties therefor; prohibiting certain state, county and municipal officials and certain relatives of such persons from being so licensed; providing for certain restrictions upon the importation of alcoholic liquors including wines into this state and providing exceptions therefor; permitting the sale by wine distributors to licensed private clubs; providing for rules of construction and application of provisions of

said article eight; requiring license for distributor and retailer; establishing fees for such licenses; providing restrictions upon eligibility for licenses; levying and imposing a gallonage tax; imposing or authorizing a tax for the benefit of counties and municipalities; requiring reports of sales and return of tax; providing for refund or credit of taxes; imposing restrictions, registration and reporting requirements on persons selling or shipping wine into this state and providing a penalty for violation by such persons; requiring preservation of records and authorizing the alcohol beverage control commissioner to inspect and examine records and persons; providing for assessments of tax; jeopardy assessments; interest; providing penalties for insufficient and fraudulent returns or failure to file; providing for notices, hearings and appeals on assessments; authorizing commissioner to collect taxes by distraint, action or suit; providing for creation of lien against taxpayer's property; requiring registration of label and establishing registration fee; regulating relationships between licensees; prohibiting discrimination by distributors; prohibiting distributors from selling wine on credit; prescribing unlawful acts generally; prescribing criminal penalties for violations of article and for making false statements; requiring application for license; prescribing contents and requiring verification of application; requiring bond of distributor; prescribing procedure upon submission of application; prohibiting transfer of license; duties and powers of commissioner; promulgation of rules and regulations; subpoena power; procedure on revocation or suspension of license; hearing; review; providing for forfeiture of bond of distributor; providing for disposition of fees and taxes collected by commissioner; and making local option election provisions of article five, chapter sixty of this code applicable to the sale of wine by licensees hereunder; prohibiting exclusive franchise areas to be established by distributors; providing certain limitations to whom resident manufacturers of wine may sell their product and providing certain exceptions therefor; providing that all wines sold at retail must be in sealed packages or bottles and must bear such seals and labels as may be required by the commissioner; providing certain criminal penalties for the violation of the provisions of the article; granting authority to the commissioner and other persons to seek the abatement of certain public nuisances with re-

spect to the sale of wine; and providing for certain unlawful acts on the premises of a wine retailer.

Be it enacted by the Legislature of West Virginia:

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

Chapter

8. Municipal Corporations.

60. State Control of Alcoholic Liquors.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

*§8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.

1 Every municipality shall have plenary power and authority
 2 to levy and collect a tax upon all purchases within such
 3 municipality of intoxicating liquors from the alcohol beverage
 4 control commissioner or from any person licensed to sell wine
 5 at retail to the public under the provisions of article eight,
 6 chapter sixty of this code: *Provided*, That no municipality
 7 shall have authority to levy or collect any such tax on the
 8 intoxicating liquors sold by or purchased from holders of a
 9 license issued under the provisions of article seven, chapter
 10 sixty of this code. The tax shall be levied upon the purchaser
 11 and shall be added to and collected with the price of purchase.
 12 The tax shall not exceed three percent of the purchase price.

13 A copy of any ordinance imposing the tax authorized by
 14 this section shall be certified by the mayor of the municipality
 15 to the West Virginia alcohol beverage control commissioner
 16 and to the tax commissioner. The West Virginia alcohol beverage
 17 control commissioner by appropriate rules and regulations

*Clerk's Note: This section was also amended by H. B. 1331, now Chapter 163, which was passed on April 10, 1981.

18 shall provide for the collection of such tax upon all purchases
 19 within such municipality of intoxicating liquors from the alcohol
 20 beverage control commissioner or from any person licensed to
 21 sell wine at retail pursuant to the provisions of chapter sixty
 22 of this code and for distribution thereof to the respective
 23 municipalities for which the same shall be collected. Such
 24 rules and regulations shall provide that all such taxes shall
 25 be deposited with the state treasurer and distributed quarterly
 26 by the treasurer upon warrants of the auditor payable to the
 27 municipality.

28 Every municipality shall have plenary power and authority
 29 to levy and collect a fee from any private club licensee whose
 30 premises are situate therein, as authorized in section seven,
 31 article seven, chapter sixty of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article

1. General Provisions.
3. Sales by Commissioner.
4. Licenses.
6. Miscellaneous Provisions.
7. Licenses to Private Clubs.
8. Sale of Wines.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-4. Sales to be made by or through West Virginia alcohol beverage control commissioner.

1 Alcoholic liquors shall be sold at wholesale and retail in
 2 this state only by or through the West Virginia alcohol bever-
 3 age control commissioner or retail agencies established by
 4 him or any predecessor commissioners or commission, except
 5 as authorized by articles seven and eight of this chapter.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-1. Sales at retail and wholesale.

§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities; limitation; rate of tax; collection and distribution.

***§60-3-1. Sales at retail and wholesale.**

1 The sale of alcoholic liquors at wholesale and retail in

*Clerk's Note: Section 60-3-1 was also amended by H. B. 935, now Chapter 218, which was passed on March 5, 1981.

2 this state is a state monopoly, except for sales made by
3 authority of articles seven and eight of this chapter.

****§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities; limitation; rate of tax; collection and distribution.**

1 For the purpose of providing financial assistance to and
2 for the use and benefit of the various counties and municipal-
3 ities of this state, there is hereby levied a tax upon all purchases
4 outside the corporate limits of any municipality of intoxicating
5 liquor from state stores or other agencies of the alcohol bever-
6 age control commissioner and of wine from any person licensed
7 to sell wine at retail under the provisions of article eight,
8 chapter sixty of this code. The tax shall be three percent of
9 the purchase price and shall be added to and collected with
10 the purchase price by the commissioner or by the person so
11 licensed to sell wine: *Provided*, That no such tax shall be
12 collected on the intoxicating liquors sold by or purchased
13 from holders of a license issued under the provisions of article
14 seven of this chapter.

15 All such tax collected within one mile of the corporate
16 limits of any municipality within the state shall be remitted
17 to such municipality; all other tax so collected shall be
18 remitted to the county wherein collected: *Provided*, That
19 where the corporate limits of more than one municipality be
20 within one mile of the place of collection of such tax, all
21 such tax collected shall be divided equally among each of
22 said municipalities: *Provided, however*, That such mile is
23 measured by the most direct hard surface road or access way
24 usually and customarily used as ingress and egress to the
25 place of tax collection.

26 The West Virginia alcohol beverage control commissioner
27 by appropriate rules and regulations shall provide for the
28 collection of such tax upon all purchases outside the corporate
29 limits of any municipality of intoxicating liquor from state
30 stores or other agencies of the alcohol beverage control

****Clerk's Note:** Section 60-3-9d was also amended by H. B. 935, now Chapter 218, which was passed on March 5, 1981 and by H. B. 1331, now Chapter 163, which was passed on April 10, 1981.

31 commissioner, separation or proration of the same and dis-
32 tribution thereof to the respective counties and municipalities
33 for which the same shall be collected. The tax commissioner
34 by appropriate rules and regulations shall provide for the
35 collection of such tax upon all purchases outside the corporate
36 limits of any municipality of wine from any person licensed to
37 sell wine at retail under the provisions of article eight,
38 chapter sixty of this code, separation or proration of the
39 same and distribution thereof to the respective counties and
40 municipalities for which the same shall be collected. Such
41 rules and regulations shall provide that all such taxes shall
42 be deposited with the state treasurer and distributed quarterly
43 by the treasurer upon warrants of the auditor payable to the
44 counties and municipalities.

ARTICLE 4. LICENSES.

§60-4-22. Wholesale representatives' licenses.

1 No person, firm or corporation shall be or act or serve as
2 an agent, broker or salesman selling or offering to sell or solici-
3 ting or negotiating the sale of alcoholic liquor to the com-
4 mission or to any distributor licensed pursuant to article eight
5 of this chapter without first obtaining a license so to do in
6 accordance with the provisions of this section. Only salaried
7 employees of distilleries, manufacturers, producers or pro-
8 cessors of alcoholic liquor may be licensed hereunder, and no
9 person may be licensed hereunder who sells or offers to sell
10 alcoholic liquor to the commission or any distributor on a fee
11 or commission basis. The commission shall be the licensing
12 authority and may grant to persons of good moral character
13 the license herein provided, and may refuse to grant such
14 license to any person heretofore convicted of a felony within
15 ten years prior to his application for such license; refuse to
16 grant, suspend or revoke licenses. Licenses shall be on an an-
17 nual basis for the period from the first day of July until the
18 thirtieth day of June next following. New and renewal licenses
19 shall be granted only upon verified application to the commis-
20 sion presented on forms provided by the commission. Any per-
21 son representing more than one producer, manufacturer, or
22 distributor of alcoholic liquors shall file a separate application
23 and shall obtain a separate license for each such representa-

24 tion. The annual license fee shall be one hundred dollars.
25 The fee for any license granted for the remainder of any
26 license year between the first day of January and the thirtieth
27 day of June of the same calendar year shall be fifty dollars.

28 No person who is the father, mother, son, daughter, brother,
29 sister, uncle, aunt, nephew or niece of a member of the com-
30 mission or of any elected or appointed state official, county
31 official or municipal official, or who is the spouse of any such
32 person so related to a member of the commission or to any
33 elected or appointive state official, county official or municipal
34 official, may be granted a license hereunder. No member of the
35 Legislature or the spouse of any such member may be granted
36 a license hereunder. Nor shall any member or officer of any
37 political party executive committee of this state or the spouse
38 of any such member or officer be granted a license hereunder.

39 In addition to all other information which the commission
40 may require to be supplied on the license application forms,
41 each applicant shall be required to state his name and his
42 residence address and the name and business address of the
43 producer, manufacturer or distributor he represents; the name
44 and address of each additional producer, manufacturer or dis-
45 tributor of alcoholic liquors he represents; the monetary total
46 of all alcoholic liquor sales, if any, made by him to the com-
47 mission or to any distributor licensed pursuant to article eight
48 of this chapter during the fiscal year preceding the license year
49 for which he is seeking a license; the monetary total of the
50 gross income received by him on such sales, if any, during such
51 fiscal year; whether he has, during such fiscal year, made or
52 given, voluntarily or on request, any gift, contribution of money
53 or property to any member or employee of the commission or
54 of any distributor licensed pursuant to article eight of this
55 chapter or to or for the benefit of any political party committee
56 or campaign fund; and his relationship, if any, by blood or
57 marriage, to any member of the commission or to any elected or
58 appointive state official, county official or municipal official.
59 All such applications shall be verified by oath of the applicant
60 and shall be prepared and filed in duplicate. All such applica-
61 tions and a current list of all licensees hereunder shall be mat-
62 ters of public record and shall be available to public inspection

63 at the commission's offices at the state capitol. Every licensee
64 who ceases to be an agent, broker or salesman, as herein con-
65 templated, shall so advise the commission in writing and such
66 person's name shall be immediately removed from the license
67 list and his license shall be canceled and terminated.

68 Except as to owners, principal officers or employees of farm
69 wineries, all persons licensed hereunder shall be full-time
70 salaried employees of the distilleries, manufacturers, producers
71 or processors of alcoholic liquor they represent and shall de-
72 vote their full time to the duties of such employment and shall
73 have and engage in no other remunerative occupation or call-
74 ing at the same time. No such licensed person shall share,
75 divide or split his salary with any person other than his wife,
76 or some legal dependent, nor shall he make any contribution
77 to any political party campaign fund in this state.

78 All licensees hereunder shall be subject to all other pro-
79 visions of this chapter and to the lawful rules and regulations
80 promulgated by the commission. Licenses may be refused,
81 suspended or revoked by the commission for cause, including
82 any of the applicable grounds of revocation specified in section
83 nineteen of this article. Provisions of this article relating to
84 notice, hearing and appeals shall, to the extent applicable, gov-
85 ern procedures on suspension and revocation of licenses here-
86 under.

87 Any person, firm or corporation violating any provision of
88 this section, including knowingly making of any false statement
89 in a verified application for a license, shall be guilty of a mis-
90 demeanor offense and shall, upon conviction thereof, be fined
91 not exceeding one thousand dollars or imprisoned in jail not
92 exceeding twelve months, or be subject to both such fine and
93 imprisonment in the discretion of the court.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-13. Restrictions on importing into, and transporting liquors in state.

1 Except as permitted by section six of this article and article
2 eight of this chapter, a person shall not import into, or
3 transport in this state, any alcoholic liquors, unless it is:

- 4 (1) Consigned to the commission;
- 5 (2) Transported upon the direction of the commission
6 directly to persons licensed to receive alcoholic liquors at
7 wholesale; or
- 8 (3) Transported into the state or through the state to
9 persons outside the state upon transportation permits issued
10 by the commissioner.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner; exceptions.

1 All licensees shall purchase all alcoholic liquors sold by
2 them from the West Virginia alcohol beverage control com-
3 missioner at prices established by such commissioner for sales
4 of such alcoholic liquors to the public generally except that
5 such licensees may purchase those wines permitted to be sold
6 at retail pursuant to article eight of this chapter from those
7 distributors licensed pursuant to said article at the same
8 prices such distributors sell such wines to retailers licensed
9 pursuant to said article.

ARTICLE 8. SALE OF WINES.

PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.

§60-8-1. Construction and application of article.

PART. II. SALE OF WINE GENERALLY.

- §60-8-2. Definitions.
- §60-8-3. Licenses; fees; general restrictions.
- §60-8-4. Gallonage tax.
- §60-8-5. Refund or credit of taxes.
- §60-8-6. License or registration required for sale or shipment of wine.
- §60-8-7. Records; inspection.
- §60-8-8. Assessment of tax when insufficiently returned.
- §60-8-9. Jeopardy assessments.
- §60-8-10. Interest; penalties.
- §60-8-11. Notice of assessment; petition for reassessment.
- §60-8-12. Hearings; appeals.
- §60-8-13. Sale or discontinuance of business of taxpayer.
- §60-8-14. Collection by distraint; report of collection.
- §60-8-15. Collection by action or suit.
- §60-8-16. Application for license.

- §60-8-17. License issuance or refusal; terms of license.
- §60-8-18. Revocation or suspension of license; procedure upon refusal, revocation or suspension.
- §60-8-19. To whom licensed resident manufacturer may sell.
- §60-8-20. Unlawful act generally.
- §60-8-21. Sale in sealed, labeled packages required.
- §60-8-22. Sales on credit prohibited; exception.
- §60-8-23. Duties and powers of commissioner; rules and regulations.
- §60-8-24. Disposition of revenue.
- §60-8-25. Criminal penalties; public nuisances.
- §60-8-26. Forfeiture of bond.
- §60-8-27. Local option elections.

PART III. WINE DISTRIBUTION.

- §60-8-28. Registration of labels.
- §60-8-29. Bond required of distributors.
- §60-8-30. Exclusive franchise agreements prohibited.
- §60-8-31. Other unlawful acts.

PART IV. WINE RETAILERS.

- §60-8-32. Where wine may be sold at retail.
- §60-8-33. Certain prohibitions not applicable.
- §60-8-34. When retail sales prohibited.
- §60-8-35. Other unlawful acts.

PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.

§60-8-1. Construction and application of article.

1 (a) The provisions of part II of this article shall have
2 general application to the distribution and retail sale of
3 wine in this state. The provisions of part III of this article
4 shall relate solely to the distribution and the regulation of
5 distributors of such wines as may be permitted to be sold at
6 retail pursuant to the provisions of this article. The pro-
7 visions of part IV of this article shall relate solely to the
8 retail sale of wine in grocery stores as the term "grocery
9 store" is defined in this article and the retail sale of wine
10 in wine specialty shops as defined in this article. In the event
11 of any inconsistency of any provisions of part II and the
12 provisions of either part III or part IV of this article, the
13 provisions of either part III or part IV shall prevail to the
14 extent of such inconsistency.

15 (b) In the event of any inconsistency between any of the
16 provisions of this article and provisions of any other article

17 of this chapter or of this code, the provisions of this article
18 shall prevail to the extent of any such inconsistency.

19 (c) To the extent the provisions of this chapter exclusive
20 of this article may be given application without creating an
21 inconsistency with the provisions of this article, the provisions
22 of this chapter, exclusive of this article, shall apply to the
23 same extent as if this article did not exist.

PART II. SALE OF WINE GENERALLY.

§60-8-2. Definitions.

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

3 "Commissioner" means the West Virginia alcohol beverage
4 control commissioner.

5 "Distributor" means any person whose principal place of
6 business is within the state of West Virginia, and who is en-
7 gaged in selling or distributing wine to retailers under authority
8 of this article and actually maintains a warehouse in this state
9 for the distribution of wine.

10 "Fortified wine" shall mean any wine to which brandy or
11 other alcohol has been added and shall include dessert wines
12 which are not fortified.

13 "Grocery store" means any retail establishment, commonly
14 known as a grocery store, supermarket or delicatessen, where
15 food, food products and supplies for the table are sold for con-
16 sumption off the premises with average monthly sales (exclu-
17 sive of sales of wines) of not less than three thousand dollars
18 and an average monthly inventory (exclusive of inventory of
19 wine) of not less than three thousand dollars. The term "gro-
20 cery store" shall also include and mean a separate and segre-
21 gated portion of any other retail store which is dedicated solely
22 to the sale of food, food products and supplies for the table for
23 consumption off the premises with average monthly sales with
24 respect to such separate or segregated portion (exclusive of
25 sales of wine) of not less than three thousand dollars and an
26 average monthly inventory (exclusive of inventory of wine) of
27 not less than three thousand dollars.

28 "Licensee" means the holder of a license granted under
29 the provisions of this article.

30 "Retailer" means any person licensed to sell wine at retail
31 to the public at his established place of business for off-
32 premises consumption and who is licensed to do so under
33 authority of this article.

34 "Tax" includes within its meaning interest, additions to
35 tax and penalties.

36 "Taxpayer" means any person liable for any tax, interest,
37 additions to tax or penalty under the provisions of this article
38 and any person claiming a refund of tax.

39 "Varietal wine" means any wine labeled according to the
40 grape variety from which such wine is made.

41 "Vintage wine" or "vintage-dated wine" means wines from
42 which the grapes used to produce such wine or harvested dur-
43 ing a particular year or wines produced from the grapes of a
44 particular harvest in a particular region of production.

45 "Wine" means any alcoholic beverage obtained by the natural
46 fermentation of the natural content of grapes, other fruits or
47 honey or other agricultural products containing sugar and to
48 which no alcohol has been added and shall include table wine,
49 and shall exclude fortified wine.

50 "Wine specialty shop" means a retailer who shall deal
51 principally in the sale of table wine, wine accessories and
52 food or foodstuffs normally associated with wine and who shall
53 maintain a representative number of such wines for sale in
54 his inventory which are designated by label as varietal wine,
55 vintage, generic and/or according to region of production
56 and such inventory shall contain not less than fifteen percent
57 vintage or vintage-dated wine by actual bottle count.

§60-8-3. Licenses; fees; general restrictions.

1 Except as to farm wineries as defined by section five-a,
2 article one of this chapter, no person may engage in business
3 in the capacity of a distributor or retailer without first obtain-
4 ing a license from the commissioner, nor shall a person con-

5 tinue to engage in any such activity after his license has ex-
6 pired, been suspended or revoked. No person may be licensed
7 in more than one of such capacities at the same time.

8 The commissioner shall collect an annual fee for licenses is-
9 sued under this article as follows:

10 (a) Twenty-five hundred dollars per year for a distributor's
11 license.

12 (b) One hundred fifty dollars per year for a retailer's license.

13 The license period shall begin on the first day of July of
14 each year and end on the thirtieth day of June of the follow-
15 ing year, and if the initial license is granted for less than a year,
16 the fee shall be computed in proportion to the number of
17 quarters remaining in the fiscal year, including the quarter in
18 which application is made.

19 No retailer may be licensed as a private club as provided by
20 article seven of this chapter or as a Class A retail dealer in
21 nonintoxicating beer as provided by article sixteen, chapter
22 eleven of this code. A retailer who has more than one place of
23 retail business shall obtain a license for each separate retail
24 establishment. A retailer's license may be issued only to the
25 proprietor or owner of a bona fide grocery store or wine
26 specialty shop.

§60-8-4. Gallonage tax.

1 There is hereby levied and imposed on all wine sold by dis-
2 tributors to retailers a tax of one dollar per gallon and
3 in like ratio on other volumes. No wine imported, sold or
4 distributed in this state shall be subject to more than one
5 gallonage tax.

6 The retailer shall pay to the distributor the amount of tax
7 imposed by this article which shall be added to and constitute
8 part of the sales price, and shall be collectible as such by the
9 distributor. Before the sixteenth day of each month during the
10 license period, every distributor shall make a written report,
11 under oath, to the commissioner showing the quantity, label
12 and alcoholic content of wine sold or purchased by the distribu-
13 tor during the preceding month, and at the same time shall

14 pay the tax thereon imposed by this article on the wine sold
15 during the preceding month. The report shall contain other
16 information and be in the form the commissioner may require.
17 For purposes of this article, the reports required by this section
18 shall be considered tax returns.

§60-8-5. Refund or credit of taxes.

1 The commissioner shall refund, or credit on a subsequent
2 return, any tax which has been erroneously or illegally col-
3 lected. In the event that a licensee, while the owner of wine
4 on which the tax imposed by this article has been paid, loses
5 such wine through fire or casualty, other than breakage oc-
6 curring on the premises of the licensee because such wine has
7 been declared by the commissioner to be unfit for sale, and
8 the amount of tax paid exceeds fifty dollars, the commissioner
9 shall refund the tax paid. The commissioner shall promulgate
10 regulations establishing the procedure and nature of proof re-
11 quired in case of any claim for refund or credit.

§60-8-6. License or registration required for sale or shipment of wine.

1 Except as to the commissioner, no person may offer for sale or
2 sell wine in this state, or offer wine for shipment into this state,
3 except to a distributor who is duly licensed under this article.
4 Every person, whether resident or nonresident in this state, who
5 is engaged in or desires to engage in the sale or shipment of
6 wine to a distributor for resale under this article shall, prior to
7 engaging in such activities, register with the commissioner. Be-
8 fore the sixteenth day of each month, every such person shall
9 make a written report, under oath, to the commissioner showing
10 all sales, shipments and deliveries of wine made to distributors
11 during the preceding month. The report shall state the identity
12 of the purchaser, the quantity, label and alcoholic content of the
13 wine, and shall be in the form and contain other information
14 the commissioner may require. If any such person violates
15 the provisions of this article, he shall not be permitted to sell,
16 ship or deliver any wine to a distributor or to the commissioner,
17 or otherwise engage in the wine business in this state for a
18 period of one year from the date a notice is mailed to such
19 person by the commissioner of the fact that such person has

20 violated the provisions of this article. During such one-year
21 period, it shall be unlawful for any distributor within this state
22 to buy or receive wine from such person or to have any dealings
23 with such person with respect thereto. Hearings and appeals on
24 such notices may be had in the same manner as in the case of
25 revocations of licenses under this article.

§60-8-7. Records; inspection.

1 Every person who sells or ships wine to a distributor, and
2 and every distributor, shall maintain records of all sales, ship-
3 ments and deliveries, including invoices, records, receipts, bills
4 of lading and other pertinent papers required by the commis-
5 sioner. All such records shall be preserved for at least two
6 years. The commissioner may inspect the books, accounts
7 and records of any licensee and examine, under oath, any offi-
8 cer, agent or employee of any licensee or any person engaged in
9 the business of selling, shipping or delivering wine to a distri-
10 butor. The commissioner may require the production, within
11 this state at the time and place he may designate, of any books,
12 accounts, papers or records kept within or without the state,
13 or verified copies in lieu thereof, in order that an examination
14 thereof may be made by the commissioner or his duly desig-
15 nated agents.

§60-8-8. Assessment of tax when insufficiently returned.

1 If the commissioner believes that the tax imposed by
2 this article is insufficiently returned by a taxpayer, either
3 because the taxpayer has failed to properly remit the tax or
4 has failed to make a return, or has made a return which is
5 incomplete, deficient or otherwise erroneous or a person has
6 filed and has been paid upon an erroneous claim, petition, or
7 application for a refund of taxes, he may proceed to investi-
8 gate and determine or estimate the tax liability of the tax-
9 payer and make an assessment therefor.

§60-8-9. Jeopardy assessments.

1 If the commissioner believes that the collection of any tax
2 which he is required to administer will be jeopardized by
3 delay, he shall thereupon make an assessment of tax, noting
4 that fact upon the assessment. The amount assessed shall be

5 immediately due and payable. Unless the taxpayer against
6 whom a jeopardy assessment is made petitions for reassess-
7 ment within twenty days after service of notice of the jeopardy
8 assessment, such an assessment is final. A petition for re-
9 assessment by a person against whom a jeopardy assessment
10 has been made must be accompanied by security the com-
11 missioner deems necessary to ensure compliance with this
12 article.

§60-8-10. Interest; penalties.

1 (1) *Interest.*—The tax imposed by this article, if not paid
2 when due, shall bear interest at the rate of six percent per
3 annum from the due date of the return. Each assessment or
4 deficiency notice made by the commissioner shall bear interest
5 at the rate of six percent per annum. In all cases of de-
6 linquency or extensions of time, interest shall be assessed
7 and collected.

8 (2) *Additions to tax; penalty.*—In the case of any failure
9 to make or file a return or whenever the full amount of the
10 tax on any portion or deficiency thereof has not been paid,
11 as required by this article, unless it be shown that such failure
12 is due to reasonable cause and not due to willful neglect,
13 there may be added to the tax five percent if a failure is
14 for not more than thirty days, with an additional five percent
15 for each additional thirty days or fraction thereof during
16 which failure shall continue, not to exceed twenty-five percent
17 in the aggregate. If no tax is due, the penalty shall be twenty-
18 five dollars per month or fraction thereof for failure to file
19 a tax return.

20 (3) *Fraudulent returns; willful failure to file.*—In the
21 case of the filing of any false or fraudulent return with intent
22 to evade the tax imposed by this article, or in the case of a
23 willful failure to file a return with intent to evade the tax,
24 or the filing of a false claim for credit or refund, there shall
25 be added to the tax due a penalty in an amount equal to one
26 hundred percent of the tax due. The burden of proving
27 fraud, willfulness, or intent to evade tax shall be upon the
28 commissioner.

§60-8-11. Notice of assessment; petition for reassessment.

1 The commissioner shall give to the taxpayer written notice
2 of any assessment made pursuant to this article. Unless the
3 taxpayer to whom a notice of assessment is directed shall,
4 within thirty days after service thereof (twenty days in the
5 case of jeopardy assessments), either personally or by certified
6 mail, file with the commissioner a petition in writing, verified
7 under oath by said taxpayer or his duly authorized agent
8 having knowledge of the facts, setting forth with particularity
9 the items of the assessment objected to, together with the
10 reasons for objections, said assessment shall become final and
11 conclusive, not subject to administrative or judicial review, and
12 the amount thereof shall be payable at the end of the thirty
13 day period (twenty days in the case of a jeopardy assessment).
14 A petition for reassessment shall be deemed to be timely
15 filed if the postmark date thereon is clearly within said
16 thirty days (twenty days in case of jeopardy assessment) of
17 receipt of said assessment by the taxpayer or is received within
18 such period.

§60-8-12. Hearings; appeals.

1 In every case when a petition for reassessment is filed,
2 the commissioner shall assign a time and place for the hear-
3 ing of same and shall notify the petitioner of such hearing
4 by written notice at least twenty days in advance thereof.
5 Such hearing shall be held within sixty days from the filing
6 of the petition for reassessment unless continued by agreement
7 or by the commissioner for good cause. The hearing shall be
8 informal and may be conducted by an examiner designated
9 by the commissioner. At such hearing, the assessment shall
10 constitute prima facie evidence of the claim of the state
11 and the burden of proof shall be upon the taxpayer assessed
12 to show that the assessment is incorrect and contrary to law.
13 In every case where a petition or request for refund as above
14 described is filed and the commissioner has refused to allow
15 said refund in whole or in part, the petitioner may file within
16 thirty days after receipt of the commissioner's decision a
17 written request for hearing. In every case where a request for
18 hearing is filed, the commissioner shall proceed to assign
19 and hold such hearing in accordance with the methods herein

20 prescribed for a petition for reassessment. After any such
21 hearing, the commissioner shall, within a reasonable time,
22 give notice in writing of the decision. Unless an appeal is
23 made within thirty days from service of this notice, the
24 commissioner's decision shall be final.

25 Every assessment made by the commissioner under this
26 article which becomes final shall constitute a judgment and
27 may be collected as judgments are collected.

28 An appeal may be made by the taxpayer to the circuit
29 court of the county in which he conducts the taxed activity,
30 or in which he resides, or in the circuit court of Kanawha
31 County, within thirty days after he has received notice from
32 the commissioner of his determination as provided in this
33 section.

34 The appeal shall be made by written notice to the com-
35 missioner and served as an original notice. When the notice
36 is served it shall, with the return thereon, be filed in the
37 office of the clerk of the circuit court and docketed as other
38 cases with the taxpayer as plaintiff and the commissioner as
39 defendant. Before the appeal is heard, the plaintiff shall file
40 with the clerk a bond for the use of the defendant, with
41 sureties approved by the clerk, the penalty of the bond to be
42 not less than the total amount of the tax, interest, additions
43 to tax and penalties appealed from, and conditioned that the
44 plaintiff shall perform the orders of the court.

45 The court shall hear the appeal upon the administrative
46 record below and determine anew all questions submitted to
47 it on appeal from the determination of the commissioner. In
48 such appeal, a certified copy of the commissioner's assessment
49 is admissible and shall constitute prima facie evidence of the
50 tax due under the provisions of this article. The court shall
51 render its decree thereon and a certified copy of the decree
52 shall be filed by the clerk of said court with the commissioner
53 who shall then correct the assessment in accordance with said
54 decree. An appeal may be made by the taxpayer or the com-
55 missioner to the supreme court of appeals of this state.

§60-8-13. Sale or discontinuance of business of taxpayer.

1 Whenever any person liable for the tax imposed by this

- 2 article ceases business at any location by reason of sale or
- 3 discontinuance, the taxes imposed by this article are due and
- 4 payable immediately and such person shall make a final re-
- 5 turn within fifteen days after the date of sale or discontinuance.
- 6 Such taxes shall be a lien upon the property of such person.

§60-8-14. Collection by distraint; report of collection.

1 The commissioner may distraint upon any goods, chattels
2 or intangibles represented by negotiable evidences of indebt-
3 edness of any taxpayer delinquent under this article for the
4 amount of all taxes accrued and unpaid hereunder. The com-
5 missioner may require the assistance of the sheriff of any
6 county of the state in levying such distress in the county of
7 which such sheriff is an officer. A sheriff collecting taxes due
8 hereunder is entitled to compensation in the amount of all
9 additions to tax collected exceeding the principal amount of
10 the tax due, but in no case may such compensation exceed
11 twenty-five dollars. All taxes collected shall be reported and
12 returned within ten days after collection to the commissioner,
13 who shall pay the sheriff the compensation due him under
14 this section.

15 The sheriff shall within five days after receipt of the distress
16 warrant file with the clerk of the county commission a copy
17 thereof and thereupon the clerk shall enter in the judgment
18 docket the name of the taxpayer mentioned in the warrant and
19 the amount of the tax for which the warrant is issued and the
20 date when such copy is filed, and thereupon the amount so
21 docketed shall become a lien upon the title to an interest in
22 real property or chattels real of the person against whom it is
23 issued, in the same manner as a judgment duly docketed in
24 the office of such clerk. The sheriff shall then proceed upon
25 the warrant in the same manner prescribed by law in respect
26 to executions issued against property upon judgment of a court
27 of record. If a warrant is returned not satisfied in full, the
28 commissioner has the same remedies to enforce the claim for
29 the taxes against the taxpayer as if the state had recovered
30 judgment against the taxpayer for the amount of the tax.

§60-8-15. Collection by action or suit.

1 The commissioner may collect any tax due and unpaid under

2 the provisions of this article by appropriate legal proceedings
3 in the county where the activity taxed was conducted or the
4 taxpayer resides, or by a suit to enforce the lien therefor in any
5 county where property of the taxpayer is located.

§60-8-16. Application for license.

1 Any person desiring a license under this article shall file a
2 written application for a license with the commissioner, and
3 in the application shall state under oath:

4 (1) The name of the applicant, including his trade name
5 if any, his address and the length of his residence within this
6 state;

7 (2) The address of the place of business for which the
8 license is desired, or other description that definitely locates
9 it; and that the place of business conforms to all health and
10 fire laws and regulations applicable thereto;

11 (3) The name of the owner of the premises upon which the
12 business is to be conducted, and, if the owner is not the appli-
13 cant, that such applicant is the bona fide lessee of the business;

14 (4) If the application is for a retailers license, that the appli-
15 cant is the proprietor or owner of a bona fide grocery store or
16 wine specialty shop;

17 (5) That the applicant intends to carry on the business
18 authorized by the license for himself or under his immediate
19 supervision or direction;

20 (6) That the applicant is a citizen of the United States and
21 an actual bona fide resident of the state of West Virginia and
22 is not less than eighteen years of age;

23 (7) That the applicant has not been convicted of a felony
24 or other crime involving moral turpitude within the three years
25 next preceding the filing of the application; and that he has
26 not, within the two years next preceding the filing of the
27 application, been convicted of violating the liquor laws of any
28 state or of the United States;

29 (8) That the applicant has not during the five years next

30 preceding the date of said application had any license revoked
31 under this chapter or under the liquor laws of any other state;

32 (9) If the applicant is a firm, association or partnership,
33 the application shall state the matters required in subdivisions
34 (6), (7) and (8), with respect to each of the members thereof,
35 and each of said members must meet all the requirements in
36 said subdivisions;

37 (10) If the applicant is a corporation, organized or autho-
38 rized to do business in this state, the application shall state the
39 matters required in subdivisions (6), (7) and (8), with respect
40 to each of the officers and directors thereof, and any stock-
41 holder owning twenty percent or more of the stock of such
42 corporation, and the persons who conduct and manage the
43 licensed premises for the corporation. Each of said individuals
44 must meet all the requirements provided in those subdivisions
45 except that the requirements as to citizenship and residence
46 shall not apply to the officers, directors and stockholders of a
47 corporation applying for a retailers license; and

48 (11) Any other information that the commissioner may
49 reasonably require.

50 The foregoing statements required in an application shall
51 constitute mandatory prerequisites for the issuance of a license.

52 The application must be verified by the owner, or each
53 member of the firm, each partner, if a partnership, each mem-
54 ber of the governing board, if an association, or each officer
55 and director, if a corporation: *Provided*, That the application
56 of a corporation applying for a retailers license need be veri-
57 fied only by its president or vice president.

§60-8-17. License issuance or refusal; terms of license.

1 (a) Upon receipt of the application, fee, and bond if requir-
2 ed, the commissioner shall conduct such investigation as he
3 may deem necessary to determine the accuracy of the matters
4 contained in the application. For the purposes of conducting
5 such investigation, the commissioner may withhold the grant-
6 ing or refusal to grant a license for a period not to exceed
7 thirty days. If it appears that there is no false statement con-

8 tained in the application and that the issuance of the license
9 would not be in conflict with any of the provisions of this
10 chapter, the commissioner shall issue the license, and other-
11 wise shall refuse to issue such license.

12 (b) The commissioner shall refuse the license of any appli-
13 cant if he finds that such applicant is not a suitable person
14 or that the place of business of such applicant is not a suitable
15 place or that such applicant has not complied with the pro-
16 visions of this chapter. Upon refusal to issue such license,
17 the commissioner shall enter an order refusing such applica-
18 tion, which refusal is final unless a hearing is requested in
19 accordance with the provisions of section eighteen of this
20 article. When such refusal becomes final the commissioner
21 shall forthwith refund to the applicant his fees and bond ac-
22 companying said application.

23 (c) Such license shall expire on the thirtieth day of June
24 next following the date it was issued and may be renewed up-
25 on the same showing as required for the issuance of the initial
26 license, together with the payment of fee and filing of any bond
27 required by this article.

28 (d) Such license shall not be transferred to another person,
29 but the location of the premises to which the license relates
30 may be changed with the written consent of the commissioner
31 if the new location is such as would satisfy the requirements
32 of this article upon an initial application.

**§60-8-18. Revocation or suspension of license; procedure upon re-
fusal, revocation or suspension.**

1 (a) The commissioner may on his own motion, or shall on
2 the sworn complaint of any person, conduct an investigation
3 to determine if any provisions of this article have been
4 violated by any licensee. The commissioner may suspend or
5 revoke any licensee's license if he finds that such licensee
6 has violated any provision of this article, or if he finds the
7 existence of any ground on which a license could have been
8 refused, if such licensee were then applying for a license,
9 and if the commissioner finds that a licensee has willfully
10 violated any provision of this article he shall revoke such
11 licensee's license.

12 (b) Whenever any distributor fails or refuses to keep the
13 bond required by section twenty of this article in effect, such
14 distributor's license shall be automatically suspended until
15 such time as bond required by section twenty is furnished to
16 the commissioner, at which time such suspension shall be
17 vacated.

18 (c) Whenever the commissioner refuses to issue a license,
19 or suspends or revokes a license, he shall enter an order to
20 that effect, and cause a copy of the order to be served in
21 person or by certified mail, return receipt requested, on the
22 licensee or applicant.

23 (d) Any applicant or licensee, as the case may be, adversely
24 affected by such order shall have a right to a hearing thereon
25 before the commissioner, providing that demand in writing
26 for such hearing is served upon the commissioner within ten
27 days following the receipt by such applicant or licensee of the
28 copy of said order. The service of such demand for a hearing
29 upon the commissioner shall operate to suspend the execution
30 of the order with respect to which a hearing is being demanded,
31 except an order suspending a license under the provisions of
32 subsection (b) of this section. The person demanding a
33 hearing shall give security for the cost of such hearing in
34 such form and amount as the commissioner may reasonably
35 require. If the person demanding such hearing does not sub-
36 stantially prevail in such hearing or upon judicial review
37 thereof as hereinafter provided, then the costs of such hearing
38 shall be assessed against him by the commissioner and may
39 be collected by an action at law or other proper remedy.

40 (e) The commissioner shall immediately set a date for
41 such hearing and notify the person demanding such hearing
42 thereof, which hearing shall be held within thirty days after
43 receipt of said demand. At such hearing the commissioner
44 shall hear evidence and thereafter enter an order supporting
45 by findings of facts, affirming, modifying or vacating the
46 order, which order shall be final unless vacated or modified
47 upon judicial review thereof.

48 (f) Such hearing and the administrative procedure prior
49 to, during and following the hearing shall be governed by

50 and in accordance with the provisions of article five, chapter
51 twenty-nine-a of this code in like manner as if the provisions
52 of article five were set forth in extenso in this section.

53 (g) Any person adversely affected by an order entered
54 following such hearing shall have the right of judicial review
55 thereof in accordance with the provisions of section four,
56 article five, chapter twenty-nine-a of this code with like
57 effect as if the provisions of said section four were set forth
58 in extenso herein.

59 (h) The judgment of a circuit court reviewing the order
60 of the commissioner shall be final unless reversed, vacated
61 or modified on appeal to the supreme court of appeals in ac-
62 cordance with the provisions of section one, article six,
63 chapter twenty-nine-a of this code.

64 (i) Legal counsel and services for the commissioner in all
65 such proceedings in any circuit court and the supreme court
66 of appeals shall be provided by the attorney general or his
67 assistants and in any proceedings in any circuit court by the
68 prosecuting attorney of that county as well, all without addi-
69 tional compensation.

§60-8-19. To whom licensed resident manufacturer may sell.

1 A person who is licensed to manufacture in this state wine
2 as defined in this article may sell such wines in this state
3 only to the West Virginia alcohol beverage control com-
4 missioner and to distributors as defined in this article. Such
5 manufacturers may sell such wine outside of this state for
6 use or resale outside this state. The provisions of this section
7 shall not apply to farm wineries as defined by section five-a,
8 article one of this chapter.

§60-8-20. Unlawful act generally.

1 It shall be unlawful:

2 (a) For a distributor to sell or deliver wine purchased or
3 acquired from any source other than a person registered under
4 the provisions of section six, article eight, chapter sixty of
5 this code, or for a retailer to sell or deliver wine purchased
6 or acquired from any source other than a licensed distributor

7 or a farm winery as defined in section five-a, article one of
8 this chapter;

9 (b) For a licensee under this article to acquire, transport,
10 possess for sale, or sell wine other than in the original
11 package;

12 (c) For a licensee, his servants, agents or employees to
13 sell, furnish or give wine to any minor, mental incompetent,
14 or person who is physically incapacitated due to the con-
15 sumption of alcoholic liquor or the use of drugs;

16 (d) For a licensee to permit any person to whom alcoholic
17 liquors cannot be sold under the provisions of section twenty-
18 two, article three, chapter sixty of this code, to sell, furnish
19 or give wine to any person; or

20 (e) For a person to violate any reasonable rule or regula-
21 tion promulgated by the commissioner under this article.

§60-8-21. Sale in sealed, labeled packages required.

1 All wines sold pursuant to this article, except that sold
2 pursuant to the provisions by article seven of this chapter, shall
3 be sold only in sealed packages, bearing such seals and labels
4 as the commissioner may require. A manufacturer of wine
5 offered for sale by any licensee shall attach to each bottle a
6 special label bearing an accurate description of the contents
7 of the bottle in such form and detail as the commissioner may
8 require.

§60-8-22. Sales on credit prohibited; exception.

1 It shall be unlawful for a distributor to sell or offer to sell,
2 or a retailer to purchase or receive, any wine except on a cash
3 basis, and no right of action exists to collect any claims for
4 credit extended contrary to the provisions of this subdivision:
5 *Provided*, That nothing herein prohibits, as a credit on any
6 subsequent sale, the crediting of the purchase price charged for
7 wine returned by the purchaser because of damage, spoilage,
8 erroneous shipments or orders, and other such reasons cus-
9 tomary in the trade.

§60-8-23. Duties and powers of commissioner; rules and regulations.

1 The commissioner is hereby authorized:

2 (a) To enforce the provisions of this article.

3 (b) To enter the premises of any licensee at reasonable
4 times for the purpose of inspecting the premises, and determin-
5 ing the compliance of the licensee with the provisions of this
6 article and any rules and regulations promulgated by the
7 commissioner.

8 (c) In addition to rules and regulations relating to the tax
9 imposed by section four of this article, to promulgate reason-
10 able rules and regulations as he deems necessary for the exe-
11 cution and enforcement of the provisions of this article, which
12 may include, but shall not be limited to:

13 (1) The transport, use, handling, service and sale of wine;

14 (2) Establishing standards of identity, quality and purity
15 to protect the public against wine containing deleterious,
16 harmful or impure substances or elements and against spurious
17 or imitation wines and wines unfit for human consumption.

18 (d) To issue subpoenas and subpoenas duces tecum for the
19 purposes of conducting hearings under the provisions of sec-
20 tion twelve of this article, which subpoenas and subpoenas
21 duces tecum shall be issued in the time, for the fees, and
22 shall be enforced in the manner specified in section one, article
23 five, chapter twenty-nine-a of this code with like effect as if
24 said section one was set forth in extenso in this subdivision.

25 The authority granted in subdivisions (a), (b) and (d) of
26 this section may also be exercised by the duly authorized
27 agents of the commissioner.

28 All rules and regulations promulgated by the commissioner
29 pursuant to this article shall be so promulgated in accordance
30 with the provision of chapter twenty-nine-a of this code. The
31 initial rules and regulations promulgated pursuant to this
32 article shall be so promulgated within thirty days of the effective
33 date hereof.

§60-8-24. Disposition of revenue.

1 (a) All fees collected by the commissioner under the pro-
2 visions of this article shall be deposited in the state treasury
3 and credited to a special fund to be known as the "wine license

4 special fund." All moneys in such special fund may be expend-
5 ed only for the administration of the provisions of this article
6 or, to the extent of any excess, for the administration of this
7 chapter or as may be appropriate by law.

8 (b) The gallage tax imposed and collected by the com-
9 missioner under the provisions of this article shall be paid into
10 the state treasury and deposited in the general revenue fund
11 of the state.

12 (c) All moneys collected by the commissioner under the
13 provisions of this article shall be remitted to the state treasury
14 monthly within fifteen days after the end of each month.

§60-8-25. Criminal penalties; public nuisances.

1 (a) Any person who violates any provision of this article or
2 who makes any false statement concerning any material fact
3 in submitting application for license or for a renewal of a
4 license or in any hearing concerning the suspension or revoca-
5 tion thereof, or who commits any of the acts herein declared
6 to be unlawful, is guilty of a misdemeanor, and, upon con-
7 viction thereof, shall for each offense be fined not less than
8 twenty-five dollars nor more than five hundred dollars, or im-
9 prisoned in the county jail not less than thirty days nor more
10 than six months, or both fined and imprisoned. Magistrate
11 courts shall have concurrent jurisdiction with the circuit court
12 for the trial of all misdemeanors arising under this article.

13 (b) The provisions of sections sixteen and seventeen, article
14 six of this chapter shall apply to persons violating the provi-
15 sions of this article to the same extent as if such provisions were
16 set forth in extenso herein.

§60-8-26. Forfeiture of bond.

1 On conviction of a violation of any provision of this article
2 or upon the revocation of a license in accordance with section
3 eighteen of this article, which conviction or revocation has
4 become final, the licensee or former licensee, as the case may
5 be, shall forfeit any bond required by section twenty of this
6 article. The penal sum of said bond shall forthwith be paid to
7 the state treasurer and credited to the general revenue fund of

8 this state. Such sum may be collected by an action at law or
9 other appropriate remedy.

§60-8-27. Local option elections.

1 The question "Shall the sale of alcoholic beverages under
2 the West Virginia liquor control commission be permitted
3 in _____" ?
4 stated in the petition and ballot under the provisions of sec-
5 tions three and five, article five of this chapter shall be
6 deemed to include therein the sale of wine under the pro-
7 visions of this article. Within thirty days after a "local option
8 election" conducted under the provisions of article five of
9 this chapter in which a majority has voted "No," the com-
10 mission shall close all state stores and discontinue all agencies
11 within the county or municipality as provided in section seven,
12 article five of this chapter, and each retailer shall cease
13 the sale of wine.

PART III. WINE DISTRIBUTION.

§60-8-28. Registration of labels.

1 Every distributor and farm winery offering wine for sale
2 under this article shall register with the commissioner each
3 label offered for sale in the state and shall pay a fee of three
4 dollars for the registration of such label. No wine may be
5 sold under this article unless its label has been registered.

§60-8-29. Bond required of distributors.

1 Each applicant for a distributors license shall furnish
2 with his application a bond with a corporate surety authorized
3 to transact business in this state, payable to the state, and
4 conditioned on the payment of all taxes and fees herein
5 prescribed and on the faithful performance of and compliance
6 with the provisions of this article.

7 The penal sum of the bond shall be ten thousand dollars.

§60-8-30. Exclusive franchise agreements prohibited.

1 It shall be illegal for any manufacturer to enter into any
2 exclusive franchise agreement with any distributor whereby
3 any such distributor is given the exclusive right within this

4 state or in any given territory within this state to distribute the
5 product or products of such manufacturer which are to be sold
6 or distributed pursuant to the provisions of this article.

§60-8-31. Other unlawful acts.

1 It is unlawful:

2 (a) For a distributor to discriminate in price, sales agree-
3 ments, terms or services offered to retailers or to any licensee
4 under article seven of this chapter. "Discriminate" as used
5 in this section means the granting of more favorable prices,
6 agreements, terms or services to one person than to another.

7 (b) For a distributor, his agents, servants or employees
8 to transport or deliver wine to any retail licensee or to any
9 licensee under article seven of this chapter on Sunday or any
10 general election day.

11 (c) For a distributor to sell wines authorized by this article
12 to licensees under article seven of this chapter at a price
13 which is greater than the price at which such wines are sold
14 and distributed to retailers under this article.

PART IV. WINE RETAILERS.

§60-8-32. Where wine may be sold at retail.

1 Except as to sales permitted to be made by farm wineries as
2 defined by section five-a, article one of this chapter, wine sold
3 pursuant to this article may be sold at retail only by the com-
4 missioner and in and by grocery stores and wine specialty shops
5 as defined by section two of this article.

§60-8-33. Certain prohibitions not applicable.

1 The prohibitions contained in subdivisions (h) and (j),
2 section thirteen, article sixteen, chapter eleven of this code
3 and the prohibitions contained in subdivisions (1), (2) and
4 (3), section seven, article six of this chapter shall not apply to
5 the holder of a retailer's license issued under the provisions
6 of this article: *Provided*, That all prohibitions contained with-
7 in this article shall apply to the holder of a retailer's license
8 notwithstanding the provisions of this section.

§60-8-34. When retail sales prohibited.

1 It shall be unlawful for a retailer, his servants, agents or
2 employees to sell or deliver wine on any general or primary
3 election day, or prior to one o'clock p.m. or after nine o'clock
4 p.m. on Sundays, or between the hours of nine o'clock p.m.
5 and ten o'clock a.m. on weekdays and Saturdays.

§60-8-35. Other unlawful acts.

1 No person while on the premises of any retailer licensed
2 pursuant to this article shall:
3 (1) Break the seal on any package or bottle of wine;
4 (2) Consume alcoholic liquor, wine or beer; or
5 (3) Loiter.

CHAPTER 218

(Com. Sub. for H. B. 935—By Mr. Harman, 33rd Dist.)

[Passed March 5, 1981; in effect ninety days from passage. Disapproved by the
Governor, and repassed notwithstanding his objections.]

AN ACT to amend article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a; to amend and reenact sections one and nine-d, article three of said chapter; to further amend said article three, by adding thereto a new section, designated section twenty-five; to amend and reenact sections two, three and fifteen, article four of said chapter; and to amend and reenact sections one and two, article six of said chapter, all relating to state control of alcoholic liquors generally; permitting the establishment and licensure of farm wineries in this state and defining the term "farm winery"; limiting the amount of annual production at such wineries; limiting the amount of grapes, grape juice, fruit, fruit juice or honey imported; permitting the sale of wine produced by such wineries at wholesale or retail; levying a tax upon such sales; issuance of permit to import grapes,

grape juice, fruit, fruit juice or honey in excess of established limit; requiring a license for the operation of such license; establishing license fees for such wineries; and establishing regulation of hours of sale.

Be it enacted by the Legislature of West Virginia:

That article one, 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 five-a; that sections one and nine-d, article three of said chapter be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section twenty-five; that sections two, three and fifteen, article four of said chapter be amended and reenacted; and that sections one and two, article six of said chapter be amended and reenacted, all to read as follows:

Article

1. **General Provisions.**
3. **Sales By Commissioner.**
4. **Licenses.**
6. **Miscellaneous Provisions.**

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

1 For the purpose of this chapter: "Farm winery" shall mean
 2 an establishment where wine not exceeding fifty thousand
 3 gallons each year is manufactured exclusively by natural
 4 fermentation from grapes, other fruit or honey, twenty-five
 5 percent of such raw products being produced by the owner
 6 of such farm winery on the premises of that establishment,
 7 and no more than twenty-five percent of such produce origina-
 8 ting from any source outside this state

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-1. Sales at retail and wholesale.

§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.

§60-3-25. Permit for farm winery to import produce in excess of established limits.

***§60-3-1. Sales at retail and wholesale.**

1 The sale of alcoholic liquors at wholesale and retail in this

*Clerk's Note: Section 60-3-1 was also amended by H. B. 1111, now Chapter 217, which was passed on March 26, 1981.

2 state shall be a state monopoly, except for retail sales made by
3 authority of article six, section two and article seven of this
4 chapter. Alcoholic liquors shall be sold at retail only through
5 the state stores, agencies of the West Virginia alcohol beverage
6 control commissioner, and may be sold by private clubs holding
7 a license issued under the provisions of article seven of
8 this chapter.

9 The commissioner may sell such liquors at wholesale to
10 persons licensed to purchase at wholesale as provided in this
11 chapter and wine may be sold by farm wineries licensed under
12 and subject to the provisions of this chapter.

****§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.**

1 For the purpose of providing financial assistance to and
2 for the use and benefit of the various counties and municipalities of this state, there is hereby levied a tax upon all
3 purchases of intoxicating liquor from state stores, other
4 agencies of the alcohol beverage control commissioner or
5 farm wineries, outside the corporate limits of any municipality. The tax shall be three percent of the purchase price
6 and shall be added to and collected with the purchase price
7 by the commissioner: *Provided*, That no such tax shall be
8 collected on the intoxicating liquors sold by or purchased
9 from holders of a license issued under the provisions of article
10 seven of this chapter.
11
12

13 All such tax collected within one mile of the corporate limits
14 of any municipality within the state shall be remitted to such
15 municipality; all other tax so collected shall be remitted to the
16 county wherein collected: *Provided*, That where the corporate
17 limits of more than one municipality be within one mile of the
18 place of collection of such tax, all such tax collected shall
19 be divided equally among each of said municipalities: *Provided, however*, That such mile is measured by the most direct
20 hard surface road or access way usually and customarily used
21 as ingress and egress to the place of tax collection.
22

****Clerk's Note:** Section 60-3-9d was also amended by H. B. 1111, now Chapter 217, which was passed on March 26, 1981 and also by H. B. 1331, now Chapter 163, which was passed on April 10, 1981.

23 The commissioner by appropriate rules and regulations shall
24 provide for the collection of such tax, separation or proration
25 of the same and distribution thereof to the respective counties
26 and municipalities for which the same shall be collected. Such
27 rules and regulations shall provide that all such taxes shall be
28 deposited with the state treasurer and distributed quarterly
29 by the treasurer upon warrants of the auditor payable to the
30 counties and municipalities.

§60-3-25. Permit for farm winery to import produce in excess of established limits.

1 Upon application by the holder of a farm winery license,
2 filed with the West Virginia alcohol beverage control commis-
3 sioner, showing, due to unusual climatic or other conditions ad-
4 versely affecting its ability to obtain from within this state
5 seventy-five percent of the grapes, grape juice, other fruits or
6 fruit juices or honey necessary to produce its wine, the com-
7 missioner may issue to the applicant a permit to import such
8 products in an amount deemed necessary by the commissioner
9 to allow such farm winery to produce wine within the quota
10 established by section five-a, article one of this chapter. The
11 permit issued under this section shall not be effective for
12 more than ninety days. The burden of proof shall be
13 upon the applicant to show that grapes, grape juice, fruit, fruit
14 juice or honey of the type normally used by the licensee are
15 not available from any other source within the state of West
16 Virginia, and no application for a permit under this section
17 shall be considered by the commissioner unless it is accom-
18 panied by written findings by the West Virginia agriculture
19 commissioner in support thereof.

ARTICLE 4. LICENSES.

§60-4-2. Licenses for manufacture.

§60-4-3. To whom licensed manufacturer may sell.

§60-4-15. Amount of license fees.

§60-4-2. Licenses for manufacture.

1 The commission may grant licenses for the manufacture of
2 alcoholic liquors. Separate licenses shall be issued to the
3 following classes of manufacturing establishments:

4 (1) Distilleries, in which only alcoholic liquors other than
5 wine or beer shall be manufactured;

6 (2) Wineries, in which only wines shall be manufactured;

7 (3) Breweries, in which beer shall be manufactured;

8 (4) Bottling plants, in which beer only shall be bottled;

9 (5) Industrial plants, in which alcohol is distilled, manu-
10 factured, or otherwise produced for scientific, chemical, me-
11 chanical or industrial purposes; and

12 (6) Farm wineries, in which only wines shall be manu-
13 factured and from which the wine so manufactured may be
14 served or sold or both served and sold in accordance with the
15 provisions of this chapter.

16 Licenses for manufacture shall authorize the manufacture
17 and sale of alcoholic liquors as provided by this chapter.

§60-4-3. To whom licensed manufacturer may sell.

1 A person who is licensed to manufacture alcoholic liquors
2 in this state may sell such liquors in this state only to the West
3 Virginia alcohol beverage control commissioner, and to whole-
4 salers and retailers licensed as provided in this chapter:
5 *Provided*, That a holder of a farm winery license may sell
6 wines manufactured by it in this state in accordance with the
7 provisions of section two, article six of this chapter. Hours
8 of retail sale by a farm winery shall be subject to regulation
9 by the commissioner. A manufacturer may sell alcoholic liquors
10 outside of the state for use or resale outside of the state.

§60-4-15. Amount of license fees.

1 A person to whom a license is issued under the provisions
2 of this chapter shall pay annually to the commissioner a
3 license fee as follows, for:

4 (1) Distilleries, five hundred dollars;

5 (2) Wineries, two hundred fifty dollars;

6 (3) Breweries, two hundred fifty dollars;

7 (4) Bottling plants, one hundred dollars;

- 8 (5) Wholesale druggists, fifty dollars;
- 9 (6) Institutions, ten dollars;
- 10 (7) Industrial use, fifty dollars;
- 11 (8) Industrial plants producing alcohol, two hundred fifty
- 12 dollars;
- 13 (9) Retail druggists, ten dollars; and
- 14 (10) Farm wineries, fifty dollars.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

§60-6-2. When lawful to manufacture and sell wine and cider.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

- 1 The provisions of this chapter shall not prevent:
- 2 (1) A person from keeping and possessing alcoholic liquors
- 3 in his residence for the personal use of himself, his family, his
- 4 servants or his guests if such alcoholic liquors shall have been
- 5 lawfully acquired by him;
- 6 (2) A person, his family, or servants from giving or
- 7 serving such alcoholic liquors to guests in said residence, when
- 8 such gift or service is not for the purpose of evading the
- 9 provisions of this chapter; and
- 10 (3) The holder of a farm winery license from serving
- 11 complimentary samples of its wine in moderate quantities for
- 12 tasting at the winery premises.

§60-6-2. When lawful to manufacture and sell wine and cider.

- 1 The provision of this chapter shall not prevent:
- 2 (1) A person from manufacturing wine at his residence for
- 3 consumption at his residence as permitted by section one of this
- 4 article;
- 5 (2) A person from manufacturing and selling unfermented
- 6 cider;
- 7 (3) A person from manufacturing and selling cider made
- 8 from apples produced by him within this state, to persons

9 holding distillery licenses, but such manufacture and sale
10 shall be under the supervision and regulation of the com-
11 missioner;

12 (4) A person from manufacturing and selling wine made
13 from fruit produced by him within this state to persons holding
14 winery licenses, but such manufacture and sale shall be
15 under the supervision and regulation of the commissioner;
16 and

17 (5) The holder of a farm winery license from selling
18 wine produced by it directly to consumers or to any other
19 person who is licensed under this chapter to sell wine either
20 at wholesale or at retail.

CHAPTER 219

(H. B. 1704—By Mr. Blackwell)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the workmen's compensation appeal board to meet the first Tuesday of every month for a period of two days or as long as necessary to transact its business.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. REVIEW.

§23-5-2. Workmen's compensation appeal board—Generally.

1 There shall be a board to be known as the "Workmen's
2 Compensation Appeal Board," which shall be referred to in
3 this article as the "board," to be composed of three members.

4 Two members of such board shall be of opposite politics

5 to the third, and all three shall be citizens of this state who
6 have resided therein for a period of at least five years. All
7 members of the board shall be appointed by the governor
8 and shall receive an annual salary in accordance with the
9 provisions of section two-a, article seven, chapter six of this
10 code. The salaries shall be payable in monthly installments,
11 and the members shall also be entitled to all reasonable and
12 necessary traveling and other expenses actually incurred while
13 engaged in the performance of their duties. The governor
14 shall designate one of the members of the board as chairman
15 thereof, and the board shall meet at the capitol or at such
16 other places throughout the state as it may deem proper at
17 regular sessions designated as "Appeal Board Hearing Days"
18 commencing on the first Tuesday of every month or the
19 next regular business day, for a period of at least three
20 days, for the purpose of conducting hearings on appeals,
21 and continuing as long as may be necessary for the
22 proper and expeditious transaction of the hearings, de-
23 cisions and other business before it. All clerical services re-
24 quired by the board shall be paid for by the compensation
25 commissioner from any funds at his disposal. The board shall,
26 from time to time, compile and promulgate such rules of
27 practice and procedure as to it shall appear proper for the
28 prompt and efficient discharge of its business and such rules
29 shall be submitted to the supreme court of appeals for approval,
30 and if approved by such court shall have the same force and
31 effect as the approved rules of procedure of circuit courts. The
32 board shall employ such clerical staff as may be necessary for
33 the efficient conduct of its business but the number of such em-
34 ployees shall not exceed four. Salaries of the board, and its em-
35 ployees, and all of its necessary operating expenses shall be
36 paid from the workmen's compensation fund. The board shall
37 submit its annual budget to the state compensation commission-
38 er for inclusion as a separate item in the budget estimates pre-
39 pared by him annually and within the limits of such budget, all
40 expenses of the board shall be by the requisition of the com-
41 missioner. Salaries of the employees of the board shall be fixed
42 by the board.

43 The board shall report monthly to the governor and com-
44 missioner on the status of all claims on appeal.

CHAPTER 220

(S. B. 395—By Mr. Staggers and Mr. Steptoe)

[Passed April 3, 1981; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Berkeley County to make expenditures from the county general fund for the support of the Mountain State Apple Harvest Festival.

Be it enacted by the Legislature of West Virginia:

MOUNTAIN STATE APPLE HARVEST FESTIVAL.

§1. Support of Mountain State Apple Harvest Festival.

1 The county commission of Berkeley County is hereby
 2 authorized, in its discretion, to expend a sum of money not to
 3 exceed two thousand five hundred dollars per year from the
 4 general fund of that county for the support of the Mountain
 5 State Apple Harvest Festival when held in Berkeley County.

CHAPTER 221

(H. B. 1791—By Mr. Martin, 35th Dist., and Mr. Stephens)

[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Berkeley County to make expenditures from the county general fund to contribute to a nonprofit charitable corporation known as the associates for community development to aid in construction of congregate housing projects for the elderly in Berkeley County.

Be it enacted by the Legislature of West Virginia:

EXPENDITURES BY BERKELEY COUNTY COMMISSION.

§1. Support of congregate housing for the elderly.

1 The county commission of Berkeley County is hereby autho-
 2 rized in its discretion, to expend money from the general
 3 fund in that county to contribute to a nonprofit, charitable

- 4 corporation known as the associates for community develop-
5 ment to aid in construction of congregate housing projects
6 for the elderly in Berkeley County.

CHAPTER 222

(Com. Sub. for H. B. 1591—By Mr. Chambers)

[Passed April 10, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, as last amended and reenacted by chapter one hundred forty-seven, acts of the Legislature, regular session, one thousand nine hundred seventy-four, relating to the Cabell County youth center; medium security school for the detention of juveniles adjudged delinquent; and providing that the board of supervisors and executive director shall be responsible for its operation.

Be it enacted by the Legislature of West Virginia:

That sections three and four, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, as last amended by chapter one hundred forty-seven, acts of the Legislature, regular session, one thousand nine hundred seventy-four, be amended and reenacted to read as follows:

CABELL COUNTY YOUTH CENTER.

§3. Medium security school.

§4. Foster homes division.

§3. Medium security school.

1 The medium security school of the Cabell County youth
2 center shall be maintained at the Cabell County farm at Ona,
3 West Virginia by the board of supervisors as one of the
4 divisions of the Cabell County youth center. It may be used
5 for the detention of juveniles pending hearings before the
6 juvenile court of Cabell County within the discretion of the
7 judge of said court; and it shall be used for the training of

8 juveniles who have been adjudged delinquent and committed
9 thereto by said court. It shall not be deemed a penal institu-
10 tion, a jail or prison. It shall be conducted and respected as
11 comparable to a "school away from home." There shall be
12 maintained at the school, or in close proximity thereto, by the
13 board of supervisors, sufficient classrooms and equipment for
14 the proper education and training during the regular nine
15 months school period, of all juveniles residing in said medium
16 security school. The board of education of Cabell County, at
17 its own expense, shall furnish sufficient teachers of proper
18 qualifications to adequately staff said classrooms and to fur-
19 nish proper educational training for all those committed to
20 said school, to the end that those so committed shall be allow-
21 ed and required to progress in education and in spiritual and
22 moral development in preparation for a return to a normal life.

23 The board of supervisors may appoint an assistant director in
24 charge of the medium security school who shall be answerable
25 to the executive director and to the board. The assistant director
26 in charge of the medium security school shall be provided with
27 such other personnel as to the board may seem necessary to
28 assist in maintaining the school, securing the custody of the
29 juveniles therein, and carrying out general supervision of the
30 school to the end that order and discipline shall be maintained.
31 Compensation to be paid the assistant director and all per-
32 sonnel of said school shall be fixed by the board and paid as
33 hereinafter provided.

34 The board of supervisors, shall, within its discretion, have
35 the power and authority to accept juveniles upon commitment
36 by the juvenile courts of other counties in West Virginia, and
37 to make arrangements with the county commission of such
38 counties for the payment of the fair per capita, per diem cost
39 for each juvenile so committed, and which payments shall be
40 credited to the fiscal account of the Cabell County youth center.

41 The procedure for the release of juveniles committed to the
42 medium security school shall be as follows:

43 After a juvenile has been committed to the school he shall
44 be advised by the executive director of his right to apply in
45 writing for release. He shall be afforded and may sign a peti-

46 tion in which he shall state the reasons he thinks are grounds
47 for his release. The executive director shall then call a meeting
48 with the assistant director, the teachers and all other paid em-
49 ployees who have had personal contact with and supervision of
50 said juvenile and said staff shall then review the petition and
51 shall make such recommendations as they deem proper to the
52 next meeting of the board of supervisors. After review of the
53 juvenile's petition and record the board may take such action
54 as to it may seem proper. If the board be of opinion to recom-
55 mend the release of the juvenile it shall then submit such
56 recommendation to the juvenile court over the signature of the
57 executive director, the president of the board and the teacher
58 that last had the juvenile in school.

59 Within a reasonable time thereafter the juvenile court shall
60 review the case history of the juvenile and after considering the
61 recommendations of the staff and the board, shall enter such
62 order as to the court may seem to be in the best interest of the
63 juvenile.

§4. Foster homes division.

1 The foster homes division of the Cabell County youth center
2 shall be erected and maintained at the Cabell County farm at
3 Ona, West Virginia, as homes for Cabell County children who
4 are orphans, homeless, neglected and deserted, or who have
5 been adjudged delinquent and committed thereto, as herein pro-
6 vided, or who, if permitted to run ungoverned or undisciplined,
7 are apt to become delinquent, and which said children are with-
8 in the age prescribed by the statutes of this state for juveniles.

9 The board of supervisors of the Cabell County youth center
10 shall cause to be erected and maintained at said farm sufficient
11 cottages and of capacity to comfortably house in each cottage
12 not more than twenty children.

13 A part of the facilities of the foster homes division may be
14 utilized for a diagnostic clinic and treatment center.

15 The foster homes division shall be made available for any
16 and all Cabell County children now or hereafter to be under
17 the control of the state or county department of welfare, all
18 Cabell County children cared for by any of the other welfare

19 agencies, youth or child centers, private homes or institutions
20 within the county, and all Cabell County children adjudged
21 to be delinquent pursuant to the provisions of section eleven,
22 article five, chapter forty-nine of the code and pursuant to
23 disposition by the circuit court in accordance with the provi-
24 sions of subdivision (6), subsection (b), section thirteen,
25 article five, chapter forty-nine, and for the purposes set forth
26 in article five-b, chapter forty-nine of the code.

27 For the support and maintenance of the children placed in
28 said foster homes division by the department of welfare, they
29 shall contribute the standard amount paid by the departments
30 to private foster homes in other counties of the state. The
31 money so contributed shall be paid to the county commission
32 of Cabell County and by the commission set aside for the use
33 of said foster homes division. The executive director is further
34 authorized to contract with the department of welfare for the
35 provision of services and support and maintenance of such
36 children.

37 The "cottage parents" and all other personnel required for
38 the efficient operation of said cottages in which children are
39 maintained shall be carefully selected by the board of super-
40 visors or executive director. Said "cottage parents" under the
41 guidance and supervision of the board of supervisors or execu-
42 tive director shall be responsible for the supervision and train-
43 ing of all the children committed to their care; for keeping
44 them in school during school terms and hours; for teaching
45 them to do a reasonable amount of work, and for making each
46 cottage as nearly self-supporting as possible.

47 Complete supervision of the foster homes division, together
48 with the employment and discharge of any and all personnel
49 including "cottage parents" shall be under the board of super-
50 visors and executive director. The salary of each person so
51 employed shall be reasonable and determined by the board,
52 and when approved by the board of supervisors shall be certi-
53 fied for payment as is provided in section six, as last amended
54 by chapter two hundred, acts of the Legislature, regular ses-
55 sion, one thousand nine-hundred sixty-three. In advance of
56 the submission by the board of supervisors of the estimate of all
57 monetary needs of the Cabell County youth center to the coun-

58 ty commission as provided in section six, as last amended by
59 chapter two hundred, acts of the Legislature, regular session,
60 one thousand nine-hundred sixty-three, the executive director
61 shall furnish to the board of supervisors an estimate of all
62 reasonable monetary needs of the foster homes division for the
63 next fiscal year, said estimate shall cover all anticipated costs
64 for services for all employees and personnel employed in the
65 reasonable operation of said foster homes, and all other reason-
66 able expenses incident thereto, and which said estimate shall be
67 certified to the board of supervisors and by that board included
68 in the estimate rendered to the county commission of Cabell
69 County as required by paragraph one, section six, as last
70 amended by chapter two hundred, acts of the Legislature, regu-
71 lar session, one thousand nine hundred sixty-three.

CHAPTER 223

(H. B. 1352—By Mr. Speaker, Mr. See)

[Passed April 7, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to provide a stable method of financing the operation of the Hardy County public library, Hardy County, West Virginia, organized under article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

Be it enacted by the Legislature of West Virginia:

HARDY COUNTY PUBLIC LIBRARY.

- §1. Levies by county commission, county board of education and town of Moorefield to support the Hardy County public library.
- §2. Disbursements.
- §3. Effect of future amendments of general laws.
- §4. Severability.
- §1. **Levies by county commission, county board of education and town of Moorefield to support the Hardy County public library.**

1 In order to provide for the support, maintenance and opera-
2 tion of the Hardy County public library, Hardy County,

3 West Virginia, and any and all branches thereof, the Hardy
4 County board of education, the Hardy County commission and
5 the town of Moorefield, hereinafter described as the support-
6 ing agencies, shall, upon written request by the board of
7 directors of the Hardy County public library, levy annually
8 on each one hundred dollars of assessed valuation of the
9 property taxable according to the last assessment for state
10 and county purposes, amounts as follows: By the board of
11 education of the County of Hardy, Class I, two mills; Class
12 II, two mills; Class III, two mills; Class IV, two mills; by
13 the county commission of Hardy County, Class I, one-half
14 cent; Class II, one cent; Class III, one cent; Class IV, one
15 cent; and by the town of Moorefield, Class I, half cent;
16 Class II, one cent; Class IV, half cent.

17 Each year the board of directors shall request each of the
18 three supporting agencies to levy within the above rates on
19 each one hundred dollars of assessed valuation of property of
20 the same class, and each of the three supporting agencies
21 shall levy within the rates aforesaid. In addition, each sup-
22 porting agency may contribute to the public library any
23 other general or specific revenues or excess levies. All income
24 realized by the operation of the public library from any
25 sources other than the above levies shall be used by the board
26 of directors for the support and maintenance of the public
27 library.

§2. Disbursements.

1 All money collected or appropriated by the three support-
2 ing agencies for library purposes shall be deposited in a
3 bank account as directed by the library board of directors
4 and disbursed by it for salaries, wages, books and other
5 library materials such as magazines, pamphlets, papers, works
6 of art, records, machinery, equipment, supply services and
7 other costs and expenses of operating a public library and
8 maintaining, repairing, improving and replacing its property
9 as well as acquiring additional property.

§3. Effect of future amendments of general law.

1 Amendments to article one, chapter ten of the code of
2 West Virginia, one thousand nine hundred thirty-one, as

3 amended, and other general laws shall not control this act
4 except to the extent that they do not conflict with the special
5 features hereof, or unless the intent to amend this act is clear,
6 specific and unmistakable.

§4. Severability.

1 If any provision hereof is held invalid, such invalidity
2 shall not affect other provisions hereof which can be given
3 effect without the invalid provision, and to this end the
4 provisions of this act are declared to be severable.

CHAPTER 224

(H. B. 1327—By Mr. Wiedebusch and Mr. Yanni)

[Passed March 25, 1981: in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Marshall County to
make expenditures from the county general fund for the
support of the Marshall County fair organization.

Be it enacted by the Legislature of West Virginia:

MARSHALL COUNTY FAIR ORGANIZATION.

§1. Support of Marshall County fair.

1 The county commission of Marshall County is hereby
2 authorized, in its discretion, to expend a sum of money not
3 to exceed fifteen thousand dollars per year from the general
4 fund of that county for the support of the Marshall County
5 fair organization.

CHAPTER 225

(H. B. 1317—By Mr. Speaker, Mr. See)

[Passed April 11, 1981: in effect from passage. Approved by the Governor.]

AN ACT to authorize the sale by the West Virginia Department of
Agriculture of a tract of land in Moorefield and providing

that the proceeds of such sale be used for capital improvements to the newly constructed agricultural center in Hardy County.

Be it enacted by the Legislature of West Virginia:

**SALE OF DEPARTMENT OF AGRICULTURE LAND IN MOOREFIELD,
WEST VIRGINIA.**

**§1. Department of agriculture authorized to sell land located in
Moorefield, West Virginia, and use the proceeds for certain
capital improvements.**

1 The department of agriculture is hereby authorized and
2 empowered to sell a certain lot and parcel of land consisting of
3 approximately sixty-five hundred square feet, located in the
4 Town of Moorefield, Moorefield District, Hardy County, West
5 Virginia, being the same lot and parcel more fully described
6 in Deed Book 82, page 374 in the county clerk's office of
7 said county, by means of a private sale, public auction, or other
8 reasonable method of sale, for a price not less than an in-
9 dependently appraised value. The proceeds from the sale of
10 such property shall be utilized solely for the purpose of capital
11 improvements to the newly constructed agricultural center
12 located in the Moorefield Industrial Park, Hardy County,
13 West Virginia.



RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 21

(By Mr. Moore and Mr. Frazier)

[Adopted April 4, 1981.]

Memorializing the Congress of the United States to support the continuation of the federal black lung benefits program.

WHEREAS, The people of West Virginia support continuation of the federal black lung benefits program which requires coal industry employers to compensate employees who are inflicted with disabling pulmonary and respiratory diseases caused by years of coal mine employment; and

WHEREAS, The production of American coal, and its energy derivatives, is central to all feasible plans to make the Nation secure and independent of foreign sources of energy and all possible domination by foreign governments over our national economic and political stability; and

WHEREAS, The production of coal sufficient to so secure the Nation will cause present and future coal workers to suffer the same dreaded diseases now compensated by coal industry employers as a result of the federal black lung benefits program; and

WHEREAS, The infliction of disabling pulmonary and respiratory diseases upon present and future coal workers will rob them of the physical comfort and dignity and the financial security which is enjoyed by other American workers in the mature years of their employment and in the golden years of their lives, ending so many before their time; and

WHEREAS, Those coal workers deserve to share equally with other American workers in the Nation's well-established commitment to make dignified and to make secure those years which follow the lifetimes of dedicated service to the Nation by working Americans; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States be requested to continue

in full force and effect the federal black lung benefits program; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward a copy of this resolution to the President of the United States, United States Senators Robert C. Byrd and Jennings Randolph, the West Virginia Delegation in the House of Representatives and the presiding officers of the legislatures of the coal producing states.

HOUSE CONCURRENT RESOLUTION NO. 35

(By Mr. Tompkins)

[Adopted April 9, 1981.]

Authorizing the Judith A. Herndon Legislative Fellows Program for college and university students in West Virginia.

WHEREAS, The Legislature desires to provide a special learning experience for selected undergraduates from West Virginia's public and private colleges and universities so that students may learn about the legislative branch of government through a concentrated and organized work/study program for four months, encompassing regular sessions of the Legislature; and

WHEREAS, The Joint Committee on Government and Finance authorized a pilot program that is now in operation, which program was designated as the Judith A. Herndon Fellows Program in memory of the late Senator Judith A. Herndon; and

WHEREAS, This pilot program should be continued; therefore, be it

Resolved by the Legislature of West Virginia:

That the Judith A. Herndon Fellows Program, currently in operation as a pilot program for selected undergraduate students from West Virginia's public and private colleges and universities, is hereby continued as an ongoing program of the Legislature and shall operate under the supervision and direction of the Joint Committee on Government and Finance. The Joint Committee on Government and Finance and the program in the future will be guided by the program plan previously adopted by the Joint Com-

mittee for the pilot program, but the Joint Committee is authorized to amend the program to provide improvements and enhancements as experience dictates. Legislative funds necessary for the expense of the program shall be paid from legislative appropriations to the Joint Committee on Government and Finance, but expenditures therefor or may be made only upon prior authorization by the Joint Committee.

SENATE CONCURRENT RESOLUTION NO. 13

(By Mr. Rogers, Mr. Tomblin, Mr. McGraw, Mr. President,
and Mr. Wise)

[Adopted April 11, 1981.]

Recommending that a joint investigatory interim committee of the Legislature meet after the 1981 Regular Session to conduct hearings and a complete review of the events following the Buffalo Creek disaster.

WHEREAS, There was a disaster in the Buffalo Creek area of Logan County in February of 1972, wherein 125 people died; millions of dollars of property was damaged or destroyed; and the lives of the survivors of the families and their friends received irreparable emotional and physiological harm; and

WHEREAS, The Pittston Company, the parent company of the Buffalo Mining Company, was found to be responsible for the failure of the refuse dams at their mining operation upstream from the community of Buffalo Creek; and

WHEREAS, Extraordinary recovery efforts by various elements of local, state and federal governments resulted in a tremendous outlay of public funds for this privately caused disaster; and

WHEREAS, The individual citizens of the State of West Virginia have not been provided with a complete explanation relating to the repayment by the Pittston Company of the additional financial burden on all of the governmental units participating in the recovery efforts; therefore, be it

Resolved by the Legislature of West Virginia:

That the 65th Legislature be required to appoint a joint investigatory interim committee made up of five members of the House

of Delegates to be appointed by the Speaker and five members of the Senate to be appointed by the President to meet after the 1981 regular session at such times as are appropriate and conduct hearings and a complete review of the events following the Buffalo Creek disaster; and, be it

Further Resolved, That the Attorney General of the State of West Virginia be directed to provide all of the documentation of the events relative to the repayment of all debts owed to all governmental units to the special investigatory committee, and also stand ready to enter into whatever legal actions that the special interim committee may deem necessary to recover any deficient funds; and, be it

Further Resolved, That the results and findings of this investigation be reported to the Second Regular Session of the Sixty-fifth Legislature upon the completion of the investigation.

SENATE CONCURRENT RESOLUTION NO. 15

(By Mrs. Spears and Mr. Moreland)

[Adopted April 10, 1981.]

Providing for a Silver Haired Legislature conducted by elected Delegates and Senators who are persons over sixty years old to provide an opportunity for older West Virginians to learn about the legislative process.

WHEREAS, The members of the West Virginia State Legislature have continually evidenced their special concern for issues affecting older West Virginians; and

WHEREAS, West Virginia's legislators seek input from the State's older citizens to aid them in making their legislative decisions; and

WHEREAS, It is appropriate for older West Virginians to communicate their concerns to their elected officials; and

WHEREAS, It is appropriate for the citizens of the State to understand the legislative process of the State Legislature; and

WHEREAS, A Silver Haired Legislature conducted by elected Delegates and Senators who are persons sixty years of age and over

can offer an opportunity for older West Virginians to learn about the State's legislative process and, at the same time, prepare a list of proposed legislation to the West Virginia Legislature representing the concerns of our elders; and

WHEREAS, The West Virginia Commission on Aging plans to hold such a session in West Virginia in 1981; therefore, be it

Resolved by the Legislature of West Virginia:

That the first session of the 65th West Virginia Senate and the first session of the 65th West Virginia House of Delegates grant permission for the Silver Haired Legislature to utilize the senate and house chambers and appropriate hearing and meeting rooms for a one-day training session in September, 1981, and a three-day legislative session during November, 1981; and, be it

Resolved Further, That Legislative Services assist the Silver Haired Legislature with the bill drafting, bill review and bill printing processes to the maximum extent possible as determined by the director of Legislative Services.

SENATE JOINT RESOLUTION NO. 12

(By Mr. McGraw, Mr. President)

[Adopted April 11, 1981.]

Proposing an amendment to the Constitution of the State of West Virginia, authorizing the issuance and sale of state road bonds not exceeding in the aggregate seven hundred fifty million dollars and with no more than seventy-five million dollars of such aggregate amount to be issued or sold in any fiscal year for economic development access roads, upgrading bridges throughout the State, federal aid matching, Appalachian Corridors, upgrading state local service roads and expressway, trunkline and feeder roads, upgrading State Route 2 and construction of the Weirton-Steubenville Bridge and Route 22 Bypass, construction of the Charles Town Bypass, and U. S. Route 52 and West Virginia Route 10 and their feeder roads (known as the "Intermountain Highway System"); numbering and designating such proposed amendment; and providing a

summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held in the year one thousand nine hundred eighty-one, on a date proclaimed by the Governor, which date shall be at least three months from the adoption of this resolution, 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 as follows:

ROADS FOR JOBS AND PROGRESS AMENDMENT

The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate seven hundred fifty million dollars, and with no more than seventy-five million dollars of such aggregate amount to be issued or sold in any fiscal year. The purpose of these bonds shall be to complete a modern system of highways, roads and bridges throughout the State of West Virginia; to facilitate economic development and to create new jobs for West Virginians. The proceeds of said bonds hereby authorized to be issued and sold shall be used and appropriated solely for the following purposes and in the following amounts:

- (1) Twenty-five million dollars for economic development access roads;
- (2) One hundred million dollars for upgrading bridges throughout the State;
- (3) One hundred million dollars for federal aid matching;
- (4) One hundred million dollars for Appalachian Corridors;
- (5) One hundred fifteen million dollars for upgrading state local service roads and expressway, trunkline and feeder roads;
- (6) One hundred seventy-five million dollars for upgrading State Route 2 and construction of the Weirton-Steubenville Bridge and Route 22 Bypass;

(7) Thirty-five million dollars for construction of the Charles Town Bypass;

(8) One hundred million dollars for U S. Route 52 and West Virginia Route 10 and their feeder roads (known as the "Inter-mountain Highway System").

The Legislature shall have power to authorize the issuing and selling of state bonds to refund any bonds issued and sold as aforesaid: *Provided*, That the actuarially determined present value of the debt service on the refunding bonds is less than that of the bonds being refunded.

When a bond issue or refunding bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding twenty-five years. Such tax shall be levied in any one year only to the extent that the moneys in the State Road Fund irrevocably set aside and appropriated for and applied to the payment of the interest on and the principal of said bonds becoming due and payable in such year are insufficient therefor

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 1" and designated as the "Roads for Jobs and Progress Amendment" and the purpose of the proposed amendment is summarized as follows: "To empower the Legislature to authorize the issuing and selling of state bonds, for completing a modern system of highways, roads and bridges throughout the State which encourage economic development and the creation of new jobs for West Virginians. These bonds shall not exceed in the aggregate seven hundred fifty million dollars, with no more than seventy-five million dollars to be issued or sold in any fiscal year, and shall be used for economic development access roads, upgrading bridges throughout the State, federal aid matching, Appalachian Corridors, upgrading state local service roads and expressway, trunkline and feeder roads, upgrading State Route 2 and construction of the Weirton-Steubenville Bridge and Route 22 Bypass, construction of the Charles Town Bypass, and U. S. Route

52 and West Virginia Route 10 and their feeder roads (known as the "Intermountain Highway System").

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1981

CHAPTER 1

(Com. Sub. for S. B. 1—By Mr. McGraw, Mr. President)

[Passed May 14, 1981: in effect from passage. Approved by the Governor with deletions and reductions.]

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
2 to appropriate money necessary for economical and
3 efficient discharge of the duties and responsibilities of
4 the state and its agencies during the fiscal year one
5 thousand nine hundred eighty-two.

1 **Sec. 2. Definitions.**—For the purpose of this act:

2 "Governor" shall mean the Governor of the State of West
3 Virginia.

4 "Spending Unit" shall mean the department, agency
5 or institution to which an appropriation is made.

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

10 "From collections" shall mean that part of the total
11 appropriation which must be collected by the spending
12 unit to be available for expenditure. If the authorized
13 amount of collections is not collected, the total appro-
14 priation for the spending unit shall be reduced auto-
15 matically by the amount of the deficiency in the collec-
16 tion. If the amount collected exceeds the amount
17 designated "from collections," the excess shall be set
18 aside in a special surplus fund and may be expended for
19 the purpose of the spending unit as provided by Chapter
20 5A, Article 2 of the Code of West Virginia.

1 **Sec. 3. Classification of appropriations.**—An approp-
2 riation for:

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

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

13 Unless otherwise specified, appropriations for personal
14 services shall include salaries of heads of spending units.

15 "Current Expenses" shall mean operating costs other
16 than personal services, and shall not include equipment,
17 repairs and alterations, buildings or lands.

18 "Equipment" shall mean equipment items which have
19 an appreciable and calculable period of usefulness in
20 excess of one year.

21 "Repairs and Alterations" shall mean repairs to struc-
22 tures and improvements to property which do not in-
23 crease the capital assets.

24 "Buildings" shall include construction and alteration of
25 structures and the improvement of lands and shall in-
26 clude shelter, support, storage, protection or the improve-
27 ment of a natural condition;

28 "Capital Outlay" shall mean and include buildings,
29 lands, or buildings and lands, with such category or item
30 of appropriation to remain in effect as provided by
31 Chapter 12, Article 3, Section 12 of the Code of West
32 Virginia; and

33 "Lands" shall mean the purchase of real property or
34 interest in real property.

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

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

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

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

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1 **Section 1. Appropriations from general revenue.**—From
 2 the state fund, General Revenue, there is hereby appro-
 3 priated conditionally upon the fulfillment of the pro-
 4 visions set forth in Chapter 5A, Article 2 of the Code of
 5 West Virginia, the following amounts, as itemized, for
 6 expenditure during the fiscal year one thousand nine
 7 hundred eighty-two.

LEGISLATIVE

1—Senate

Acct. No. 1010

	<i>Fiscal Year</i> 1981-1982
1 Compensation of Members	\$ 302,500
2 Compensation and per diem of officers and	
3 employees	825,000
4 Expenses of Members	275,000
5 Current Expenses and Contingent Fund	330,000
6 Printing Blue Book	175,000
6a Repairs and Alterations	100,000
	<hr/>
7 Total.....	\$ 2,007,500

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

14 The appropriations for the Senate for the fiscal year
 15 1980-81 are to remain in full force and effect, and are
 16 hereby reappropriated to June 30, 1982.

17 Any balances so reappropriated may be transferred and
 18 credited to the 1981-82 accounts.

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

23 The Clerk of the Senate, with approval of the President

24 is authorized to draw his requisition upon the Auditor,
 25 payable out of the Current Expenses and Contingent
 26 Fund of the Senate, for any bills for supplies and services
 27 that may have been incurred by the Senate and not in-
 28 cluded in the appropriation bill, for supplies and services
 29 incurred in preparation for the opening, the conduct of
 30 the business and after adjournment of any regular or
 31 extraordinary session, and for the necessary operation of
 32 the Senate offices, the requisition for same to be accom-
 33 panied by the bills to be filed with the Auditor.

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

51 For duties imposed by law and the Senate, the Clerk of
 52 the Senate shall be paid a monthly salary as provided in
 53 Senate resolution adopted February, 1981, and payable
 54 out of the amount appropriated for Compensation and per
 55 diem of officers and employees.

2—House of Delegates

Acct. No. 1020

1	Compensation of Members	\$ 886,400
2	Compensation and per diem of officers and	
3	employees	550,000
4	Expenses of Members	450,000

5	Current Expenses and Contingent Fund	800,000
6	Total.....	\$ 2,686,400

7 The appropriations for the House of Delegates for the
8 fiscal year 1980-81 are to remain in full force and effect,
9 and are hereby reappropriated to June 30, 1982.

10 Any balances so reappropriated may be transferred and
11 credited to the 1981-82 accounts.

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

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

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

42 For duties imposed by law and by the House of Dele-

43 gates, including salary allowed by law as keeper of the
 44 rolls, the Clerk of the House of Delegates shall be paid a
 45 monthly salary as provided in the House resolution, un-
 46 less increased between sessions under the authority of the
 47 Speaker, with approval of the House Committee on Rules,
 48 and payable from the Compensation and per diem of
 49 officers and employees item or the Current Expenses and
 50 Contingent Fund item of the House of Delegates.

3—Joint Expenses

Acct. No. 1030

1	Joint Committee on Government and	
2	Finance	\$ 3,753,912
3	To pay cost of Legislative Printing	775,000
4	Other Legislative Committees	50,000
5	Commission on Interstate Cooperation.....	88,000
6	Total.....	\$ 4,666,912

7 The appropriations for Joint Expenses for the fiscal
 8 year 1980-81 are to remain in full force and effect and are
 9 hereby reappropriated to June 30, 1982. Any balances so
 10 reappropriated may be transferred and credited to the
 11 1981-82 accounts.

12 Upon written request of the Clerk of the Senate and
 13 the Clerk of the House of Delegates, the State Auditor
 14 shall transfer amounts between items of the total appro-
 15 priation in order to protect or increase the efficiency of
 16 the service.

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

1	Personal Services	\$ 13,293,546
2	Other Expenses	1,870,289
3	Judges Retirement System	750,000
4	Other Court Costs	1,879,980
5	Judicial Training Program	50,000
6	Mental Hygiene Fund	180,000
7	Total	\$ 18,023,815

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

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

18 Any unexpended balance remaining in this appropria-
 19 tion at the close of the fiscal year 1980-81 is hereby re-
 20 appropriated for expenditure during the fiscal year
 21 1981-82.

EXECUTIVE

5—Governor's Office

Acct. No. 1200

1	Salary of Governor	\$ 60,000
2	Other Personal Services	992,160
3	Current Expenses	237,971
4	Equipment	4,660
5	Total	\$ 1,294,791

6—Office of Economic and Community Development

Acct. No. 1210

1	Personal Services	\$ 2,701,185
2	Current Expenses	2,916,606
3	Equipment	21,069
4	The Economic Development Loan Fund	4,000,000
5	Regional Council—to match Federal Funds	220,000
6	A.R.C. Assessment	412,500
7	Partnership grants	5,500,000
8	Fire Departments	1,500,000
9	Coal Development Authority	875,000
10	Emergency Assistance to Small Municipal	
11	and Public Service Districts Water and	
12	Sewage Systems	500,000

13 *Flood 1,000,000

14 Total \$ 19,646,360

15 Any unexpended balance remaining in accounts "Fed-
16 eral-State Coordination," "Office of Criminal Justice and
17 Highway Safety" and "Regional Council to match Fed-
18 eral Funds" at the close of the fiscal year 1980-81 is
19 hereby reappropriated for expenditure during the fiscal
20 year 1981-82.

21 Any unexpended balance remaining in the account
22 "Community Water Development Grants and Partner-
23 ship Grants" at the close of the fiscal year 1980-81 is
24 hereby reappropriated for expenditure during the fiscal
25 year 1981-82.

7—*Governor's Office—Custodial Fund*

Acct. No. 1230

1 Unclassified—Total \$ 284,977

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

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

Acct. No. 1240

1 Unclassified—Total \$ 1,000,000

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

6 Any unexpended balance remaining in this appropria-
7 tion at the close of the fiscal year 1980-81 is hereby re-
8 appropriated for expenditure during the fiscal year 1981-
9 82.

9—*Governor's Office—Disaster Relief-Matching*

Acct. No. 1260

1 Unclassified—Total \$ 50,000

2 To match and aid Federal Programs, and any part of

* Clerk's Note: The word "Prevention" on line 13 was stricken by the Governor.

13—*Treasurer's Office*

Acct. No. 1600

1	Salary of State Treasurer	\$	42,000
2	Other Personal Services		677,422
3	Current Expenses		261,107
4	Equipment		30,000
5	Microfilm Program		8,085
6	Total	\$	1,018,614

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

Acct. No. 1650

1	Total	\$	17,136,500
2	Any unexpended balance remaining in the appropriation for "Treasurer's Office—School Building Sinking Fund" at the close of the fiscal year 1980-81 is hereby		
3	reappropriated for expenditure during the fiscal year		
4	1981-82.		
5			
6			

15—*Municipal Bond Commission*

Acct. No. 1700

1	Personal Services	\$	74,687
2	Current Expenses		22,379
3	Equipment		200
4	Total	\$	97,266

16—*State Tax Department*

Acct. No. 1800

1	Personal Services	\$	7,977,080
2	Current Expenses		2,753,276
3	Repairs and Alterations		14,520
4	Equipment		121,488
5	Circuit Breaker Reimbursement		15,000
6	Other Expenses		725,546
7	Multi-State Tax Compact		57,500
8	Total	\$	11,664,410
9	Any unexpended balance remaining in the appropriation for "Other Expenses" at the close of the fiscal year		
10			

11 1980-81 is hereby reappropriated for expenditure during
 12 the fiscal year 1981-82.

17—*Department of Finance and Administration*

Acct. No. 2100

1	Personal Services	\$ 2,847,180
2	Current Expenses	894,285
3	Repairs and Alterations	277,700
4	Equipment	21,200
5	Postage	812,500
6	Utilities	385,000
7	T.R.I.P. Program	350,000
8	Fire Service Fee	106,000
9	Building Equipment and Supplies	10,000
10	So. Regional Ed. Board	80,000
11	Council of State Governments	34,500
12	National Governors Association	32,800
13	Total.....	<u>\$ 5,851,165</u>

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

33 Any unexpended balance remaining in the "Postage
 34 Account" at the close of the fiscal year 1980-81 is hereby

35 reappropriated for expenditure during the fiscal year
36 1981-82.

37 Any unexpended balances remaining at the close of the
38 fiscal year 1980-81 for "Major Building Repairs" is hereby
39 reappropriated for expenditure during the fiscal year
40 1981-82 (Major Building Repairs to include maintenance
41 and repairs to Governor's Mansion).

42 State Department of Highways shall reimburse the ap-
43 propriation of the Department of Finance and Adminis-
44 tration monthly for all actual expenses incurred pursuant
45 to the provisions of Chapter 17, Article 2A, Section 13
46 of the Code of West Virginia.

13—*State Board of Insurance*

Acct. No. 2250

1	Personal Services	\$ 100,547
2	Current Expenses	25,477
3	Equipment	1,270
4	Premiums, Claims and Other Expenses	2,100,000
5	Total.....	\$ 2,227,294

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

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

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

LEGAL

19—Attorney General

Acct. No. 2400

1	Salary of Attorney General	\$	42,000
2	Other Personal Services		1,637,453
3	Current Expenses		329,881
4	Equipment		73,500
5	Publication of Reports and Opinions.....		20,000
6	To protect the resources or tax structure of		
7	the state in controversies or legal proceed-		
8	ings affecting same		3,250
9	Consumer Protection		261,810
	Personal Services	205,036	
	Current Expenses	50,474	
	Equipment	6,300	
10	Total.....	\$	2,367,894

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

16 Any unexpended balance remaining in the appropria-
 17 tion for "Publication of Reports and Opinions" at the close
 18 of the fiscal year 1980-81 is hereby reappropriated for
 19 expenditure during the fiscal year 1981-82.

20—Commission on Uniform State Laws

Acct. No. 2450

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

INCORPORATING AND RECORDING

21—Secretary of State

Acct. No. 2500

1	Salary of Secretary of State	\$	36,000
2	Other Personal Services		428,593
3	Current Expenses		160,000

4	Equipment	25,500
5	Certification of Primary and General Elections	4,950
6	Publication of State Register	1,650
7	Rules and Regulations Division	26,000
8	Special Election	1,000,000
9	Total	\$ 1,682,693

10 The above appropriation for "Rules and Regulations Di-
 11 vision" shall be expended for the implementation of Sec-
 12 tion 4, Article 3, Chapter 29A of the Code.

EDUCATIONAL

22—State Department of Education

Acct. No. 2770

1 Teacher Education Centers—Total\$ 126,000

23—West Virginia Board of Regents (Control)

Acct. No. 2790

1	Personal Services	\$108,499,728
2	Current Expenses	19,972,599
3	Repairs and Alterations	1,020,400
4	Equipment	1,000,000
5	Bureau of Coal Research	1,157,630
6	National Research Center for Coal and Energy	1,466,607
7	Transportation Services—W.V.U.	1,200,000
8	Total	\$134,316,964

24—West Virginia Board of Regents

Acct. No. 2800

1	Personal Services	\$ 567,770
2	Current Expenses	211,050
3	Equipment	7,000
4	Scholarship Program	3,000,000
5	Tuition Contract Programs	725,000
6	Unclassified (Implement S. B. 579)	171,000
7	Total	\$ 4,681,820

25—*West Virginia College of Osteopathic Medicine*

Acct. No. 2810

1	Personal Services	\$ 2,892,274
2	Current Expenses	514,000
3	Repairs and Alterations	52,000
4	Equipment	135,000
5	Total.....	<u>\$ 3,593,274</u>

6 Any unexpended balance remaining in the appropriation
7 at the close of the fiscal year 1980-81 is hereby re-
8 appropriated for expenditure during the fiscal year 1981-
9 82.

26—*Marshall University—Medical School*

Acct. No. 2840

1	Personal Services	\$ 2,443,790
2	Current Expenses	1,010,000
3	Repairs and Alterations	56,000
4	Equipment	116,000
5	Total.....	<u>\$ 3,625,790</u>

27—*West Virginia University—Medical School*

Acct. No. 2850

1	Personal Services	\$ 11,739,214
2	Current Expenses	5,714,000
3	Repairs and Alterations	428,000
4	Equipment	268,000
5	Family Practice Residency Support Program	457,960
6	Intern and Residency Support Program for	
7	Community Hospitals	944,542
8	Total.....	<u>\$ 19,551,716</u>

9 To be transferred to the West Virginia University—
10 Medical School Fund upon the requisition of the Gover-
11 nor.

28—*State Department of Education*

Acct. No. 2860

1	Personal Services	\$ 1,839,039
2	Current Expenses	822,280
3	Repairs and Alterations	1,100

3	Equipment	15,000
4	Regional ETV	2,247,433
5	WWVU—TV	970,329
6	*Capital Outlay	285,000
7	Micro Wave Interconnect System	550,000
8	*Total	\$ 4,185,211

9 "Regional ETV" is for participation in the construction
 10 and operation of Regional ETV stations by Marshall Uni-
 11 versity, Concord College, Bluefield State College, West
 12 Virginia Institute of Technology and West Virginia State
 13 College, and the acquisition of a new FM radio station
 14 to serve northern panhandle, and such funds may be
 15 transferred to Special Revenue Accounts for matching
 16 County and/or Federal Funds.

32—*State Board of Education—Vocational Division*

Acct. No. 2940

1 Other Expenses—Total \$ 493,123

2 Any unexpended balance remaining in this appropria-
 3 tion at the close of the fiscal year 1980-81 is hereby re-
 4 appropriated for expenditure during the fiscal year 1981-
 5 82.

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

Acct. No. 2950

1	Professional Educators	\$366,292,286
2	Service Personnel	129,614,778
3	Fixed Charges	54,078,665
4	Transportation	20,544,799
5	Administration	2,564,045
6	Other Current Expense	32,233,960
7	Program Improvement	—0—
8	Basic Foundation Allowances	605,328,533
9	Less Local Share	76,528,174
10	Total Basic State Aid	528,800,359
11	Loss Reduction	2,699,443

* Clerk's Note: The figure "383,750" on line 6, account 2910, was reduced by the Governor to "285,000"; and the total on line 8 was reduced from "4,283,961" to "4,185,211."

12	Staffing Improvement		2,585,824
	Professional Educators	1,765,866	
	Service Personnel	819,958	
13	Increased Enrollment		500,000
14	Executive Secretary (F to G)		25,669
15	Total		<u>\$534,611,295</u>

34—State Department of Education—
Aid for Exceptional Children

Acct No. 2960

1	Personal Services	\$	260,790
2	Current Expenses		131,644
3	Equipment		7,000
4	Out-of-State Instruction		428,000
5	Aid to Counties		6,346,562
	County Grant Awards	5,925,195	
	Regional Ed. Service Agency		
	Grants	212,000	
	Special State Projects	209,367	
6	Total	\$	<u>7,173,996</u>

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

11 The appropriation for "Aid to Counties" may be ex-
12 pended for the initiation, maintenance and/or improve-
13 ments of special education programs including employ-
14 ment of new professional education personnel solely
15 serving exceptional children; training of educational
16 personnel to work with exceptional children; and sup-
17 portive costs such as materials, transportation, contracted
18 services, minor renovation and other costs directly related
19 to the special education delivery process prescribed by
20 the State Board of Education.

35—Teachers' Retirement Board

Acct. No. 2980

1	*Teachers' Retirement Fund	\$	35,800,000
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* Clerk's Note: The figure "42,264,000" on line 1 was reduced by the Governor to "35,800,000."

2 Supplemental Benefits for Annuitants 4,820,000

3 *Total\$ 40,620,000

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

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

Acct. No. 3330

1 Personal Services\$ 2,871,746

2 Current Expenses 621,303

3 Repairs and Alterations 109,327

4 Equipment 97,621

5 Total\$ 3,699,997

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

Acct. No. 3360

1 Personal Services\$ 118,951

2 Current Expenses 26,799

3 Repairs and Alterations 19,500

4 Equipment 13,900

5 Total\$ 179,150

38—*West Virginia Library Commission*

Acct. No. 3500

1 Personal Services\$ 924,742

2 Current Expenses 190,861

3 Repairs and Alterations 3,500

4 Equipment 9,200

5 Per-Capita Grants 4,872,102

6 Books and Periodicals 264,480

7 Library Matching Fund (Construction) —0—

8 Total\$ 6,264,885

9 Any unexpended balance remaining in the appropria-
10 tion for "Library Matching Fund (Construction)" at the

* Clerk's Note: The total on line 3, Account No. 2980, was reduced by the Governor to "40,620,000" to reflect the reduction in line 1 of the Account.

- 11 close of the fiscal year 1980-81 is hereby reappropriated
 12 for expenditure during the fiscal year 1981-82.

39—*Department of Culture and History*

Acct. No. 3510

1	Personal Services	\$	993,595
2	Current Expenses		262,688
3	Repairs and Alterations		25,000
4	Equipment		35,000
5	Arts and Humanities Fund		680,163
	Personal Services	165,147	
	Current Expenses	1,359	
	Grants and Contractural Services	513,657	
6	Department Programming Funds		645,000
	Outreach and Education	165,250	
	Technical Assistance	74,750	
	Cultural Center Programs	405,000	
7	Washington Carver Camp		140,000
8	Grants, Fairs and Festivals		656,500
9	Coal Exhibition		150,000
10	Total	\$	3,587,946

11 The above appropriations for "Arts and Humanities
 12 Fund," "Department Programming Funds," "Grants, Fairs
 13 and Festivals" and "Washington Carver Camp" shall be
 14 expended only upon authorization of the Department of
 15 Culture and History and in accordance with the provi-
 16 sions of Chapter 5A and Chapter 12, Article 3 of the Code
 17 of West Virginia.

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

24 Any unexpended balance remaining in the appropria-
 25 tion for "Independence Hall, Wheeling, West Virginia" at
 26 the close of the fiscal year 1980-81 is hereby reappropri-
 27 ated for expenditure during the fiscal year 1981-82.

28 Any unexpended balance remaining in the appropria-
 29 tion "Washington Carver Camp" at the close of the fiscal
 30 year 1980-81 is hereby reappropriated for expenditure
 31 during the fiscal year 1981-82.

CORRECTIONS

40—*Department of Corrections*
Probation and Parole

Acct. No. 3650

1	Salaries of Members of Board of		
2	Probation and Parole	\$	75,000
3	Other Personal Services		45,902
4	Current Expenses		22,242
5	Equipment		890
6	Total	\$	144,034

41—*Department of Corrections*
Parole Services

Acct. No. 3660

1	Personal Services	\$	625,564
2	Current Expenses		122,914
3	Repairs and Alterations		400
4	Equipment		500
5	Total	\$	749,378

42—*Department of Corrections*
Work Release Centers

Acct. No. 3670

1	Personal Services	\$	462,982
2	Current Expenses		117,413
3	Repairs and Alterations		1,600
4	Equipment		500
5	Total	\$	582,495

43—Department of Corrections

Acct. No. 3680

1	Salary of Commissioner	\$	33,750
2	Other Personal Services		477,748
3	Current Expenses		160,436
4	Repairs and Alterations		1,500
5	Total	\$	673,434

44—Anthony Center

Acct. No. 3690

1	Personal Services	\$	517,783
2	Current Expenses		142,290
3	Repairs and Alterations		3,000
4	Equipment		12,000
5	Total	\$	675,073

45—West Virginia Industrial School for Boys

Acct. No. 3700

1	Personal Services	\$	1,103,267
2	Current Expenses		350,818
3	Repairs and Alterations		20,000
4	Equipment		2,000
5	Total	\$	1,476,085

46—Davis Center

Acct. No. 3710

1	Personal Services	\$	458,576
2	Current Expenses		142,027
3	Repairs and Alterations		3,000
4	Equipment		800
5	Total	\$	604,403

47—West Virginia Industrial Home for Girls

Acct. No. 3720

1	Personal Services	\$	485,054
2	Current Expenses		94,464

3	Repairs and Alterations	3,000
4	Equipment	500
5	Unclassified	100,000
6	Total	\$ 683,018

48—*Leckie Center*

Acct. No. 3730

1	Personal Services	\$ 477,543
2	Current Expenses	140,381
3	Repairs and Alterations	3,000
4	Equipment	12,000
5	Total	\$ 632,924

49—*West Virginia State Prison for Women*

Acct. No. 3740

1	Personal Services	\$ 430,179
2	Current Expenses	151,770
3	Repairs and Alterations	5,000
4	Equipment	1,000
5	Total	\$ 587,949

50—*West Virginia Penitentiary*

Acct. No. 3750

1	Personal Services	\$ 3,491,594
2	Current Expenses	1,575,983
3	Repairs and Alterations	30,000
4	Equipment	7,000
5	Capital Outlay	1,000,000
6	Total	\$ 6,104,577

51—*Huttonsville Correctional Center*

Acct. No. 3760

1	Personal Services	\$ 2,210,977
2	Current Expenses	1,176,305

3	Repairs and Alterations	40,000
4	Equipment	7,000
5	Total.....	\$ 3,434,282

6 Any unexpended balance remaining in the appropria-
 7 tion "Boiler Conversion to Coal" at the close of the fiscal
 8 year 1980-81 is hereby reappropriated for expenditure
 9 during the fiscal year 1981-82.

HEALTH AND WELFARE

52—State Health Department

Acct. No. 4000

1	Personal Services	\$ 6,964,788
2	Current Expenses	4,225,477
3	Equipment	157,759
4	Reimbursement to Community Mental Health and Mental Retardation Centers	15,445,816
6	Reimbursement to Community Behavioral Health Programs for Social Services	1,792,925
8	Special Olympics	28,000
9	State Aid to Local Agencies	3,410,000
10	*Grants to Counties and EMS	
11	Entities	1,933,868
12	Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees	1,300,000
14	Foster Grandparents Stipends/Travel	69,300
15	Office of Chief Medical Examiner	868,550
16	Personal Services	398,555
17	Current Expenses	450,995
18	Repairs and Alterations	4,000
19	Equipment	15,000
20	Hemophiliac Assistance Program	131,500
21	Placement Program for the Developmentally Disabled	1,000,000
23	Total.....	\$ 37,327,983

* Clerk's Note: The word "Equipment" on line 10 was stricken by the Governor.

53—*Department of Veterans Affairs*
Veterans Home

Acct. No. 4010

1	Personal Services	\$	651,780
2	Current Expenses		292,246
3	Repairs and Alterations		200,000
4	Equipment		225,000
5	Total	\$	1,369,026

6 Any unexpended balance remaining in the appropria-
7 tion for "Repairs and Alterations" and "Equipment" at
8 the close of the fiscal year 1980-81 is hereby reappro-
9 priated for expenditure during the fiscal year 1981-82.

54—*Solid Waste Disposal*

Acct. No. 4020

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

55—*Department of Veterans Affairs*

Acct. No. 4040

1	Personal Services	\$	624,410
2	Current Expenses		97,532
3	Equipment		3,000
4	Educational opportunities for children of		
5	War Veterans		14,000
6	In aid of Veterans Day Patriotic Exercises		7,000
7	National Cemetery—Study and Legal Fees		5,000
8	Total	\$	750,942

9 Moneys in item 6 above are to be expended subject to
10 the approval of the Department of Veterans Affairs upon
11 presentation of satisfactory plans by the Grafton G. A. R.
12 Post, American Legion, Veterans of Foreign Wars and
13 Sons of Veterans.

56—Department of Welfare

Acct. No. 4050

1	Personal Services	\$ 11,767,364
2	Current Expenses	5,162,353
3	Repairs and Alterations	17,930
4	Equipment	55,675
5	Assistance Payments	17,174,300
6	Social Security Matching Fund	784,883
7	*Social Services	16,001,618
8	Indigent Burials	540,000
9	Emergency Assistance	1,000,000
10	Medical Services	47,411,955
11	Energy Assistance	800,000
12	T.R.I.P.	624,000
13	*Total	\$101,340,078

57—State Commission on Aging

Acct. No. 4060

1	Personal Services	\$ 95,985
2	Current Expenses	56,523
3	Equipment	300
4	Programs for Elderly	2,185,000
5	Senior Citizens Centers	200,000
6	Golden Mountaineer Program	35,000
7	E. A. Hawse Retirement Village—	
8	Clinical Equipment	25,000
9	Total	\$ 2,597,808

10 Any unexpended balance remaining in the appropriation
 11 tion for "Senior Citizens Centers" at the close of the
 12 fiscal year 1980-81 is hereby reappropriated for expendi-
 13 ture during the fiscal year 1981-82, with the purpose of
 14 such items to be redesignated: "Senior Citizens Centers—
 15 land acquisition, construction, repairs or alterations."

58—Greenbrier School for Mentally Retarded Children

Acct. No. 4140

1	Personal Services	\$ 1,020,045
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* Clerk's Note: The figure "16,200,000" on line 7, Account No. 4050, was reduced by the Governor to "16,001,618" and the total was changed, to reflect the reduction, from "101,538,460" to "101,340,078."

2	Current Expenses	229,578
3	Repairs and Alterations	35,000
4	Equipment	13,200
5	Total	\$ 1,297,823

59—State Health Department—Mental Hospitals

Acct. No. 4160

1	Personal Services	\$ 20,315,229
2	Current Expenses	5,590,919
3	Repairs and Alterations	339,626
4	Equipment	233,600
5	Student Nurse Affiliation Program	
6	(Huntington)	70,894
7	Psychiatric Training Center—Student Nurses	
8	(Weston)	204,726
9	Renovation for Certification	265,000
9a	Renovation Unit 4—Huntington	100,000
10	Total	\$ 27,119,994

11 The director of health, prior to the beginning of the
 12 fiscal year, shall file with the legislative auditor an ex-
 13 penditure schedule for each formerly separate spending
 14 unit which has been consolidated into the above account
 15 and which receives a portion of the above appropriation.
 16 He shall also, within fifteen days after the close of each
 17 six month period of said fiscal year, file with the legisla-
 18 tive auditor an itemized report of expenditures made
 19 during the preceding six-month period. Such report shall
 20 include the total of expenditures made under each of line
 21 items 1, 2, 3 and 4 above.

60—Colin Anderson Center

Acct. No. 4190

1	Personal Services	\$ 7,302,996
2	Current Expenses	966,295
3	Repairs and Alterations	147,584
4	Equipment	51,915
5	Total	\$ 8,468,790

61—Fairmont Emergency Hospital

Acct. No. 4250

1	Personal Services	\$ 798,329
2	Current Expenses	352,082
3	Repairs and Alterations	10,100
4	Equipment	24,976
5	Total	<u>\$ 1,185,487</u>

62—Welch Emergency Hospital

Acct. No. 4260

1	Personal Services	\$ 1,371,434
2	Current Expenses	373,981
3	Repairs and Alterations	16,600
4	Equipment	81,630
5	Total	<u>\$ 1,843,645</u>

63—Andrew S. Rowan Memorial Home

Acct. No. 4270

1	Personal Services	\$ 983,200
2	Current Expenses	532,509
3	Repairs and Alterations	40,000
4	Equipment	9,391
5	Total	<u>\$ 1,565,100</u>

64—Hopemont Hospital

Acct. No. 4300

1	Personal Services	\$ 3,971,988
2	Current Expenses	927,518
3	Repairs and Alterations	43,700
4	Equipment	145,214
5	Total	<u>\$ 5,088,420</u>

65—Pinecrest Hospital

Acct. No. 4310

1	Personal Services	\$ 3,897,070
2	Current Expenses	1,326,931
3	Repairs and Alterations	88,500

4	Equipment	24,300
5	Total	\$ 5,336,801

66—Denmar Hospital

Acct. No. 4320

1	Personal Services	\$ 2,571,778
2	Current Expenses	749,950
3	Repairs and Alterations	60,150
4	Equipment	53,555
5	Renovation for Certification	200,000
6	Total	\$ 3,635,433

67—State Board of Education—Rehabilitation Division

Acct. No. 4400

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

BUSINESS AND INDUSTRIAL RELATIONS

68—Bureau of Labor and Department of
Weights and Measures

Acct. No. 4500

1	Personal Services	\$ 975,670
2	Current Expenses	255,748
3	Repairs and Alterations	18,400
4	Equipment	242,880
5	Labor Management Advisory Council	26,699
6	Total	\$ 1,519,397

* Clerk's Note: The figure "1,281,361" on line 8, Account No. 4400, was reduced by the Governor to "1,181,361" and the total was changed from "9,134,627" to "9,034,627" to reflect the reduction.

69—*Department of Mines*

Acct. No. 4600

1	*Personal Services	\$ 3,143,754
2	Current Expenses	1,003,106
3	Equipment	73,470
4	Miner Training, Education and Certification ..	124,260
5	Board of Coal Mine Health and Safety	45,000
6	Gas Well Certification	195,048
7	Coal Mine Inspectors Institute of America	
8	Conference	15,000
9	*Development of Mine Safety Program	75,000
10	Total.....	\$ 4,674,638

70—*Ohio River Basin Commission*

Acct. No. 4690

1	Total.....	\$ 21,000
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71—*Interstate Commission on Potomac River Basin*

Acct. No. 4730

1	West Virginia's contribution to Potomac River	
2	Basin Interstate Commission	\$ 12,450

72—*Ohio River Valley Water Sanitation Commission*

Acct. No. 4740

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

73—*West Virginia Air Pollution Control Commission*

Acct. No. 4760

1	Personal Services	\$ 525,870
2	Current Expenses	190,776
3	Equipment	14,500
4	Total.....	\$ 731,146

74—*State Boxing Commission*

Acct. No. 4790

1	Total.....	\$ 5,500
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* Clerk's Note: Published as passed by the Legislature, notwithstanding attempted deletions and transfer of funds within the account as follows: (1) on line 9, account 4600, deleted "Development of Mine Safety Program" and "75,000" and (2) transferred "75,000" to line 1, "Personal Services", increasing the amount to "3,218,754".

75—*Department of Banking*

Acct. No. 4800

1	Personal Services	\$	511,576
2	Current Expenses		263,399
3	Equipment		8,338
4	Total	\$	783,313

76—*West Virginia State Aeronautics Commission*

Acct. No. 4850

1	Personal Services	\$	63,803
2	Current Expenses		17,485
3	Equipment		1,500
4	Aerial Markers		4,500
5	Civil Air Patrol Expenses		89,000
6	Airport Matching		500,000
7	Total	\$	676,288
8	Any unexpended balance remaining in the appropria-		
9	tion "Airport Matching" at the close of the fiscal year		
10	1980-81 is hereby reappropriated for expenditure during		
11	fiscal year 1981-82.		

77—*West Virginia Nonintoxicating
Beer Commissioner*

Acct. No. 4900

1	Personal Services	\$	305,777
2	Current Expenses		80,059
3	Equipment		300
4	Total	\$	386,136

78—*West Virginia Racing Commission*

Acct. No. 4950

1	Personal Services	\$	746,633
2	Current Expenses		83,750
3	Equipment		5,000
4	Total	\$	835,383

AGRICULTURE

79—Department of Agriculture

Acct. No. 5100

1	Salary of Commissioner	\$ 39,000
2	Other Personal Services	1,858,367
3	Current Expenses	793,002
4	Equipment	32,800
5	Multiflora Rose Eradication Program	165,000
6	Eradication of Plant and Pest Diseases	25,000
7	Total.....	\$ 2,913,169

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

80—Farm Management Commission

Acct. No. 5110

1	Personal Services	\$ 1,008,331
2	Current Expenses	790,977
3	Repairs and Alterations	215,000
4	Equipment	167,323
5	Livestock Purchase	400,000
6	Storage Shed-Weston	20,000
7	Total.....	\$ 2,601,631

81—Department of Agriculture—
Soil Conservation Committee

Acct. No. 5120

1	Personal Services	\$ 319,083
2	Current Expenses	100,000
3	Watershed Program	150,000
4	Total.....	\$ 569,083

5 Any unexpended balance remaining in the appropria-
 6 tion for "Watershed Program," "Mud River Flood Control
 7 Project," and "Channelization of Kelley's Creek," here-

8 inafter redesignated as "Stream Channelization," at the
 9 close of the fiscal year 1980-81 is hereby reappropriated
 10 for expenditure during the fiscal year 1981-82.

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

Acct. No. 5130

1	Personal Services	\$	727,978
2	Current Expenses		165,787
3	Equipment		39,200
4	Total	\$	932,965

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

83—*Department of Agriculture—Meat Inspection*

Acct. No. 5140

1	Personal Services	\$	367,068
2	Current Expenses		144,737
3	Total	\$	511,805

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

84—*Department of Agriculture—Agricultural Awards*

Acct. No. 5150

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

CONSERVATION AND DEVELOPMENT

85—*Geological and Economic Survey*

Acct. No. 5200

1	Personal Services	\$	1,301,574
2	Current Expenses		331,333
3	Repairs and Alterations		73,119
4	Equipment		73,540

5	*Special Studies	60,000
6	*Total	\$ 1,839,566

86—Department of Natural Resources

Acct. No. 5650

1	*Personal Services	\$ 9,382,988
2	Current Expenses	2,270,337
3	Repairs and Alterations	173,820
4	Equipment	119,771
5	Fire Prevention Control	701,270
	Personal Services	638,880
	Other Expenses	62,390
6	Water Resources Board and Reclamation	
7	Board of Review	40,000
8	Debt Service	1,179,050
9	*Total	\$ 13,867,236

10 Any unexpended balance remaining in the appropria-
 11 tions for "Little Beaver State Park," "Beartown State
 12 Park," "Greenbrier State Forest," "Kanawha State For-
 13 est," "Pleasants Creek Public Hunting and Fishing Area,"
 14 "Plum Orchard Lake Public Hunting and Fishing Area,"
 15 "Panther State Forest," "Improvement and land acquisi-
 16 tion—Berwind Lake Public Hunting and Fishing Area,"
 17 "Park Improvement Program," "Construction, Develop-
 18 ment and Improvement of Sewage system and water
 19 systems on state forest, parks and recreation areas," "Im-
 20 plementation of Federal Surface Mine Legislation," "Re-
 21 pairs, Replacement of Equipment and Furnishings on
 22 Existing Facilities," "Laurel Lake Public Hunting and
 23 Fishing," "Reeds Creek Hatchery," and "Castleman's Run
 24 Lake," at the close of the fiscal year 1980-81 is hereby
 25 reappropriated for expenditure during the fiscal year
 26 1981-82.

27 Any or all funds appropriated for "Fire Prevention
 28 Control" may be transferred to Special Revenue Fund to
 29 match and aid Federal Funds.

* Clerk's Note: The figure "200,000" on line 5, Account No. 5200, was reduced by the Governor to "60,000" and the total on line 6 was changed from "1,979,566" to "1,839,566."

* Clerk's Note: The figure "9,632,988" on line 1, Account No. 5650, was reduced by the Governor to "9,382,988" and the total was changed from "14,117,236" to "13,867,236" to reflect the reduction.

87—*Public Land Corporation*

Acct. No. 5660

1 Any unexpended balance remaining in the appropria-
 2 tions for "Public Land Corporation," "Blennerhasset Is-
 3 land," and "National Track and Field Hall of Fame" at
 4 the close of the fiscal year 1980-81 is hereby reappropri-
 5 ated for expenditure during the fiscal year 1981-82.

6 The appropriation for "National Track and Field Hall of
 7 Fame," as designated in Chapter 8, acts of the Legisla-
 8 ture, First Extraordinary Session, 1975, is hereby redesi-
 9 gnated as follows: The purpose of this bill is to provide
 10 state General Revenue moneys to match Federal Funds,
 11 county funds, municipal funds, board of education funds,
 12 or any combination thereof, for the establishment of the
 13 "National Track and Field Hall of Fame." Such moneys
 14 may be transferred to a special fund to match and aid
 15 Federal Funds or other of the aforesaid funds and for dis-
 16 bursement therefrom.

88—*Water Development Authority*

Acct. No. 5670

1	Personal Services	\$ 153,230
2	Current Expenses	60,177
3	Capital Outlay	4,000,000
4	Ravencliff-McGraw-Saulsville Public Service	
5	District	250,000
6	Town of Elizabeth Water System	238,000
7	Total	\$ 4,701,407

8 Any unexpended balance remaining in the appropria-
 9 tion for "Capital Outlay" and "Phase III Hardship
 10 Grants" at the close of the fiscal year 1980-81 is hereby
 11 reappropriated for expenditure during the fiscal year
 12 1981-82.

89—*West Virginia Railroad Maintenance Authority*

Acct. No. 5690

1	Personal Services	\$ 673,131
2	Current Expenses	57,630

3	So. Branch Valley Railroad—	
4	Track and Bridge Renovation	500,000
5	Total.....	<u>\$ 1,230,761</u>

6 The moneys appropriated in the item in this account for
7 "South Branch Valley Railroad" purposes may be trans-
8 ferred to special revenue account No. 8344 for expendi-
9 ture and disbursement therefrom.

PROTECTION

90—*Department of Public Safety*

Acct. No. 5700

1	Personal Services	\$ 13,928,004
2	Current Expenses	5,740,931
3	Repairs and Alterations	244,000
4	Equipment	1,882,440
5	Emergency Fund	10,000
6	Total.....	<u>\$ 21,803,375</u>

91—*Adjutant General—State Militia*

Acct. No. 5800

1	Personal Services	\$ 236,382
2	Current Expenses	485,679
3	Repairs and Alterations	39,000
4	Equipment	4,000
5	Compensation of Commanding Officers, Cleri- 6 cal Allowances and Uniform Allowances	102,035
7	Property Maintenance	879,827
8	State Armory Board	2,179,025
9	College Education Fund	135,733
10	Total.....	<u>\$ 4,061,681</u>

MISCELLANEOUS BOARDS AND COMMISSIONS

92—*West Virginia Civil Service System*

Acct. No. 5840

1	Personal Services	\$ 808,177
2	Current Expenses	283,886

3	Equipment	4,000
4	Total	\$ 1,096,063

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

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

93—*West Virginia State Board of Land Surveyors*

Acct. No. 5850

1	To pay the per diem of members and	
2	other general expenses	\$ 16,000
3	From Collections	16,000

94—*State Board of Professional Foresters*

Acct. No. 5860

1	To pay the per diem of members and	
2	other general expenses	\$ 1,400
3	From Collections	1,400

95—*West Virginia Board of Examiners for Practical Nurses*

Acct. No. 5870

1	To pay the per diem of members and	
2	other general expenses	\$ 87,500
3	From Collections	87,500

96—*State Board of Chiropractic Examiners*

Acct. No. 5880

1	To pay the per diem of members and		
2	other general expenses	\$	6,500
3	From Collections		6,500

97—*State Board of Pharmacy*

Acct. No. 5900

1	To pay the per diem of members and		
2	other general expenses	\$	75,000
3	From Collections		75,000

98—*State Board of Osteopathy*

Acct. No. 5910

1	To pay the per diem of members and		
2	other general expenses	\$	8,489
3	From Collections		8,489

99—*State Board of Embalmers and Funeral Directors*

Acct. No. 5930

1	To pay the per diem of members and		
2	other general expenses	\$	45,065
3	From Collections		45,065

100—*State Board of Registration for Professional Engineers*

Acct. No. 5940

1	To pay the per diem of members and		
2	other general expenses	\$	128,000
3	From Collections		128,000

101—*State Board of Architects*

Acct. No. 5950

1	To pay the per diem of members and		
2	other general expenses	\$	16,000
3	From Collections		16,000

102—*State Veterinary Board*

Acct. No. 5960

1	To pay the per diem of members and		
2	other general expenses	\$	6,600
3	From Collections		6,600

103—*Human Rights Commission*

Acct. No. 5980

1	Personal Services	\$	325,951
2	Current Expenses		127,106
3	Equipment		3,599
4	Total	\$	456,656

104—*West Virginia State Board of Sanitarians*

Acct. No. 5990

1	To pay the per diem of members and		
2	other general expenses	\$	1,900
3	From Collections		1,900

105—*Women's Commission*

Acct. No. 6000

1	Personal Services	\$	32,846
2	Current Expenses		13,794
3	Total	\$	46,640

106—*West Virginia Public Employees Retirement Board*

Acct. No. 6140

1	Employers Accumulation Fund	\$	10,000,000
2	Expense Fund		140,625
3	Supplemental Benefits for Annuitants		1,850,000
4	Total	\$	11,990,625

5 The above appropriation is intended to cover the state's
 6 share of West Virginia Public Employees Retirement
 7 coverage for those departments operating from General
 8 Revenue Fund. The State Department of Highways, De-

9 partment of Motor Vehicles, Workmen's Compensation
 10 Commission, Public Service Commission and other de-
 11 partments operating from Special Revenue Funds and/or
 12 Federal Funds shall pay their proportionate share of the
 13 retirement costs for their respective divisions. When
 14 specific appropriations are not made, such payments may
 15 be made from the balance in the various Special Revenue
 16 funds in excess of specific appropriations.

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

107—*West Virginia Public Employees Insurance Board*

Acct. No. 6150

1	Expense Fund	\$ 237,500
2	Public Employees Health Insurance—	
3	*State Contributions	48,500,000
4	*Total	\$ 48,737,500

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

108—*Insurance Commissioner*

Acct. No. 6160

1	Personal Services	\$ 522,155
2	Current Expenses	148,898

* Clerk's Note: The figure "50,000,000" on line 3 was reduced by the Governor to "48,500,000" and the total was changed from "50,237,500" to "48,737,500" to reflect the reduction.

3	Equipment	15,000
4	Total	\$ 686,053

109—*State Fire Commission*

Acct. No. 6170

1	Personal Services	\$ 540,473
2	Current Expenses	203,243
3	Repairs and Alterations	3,048
4	Equipment	15,470
5	Total	\$ 762,234

110—*State Department of Highways*

Acct. No. 6410

1	Unclassified—Total	\$ 12,000,000
2	Any or all of the above appropriations may be transferred to the State Road Fund for distribution.	
3		

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

111—*State Department of Highways*

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

1	Maintenance Expressway, Trunkline and	
2	Feeder	\$ 52,800,000
3	Maintenance, State Local Services	37,985,000
4	Inventory Revolving	1,650,000
5	Equipment Revolving	4,400,000
6	General Operations	16,000,000
7	Debt Service	87,900,000
8	Interstate Construction	175,000,000
9	Other Federal Aid Programs	105,000,000
10	Appalachian Program	45,000,000

11	Nonfederal Aid Construction	19,112,000
12	Total.....	<u>\$544,847,000</u>

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

17 The State Commissioner of Highways shall have the
 18 authority to operate revolving funds within the state road
 19 fund for the operation and purchase of various types of
 20 equipment used directly and indirectly in the construc-
 21 tion and maintenance of roads and for the purchase of
 22 inventories and materials and supplies.

23 There is hereby appropriated within the above items
 24 sufficient money for the payment of claims, accrued or
 25 arising during this budgetary period, to be paid in ac-
 26 cordance with Chapter 14, Article 2, Sections 17 and 18,
 27 Code of West Virginia, one thousand nine hundred thirty-
 28 one, as amended.

29 Included in the above appropriations on lines 8, 9, 10
 30 and 11 there is an amount of \$75,000,000 of which ex-
 31 penditure is contingent upon the passage of S. J. R. No.
 32 12, Regular Session of the Legislature, 1981, and said
 33 resolution's adoption and ratification by the voters of
 34 West Virginia and authorization provided for by the
 35 Legislature.

112—Department of Motor Vehicles

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 2,150,838
2	Current Expenses	3,144,668
3	Equipment	41,000
4	Purchase of License Plates	524,150
5	Social Security Matching	143,560
6	Public Employees Retirement Matching	205,454
7	Public Employees Health Insurance	144,555
8	Total	<u>\$ 6,354,225</u>

113—*Department of Education—Veterans Education*

Acct. No. 7020

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	42,622
2	Other Expenses		16,669
3	Total	\$	59,291

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

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

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

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	52,112
2	Other Expenses		36,749
3	Total	\$	88,861

115—*Real Estate Commission*

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	113,592
2	Current Expenses		84,406
3	Equipment		7,000
4	Total	\$	204,998

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

116—*West Virginia Racing Commission*

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses\$ 5,000

2 The total amount of this appropriation shall be paid
3 from Special Revenue Fund out of collections of license
4 fees and fines as provided by law.

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

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

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

1 Total\$ 12,000

2 The total amount of this appropriation shall be paid
3 from Special Revenue Fund out of fees and collections as
4 provided by law.

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

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services\$ 741,588

2 Current Expenses 408,842

3 Equipment 28,000

4 Social Security Matching 52,924

5 Public Employees Retirement Matching 70,450

6 Public Employees Health Insurance 61,656

7 Total.....\$ 1,363,460

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

11 The above appropriation includes salaries and operating
12 expenses.

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

119—*Department of Finance and Administration—
 Information System Services Division Fund*

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 3,071,058
2	Current Expenses	4,950,424
3	Equipment	67,500
4	Social Security Matching	190,741
5	Public Employees Retirement Matching	252,430
6	Public Employees Health Insurance	188,304
7	Total	\$ 8,720,457

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

120—*Department of Agriculture*

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 383,724
2	Current Expenses	18,060
3	Social Security Matching	25,594
4	Public Employees Retirement Matching	35,565
5	Public Employees Health Insurance	26,856
6	Total	\$ 489,799

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

121—*State Committee of Barbers and Beauticians*

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	116,854
2	Current Expenses		84,065
3	Equipment		1,000
4	Total	\$	201,919

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

122—*Public Service Commission*

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$	77,900
2	Other Personal Services		2,953,150
3	Current Expenses		1,013,311
4	Equipment		200,000
5	Social Security Matching		197,712
6	Public Employees Retirement Matching		287,635
7	Public Employees Health Insurance		203,856
8	Consumer Advocate		302,500
9	Headquarters Building Development		4,877,000
10	Total	\$	10,113,064

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

15 Out of the above appropriation the amount designated
16 Headquarters Building Development shall be used for
17 the establishment of a headquarters building pursuant
18 to Chapter 24, Article 7 of the Code of West Virginia.

123—Public Service Commission—Gas Pipeline Division

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	169,297
2	Current Expenses		80,385
3	Equipment		3,500
4	Social Security Matching		11,300
5	Public Employees Retirement Matching		16,083
6	Public Employees Health Insurance		8,928
7	Headquarters Building Development		233,000
8	Total	\$	522,493

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

14 Out of the above appropriation the amount designated
15 Headquarters Building Development shall be used for
16 the establishment of a headquarters building pursuant to
17 Chapter 24, Article 7 of the Code of West Virginia

124—Public Service Commission—Motor Carrier Division

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	943,874
2	Current Expenses		380,820
3	Equipment		8,250
4	Social Security Matching		63,000
5	Public Employees Retirement Matching		89,668
6	Public Employees Health Insurance		65,472
7	Headquarters Building Development		1,890,000
8	Total	\$	3,441,084

9 The total amount of this appropriation shall be paid
10 from Special Revenue Fund out of receipts collected for
11 or by the Public Service Commission pursuant to and in

12 the exercise of regulatory authority over motor carriers
13 as authorized by law.

14 Out of the above appropriation the amount designated
15 Headquarters Building Development shall be used for
16 the establishment of a headquarters building pursuant to
17 Chapter 24, Article 7 of the Code of West Virginia.

125—*Department of Natural Resources*

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 3,194,226
2	Current Expenses	1,804,699
3	Repairs and Alterations	86,720
4	Equipment	248,883
5	Land Purchase and Buildings	537,000
6	Total	\$ 5,871,528

7 The total amount of this appropriation shall be paid
8 from Special Revenue Fund out of fees collected by the
9 Department of Natural Resources. Expenditures shall be
10 limited to the amounts appropriated except for Federal
11 Funds received and Special Funds collected at state
12 parks. Any unexpended balances remaining in the prior
13 appropriation item "Land Purchase and Buildings" at the
14 close of fiscal year 1980-81 and available for capital im-
15 provements and land purchase purposes are hereby ap-
16 propriated for expenditure in fiscal year 1981-82 all in
17 accordance with Chapter 20, Article 2, Section 34, Code
18 of West Virginia.

126—*Department of Public Safety—Inspection Fees*

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 415,304
2	Current Expenses	172,075
3	Repairs and Alterations	8,700
4	Equipment	21,000
5	Social Security Matching	3,815

6	Public Employees Health Insurance	34,224
7	Total.....	\$ 655,118

8 The total amount of this appropriation shall be paid
9 from Special Revenue Fund out of fees collected for in-
10 spection stickers as provided by law.

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

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$ 538,718
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2 The total amount of this appropriation shall be paid
3 from the non-revolving Capital Improvement Fund creat-
4 ed by the 1959 Legislature, as amended.

5 Any unexpended balances remaining in the appropria-
6 tions for "Creative Arts" at the close of the fiscal year
7 1980-81 are hereby reappropriated for expenditure during
8 fiscal year 1981-82.

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

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service and Reserve	\$ 2,663,135
2	West Virginia University Campus Develop-	
3	ment (Renovation to Clark Hall—Phase II)	2,250,000
4	Capital Building Repairs & Alterations (sup-	
5	plements operating budgets at colleges and	
6	universities)	2,200,000
7	Glenville State College Campus Develop-	
8	ment (Upgrade fire and life safety systems,	
9	repair roofs, and make general grounds im-	
10	provements)	300,000
11	Marshall University Land Purchase	200,000
12	Shepherd College—Creative Arts Center	100,000

13 The total amount of this appropriation shall be paid
 14 from the Special Capital Improvement Fund created by
 15 the 1971 Legislature. Projects are to be paid on a cash
 16 basis and made available from the date of passage. Items
 17 and projects in this appropriation are to be started as
 18 funds become available and then only in the listed order
 19 of priority.

20 Any unexpended balances remaining in prior years and
 21 1980-81 appropriations are hereby reappropriated for ex-
 22 penditure during fiscal year 1981-82.

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

Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service \$ 1,675,200

2 The total amount of this appropriation shall be paid
 3 from the non-revolving Capital Improvement Fund creat-
 4 ed by the 1959 Legislature, as amended.

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

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years and
 2 1980-81 appropriations are hereby reappropriated for
 3 expenditure during the fiscal year 1981-82.

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

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service and Reserve \$ 4,449,806
 2 Miscellaneous Campus Development Projects 1,000,000
 3 West Virginia Northern Community College
 4 Campus Development 500,000
 5 (Development of College Square—Wheeling)

6	West Liberty State College Campus	
7	Development	200,000
8	(Upgrade Pool Filter System and Correct Fire	
9	Safety Violations)	
10	Marshall University Campus Development ..	1,250,000
11	(Renovation to Science Building, Equipment	
12	Purchase, and Land Acquisition)	
13	West Virginia State College Campus	
14	Development	1,275,000
15	(Library Renovation and Improvements to	
16	Utility Distribution System)	
17	Concord College Campus Development	350,000
18	Fairmont State College Campus Development	350,000
19	(Renovation and Improvement of Recreational	
20	Facilities)	

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

25 Any unexpended balances remaining in prior years
 26 and in the 1980-81 appropriations are hereby reapprop-
 27 riated for expenditure in fiscal year 1981-82.

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

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years and
 2 1980-81 appropriations are hereby reappropriated for ex-
 3 penditure during fiscal year 1981-82.

133—*Workmen's Compensation Commission*

Acct. No. 9000

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services	\$ 4,698,041
2	Current Expenses	3,288,120
3	Equipment	182,382
4	Social Security Matching	303,846
5	Public Employees Retirement Matching ..	434,944
6	Public Employees Health Insurance	360,033

7	*Unclassified	—0—
8	*Total	\$ 9,267,366

9 There is hereby authorized to be paid out of the above
 10 appropriation for "Current Expenses" the amount neces-
 11 sary for the premiums on bonds given by the State Trea-
 12 surer as Bond Custodian for the protection of the Work-
 13 men's Compensation Fund. This sum shall be transferred
 14 to the Board of Insurance.

134—*West Virginia Alcohol Beverage Control Commissioner*
 Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salary of Commissioner	\$ 33,750
2	Other Personal Services	9,348,238
3	Current Expenses	4,887,458
4	Repairs and Alterations	50,500
5	Equipment	212,000
6	Social Security Matching	626,248
7	Public Employees Retirement Matching	891,289
8	Public Employees Health Insurance	870,108
9	Total	\$ 16,919,591

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

12 The above appropriations include the salaries of store
 13 personnel, store inspectors, store operating expenses and
 14 equipment; and salaries, expenses and equipment of ad-
 15 ministration offices.

16 There is hereby appropriated from liquor revenues, in
 17 addition to the appropriation, the necessary amount for
 18 the purchase of liquor as provided by law.

135—*West Virginia University—Medical School*
 Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Personal Services	\$ 41,759,000
2	Current Expenses	26,000,000
3	Repairs and Alterations	1,645,000

* Clerk's Note: The figure "887,558" on line 7, Account No. 9000, was reduced by the Governor to "0" and the total was changed from "10,154,924" to "9,267,366" to reflect the reduction.

4	Capital Outlay	500,000
5	Equipment	2,460,000
6	Intern and Residency Support Program for	
7	Community Hospitals	944,542
8	Family Practice Residency Support Program	828,160
9	Total	\$ 74,136,702

1 **Sec. 3. Awards for claims against the state.**—There are
2 hereby appropriated, for the remainder of the fiscal year
3 1980-81 and to remain in effect until June 30, 1982, from
4 the funds as designated, in the amounts as specified, and
5 for the claimants as named in Enrolled House Bill Nos.
6 1541 and 1542, Legislature, Regular Session, 1981, total
7 general revenue funds of \$286,878; state road funds of
8 \$310,574; and special revenue funds of \$89,309 for payment
9 of claims against the state.

1 **Sec. 4. Reappropriations.**—Any unexpended balan-
2 ces of Items V, VI, and IX, in the appropriations made
3 by and under the authority of Sec. 4, Title II of the 1972
4 Budget Act, and amended under Sec. 4, Title II of the
5 1977 Budget Act, are hereby reappropriated for expendi-
6 ture during the fiscal year 1981-82.

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

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

1 **Sec. 5. Supplemental and deficiency appropriation.**—
2 From the Revenue Sharing Trust Fund, except as other-
3 wise provided, there are hereby appropriated the follow-
4 ing amounts, as itemized, for expenditure during the fiscal
5 year one thousand nine hundred eighty-one to supple-
6 ment the 1980-81 appropriation, and to be available for
7 expenditure upon date of passage.

136—*Revenue Sharing Trust Fund*
Governor's Office—Civil Contingent Fund

Acct. No. 9721

1	*Unclassified	\$ 914,000
2	*Benwood Flood Wall	400,000
3	County Boards of Education	3,000,000
4	If the actions of the chief executive of the state in	
5	placing reserves on a portion of the funds available for	
6	expenditure in the last quarter of fiscal year 1980-81 are	
7	nullified by the Supreme Court of Appeals prior to the	
8	distribution or expenditure of all or any part of the ap-	
9	propriation in item 3, above, designated "County Boards	
10	of Education," then no such distributions or expenditures	
11	under authority of such item is to occur.	

1 **Sec. 6. Appropriations from revenue sharing trust**
 2 **fund.**—The following items are hereby appropriated from
 3 the Revenue Sharing Trust Fund to be available for ex-
 4 penditure during the fiscal year 1981-82.

137—*Revenue Sharing Trust Fund*
Department of Highways

Acct. No. 9705

1	Maintenance, State Local Service	\$ 23,500,000
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138—*Revenue Sharing Trust Fund*
Department of Natural Resources

Acct. No. 9725

1	Pipestem—Convention Meeting Room	\$ 300,000
2	Kanawha State Forest—Improvements	95,000

139—*Revenue Sharing Trust Fund*
Department of Agriculture

Acct. No. 9771

1	Administration Building	\$ 1,000,000
2	Animal Health Laboratory	175,000

1 **Sec. 7. Appropriations from countercyclical fiscal**
 2 **assistance trust fund.**—Moneys received by the State of

* Clerk's Note: Published as passed by the Legislature, notwithstanding attempted deletions and transfer of funds within the account, as follows: (1) on line 2, account 9721, deleted "Benwood Flood Wall" and (2) transferred "400,000" to line 1, "Unclassified", increasing the amount to "1,314,000".

3 West Virginia pursuant to the provisions of the "Public
4 Works Employment Act of 1976; Title II of Public Law
5 94-369," as amended by the "Intergovernmental Anti-
6 recession Assistance Act of 1977; Public Law 95-30,"
7 enacted by the Congress of the United States, shall be
8 deposited in the state treasury and kept in a separate
9 account entitled "Countercyclical Fiscal Assistance Trust
10 Fund."

11 Any part of or all such amounts as deposited, including
12 deposits through fiscal year one thousand nine hundred
13 eighty-two, are hereby appropriated and may be trans-
14 ferred to any other accounts in the Governor's Office or to
15 any other departments of state government for disburse-
16 ment or expenditure.

1 ***Sec. 8. Reappropriations—Revenue Sharing Trust**
2 **Fund.**—Any unexpended balances to the appropriations
3 made by and under Sec. 8, Title II, of the 1973 Budget Act
4 and Supplementary Acts to Chapter 10, acts of the Legis-
5 lature, Regular Session 1973, with the exception of:
6 Acct. No.; under Sec. 5, Title II, of the 1974 Budget Act
7 and Supplementary Acts to Chapter Two, acts of the
8 Legislature, 2nd Extraordinary Session 1974, with the
9 exception of the following: Acct. Nos. 9700-06, 9725-09,
10 9725-14, 9771-06, 9771-08 and 9772-12; under Sec. 7, Title
11 II, acts of the Legislature, Regular Session 1976 and
12 Supplementary Acts to Chapter 7, acts of the Legislature,
13 Regular Session 1976, with the exception of the following:
14 Acct. Nos. 9725-41, 9771-09, 9773-05 and 9775-05; under
15 Sec. 5, Title II, of the 1977 Budget Act; with the exception
16 of: Acct. No. 9733-05; under Sec. 5, Title II, of the 1978
17 Budget Act, with the exception of the following: Acct.
18 No. 9725-50; under Sec. 5, Title II, of the 1979 Budget Act,
19 with the exception of the following: Acct. Nos. 9705-13,
20 and; under Sec. 5, Title II, of the 1980 Budget Act with
21 the exception of the following: Acct. Nos. 9721-11, 9740-08,
22 9745-28, 9750-07, 9750-08, 9750-09, 9771-12, 9771-13 and 9777-
23 06.

* Clerk's Note: The following Account Nos. were stricken by the Governor: line 6, 9725-05; line 9, 9725-07; line 10, 9725-18, 9725-34, 9725-48; line 14, 9725-36, 9725-38; line 15, 9825-40, 9725-42; line 19, 9725-51; and line 21, 9725-52, 9725-53, 9725-54 and 9725-55.

1 **Sec. 9. Special revenue appropriations.**—There is
2 hereby appropriated for expenditure during the fiscal year
3 one thousand nine hundred eighty-two, appropriations
4 made by general law from special revenue which are not
5 paid into the state fund as general revenue under the pro-
6 visions of Chapter 12, Article 2, Section 2 of the Code of
7 West Virginia, one thousand nine hundred thirty-one:
8 *Provided, however,* That none of the moneys so appropri-
9 ated by this section shall be available for expenditure
10 except in compliance with and in conformity to the pro-
11 visions of Chapter 12, Article 2 and 3, and Chapter 5A,
12 Article 2 of the Code of West Virginia, unless the spend-
13 ing unit has filed with the state director of the budget,
14 the state auditor and the legislative auditor prior to the
15 beginning of each fiscal year:

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

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

1 **Sec. 10. State improvement fund appropriations.**—
2 Bequests or donations of nonpublic funds, received by the
3 Governor on behalf of the State during the fiscal year one
4 thousand nine hundred eighty-two, for the purpose of
5 making studies and recommendations relative to im-
6 provements of the administration and management of
7 spending units in the executive branch of state govern-
8 ment, shall be deposited in the state treasury in a sepa-
9 rate account therein designated "State Improvement
10 Fund."

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

1 **Sec. 11. Specific funds and collection accounts.**—A

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

1 **Sec. 12. Appropriations for refunding erroneous pay-**
2 **ments.**—Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which it 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 re-
8 funding of the proper amount. The Auditor shall issue his
9 warrant to the Treasurer and the Treasurer shall pay the
10 warrant out of the fund into which the amount was origi-
11 nally paid.

1 **Sec. 13. 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 fina-
4 bond insurance fund of the West Virginia Housing De-
5 velopment Fund which is under the supervision and
6 control of the state sinking fund commission as provided
7 by Chapter 31, Article 18, Section 20b of the Code of
8 West Virginia, one thousand nine hundred thirty-one,
9 as amended, or in the funds of the state sinking fund
10 commission because of the failure of any state agency
11 for either general obligations or revenue bonds or any
12 local taxing district for general obligations bonds to
13 remit funds necessary for the payment of interest and
14 sinking fund requirements. The Governor is authorized
15 to transfer from time to time such amounts to the state
16 sinking fund commission as may be necessary for these
17 purposes.

18 The state sinking fund commission shall reimburse the
19 State of West Virginia through the Governor from the
20 first remittance collected from the West Virginia Hous-
21 ing Development Fund or from any state agency or local
22 taxing district for which the Governor advanced funds,

23 with interest at the rate carried by the bonds for the
24 security or payment of which the advance was made.

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

1 **Sec. 15. Appropriations for local governments.**—
2 There is hereby appropriated for payment to counties,
3 districts, and municipal corporations such amounts as
4 will be necessary to pay taxes due counties, districts, and
5 municipal corporations and which have been paid into
6 the treasury:

7 (a) For redemption of lands;

8 (b) By public service corporations;

9 (c) For tax forfeitures.

1 **Sec. 16. Total appropriations.**—Where only a total
2 sum is appropriated to a spending unit, that total sum
3 shall include personal services, current expenses and
4 capital outlay, except as otherwise provided in Title 1,
5 Sec. 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 9A, Section 16 of the Code of West Virginia.

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations conditional.**—The expendi-
2 ture of the appropriations made by this act, except those
3 appropriations made to the legislative and judicial

4 branches of the state government, are conditioned upon
5 the compliance by the spending unit with the require-
6 ments of Chapter 5A, Article 2 of the Code of West
7 Virginia.

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

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

CHAPTER 2

(H. B. 105—By Mr. Speaker, Mr. See)

[Passed May 8, 1981: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-a, article one, chapter seven of said code; to amend and reenact sections nine and fourteen, article three of said chapter seven; to amend and reenact sections seven and twelve, article sixteen, chapter eight of said code; to amend and reenact section fourteen, article eighteen of said chapter eight; to amend and reenact sections four, five, six and seventeen, article nineteen of said chapter eight; to amend and reenact sections four, five and sixteen, article twenty of said chapter eight; to amend and reenact sections fourteen and twenty-one, article one, chapter thirteen of said code; to amend and reenact section five, article two-d of said chapter thirteen; to amend and reenact sections three and four, article two-e of said chapter thirteen; to amend and reenact sections six, ten, nineteen and twenty-two-a, article

thirteen, chapter sixteen of said code; to amend and reenact section thirteen, article thirteen-a of said chapter sixteen; to amend and reenact section twenty-five, article eleven, chapter eighteen of said code; and to amend and reenact section six, article twenty-four of said chapter eighteen, all relating to the issuance of, rate of interest and permissible rate of return on, revenue bonds of agencies, instrumentalities, municipalities and political subdivisions of the state; relating to the issuance by the state building commission of West Virginia of state building revenue bonds; the form of, requirements for and procedure for issuance of such revenue bonds; the issuance by said state building commission of temporary bonds and the acceptance by said state building commission of federal or other funds, grants, gifts or contributions; increasing the eight percent ceiling on the stated rate of interest on such revenue bonds to twelve percent; authorizing the issuance of such revenue bonds without coupons and the designation of a co-paying agent within or without the state and increasing the eight percent ceiling on the net return to the purchaser of such revenue bonds to thirteen percent; the construction of waterworks, water mains, sewer lines and sewage disposal plants; the improvement of streets, sidewalks and alleys and the laying of sewers by county commissions; assessments for the costs of improving streets, sidewalks and alleys and laying sewers; the issuance by county commissions of certificates payable for the amounts of such assessments and the interest thereon and increasing the eight percent ceiling on the stated rates of interest on such assessments and such certificates to twelve percent; the issuance by county commissions of revenue bonds for courthouses, hospitals, other public buildings, jails or regional correctional centers; limiting the maximum stated rate of interest on such revenue bonds to twelve percent and maximum net return to the purchaser of such revenue bonds to thirteen percent and authorizing the designation of a trust company as copaying agent and of a copaying agent within or without the state; the acquisition, operation and financing by county commissions of public hospitals, clinics, long-term care facilities and other related facilities and the issuance by such county commissions of revenue bonds therefor and increasing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve

percent and the eleven percent ceiling on the net interest cost of such revenue bonds to thirteen percent; the enactment by the governing body of a municipality of an ordinance ordering the construction or acquisition of municipal public works and directing the issuance of revenue bonds; the publication of an abstract and notice of such ordinance and a public hearing on such ordinance; substituting "county commission" for "county court"; requiring that the public hearing on said ordinance be held not prior to the last publication of said abstract and notice; revenue bonds issued by a municipality for municipal public works; the interest rate, life, redemption, method of payment, form, denominations and other terms of such revenue bonds; the issuance by said municipality of additional revenue bonds and of interim certificates prior to the preparation of definitive revenue bonds; increasing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve percent; authorizing the issuance of bonds registered as to principal and interest and increasing the ten percent ceiling on the net return to the purchaser of such revenue bonds to thirteen percent; the issuance by municipalities of bonds in anticipation of special assessments to be made upon property abutting improved streets, alleys, public ways or easements or sewer rights-of-way or easements, increasing the ten percent ceiling on the stated rate of interest on such bonds to twelve percent and authorizing interest payment dates other than annual; an estimate of the cost of acquiring or constructing a waterworks system or constructing additions, betterments or improvements to any waterworks or electric power system by a municipality; the enactment by such municipality of an ordinance providing for the issuance of revenue bonds with respect to such acquisition or construction, certain terms of such revenue bonds and the rates or charges for the services from such waterworks or electric power system; increasing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve percent and authorizing the sale of such revenue bonds and interest payment dates other than semiannual; the publication of an abstract and notice of an ordinance authorizing the issuance of revenue bonds by a municipality for the acquisition or construction of a waterworks system or the construction of addi-

tions, betterments or improvements to any waterworks or electric power system and a public hearing on such ordinance and changing the date of such public hearing from not less than ten days subsequent to the date of the last publication of such abstract and notice to not less than ten days subsequent to the date of the first publication and not prior to the date of the last publication of such abstract and notice; the amount, negotiability and execution of revenue bonds issued by a municipality to acquire or construct a waterworks system or to construct additions, betterments or improvements to any waterworks or electric power system and increasing the ten percent ceiling on the net return to the purchaser of such revenue bonds to thirteen percent; the acceptance of grants and procurement of loans or temporary advances by a municipality from, and contracts and agreements with, the United States or any federal or public agency or department of the United States or any private agency, corporation or individual for the purpose of paying part or all of the cost of acquisition or construction of waterworks systems and of additions, betterments or improvements to existing waterworks systems or electric power systems and authorizing the acceptance of loans, the issuance of notes or other negotiable instruments to evidence such loans or temporary advances; the acceptance and procurement of such loans, grants or temporary advances for other authorized purposes and from any authorized agency of the state and repayment of such loans or temporary advances, including the interest thereon, from the proceeds of revenue bonds, the revenues of said waterworks system or electric power system or grants to the municipality from any agency of the state or from the United States or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment; the publication of an abstract and notice of an ordinance authorizing the issuance of revenue bonds by a municipality for the acquisition or construction of a waterworks or sewerage system to be included in a combined waterworks or sewerage system, or a combined waterworks and sewerage system, or any extensions, additions, betterments or improvements to either the waterworks or sewerage system of said combined waterworks and sewerage

system, or both, and a public hearing on such ordinance and changing the date of such public hearing from not less than ten days subsequent to the date of the last publication of such abstract and notice to not less than ten days subsequent to the date of the first publication and not prior to the date of the last publication of such abstract and notice; the amount, negotiability, execution and certain other terms of revenue bonds issued by a municipality for the purpose of acquiring or constructing a waterworks or sewerage system to be included in a combined waterworks and sewerage system, or a combined waterworks and sewerage system, or constructing any extensions, additions, betterments or improvements to either the waterworks or sewerage system of said combined waterworks and sewerage system, or both, and the refunding of outstanding revenue bonds of a waterworks or a sewerage system to be included in a combined waterworks and sewerage system by the sale or exchange therefor of revenue bonds of such combined waterworks and sewerage system, increasing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve percent; authorizing interest payment dates other than semiannual, increasing the ten percent ceiling on the interest cost to the municipality of the proceeds of such revenue bonds to thirteen percent and removing the requirement that revenue bonds issued for refunding purposes be sold at not less than par and accrued interest; the acceptance of grants and procurement of loans or temporary advances by municipality from, and contracts and agreements with, the United States or any federal or public agency or department of the United States or any private agency, corporation or individual, for the purpose of paying part or all of the cost of acquisition or construction of combined waterworks and sewerage systems and of additions, betterments and improvements thereto and authorizing the acceptance of loans, the issuance of notes or other negotiable instruments to evidence such loans or temporary advances, the acceptance and procurement of such loans, grants or temporary advances for other authorized purposes and from any authorized agency of the state and repayment of such loans or temporary advances, including the interest thereon, from the proceeds of revenue bonds, the revenues of said combined waterworks and sewerage system or grants to the municipality from any agency

of the state or from the United States or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment; adoption by the governing body of a political division of a resolution authorizing the issuance and fixing the terms of general obligation bonds; authorizing multiple interest rates on such general obligation bonds and removing the ten percent ceiling on the stated rate of interest on such general obligation bonds; the advertisement and sale of general obligation bonds by a political division and the prior offer of such bonds for purchase by any of the governmental agencies of the state, substituting "West Virginia municipal bond commission" for "state sinking fund commission" and increasing the time period for private sale of such general obligation bonds from sixty to one hundred twenty days after the date advertised for the reception of bids; the issuance by county commissions of revenue bonds to defray the cost or any part thereof of acquiring an airport or an addition, extension or improvement thereto or to be delivered in exchange for an airport or private facility for the landing and taking off of airplanes, substituting "county commission" for "county court" and increasing the six percent ceiling on the stated rate of interest on such revenue bonds to twelve percent and the six percent ceiling on the net return to the purchaser of such revenue bonds to thirteen percent; the issuance by public bodies of refunding bonds to refund all or any part of their outstanding revenue bonds and authorizing the issuance of such refunding bonds as part of a series of revenue bonds issued for the purpose, in addition to such refunding, or financing the acquisition or construction of improvements, betterments, extensions or replacements to the particular enterprise; the terms, form and execution of refunding bonds issued by a public body for the purpose of refunding all or any part of its outstanding revenue bonds and removing the requirement that such refunding bonds mature not later than the date of final maturity of the bonds to be refunded; the publication of an ordinance authorizing the issuance by a municipality or sanitary district of revenue bonds for the acquisition or construction of works for the collection and/or treatment, purification and disposal of sewage or extensions, improvements or betterments thereto,

together with a notice regarding such ordinance, and a public hearing on such ordinance, authorizing publication of an abstract of such ordinance, determined by the governing body of such municipality or sanitary district to contain sufficient information as to give notice of the contents of such ordinance and changing the date of such publication from not less than ten days subsequent to the date of the last such publication to not less than ten days subsequent to the date of the first publication and not prior to the date of the last publication of such abstract and notice; the interest on and the redemption, form, negotiability exemption from taxation, registration, execution, sale and other terms of revenue bonds issued by a municipality or a sanitary district to finance the cost of acquisition or construction of works for the collection and/or treatment, purification and disposal of sewage or any extensions, improvements or betterments thereto, and the statement required on the face of such revenue bonds regarding payment solely from the special fund provided from the net revenues of such works, the disposition of surplus proceeds of such revenue bonds and the issuance by said municipality or sanitary district of additional revenue bonds and temporary bonds; increasing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve percent; authorizing interest payment dates other than semiannual and the issuance of bonds registered as to principal and interest and increasing the eleven percent ceiling on the net return to the purchaser of such revenue bonds to thirteen percent; the contract of a municipality operating or constructing or acquiring a sewage collecting system and/or sewage disposal plant with other municipal corporations or political subdivisions of the state for the service of such works, the powers of the municipal corporations or political subdivisions with which such municipality contracts as to rates for the service rendered by such works and the construction of the necessary intercepting sewers and increasing the maximum term of such contract from fifteen to forty years; the acceptance of grants and procurement of loans or temporary advances by a municipality or sanitary district from, and contracts and agreements with, any authorized agency of the state or from the United States or any federal or public agency or department of the United States or any private agency, corporation or individual,

for the purpose of paying part or all of the costs of acquisition or construction of sewage works and the construction of betterments and improvements thereto; authorizing the acceptance of loans and the acceptance and procurement of such loans, grants or temporary advances for other authorized purposes; providing that the notes or other negotiable instruments evidencing such loans or temporary advances shall be subject to the privileges set forth with respect to revenue bonds of such sewerage works and rephrasing the authorization for repayment of such loans or temporary advances, including the interest thereon, from the proceeds of revenue bonds, the revenues of said sewage works or grants to the municipality or sanitary district from any agency of the state or from the United States or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment; the issuance by public service districts of revenue bonds for constructing or acquiring any public service properties or improvements and extensions thereto and for reimbursing or paying the costs and expenses of creating such public service district; increasing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve percent; authorizing interest payment dates other than semi-annual and increasing the ten percent ceiling on the interest costs of the proceeds of such revenue bonds to thirteen percent; the acquisition, construction, financing and regulation by the West Virginia board of regents of automobile parking facilities at West Virginia University; the imposition of penalties for violation of the regulations with respect to such parking facilities; and the issuance by the board of regents of revenue bonds to finance in whole or in part such parking facilities, substituting "magistrate" for "justice of the peace"; increasing the seven percent ceiling on the stated rate of interest on such revenue bonds to twelve percent; authorizing the issuance of such revenue bonds without coupons and increasing the eight percent ceiling on the net return to the purchaser of such revenue bonds to thirteen percent; the disposition and use of student union fees imposed by state educational institutions and the issuance by the West Virginia board of regents of revenue bonds for student union buildings and increas-

ing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve percent.

Be it enacted by the Legislature of West Virginia:

That section eight, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three-a, article one, chapter seven of said code be amended and reenacted; that sections nine and fourteen, article three of said chapter seven be amended and reenacted; that sections seven and twelve, article sixteen, chapter eight of said code be amended and reenacted; that section fourteen, article eighteen of said chapter eight be amended and reenacted; that sections four, five, six and seventeen, article nineteen of said chapter eight be amended and reenacted; that sections four, five and sixteen, article twenty of said chapter eight be amended and reenacted; that sections fourteen and twenty-one, article one, chapter thirteen of said code be amended and reenacted; that section five, article two-d of said chapter thirteen be amended and reenacted; that sections three and four, article two-e of said chapter thirteen be amended and reenacted; that sections six, ten, nineteen and twenty-two-a, article thirteen, chapter sixteen of said code be amended and reenacted; that section thirteen, article thirteen-a of said chapter sixteen be amended and reenacted; that section twenty-five, article eleven, chapter eighteen of said code be amended and reenacted; and that section six, article twenty-four of said chapter eighteen be amended and reenacted, all to read as follows:

Chapter

- 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, etc.**
- 7. County Commissions and Officers.**
- 8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.**
- 13. Public Bonded Indebtedness.**
- 16. Public Health.**
- 18. Education.**

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

ARTICLE 6. STATE BUILDING COMMISSION.

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

1 The commission is hereby empowered to raise the cost of
2 a project, as defined hereinabove, by the issuance of state
3 building revenue bonds of the state, the principal of and
4 interest on which bonds shall be payable solely from the
5 special fund herein provided for such payment. Subject to
6 the proceedings pursuant to which any bonds outstanding
7 were authorized and issued pursuant to this article, the
8 commission shall pledge the moneys in such special fund,
9 except such part of the proceeds of sale of any bonds to be
10 used to pay the cost of a project, for the payment of the
11 principal of and interest on bonds issued pursuant to this
12 article, such pledge to apply equally and ratably to separate
13 series of bonds or upon such priorities as the commission
14 shall determine. Such bonds shall be authorized by resolution
15 of the commission which shall recite an estimate by the
16 commission of such cost, and shall provide for the issuance
17 of bonds in an amount sufficient, when sold as hereinafter
18 provided, to produce such cost, less the amount of any funds,
19 grant or grants, gift or gifts, contribution or contributions
20 received, or in the opinion of the commission expected to be
21 received, from the United States of America or from any other
22 source. The acceptance by the commission of any and all such
23 funds, grants, gifts and contributions, whether in money or
24 in land, labor or materials, is hereby expressly authorized. All
25 such bonds shall have and are hereby declared to have all the
26 qualities of negotiable instruments. Such bonds shall bear
27 interest at not more than twelve percent per annum, payable
28 semiannually, and shall mature in not more than forty years
29 from their date or dates, and may be made redeemable at the
30 option of the state, to be exercised by the commission, at

31 such price and under such terms and conditions, all as the
32 commission may fix prior to the issuance of such bonds. The
33 commission shall determine the form of such bonds, in-
34 cluding coupons, if any, to be attached thereto to evidence
35 the right of interest payments, which bonds shall be signed
36 by the chairman and secretary of the commission, under the
37 great seal of the state, attested by the secretary of state, and
38 the coupons, if any, attached thereto shall bear the facsimile
39 signature of said chairman of the commission. In case any of
40 the officers whose signatures appear on the bonds or coupons
41 issued as hereinbefore authorized shall cease to be such
42 officers before the delivery of such bonds, such signatures
43 shall nevertheless be valid and sufficient for all purposes the
44 same as if they had remained in office until such delivery.
45 The commission shall fix the denominations of said bonds, the
46 principal and interest of which shall be payable at the office
48 of the treasurer of the state of West Virginia, at the capitol of
48 said state, or, at option of the holder, at some bank or trust
49 company within or without the state of West Virginia to be
50 named in the bonds, in such medium as may be determined
51 by the commission. The said bonds and interest thereon shall
52 be exempt from taxation by the state of West Virginia, or any
53 county or municipality therein. The commission may provide
54 for the registration of such bonds in the name of the owner as
55 to principal alone, and as to both principal and interest under
56 such terms and conditions as the commission may determine,
57 and shall sell such bonds in such manner as it may deter-
58 mine to be for the best interest of the state, taking into
59 consideration the financial responsibility of the purchaser,
60 and the terms and conditions of the purchase, and especially
61 the availability of the proceeds of the bonds when required
62 for payment of the costs of the project, such sale to be made at
63 a price not lower than a price which, computed upon stan-
64 dard tables of bond values, will show a net return of not
65 more than thirteen percent per annum to the purchaser upon
66 the amount paid therefor. The proceeds of such bonds shall
67 be used solely for the payment of the cost of the project for
68 which bonds were issued, and shall be deposited and checked
69 out as provided by section five of this article, and under such
70 further restrictions, if any, as the commission may provide. If

71 the proceeds of bonds issued for a project shall exceed
72 the cost thereof, the surplus shall be paid into the fund
73 hereinafter provided for payment of the principal and interest
74 of such bonds. Such fund may be used for the purchase of any
75 of the outstanding bonds payable from such fund at the
76 market price, but at not exceeding the price, if any, at which
77 such bonds shall in the same year be redeemable, and all
78 bonds redeemed or purchased shall forthwith be canceled,
79 and shall not again be issued. Prior to the preparation of
80 definitive bonds, the commission may, under like restric-
81 tions, issue temporary bonds with or without coupons,
82 exchangeable for definitive bonds upon the issuance of the
83 latter. Notwithstanding the provisions of sections nine and
84 ten, article six, chapter twelve of this code, revenue bonds
85 issued under the authority herein granted shall be eligible as
86 investments for the workmen's compensation fund, teachers
87 retirement fund, department of public safety death, disability
88 and retirement fund, West Virginia public employees retire-
89 ment system and as security for the deposit of all public
90 funds. Such revenue bonds may be issued without any other
91 proceedings or the happenings of any other conditions or
92 things than those proceedings, conditions and things which
93 are specified and required by this article, or by the con-
94 stitution of the state. The aggregate amount of all issues of
95 bonds outstanding at one time for all projects authorized
96 hereunder shall not exceed sixty-two million five hundred
97 thousand dollars including the renegotiation, reissuance or
98 refinancing of any such bonds. No bonds or other obligations
99 shall be issued or incurred hereunder, unless and until the
100 Legislature by concurrent resolution has approved the
101 purpose and amount of each separate project.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

Article

- 1. County Commissions Generally.**
- 3. County Property.**

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3a. Construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; assessment of cost of sanitary sewers and improved streets.

1 In addition to all other powers and duties now conferred by
2 law upon county commissions, such commissions are here-
3 by authorized and empowered to install, construct, repair,
4 maintain and operate waterworks, water mains, sewer lines
5 and sewage disposal plants in connection therewith within
6 their respective counties: *Provided*, That the county com-
7 mission of Webster County is authorized to expend
8 county funds in the opening of, and upkeep of, a sulphur well
9 now situate on county property: *Provided, however*, That such
10 authority and power herein conferred upon county com-
11 missions shall not extend into the territory within any
12 municipal corporation: *Provided further*, That any county
13 commission is hereby authorized to enter into contracts or
14 agreements with any municipality within the county, or with
15 a municipality in an adjoining county, with reference to the
16 exercise of the powers vested in such commissions by this
17 section.

18 In addition to the foregoing, the county commission shall
19 have the power to improve streets, sidewalks and alleys and
20 lay sewers as follows: Upon petition in writing duly verified,
21 of the persons, firms or corporations owning not less than
22 sixty percent of the frontage of the lots abutting on both sides
23 of any street or alley, between any two cross-streets, or
24 between a cross-street and an alley in any unincorporated
25 community, requesting the county commission so to do ac-
26 cording to plans and specifications submitted with such
27 petition and offering to have their property so abutting
28 assessed not only with their portion of the cost of such
29 improvement abutting upon their respective properties, but
30 also offering to have their said properties proportionately
31 assessed with the total cost of paving, grading and curbing
32 the intersections of such streets and alleys, the county
33 commission may cause any such street or alley to be
34 improved or paved or repaved substantially with the
35 materials and according to such plans and specifications

36 as hereinafter provided: *Provided*, That the county com-
37 mission is further authorized, if the said county com-
38 mission so determines by a unanimous vote of its consti-
39 tuted membership, that two or more intersecting streets,
40 sidewalks, alleys and sewers, should be improved as one
41 project, in order to satisfy peculiar problems resulting from
42 access as well as drainage problems, then, in that event,
43 the said county commission may order such improvements as
44 one single unit and project, upon petition in writing duly
45 verified of the persons, firms or corporations owning not less
46 than sixty percent of the frontage of the lots abutting on both
47 sides of all streets or alleys, or portions thereof included by
48 said county commission in said unit and project.

49 The total cost including labor and materials, engineering,
50 and legal service of grading and paving, curbing, improving
51 any such street or alley (including the cost of the inter-
52 sections) and assessing the cost thereof shall be borne by
53 the owners of the land abutting upon such street or alley
54 when the work is completed and accepted according to the
55 following plan, that is to say, payment is to be made by all
56 landowners on either side of such street or alley so paved or
57 improved, in such proportion of the total cost as the frontage
58 in feet of each owner's land so abutting bears to the total
59 frontage of all the land so abutting on such street or alley, so
60 paved or improved as aforesaid, which computation shall be
61 made by the county engineer or surveyor and certified by him
62 to the clerk of said commission.

63 Upon petition in writing duly verified, of the persons, firms
64 or corporations owning not less than sixty percent of the
65 frontage of the lots abutting on one side of any street between
66 any two cross-streets or between a cross-street and an alley in
67 any unincorporated community requesting the county
68 commission so to do according to plans and specifications
69 submitted with such petition and offering to have their
70 property so abutting assessed with the total cost thereof, the
71 county commission may cause any sidewalk to be improved,
72 or paved, or repaved, substantially with such materials ac-
73 cording to such plans and specifications and the total cost
74 including labor and materials, engineering and legal service

75 of improving, grading, paving or repaving such sidewalk and
76 assessing the cost thereof shall, when the work is completed
77 and accepted, be assessed against the owners of the lots or
78 fractional part of lots abutting on such sidewalk, in such
79 portion of the total cost as the frontage in feet of each owner's
80 land so abutting bears to the total frontage of all lots so
81 abutting on such sidewalk so paved or improved, as afore-
82 said, which computation shall be made by the county engi-
83 neer or surveyor and certified by him to the clerk of said
84 commission.

85 Upon petition in writing duly verified, of the persons, firms
86 or corporations owning not less than sixty percent of the
87 frontage of the lots abutting on both sides of any street or
88 alley, in any unincorporated community requesting the
89 county commission so to do according to plans and
90 specifications submitted with such petition and offering to
91 have their property so abutting assessed with the cost, as
92 hereinafter provided, the county commission may lay and
93 construct sanitary sewers in any street or alley with such
94 materials and substantially according to such plans and
95 specifications and when such sewer is completed and
96 accepted, the county engineer or surveyor shall report to
97 the county commission, in writing, the total cost of such
98 sewer and a description of the lots and lands, as to the lo-
99 cation, frontage, depth and ownership liable for such
100 sewer assessment, so far as the same may be ascertained,
101 together with the amount chargeable against each lot and
102 owner, calculated in the following manner. The total cost
103 of constructing and laying the sewer including labor, materials,
104 legal and engineering services shall be borne by the owners
105 of the land abutting upon the streets and alleys, in which the
106 sewer is laid according to the following plan: Payment is to
107 be made by each landowner on either side of such portion of
108 a street or alley in which such sewer is laid, in such proportions
109 as the frontage of his land upon said street or alley bears to
110 the total frontage of all lots so abutting on such street or alley.
111 In case of a corner lot, frontage is to be measured along the
112 longest dimensions thereof abutting on such street or alley
113 in which such sewer is laid. Any lot having a depth of two
114 hundred feet or more, and fronting on two streets or alleys,

115 one in the front and one in the rear of said lot, shall be
116 assessed on both of said streets or alleys if a sewer is laid in
117 both such streets and alleys. Where a corner lot has been
118 assessed on the end it shall not be assessed on the side for the
119 same sewer and where it has been assessed on the side it shall
120 not be assessed on the end for the same sewer.

121 If the petitioners request the improvement of any such
122 street, alley or sidewalk in a manner which does not require
123 the permanent paving or repaving thereof, the county
124 commission shall likewise have authority to improve such
125 street, alley or sidewalk, substantially as requested in such
126 petition, and the total cost thereof including labor, materials,
127 engineering and legal services shall be assessed against the
128 abutting owners in the proportion which the frontage of their
129 lots abutting upon such street, alley or sidewalk bears to the
130 total frontage of all lots abutting upon such street, alley or
131 sidewalk so improved.

132 Upon the filing of such petition and before work is begun,
133 or let to contract, the county commission shall fix a time and
134 place for hearing protests and shall require the petitioners to
135 post notice of such hearing in at least two conspicuous places
136 on the street, alley or sidewalk affected, and to give notice
137 thereof by publication of such notice as a Class 1 legal
138 advertisement in compliance with the provisions of article
139 three, chapter fifty-nine of this code, and the publication area
140 for such publication shall be the county in which the im-
141 provement is to be made. The hearing shall be held not less
142 than ten nor more than thirty days after the filing of such
143 petition.

144 At the time and place set for hearing protests the county
145 commission may examine witnesses and consider other
146 evidence to show that said petition was filed in good faith;
147 that the signatures thereto are genuine; and that the proposed
148 improvement, paving, repaving or sewerage will result in
149 special benefits to all owners of property abutting on said
150 street, alley or sidewalk in an amount at least equal in value
151 to the cost thereof. The commission shall within ten days
152 thereafter enter a formal order stating its decision and if the
153 petition be granted shall proceed after due advertisement,

154 reserving the right to reject any or all bids, to let a contract for
155 such work and materials to the lowest responsible bidder.

156 Any owner or property abutting upon said street, alley or
157 sidewalk aggrieved by such order shall have the right to
158 review the same on the record made before the county
159 commission by filing within ten days after the entry of such
160 order a petition with the clerk of the circuit court assigning
161 errors and giving bond in a penalty to be fixed by the circuit
162 court to pay any costs or expenses incurred upon such appeal
163 should the order of the county commission be affirmed. The
164 circuit court shall proceed to review the matter as in other
165 cases of appeal from the county commission.

166 All assessments made under this section shall be certified
167 to the county clerk and recorded in a proper trust deed book
168 and indexed in the name of the owner of any lot or fractional
169 part of a lot so assessed: The assessment so made shall be a
170 lien on the property liable therefor, and shall have priority
171 over all other liens except those for taxes, and may be
172 enforced by a civil action in the name of the contractor
173 performing the work in the same manner as provided for
174 other liens for permanent improvements. Such assessment
175 shall be paid in not more than ten equal annual installments,
176 bearing interest at a rate not to exceed twelve percent per
177 annum, as follows: That first installment, together with
178 interest on the whole assessment, shall be paid not later than
179 one year from the date of such assessment, and a like
180 installment with interest on the whole amount remaining
181 unpaid each year thereafter until the principal and all interest
182 shall have been paid in full.

183 The county commission may issue coupon-bearing cer-
184 tificates payable in not more than ten equal annual in-
185 stallments for the amount of such assessment and the
186 interest thereon, to be paid by the owner of any lot or
187 fractional part thereof, fronting on such street, alley or
188 sidewalk which has been improved, paved, or repaved or in
189 which a sewer has been laid, as aforesaid, and the holder of
190 said certificate shall have a lien having priority over all other
191 liens except those for taxes upon the lot or part of lot fronting
192 on such street, alley or sidewalk, and such certificate shall
193 likewise draw interest from the date of assessment at a rate

194 not to exceed twelve percent per annum, and payment
195 thereof may be enforced in the name of the holder of said
196 certificate by proper civil action in any court having jurisdic-
197 tion to enforce such lien.

198 Certificates authorized under this section may be issued,
199 sold or negotiated to the contractor doing the work, or to his
200 assignee, or to any person, firm or corporation: *Provided,*
201 That the county commission in issuing such certificates shall
202 not be held as a guarantor, or in any way liable for the
203 payment thereof. Certificates so issued shall contain a
204 provision to the effect that in the event of default in the
205 payment of any one or more of said installments, when due,
206 said default continuing for a period of sixty days, all unpaid
207 installments shall thereupon become due and payable, and
208 the owner of said certificates may proceed to collect the
209 unpaid balance thereof in the manner hereinbefore provided.

210 In all cases where petitioners request paving or repaving, or
211 the laying of sewers under the provisions of this section, the
212 county commission shall let the work of grading, paving,
213 curbing or sewerage to contract to the lowest responsible
214 bidder. In each such case the county commission shall
215 require a bond in the penalty of the contract price guar-
216 anteeing the faithful performance of the work and each
217 such contract shall require the contractor to repair any
218 defects due to defective workmanship or materials discovered
219 within one year after the completion of the work.

220 Upon presentation to the clerk of the county commission
221 of the certificates evidencing the lien, duly canceled and
222 marked paid by the holder thereof, or evidence of payment of
223 the assessment if no certificates have been issued, said clerk
224 shall execute and acknowledge a release of the lien which
225 release may be recorded, as other releases in the office of the
226 clerk of the county commission.

227 The owner of any lot or fractional part of a lot abutting
228 upon such street, alley or sidewalk so improved, paved, repaved
229 or sewerage shall have the right to anticipate the payment of
230 any such assessment or certificate by paying the principal
231 amount due, with interest accrued thereon to date of pay-
232 ment, and also to pay the entire amount, without interest

233 at any time, within thirty days following the date of the
234 assessment.

235 Nothing in this section contained shall be construed to
236 authorize the county commission of the various counties to
237 acquire any road construction, ditching or paving equipment.
238 The county commissions are hereby authorized to rent from
239 the state road commissioner or any other person, firm or
240 corporation such equipment as may be necessary from time
241 to time, to improve any street or sidewalk which petitioners
242 do not desire to have paved in a permanent manner, and for
243 such purpose to employ such labor as may be necessary but
244 no expense connected therewith shall be charged to any
245 county funds.

246 No county commission shall be under any duty after the
247 paving, repaving or improvement of any street, alley or
248 sidewalk or the laying of any sanitary sewer under the
249 provisions of this section, to maintain or repair the same, but
250 any such commission shall have authority upon petition duly
251 verified, signed by at least sixty percent of the owners of
252 property abutting upon any improvement made under this
253 section, to maintain or repair such improvement or sewer and
254 to assess the cost thereof against the owners of such abutting
255 property in the same manner as the cost of the original im-
256 provement.

ARTICLE 3. COUNTY PROPERTY.

§7-3-9. Form and payment of bonds; use of proceeds of bonds.

§7-3-14. Authority to acquire and operate hospitals, clinics, long-term care facilities and other related facilities; financing.

§7-3-9. Form and payment of bonds; use of proceeds of bonds.

1 Any county commission issuing revenue bonds under the
2 provisions of this article shall thereafter, so long as any such
3 bonds remain outstanding, operate and maintain said
4 courthouse, hospital, other public buildings, jail or regional
5 correctional center, to provide revenue sufficient to pay all
6 operating costs, provide a sinking fund for, and to retire such
7 bonds and pay the interest thereon as the same may become
8 due. The amounts, as and when so set apart by said county
9 commission, shall be remitted to the West Virginia municipal
10 bond commission at least thirty days previous to the time

11 interest or principal payments become due, to be retained
12 and paid out by said commission consistent with the
13 provisions of this article and with the order pursuant to
14 which the bonds have been issued. The West Virginia munic-
15 ipal bond commission is hereby authorized to act as fiscal
16 agent for the administration of such sinking fund under any
17 order passed pursuant to the provisions of this article, and
18 shall invest all sinking funds, as provided by general law.
19 Revenue bonds issued under the provisions of this article are
20 hereby declared to be and to have all the qualities of negoti-
21 able instruments. Such bonds shall bear interest at the rate
22 or rates set by the county commission, not to exceed twelve
23 percent per annum, payable semiannually, and shall mature
24 at any time fixed by the county commission, in not more than
25 thirty years from their date. Such bonds shall be sold at a
26 price not lower than a price which, when computed upon
27 standard tables of bond values, will show a net return of not
28 more than thirteen percent per annum to the purchaser upon
29 the amount paid therefor. Such bonds may be made
30 redeemable at the option of the county commission at such
31 price and under terms and conditions as said county
32 commission may fix, by its order, prior to the issuance of such
33 bonds. Revenue bonds issued hereunder shall be payable at
34 the office of the state treasurer, or a designated bank or trust
35 company within or without the state of West Virginia.

36 In case any of the officers whose signatures appear on such
37 bonds or coupons shall cease to be such officers before the
38 delivery of such bonds, such signatures shall, nevertheless,
39 be valid and sufficient for all purposes the same as if they
40 had remained in office until such delivery. The county com-
41 mission shall by order entered prior to the issuance of
42 said bonds, fix the denominations, times and places of
43 payment of such bonds, the principal and interest of which
44 shall be payable in lawful money of the United States of
45 America. The proceeds of such bonds shall be used solely for
46 the payment of the cost of land, buildings, furniture and
47 equipment thereon, and shall be checked out by the county
48 commission under such restrictions as are contained in the
49 order providing for the issuance of said bonds. If the proceeds
50 of such bonds issued for any courthouse, hospital, other

51 public buildings, jail or regional correctional center, shall
52 exceed the cost thereof, the surplus shall be paid into the
53 fund herein provided for the payment of principal and
54 interest upon such bonds. Such fund may be used for the
55 purchase or redemption of any of the outstanding bonds
56 payable from such fund at the market price, but at not
57 exceeding the price at which any of such bonds shall in the
58 same year be redeemable, as fixed by the commission in its
59 said order, and all bonds redeemed or purchased shall forth-
60 with be canceled, and shall not again be issued.

61 Prior to the preparation of definitive bonds, the county
62 commission may, under like restrictions, issue temporary
63 bonds, or interim certificates, with or without coupons,
64 exchangeable for definitive bonds upon the issuance of the
65 latter. Such bonds may be issued without any other
66 proceedings or the happening of any other conditions or
67 things than those proceedings, conditions and things which
68 are specified and required by this article.

§7-3-14. Authority to acquire and operate hospitals, clinics, long-term care facilities and other related facilities; financing.

1 The county commission of any county is hereby authorized
2 and empowered to acquire by purchase or construction and
3 to thereafter own, equip, furnish, operate, lease, improve and
4 extend a public hospital, clinic, long-term care facility and
5 other related facilities, with all appurtenances, including the
6 necessary real estate as a site therefor. Any such county
7 public hospital acquired pursuant thereto may include a
8 nurses home and nurses training school. The county
9 commission is further authorized and empowered, upon
10 acquiring a hospital, clinic, long-term care facility or other
11 related facility, to lease to others any or all such facilities for
12 such rentals and upon such terms and conditions as the
13 county commission may deem advisable. For the purpose of
14 paying all or any part of the costs, not otherwise provided, of
15 acquiring, completing, equipping, furnishing, improving or
16 extending such hospital, clinic, long-term care facility or
17 other related facility, the county commission is hereby
18 authorized and empowered by order duly entered of record,

19 to issue and sell the negotiable revenue bonds of such county,
20 which shall be payable solely and only from all or such part of
21 the net revenues from the operation of such county public
22 hospital, clinic, long-term care facility or other related facility
23 as may be provided by said order; and each such revenue
24 bond so issued shall contain a recital that payment or
25 redemption of the bond and payment of the interest thereon
26 is secured by the revenues pledged therefor, and that such
27 bond does not constitute an indebtedness of such county or
28 the county commission thereof within the meaning of any
29 constitutional or statutory limitation or provision. Such
30 revenue bonds may bear such date or dates, may mature at
31 such time or times not exceeding thirty-four years from their
32 respective dates, may bear interest at such rate or rates not
33 exceeding twelve percent per annum, may be of such
34 denomination or denominations, may be in such form, may
35 carry such registration privileges, may be made subject to
36 such terms of redemption with or without premium, and may
37 contain such other terms and covenants not inconsistent with
38 this article as may be provided in such order. Such revenue
39 bonds shall be exempt from taxation by the state of West
40 Virginia and the other taxing bodies of the state. In deter-
41 mining the amount of revenue bonds to be issued, there may
42 be included any expenses in connection with and incidental
43 to the issuance and sale of bonds and for the preparation of
44 plans, specifications, surveys and estimates, interest during
45 the estimated construction period and for six months
46 thereafter, and a reasonable amount for working capital and
47 prepaid insurance. Such bonds may be sold in such manner,
48 at such times and upon such terms as may be determined by
49 the county commission to be for the best interests of the
50 county: *Provided*, That no bonds may be sold upon terms
51 which will result in the net interest cost of more than thirteen
52 percent per annum computed to maturity of the bonds
53 according to standard tables of bond values. There may be
54 included in any such order authorizing the issuance of
55 revenue bonds such covenants, stipulations and conditions
56 as may be deemed necessary with respect to the expenditure
57 of the bond proceeds, the operation and maintenance of the
58 county public hospital, clinic, long-term care facility or other

59 related facility, and the custody and application of the
 60 revenues from such operation. The holder of any bond or
 61 bonds may, by mandamus or other appropriate proceedings,
 62 require and compel performance of any duties imposed by
 63 law in connection with the hospital, clinic, long-term care
 64 facility or other related facility, or any covenant, stipulation
 65 or condition that may have been expressed in such bond
 66 order.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

Article

- 16. **Municipal Public Works; Revenue Bond Financing.**
- 18. **Assessments to Improve Streets, Sidewalks and Sewers; Sewer Connections and Board of Health.**
- 19. **Municipal Waterworks and Electric Power Systems.**
- 20. **Combined Waterworks and Sewerage Systems.**

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-7. Ordinance for construction, etc., of works.

§8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates.

§8-16-7. Ordinance for construction, etc., of works.

1 Before any municipality or municipalities shall, under the
 2 provisions of this article, construct, reconstruct, establish,
 3 acquire, improve, renovate, extend, enlarge, increase, equip
 4 or repair (including replacements) any municipal public
 5 works, the governing body, or the governing body of each
 6 participating municipality, shall enact an ordinance or
 7 ordinances, which shall (a) set forth a brief and general
 8 description of the works, including a reference to the
 9 preliminary report or plans and specifications which shall
 10 theretofore have been prepared; (b) set forth the estimated
 11 cost thereof; (c) order the construction, reconstruction,
 12 establishment, acquisition, improvement, renovation, ex-
 13 tension, enlargement, increase, equipment or repair (in-
 14 cluding replacements) of such works; (d) direct that
 15 municipal revenue bonds be issued pursuant to this article, in
 16 such amount as may be found necessary to pay the cost of the

17 works; (e) contain such provisions as the governing body
18 determines are necessary or desirable with regard to the
19 establishment and setting aside of reserves from the proceeds
20 of such revenue bonds or from the revenues of said works, or
21 from both, and the administration and disposition thereof;
22 and (f) contain such other provisions as may be necessary or
23 proper in the premises. When two or more municipalities take
24 joint action under the provisions of this article, a certified
25 copy of each such ordinance shall be filed in the office of the
26 clerk of the county commission of the county or counties in
27 which the municipalities are located and in the office of the
28 state tax commissioner, and when any such municipality
29 is located in more than one county, the filing for that
30 municipality shall be in the office of the clerk of the county
31 commission in which the major portion of the territory of
32 such municipality is located. Before any such ordinance shall
33 become effective, an abstract of the ordinance, determined by
34 the governing body or each governing body, as the case may
35 be, to contain sufficient information as to give notice of
36 the contents of such ordinance, together with the following
37 described notice, shall be published as a Class II legal
38 advertisement in compliance with the provisions of article
39 three, chapter fifty-nine of this code, and the publication area
40 for such publication shall be such municipality or each such
41 municipality, as the case may be. The notice to be published
42 with said abstract of the ordinance shall specify a date, time
43 and place for a public hearing, the date being not less than ten
44 days after the first publication of said abstract and notice and
45 not prior to the last publication of said abstract and notice, at
46 which time and place all parties and interest may appear
47 before the governing body of the municipality or each such
48 municipality and may be heard as to whether or not said
49 ordinance shall be put into effect, and said notice shall also
50 identify the office in which a certified copy of such ordinance
51 shall be on file for review by interested persons during the
52 office hours of such office. At such hearing all objections and
53 suggestions shall be heard and the governing body or each
54 such governing body shall take such action as it or they shall
55 deem proper in the premises: *Provided*, That if at any such
56 hearing written protest is filed by thirty percent or more of

57 the freeholders of the municipality for which the hearing is
58 held, then the governing body of said municipality shall not
59 take further action unless four fifths of the members of said
60 governing body assent thereto: *Provided, however,* That in
61 case written protest is filed by thirty percent or more of the
62 freeholders as herein provided, any such governing body
63 shall have authority to appoint a committee to consist of one
64 proponent, one opponent, and the third to be selected by
65 these two, to determine whether or not thirty percent of the
66 freeholders have in fact protested and said committee shall
67 report its findings to any such governing body.

**§8-16-12. Interest rate and life of bonds; redemption; how payable;
form, denominations, etc.; additional bonds autho-
rized; interim certificates.**

1 Such revenue bonds shall bear interest at not more than
2 twelve percent per annum, payable semiannually, or at
3 shorter intervals, and shall mature at such time or times, not
4 exceeding forty years, as may be determined by the
5 ordinance or ordinances authorizing the issuance of such
6 bonds. Such bonds may be made redeemable before
7 maturity, at the option of the municipality or municipalities
8 issuing the same, to be exercised by said board, at not more
9 than the par value thereof, and at a premium of not more than
10 five percent, under such terms and conditions as may be
11 fixed by the ordinance or ordinances authorizing the issuance
12 of the bonds. The principal and interest of the bonds may be
13 made payable in any lawful medium. Such ordinance or
14 ordinances shall determine the form of the bonds, either
15 coupon or registered, shall set forth any registration or
16 conversion privileges, and shall fix the denomination or
17 denominations of such bonds, and the place or places of the
18 payment of the principal and interest thereof, which may be
19 at any banking institution or trust company within or without
20 the state. When two or more municipalities take joint action
21 under the provisions of this article, the bonds shall be issued
22 by the participating municipalities either as separate or joint
23 bonds, as the governing bodies thereof may agree, and when
24 separate bonds are issued, the amount of the bonds to be
25 issued by each participating municipality shall be fixed by

26 agreement of the governing bodies of the participating
27 municipalities set forth in the ordinance of each participating
28 municipality authorizing the issuance of such bonds. The
29 bonds shall contain a statement on their face that the
30 municipality or municipalities issuing the same shall not be
31 obligated to pay the same, or the interest thereon, except
32 from the special fund derived from the net revenue of the
33 works, or the pro rata part thereof, as provided for in section
34 eleven hereof. All such bonds shall be, and shall have and are
35 hereby declared to have all the qualities and incidents of
36 negotiable instruments, under the Uniform Commercial Code
37 of this state. The bonds shall be executed in such manner as
38 the governing body or bodies may direct. The bonds shall be
39 sold by the governing body or bodies in such manner as may
40 be determined to be for the best interest of the municipality
41 or municipalities: *Provided*, That said bonds shall not be
42 negotiated at a price lower than a price which when
43 computed to maturity upon standard tables of bond values
44 will show a net return of more than thirteen percent per
45 annum to the purchaser upon the amount paid therefor. Any
46 surplus of the bond proceeds over and above the cost of the
47 project shall be paid into the sinking fund hereinafter
48 provided for. If the proceeds of the bonds, by error of
49 calculation or otherwise, shall be less than the cost of the
50 project, additional bonds may in like manner be issued to
51 provide the amount of such deficit, and, unless otherwise
52 provided in the ordinance or ordinances authorizing the
53 issuance of the bonds first issued, or in the trust indenture
54 hereinafter authorized, shall be deemed to be of same issue,
55 and shall be entitled to payment without preference or
56 priority of the bonds first issued; and if any preference or
57 priority of the bonds first issued is provided for in the ordi-
58 nance or ordinances authorizing the issuance of the bonds
59 first issued or in said trust indenture, such preference or prior-
60 ity shall not extend to an amount exceeding ten percent of the
61 original issue. Prior to the preparation of the definitive bonds,
62 interim certificates may, under like restrictions, be issued,
63 exchangeable for definitive bonds upon the issuance of the
64 latter.

**ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS
AND SEWERS; SEWER CONNECTIONS AND BOARD
OF HEALTH.**

§8-18-14. Issuance of bonds.

1 Every municipality is hereby empowered and authorized to
2 issue its bonds for any improvements under the provisions of
3 this article in anticipation of special assessments to be made
4 upon the property abutting upon the streets, alleys, public
5 ways or easements, or sewer rights-of-way or easements, so
6 improved, and such bonds may be in such an amount as will
7 be sufficient to pay the entire estimated cost and expense of
8 such improvements for which such special assessments are
9 levied. Such municipality is also authorized to sell such
10 bonds, but the price for which they are sold shall not be below
11 the par value of such bonds. Such bonds shall be payable in
12 not to exceed ten years from the date of the issuance thereof,
13 and shall bear interest at not to exceed twelve percent per
14 annum, payable at such times, as shall be determined by the
15 governing body of the municipality; and in the issuance and
16 sale of such bonds, the municipality shall be governed by all
17 the restrictions and limitations of the constitution of this
18 state, and by the restrictions and limitations of the statutes of
19 this state with respect to the issuance and sale of other bonds,
20 so far as they are not in conflict with the provisions of this
21 article; and the assessments shall be collected as provided in
22 sections ten and twelve of this article, and as paid and
23 collected shall be applied to the liquidation of such bonds and
24 the interest thereon; and if by reason of penalties collected
25 with delinquent assessments there be any balance after the
26 payment of such bonds and all accrued interest and costs, such
27 balance shall be turned into the municipal treasury to the
28 credit of the interest and sinking fund of the municipality:
29 *Provided*, That no such municipality shall by sale or issuance
30 of such bonds cause the aggregate of its indebtedness of
31 every kind whatsoever to exceed five percent of the value of
32 taxable property therein: *Provided, however*, That nothing
33 herein contained shall be construed as authorizing any such
34 municipality to become indebted in any other manner or for
35 any purpose, to an amount, including its existing in-
36 debtedness, in the aggregate exceeding two and one-half

37 percent of the value of the taxable property therein, as
38 provided in section three, article one, chapter thirteen of this
39 code, except for the purpose of grading, regrading, paving,
40 repaving, surfacing, resurfacing, curbing, recurbing, building
41 or renewing sidewalks, or constructing sewers or otherwise
42 improving or reimproving the streets, alleys, public ways or
43 easements, or sewer rights-of-way or easements, of such
44 municipality, as provided for in this article; nor shall such
45 municipality make such issuance and sale without at the
46 same time providing for the collection of a direct annual tax
47 sufficient to pay annually the interest on such debt and the
48 principal thereof within and not exceeding ten years. All of
49 the assessments, interest and penalties collected from the
50 abutting property owners on account of the grading,
51 regrading, paving, repaving, surfacing, resurfacing, curbing,
52 recurbing, building or renewing sidewalks, or constructing
53 sewers or otherwise improving or reimproving the streets,
54 alleys, public ways or easements, or sewer rights-of-way or
55 easements, of any such municipality, under the provisions of
56 this article, shall annually be applied to the annual tax
57 required to pay the interest on such debt and such principal
58 within and not exceeding ten years; and in the event that the
59 assessments, interest and penalties so collected do not
60 amount to a sum sufficient to pay annually the interest on
61 such debt and the principal thereof within and not exceeding
62 ten years, then the governing body of such municipality shall
63 collect so much of such levy as will pay annually the interest
64 on such debt and the principal thereof within and not exceed-
65 ing ten years.

ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

- §8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.
- §8-19-5. Publication of abstract of ordinance and notice; hearing.
- §8-19-6. Amount, negotiability and execution of bonds.
- §8-19-17. Grants, loans and advances.

§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

1 Whenever a municipality shall, under the provisions of

2 this article, determine to acquire, by purchase or otherwise,
3 construct, establish, extend or equip a waterworks system, or
4 to construct any additions, betterments or improvements to
5 any waterworks or electric power system, it shall cause an
6 estimate to be made of the cost thereof, and shall, by
7 ordinance, provide for the issuance of revenue bonds under
8 the provisions of this article, which ordinance shall set
9 forth a brief description of the contemplated undertaking, the
10 estimated cost thereof, the amount, rate or rates of interest,
11 the time and place of payment, and other details in con-
12 nexion with the issuance of the bonds. Such bonds shall
13 be in such form and shall be negotiated and sold in such
14 manner and upon such terms as the governing body of such
15 municipality may by ordinance specify. All such bonds and
16 the interest thereon, and all properties and revenues and
17 income derived from such waterworks or electric power
18 system, shall be exempt from all taxation by this state, or any
19 county, municipality, political subdivision or agency thereof.
20 Such bonds shall bear interest at not more than twelve
21 percent per annum, payable at such times, and shall be
22 payable as to principal at such times, not exceeding forty
23 years from their date, and at such place or places, within or
24 without the state, as shall be prescribed in the ordinance
25 providing for their issuance. Such ordinance shall also
26 declare that a statutory mortgage lien shall exist upon the
27 property so to be acquired, constructed, established, extended
28 or equipped, fix minimum rates or charges for water to be
29 collected prior to the payment of all of said bonds and shall
30 pledge the revenues derived from the waterworks or electric
31 power system for the purpose of paying such bonds and
32 interest thereon, which pledge shall definitely fix and de-
33 termine the amount of revenues which shall be necessary to
34 be set apart and applied to the payment of the principal of and
35 interest upon the bonds and the proportion of the balance of
36 such revenues, which are to be set aside as a proper and
37 adequate depreciation account, and the remainder shall be
38 set aside for the reasonable and proper maintenance and
39 operation thereof. The rates or charges to be charged for the
40 services from such waterworks or electric power system shall
41 be sufficient at all times to provide for the payment of interest

42 upon all bonds and to create a sinking fund to pay the
43 principal thereof as and when the same become due, and
44 reasonable reserves therefor, and to provide for the repair,
45 maintenance and operation of the waterworks or electric
46 power system, and to provide an adequate depreciation fund,
47 and to make any other payments which shall be required or
48 provided for in the ordinance authorizing the issuance of said
49 bonds.

§8-19-5. Publication of abstract of ordinance and notice; hearing.

1 After the ordinance for any project under this article has
2 been adopted, an abstract of the ordinance, determined by
3 the governing body to contain sufficient information as to
4 give notice of the contents of such ordinance, together with
5 the following described notice, shall be published as a Class
6 II legal advertisement in compliance with the provisions of
7 article three, chapter fifty-nine of this code, and the
8 publication area for such publication shall be such munic-
9 ipality. The notice to be published with said abstract of
10 the ordinance shall state that said ordinance has been
11 adopted, that the municipality contemplates the issuance of
12 the bonds described in the ordinance, that any person
13 interested may appear before the governing body, upon a
14 certain date, which shall be not less than ten days subsequent
15 to the date of the first publication of such abstract and notice
16 and which shall not be prior to the date of the last publication
17 of such abstract and notice, and present protests, and that a
18 certified copy of the ordinance is on file with the governing
19 body for review by interested parties during the office hours
20 of the governing body. At such hearing all protests and
21 suggestions shall be heard and the governing body shall take
22 such action as it shall deem proper in the premises: *Provided,*
23 That if at such hearing written protest is filed by thirty
24 percent or more of the freeholders of the municipality, then
25 the governing body of said municipality shall not take further
26 action unless four fifths of the qualified members of said
27 governing body assent thereto.

§8-19-6. Amount, negotiability and execution of bonds.

1 Bonds herein provided for shall be issued in such amounts

2 as may be necessary to provide sufficient funds to pay all
3 costs of acquisition, construction, establishment, extension
4 or equipment, including engineering, legal and other
5 expenses, together with interest to a date six months
6 subsequent to the estimated date of completion. Bonds
7 issued under the provisions of this article are hereby declared
8 to be negotiable instruments, and the same shall be executed
9 by the proper legally constituted authorities of the munic-
10 ipality, and be sealed with the corporate seal of the munic-
11 ipality, and in case any of the officers whose signatures
12 appear on the bonds or coupons shall cease to be such officers
13 before delivery of such bonds, such signatures shall
14 nevertheless be valid and sufficient for all purposes the same
15 as if they had remained in office until such delivery. All
16 signatures on the bonds or coupons and the corporate seal
17 may be mechanically reproduced if authorized in the
18 ordinance authorizing the issuance of the bonds. Said bonds
19 shall not be negotiated at a price lower than a price which
20 when computed to maturity upon standard tables of bond
21 values will show a net return of more than thirteen percent
22 per annum to the purchaser upon the amount paid therefor.

§8-19-17. Grants, loans and advances.

1 Any municipality is hereby empowered and authorized to
2 accept loans or grants and procure loans or temporary
3 advances evidenced by notes or other negotiable instruments
4 issued in the manner, and subject to the privileges and
5 limitations, set forth with respect to bonds authorized to be
6 issued under the provisions of this article, for the purpose of
7 paying part or all of the cost of acquisition, construction,
8 establishment, extension or equipment of waterworks sys-
9 tems and the construction of additions, betterments and
10 improvements to existing waterworks systems or to existing
11 electric power systems, and for the other purposes herein
12 authorized, from any authorized agency of the state or from
13 the United States of America or any federal or public agency
14 or department of the United States or any private agency,
15 corporation or individual, which loans or temporary ad-
16 vances, including the interest thereon, may be repaid out
17 of the proceeds of bonds authorized to be issued under the

18 provisions of this article, the revenues of the said waterworks
19 system or electric power system or grants to the municipality
20 from any agency of the state or from the United States of
21 America or any federal or public agency or department of the
22 United States or any private agency, corporation or in-
23 dividual or from any combination of such sources of
24 payment, and to enter into the necessary contracts and
25 agreements to carry out the purposes hereof with any agency
26 of the state, the United States of America or any federal or
27 public agency or department of the United States, or with any
28 private agency, corporation or individual.

29 In no event shall any such loan or temporary advance be a
30 general obligation of the municipality and such loans or
31 temporary advances, including the interest thereon, shall be
32 paid solely from the sources specified in this section.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

§8-20-4. Publication of abstract of ordinance and notice; hearing.

§8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.

§8-20-16. Grants, loans and advances.

§8-20-4. Publication of abstract of ordinance and notice; hearing.

1 After the ordinance for any project under the provisions of
2 this article has been adopted, an abstract of the ordinance,
3 determined by the governing body to contain sufficient
4 information as to give notice of the contents of such
5 ordinance, together with the following described notice, shall
6 be published as a Class II legal advertisement in compliance
7 with the provisions of article three, chapter fifty-nine of this
8 code, and the publication area for such publication shall be
9 such municipality. The notice to be published with said
10 abstract of the ordinance shall state that said ordinance has
11 been adopted, that the municipality contemplates the
12 issuance of the bonds described in the ordinance, that any
13 person interested may appear before the governing body
14 upon a certain date, which shall not be less than ten days
15 subsequent to the date of the first publication of such abstract
16 and notice and which shall not be prior to the date of the last
17 publication of such abstract and notice, and present protests

18 and that a certified copy of the ordinance is on file with the
19 governing body for review by interested parties during the
20 office hours of the governing body. At such hearing all
21 protests and suggestions shall be heard and the governing
22 body shall take such action as it shall deem proper in the
23 premises: *Provided*, That if at such hearing written protest is
24 filed by thirty percent or more of the freeholders of the
25 municipality, then the governing body of said municipality
26 shall not take further action unless four fifths of the qualified
27 members of said governing body assent thereto.

**§8-20-5. Amount, negotiability and execution of bonds; refund of
outstanding obligations or securities by sale or exchange
of bonds.**

1 For the purpose of defraying the cost of acquisition,
2 construction, establishment or equipment of any such water-
3 works or sewerage system, or a combined waterworks
4 and sewerage system, and for the purpose of paying the cost
5 of constructing any extensions, additions, betterments or
6 improvements to either the waterworks or sewerage system
7 of said combined waterworks and sewerage system, or both,
8 any such municipality may issue revenue bonds under the
9 provisions of this article. All such bonds may be authorized,
10 issued and sold pursuant to ordinance in installments at
11 different times or an entire issue or series may be sold at one
12 time. Such bonds shall bear interest at a rate not to exceed
13 twelve percent per annum, payable at such times, and shall
14 mature within the period of usefulness of the project
15 involved, to be determined by the governing body and in any
16 event within a period of not more than forty years. Such
17 bonds may be in such denomination or denominations, may
18 be in such form, either coupon or registered, may carry such
19 registration and conversion privileges, may be executed in
20 such manner, may be payable in such medium of payment, at
21 such place or places, may be subject to such terms of
22 redemption, with or without a premium, may be declared to
23 become due before the maturity date thereof, may provide for
24 the replacement of mutilated, destroyed, stolen or lost bonds,
25 may be authenticated in such manner and upon compliance
26 with such conditions, and may contain such other terms and

27 covenants, as may be provided by ordinance of the governing
28 body of the municipality. Notwithstanding the form or tenor
29 thereof, and in the absence of an express recital on the face
30 thereof that the bond is nonnegotiable, all such bonds shall at
31 all times be, and shall be treated as, negotiable instruments
32 for all purposes. Said bonds and the interest thereon, together
33 with all properties and facilities of said municipality owned
34 or used in connection with said combined waterworks or
35 sewerage system, and all the moneys, revenues and other
36 income of such municipality derived from such combined
37 waterworks and sewerage system shall be exempt from all
38 taxation by this state or any county, municipality, political
39 subdivision or agency thereof. Such bonds may be sold in
40 such manner as the governing body shall determine. If any
41 such bonds shall be issued to bear interest at a rate of twelve
42 percent per annum, the price at which they may be sold
43 shall be such that the interest cost of such municipality of the
44 proceeds of such bonds shall not exceed thirteen percent per
45 annum computed to maturity according to the standard table
46 of bond values. If the governing body of the municipality
47 determines to sell any revenue bonds of such combined
48 waterworks and sewerage system for refunding purposes, the
49 proceeds of such bonds shall be deposited at the place of
50 payment of the bonds, obligations or securities being
51 refunded thereby. In case any officer whose signature
52 appears on such bonds or coupons attached thereto shall
53 cease to be such officer before the delivery of the bonds to the
54 purchaser, such signature shall nevertheless be valid and
55 sufficient for all purposes, with the same effect as if he had
56 remained in office until the delivery of the bonds. All
57 signatures on the bonds or coupons and the corporate seal
58 may be mechanically reproduced if authorized in the or-
59 dinance authorizing the issuance of the bonds. Such bonds
60 shall have all the qualities of negotiable instruments under
61 the laws of this state.

62 Whenever a waterworks and sewerage system is included in
63 a combined waterworks and sewerage system under the
64 provisions of this article and there are unpaid and out-
65 standing revenue bonds or any other obligations or
66 securities previously issued which are payable solely from

67 the revenues of such waterworks or such sewerage system or
68 any part thereof, such outstanding bonds, obligations or
69 securities may be refunded by the issuance and sale or
70 exchange therefor of revenue bonds to be issued under the
71 provisions of this article. Whenever any outstanding bonds,
72 obligations or securities previously issued which are payable
73 solely from the revenues of any waterworks or sewerage
74 system included in a combined waterworks and sewerage
75 system under the provisions of this article are refunded and
76 the refunding is to be accomplished by exchange, such
77 outstanding bonds, obligations or securities shall be sur-
78 rendered and exchanged for revenue bonds of such com-
79 bined waterworks and sewerage system of a total prin-
80 cipal amount which shall not be more and may be less
81 than the principal amount of the bonds, obligations or
82 securities surrendered and exchanged plus the interest to
83 accrue thereon to the date of surrender and exchange, and if
84 the refunding is to be accomplished through the sale of
85 revenue bonds of such combined waterworks and sewerage
86 system the total principal amount of such revenue bonds
87 which may be sold for refunding purposes shall not exceed
88 the principal amount of the bonds, obligations or securities
89 being refunded plus the interest to accrue thereon to the
90 retirement date or the next succeeding interest payment date,
91 whichever date may be earlier. Provision may be made that
92 each bond to be exchanged for refunding bonds shall be kept
93 intact and shall not be canceled or destroyed until the
94 refunding bonds, and interest thereon, have been finally paid
95 and discharged; but each such bond shall be stamped with a
96 legend to the effect that the same has been refunded pursuant
97 to the provisions of this article.

§8-20-16. Grants, loans and advances.

1 Any municipality is hereby empowered and authorized to
2 accept loans or grants and procure loans or temporary
3 advances evidenced by notes or other negotiable instruments
4 issued in the manner, and subject to the privileges and
5 limitations, set forth with respect to bonds authorized to be
6 issued under the provisions of this article, for the purpose of
7 paying part or all of the cost of acquisition, construction,

8 establishment, extension or equipment of combined
9 waterworks and sewerage systems and the construction of
10 additions, betterments and improvements thereto, and for the
11 other purposes herein authorized, from any authorized
12 agency of the state or from the United States of America or
13 any federal or public agency or department of the United
14 States or any private agency, corporation or individual, which
15 loans or temporary advances, including the interest thereon,
16 may be repaid out of the proceeds of bonds authorized to be
17 issued under the provisions of this article, the revenues of the
18 said combined waterworks and sewerage system or grants to
19 the municipality from any agency of the state or from the
20 United States of America or any federal or public agency or
21 department of the United States or any private agency,
22 corporation or individual or from any combination of such
23 sources of payment, and to enter into the necessary contracts
24 and agreements to carry out the purposes hereof with any
25 agency of the state, the United States of America or any
26 federal or public agency or department of the United States,
27 or with any private agency, corporation or individual.

28 In no event shall any such loan or temporary advance be a
29 general obligation of the municipality and such loans or
30 temporary advances, including the interest thereon, shall be
31 paid solely from the sources specified in this section.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

Article

- 1. Bond Issues for Original Indebtedness.**
- 2D. Airport Development Bond Act.**
- 2E. Revenue Bond Refunding Act.**

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

- §13-1-14. Resolution authorizing issuance and fixing terms of bonds.
§13-1-21. Advertisement and sale of bonds; purchase by state governmental agency.

§13-1-14. Resolution authorizing issuance and fixing terms of bonds.

- 1 If three fifths of all the votes cast for and against the
- 2 proposition to incur debt and issue negotiable bonds shall be
- 3 in favor of the same, the governing body of the political

4 division shall, by resolution, authorize the issuance of such
5 bonds in an amount not exceeding the amount stated in the
6 proposition; fix the date thereof; set forth the denomi-
7 nations in which they shall be issued, which denomi-
8 nations shall be one hundred dollars or multiples there-
9 of; determine the rate or rates of interest which the
10 bonds shall bear, which rate or rates of interest shall be within
11 the maximum rate stated in the proposition submitted to vote
12 and payable semiannually, prescribe the medium with which
13 the bonds shall be payable; require that the bonds shall be
14 made payable at the office of the state treasurer and at such
15 other place or places as the body issuing the same may desig-
16 nate; provide for a sufficient levy to pay the annual inter-
17 est on the bonds and the principal maturity; fix the times
18 within the maximum period, as contained in the proposition
19 submitted to vote, when the bonds shall become payable,
20 which shall not exceed thirty-four years from the date
21 thereof; and prescribe a form for executing the bonds autho-
22 rized.

**§13-1-21. Advertisement and sale of bonds; purchase by state
governmental agency.**

1 The governing body of the political division issuing such
2 bonds shall sell the same and collect the proceeds, which
3 proceeds shall be deposited with its treasurer. Whenever any
4 bonds are to be sold, the body authorized to sell the same
5 shall, before offering them to the public, offer them in writ-
6 ing to the secretary of state for purchase by any of the
7 governmental agencies of the state authorized by law to
8 purchase such bonds, which offer shall be held to be an
9 offer to sell the bonds at their par value to the West Vir-
10 ginia municipal bond commission and to any other of the
11 governmental agencies of the state authorized by law to
12 purchase such bonds. If, after such offer is made, the
13 governing body of the political division making the offer shall
14 be notified in writing that none of such agencies of the state
15 has elected to purchase such bonds, or after ten days have
16 elapsed after such offer of sale has been made without an
17 acceptance by any of such agencies of the state, then the
18 governing body of the political division shall advertise such

19 bonds for sale, on sealed bids, which advertisement shall be
20 published as a Class II legal advertisement in compliance
21 with the provisions of article three, chapter fifty-nine of this
22 code, and the publication area for such publication shall be
23 the political division. The first publication shall be made at
24 least fourteen days before the date fixed for the reception of
25 bids. Such advertisement shall also be published in a
26 financial paper published either in the city of New York or
27 the city of Chicago, or in a newspaper published in a city of
28 this state having a population of not less than twenty
29 thousand inhabitants, according to the last federal census.
30 The governing body may reject any and all bids. If the bonds
31 be not sold pursuant to such advertisement, they may within
32 one hundred twenty days after the date advertised for the
33 reception of bids, be sold by the governing body at private
34 sale, but no private sale shall be made at a price less than the
35 highest bid which shall have been received. If not sold, such
36 bonds shall be readvertised in the manner herein provided. In
37 no event shall bonds be sold for less than their par value.

ARTICLE 2D. AIRPORT DEVELOPMENT BOND ACT.

§13-2D-5. Bonds issued to finance airport.

1 All bonds issued by a county commission under the
2 authority of this article shall be limited obligations of the
3 county, the principal of and interest on which shall be
4 payable out of the revenues derived from the operation of the
5 airport for which the bonds are issued or any other revenue
6 derived from such airport, less operating and maintenance
7 costs and expenses. The bonds and interest coupons issued
8 under the authority of this article shall never constitute
9 evidence of indebtedness of the county issuing the same
10 within the meaning of any constitutional provision or
11 statutory limitation and shall never constitute or give rise to a
12 pecuniary liability of the county issuing the same. Neither
13 shall such bonds and interest thereon be a charge against the
14 general credit or taxing powers of the county and such fact
15 shall be plainly stated on the face of each such bond. Such
16 bonds may be executed, issued and delivered at any time, and
17 from time to time, may be in such form and denomination,
18 may be of such tenor, must be negotiable but may be

19 registered as to the principal thereof, may be payable in such
20 amounts and at such time or times, may be payable at such
21 place or places, may bear interest at such rate or rates not to
22 exceed twelve percent per annum, payable at such place or
23 places and evidenced in such manner, and may contain such
24 provisions therein not inconsistent herewith, all as shall be
25 provided in the proceedings of the county commission
26 whereunder the bonds shall be authorized to be issued. Said
27 bonds may be sold by the county commission at public or
28 private sale, and such sale shall be made at a price not lower
29 than a price which, computed upon standard tables of bond
30 values, will have a net return of not more than thirteen
31 percent per annum to the purchaser upon the amount paid
32 therefor. The said bonds may also be issued and delivered to
33 the owners of an airport or private facility for the landing
34 and taking off of airplanes with appurtenant facilities and
35 conveniences in exchange therefor and in payment of the
36 purchase price thereof.

37 The bonds issued pursuant to this article by a county
38 commission shall be signed by the president of the county
39 commission and attested by the clerk of the county
40 commission under the seal of the commission. The coupons
41 attached thereto shall bear the facsimile signature of the
42 president of the county commission. In case any of the
43 officials whose signatures appear on the bonds or coupons
44 shall cease to be such officers before the delivery of such
45 bonds, such signatures shall, nevertheless, be valid and
46 sufficient for all purposes to the same extent as if they had
47 remained in office until such delivery.

48 If the proceeds of such bonds, by error of calculation or
49 otherwise, shall be less than the cost of the airport, additional
50 bonds may in like manner be issued to provide the amount of
51 deficiency, and unless otherwise provided for in the trust
52 agreement, mortgage, or deed of trust, shall be deemed to be
53 of the same issue, and shall be entitled to payment from the
54 same fund, without preference or priority, and shall be of
55 equal priority as to any security.

ARTICLE 2E. REVENUE BOND REFUNDING ACT.

§13-2E-3. Authority to refund.

§13-2E-4. Terms, form and execution of refunding bonds.

§13-2E-3. Authority to refund.

1 Any public body may issue refunding bonds for the
2 purpose of refunding all or any part of its revenue bonds now
3 or hereafter outstanding, whether or not such revenue bonds
4 are at the time of the refunding due or optional for
5 redemption, under the circumstances and restrictions set
6 forth in this article. Refunding bonds shall be payable from
7 revenues derived from the same enterprise as the revenue
8 bonds to be refunded except where the public body has
9 outstanding revenue bonds payable from the revenues of an
10 enterprise and is authorized under any other law to combine
11 and consolidate such enterprise with another enterprise and
12 issue revenue bonds payable from the revenues of the
13 combined and consolidated enterprises. An issue of re-
14 funding bonds may refund part or all of one or more issues
15 of outstanding revenue bonds: *Provided*, That part or all of
16 two or more issues of outstanding revenue bonds may not be
17 refunded under this article unless either (a) all of the issues of
18 outstanding revenue bonds to be refunded are payable from
19 revenues derived from the same enterprise, or (b) the public
20 body is authorized under any other law to combine or
21 consolidate the enterprises in question and issue revenue
22 bonds payable from the revenues of the combined or
23 consolidated enterprises.

24 Refunding bonds may be issued hereunder whenever the
25 governing body of the public body deems it expedient and,
26 notwithstanding any provision in this article to the contrary,
27 may be issued as part of a series of revenue bonds issued for
28 the purpose, in addition to such refunding, of financing the
29 acquisition or construction of improvements, betterments,
30 extensions or replacements to the particular enterprise, as
31 provided by other articles of this code.

§13-2E-4. Terms, form and execution of refunding bonds.

1 Refunding bonds authorized under this article may be
2 issued in one or more series; may bear such date or dates:

3 may mature at such time or times, not exceeding the period of
 4 usefulness of the enterprise, as determined by the governing
 5 body in its discretion, not exceeding forty years from their
 6 respective dates; may bear interest at such rate or rates; may
 7 be in such denomination or denominations; may be in such
 8 form either coupon or registered; may carry such registration
 9 and conversion privileges; may be executed in such manner;
 10 may be payable in such medium of payment, at such place or
 11 places; may be subject to such terms of redemption, with or
 12 without a premium; may be declared or become due before
 13 the maturity date; may provide for the replacement of
 14 mutilated, destroyed, stolen or lost bonds; may be authen-
 15 ticated in such manner and upon compliance with such
 16 conditions; and may contain such other terms and cove-
 17 nants, as may be determined by the governing body in
 18 the proceedings authorizing the refunding bonds. Not-
 19 withstanding the form or tenor thereof, and in the ab-
 20 sence of an express recital on the face thereof that the
 21 bond is nonnegotiable, all refunding bonds shall at all times be,
 22 and shall be treated as, negotiable instruments for all purposes.

CHAPTER 16. PUBLIC HEALTH.

Article

13. Sewerage Works of Municipal Corporations and Sanitary Districts.

13A. Public Service Districts for Water, Sewerage and Gas Services.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-6. Publication and hearing upon ordinance.

§16-13-10. Interest on and redemption of bonds; form; statement on face of bond; negotiability; exemption from taxation; registration; execution; sale; disposition of surplus proceeds; additional and temporary bonds.

§16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.

§16-13-22a. Grants, loans and advances.

§16-13-6. Publication and hearing upon ordinance.

1 After such ordinance shall have been adopted, an abstract
 2 of the ordinance, determined by the governing body to
 3 contain sufficient information as to give notice of the
 4 contents of such ordinance, together with the following

5 described notice, shall be published as a Class II legal
6 advertisement in compliance with the provisions of article
7 three, chapter fifty-nine of this code, and the publication area
8 for such publication shall be the municipality. The notice
9 shall state that said ordinance has been adopted, and that the
10 municipality contemplates the issuance of the bonds de-
11 scribed in the ordinance, and that any person interested may
12 appear before the governing body upon a certain date, which
13 shall not be less than ten days subsequent to the first date of
14 publication of such abstract and notice which shall not be
15 prior to the last date of publication of such abstract and
16 notice, and present protests. At such hearing all objections
17 and suggestions shall be heard and the governing body shall
18 take such action as it shall deem proper in the premises:
19 *Provided, however,* That if at such a hearing written protest is
20 filed by thirty percent or more of the owners of real estate
21 situate in said municipality, then the governing body of said
22 municipality shall not take further action unless four fifths of
23 the qualified members of the said governing body assent
24 thereto.

§16-13-10. Interest on and redemption of bonds; form; statement on face of bond; negotiability; exemption from taxation; registration; execution; sale; disposition of surplus proceeds; additional and temporary bonds.

1 Such revenue bonds shall bear interest at not more than
2 twelve percent per annum, payable at such times, and shall
3 mature at such time or times as may be determined by
4 ordinance. Such bonds may be made redeemable before
5 maturity at the option of the municipality, to be exercised by
6 said board, at not more than the par value thereof and a
7 premium of five percent, under such terms and conditions as
8 may be fixed by the ordinance authorizing the issuance of the
9 bonds. The principal and interest of the bonds may be made
10 payable in any lawful medium. Said ordinance shall
11 determine the form of the bonds, either coupon or registered,
12 shall set forth any registration and conversion privileges, and
13 shall fix the denomination or denominations of such bonds
14 and the place or places of payment of the principal and
15 interest thereof, which may be at any bank or trust company

16 within or without the state. The bonds shall contain a
17 statement on their face that the municipality shall not be
18 obligated to pay the same or the interest thereon except from
19 the special fund provided from the net revenues of the works.
20 All such bonds shall be, and shall have and are hereby
21 declared to have all the qualities and incidents of, negotiable
22 instruments under the Uniform Commercial Code of the
23 state. Said bonds shall be exempt from all taxation, state,
24 county and municipal. Such bonds shall be executed by the
25 proper legally constituted authorities of the municipality, and
26 be sealed with the corporate seal of the municipality, and in
27 case any of the officers whose signatures appear on the bonds
28 or coupons shall cease to be such officers, before delivery of
29 such bonds, such signatures shall nevertheless be valid and
30 sufficient for all purposes the same as if they had remained in
31 office until such delivery. Such bonds shall be sold at a price
32 not lower than a price, which when computed upon standard
33 tables of bond values, will show a net return of not more than
34 thirteen per centum per annum to the purchaser upon the
35 amount paid therefor, and the proceeds derived therefrom
36 shall be used exclusively for the purposes for which said
37 bonds are issued and same may be sold at one time or in
38 parcels as funds are needed. Any surplus of bond proceeds
39 over and above the cost of the works shall be paid into the
40 sinking fund hereinafter provided. If the proceeds of the
41 bonds, by error of calculation or otherwise, shall be less than
42 the cost of the works, additional bonds may in like manner be
43 issued to provide the amount of such deficit and, unless
44 otherwise provided in said ordinance authorizing the is-
45 suance of the bonds first issued or in the trust indenture
46 hereinafter authorized, shall be deemed to be of the same
47 issue and shall be entitled to payment without preference or
48 priority of the bonds first issued. Prior to the preparation of
49 the definitive bonds, temporary bonds may under like re-
50 strictions be issued with or without coupons, exchangeable for
51 definitive bonds upon the issuance of the latter.

**§16-13-19. Contract with other municipalities for service of works;
powers of lessee as to rates; intercepting sewers.**

1 Any municipality operating a sewage collecting system

2 and/or a sewage disposal plant or plants as defined in this
3 article, or which as herein provided has ordered the
4 construction or acquisition of such works (in this section
5 called the owner), is hereby authorized to contract with one or
6 more other municipal corporations or political subdivisions
7 within the state (in this section called the lessee), and such
8 lessees are hereby authorized to enter into such contracts
9 with such owners, for the service of such works to such
10 lessees and their inhabitants, but only to the extent of the
11 capacity of the works without impairing the usefulness
12 thereof to the owners, upon such terms and conditions as may
13 be fixed by the boards and approved by ordinances of the
14 respective contracting parties: *Provided*, That no such
15 contract shall be made for a period of more than forty
16 years or in violation of the provisions of said ordinance
17 authorizing bonds hereunder or in violation of the provisions
18 of said trust indenture. The lessee shall by ordinance have
19 power to establish, change and adjust rates and charges for
20 the service rendered therein by the works against the owners
21 of the premises served, in the manner hereinbefore provided
22 for establishing, changing and adjusting rates and charges for
23 the service rendered in the municipality where the works are
24 owned and operated, and such rates or charges shall be
25 collectible and shall be a lien as herein provided for rates and
26 charges made by the owner. The necessary intercepting
27 sewers and appurtenant works for connecting the works of
28 the owner with the sewerage system of the lessee shall be
29 constructed by the owner and/or the lessee upon such terms
30 and conditions as may be set forth in said contract, and the
31 cost or that part of the cost thereof which is to be borne by the
32 owner may be paid as a part of the cost of the works from the
33 proceeds of bonds issued under this article unless otherwise
34 provided by said ordinance or trust indenture prior to the
35 issuance of the bonds. The income received by the owner
36 under any such contract shall, if so provided in said
37 ordinance or trust indenture, be deemed to be a part of the
38 revenues of the works as in this article defined and be applied
39 as herein provided for the application of such revenues.

§16-13-22a. Grants, loans and advances.

1 Any municipality is authorized and empowered to accept

2 loans or grants and procure loans or temporary advances
3 evidenced by notes or other negotiable instruments issued in
4 the manner, and subject to the privileges and limitations, set
5 forth with respect to bonds authorized to be issued under the
6 provisions of this article, for the purpose of paying part or all
7 of the cost of acquisition or construction of said sewage
8 works and the construction of betterments and improve-
9 ments thereto, and for the other purposes herein autho-
10 rized, from any authorized agency of the state or from
11 the United States of America or any federal or public agency
12 or department of the United States or any private agency,
13 corporation or individual, which loans or temporary ad-
14 vances, including the interest thereon, may be repaid out of
15 the proceeds of bonds authorized to be issued under the
16 provisions of this article, the revenues of the said sewage
17 works or grants to the municipality from any agency of the
18 state or from the United States of America or any federal or
19 public agency or department of the United States or any
20 private agency, corporation or individual or from any
21 combination of such sources of payment, and to enter into the
22 necessary contracts and agreements to carry out the purposes
23 hereof with any agency of the state, the United States of
24 America or any federal or public agency or department of the
25 United States, or with any private agency, corporation or
26 individual.

27 In no event shall any such loan or temporary advance be
28 a general obligation of the municipality and such loans or
29 temporary advances, including the interest thereon, shall be
30 paid solely from the sources specified in this section.

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWER-
AGE AND GAS SERVICES.**

§16-13A-13. Revenue bonds.

1 For constructing or acquiring any public service properties
2 for the authorized purposes of the district, or necessary or
3 incidental thereto, and for constructing improvements and
4 extensions thereto, and also for reimbursing or paying the
5 costs and expenses of creating the district, the board of any
6 such district is hereby authorized to borrow money from time
7 to time and in evidence thereof issue the bonds of such

8 district, payable solely from the revenues derived from the
9 operation of the public service properties under control of the
10 district. Such bonds may be issued in one or more series, may
11 bear such date or dates, may mature at such time or times not
12 exceeding forty years from their respective dates, may bear
13 interest at such rate or rates not exceeding twelve percent per
14 annum, payable at such times, may be in such form, may
15 carry such registration privileges, may be executed in such
16 manner, may be payable at such place or places, may be
17 subject to such terms of redemption with or without
18 premium, may be declared or become due before maturity
19 date thereof, may be authenticated in any manner, and upon
20 compliance with such conditions, and may contain such
21 terms and covenants as may be provided by resolution or
22 resolutions of the board. Notwithstanding the form or tenor
23 thereof, and in the absence of any express recital on the face
24 thereof, that the bond is nonnegotiable, all such bonds shall
25 be, and shall be treated as, negotiable instruments for all
26 purposes. Bonds bearing the signatures of officers in office on
27 the date of the signing thereof shall be valid and binding for
28 all purposes notwithstanding that before the delivery thereof
29 any or all of the persons whose signatures appear thereon
30 shall have ceased to be such officers. Notwithstanding the
31 requirements or provisions of any other law, any such bonds
32 may be negotiated or sold in such manner and at such time or
33 times as is found by the board to be most advantageous, and
34 all such bonds may be sold at such price that the interest cost
35 of the proceeds therefrom does not exceed thirteen percent
36 per annum, based on the average maturity of such bonds and
37 computed according to standard tables of bond values. Any
38 resolution or resolutions providing for the issuance of such
39 bonds may contain such covenants and restrictions upon
40 the issuance of additional bonds thereafter as may be deemed
41 necessary or advisable for the assurance of the payment of the
42 bonds thereby authorized.

CHAPTER 18. EDUCATION.

Article

11. West Virginia University.
24. Fees and Other Money Collected at State Institutions of Higher Education.

ARTICLE 11. WEST VIRGINIA UNIVERSITY.**§18-11-25. Acquisition, construction, financing and regulation of parking facilities; penalties.**

1 The board of regents is hereby authorized to construct,
2 maintain and operate automobile parking facilities on the
3 campus or other areas under its jurisdiction for use by
4 students, faculty, staff and visitors. Such facilities shall be
5 open to use on such terms and subject to such reasonable
6 rules and regulations as may be prescribed by the board,
7 which rules and regulations shall have the force and effect of
8 law. A summary of the rules and regulations pertaining to
9 parking and the penalties which may be imposed for any
10 violation thereof shall be posted conspicuously in each park-
11 ing area.

12 No person shall park any vehicle in violation of such rules
13 and regulations, and any person parking any vehicle contrary
14 thereto shall be subject to a fine of not less than one dollar nor
15 more than five dollars for each offense. Magistrates in
16 Monongalia County and the police court and police court
17 judge of Morgantown, West Virginia, shall have jurisdiction
18 of all such offenses.

19 In addition, the board shall have the authority, whenever
20 any vehicle is parked in a university parking facility in
21 violation of the posted rules and regulations, to remove the
22 vehicle, by towing or otherwise, to an established garage or
23 parking lot for storage until called for by the owner or his
24 agent. In such case, the owner shall be liable for the
25 reasonable cost of such removal and storage, and until
26 payment of such cost the garage or parking lot operator may
27 retain possession of the vehicle subject to a lien for the
28 amount due. The garage or parking lot operator may enforce
29 his lien for towing and storage in the manner provided in
30 section fourteen, article eleven, chapter thirty-eight of this
31 code for the enforcement of other liens.

32 The board shall have authority to charge fees for the use of
33 parking facilities under its control. All moneys collected for
34 such use shall be paid into a special fund which is hereby

35 created in the state treasury. The moneys in such fund shall
36 be used first to pay the cost of maintaining and operating
37 such facilities, but any excess not needed for this purpose
38 may be used to finance the construction of additional parking
39 facilities or the acquisition by lease or purchase of additional
40 parking areas. The board may use the moneys in such special
41 fund to finance the costs of the above purposes on a cash
42 basis, or may from time to time issue revenue bonds of the
43 state as provided in this section to finance such costs and
44 pledge all or any part of the moneys in such special funds for
45 the payment of the principal of and interest on such revenue
46 bonds, and for reserves therefor. Whenever parking facilities
47 are provided in any university building financed in whole or
48 in part by the issue of revenue bonds otherwise authorized by
49 law, the net revenue derived from the parking facilities in-
50 cluded in such building may be used or pledged to meet the
51 sinking fund requirements of the bonds issued for con-
52 struction of the buildings. The pledge of moneys in such
53 special fund for any revenue bonds shall be a prior and
54 superior charge on such special fund over the use of any of
55 the moneys in such fund to pay for the cost of any of such
56 purposes on a cash basis.

57 Such revenue bonds may be authorized and issued from
58 time to time by the board of regents to finance in whole or in
59 part the purposes provided in this section in an aggregate
60 principal amount not exceeding the amount which the board
61 shall determine can be paid as to both principal and interest
62 and reasonable margins for a reserve therefor from the
63 moneys in such special fund.

64 The issuance of such bonds shall be authorized by a
65 resolution adopted by the board, and such revenue bonds
66 shall bear such date or dates; mature at such times not
67 exceeding forty years from their respective dates; bear
68 interest at such rate or rates, not exceeding twelve per
69 centum per annum; be in such form either coupon or
70 registered, with such exchangeability and interchangeability
71 privileges; be payable in such medium of payment and at
72 such place or places, within or without the state; be subject to

73 such terms of prior redemption at such prices not exceeding
74 one hundred six per centum of the principal amount thereof;
75 and shall have such other terms and provisions as the board
76 shall determine. Such revenue bonds shall be signed by the
77 governor and by the president of the board of regents, under
78 the great seal of the state, attested by the secretary of state,
79 and the coupons, if any, attached thereto shall bear the
80 facsimile signature of the president of the board. Such
81 revenue bonds shall be sold in such manner as the board may
82 determine to be for the best interest of the state, such sale to
83 be made at a price not lower than a price which will show a
84 net return of not more than thirteen per centum per annum to
85 the purchaser upon the amount paid therefor computed to
86 the stated maturity dates of such revenue bonds without re-
87 gard to any right of prior redemption.

88 The board may enter into trust agreements with banks or
89 trust companies, within or without the state, and in such trust
90 agreements or the resolutions authorizing the issuance of
91 such bonds may enter into valid and legally binding
92 covenants with the holders of such revenue bonds as to the
93 custody, safeguarding and disposition of the proceeds of such
94 revenue bonds, the moneys in such special fund, sinking
95 funds, reserve funds, or any other moneys or funds; as to the
96 rank and priority, if any, of different issues of revenue bonds
97 under the provisions of this section; and as to any other
98 matters or provisions which are deemed necessary and
99 advisable by the board in the best interests of the state and to
100 enhance the marketability of such revenue bonds.

101 Such revenue bonds shall be and constitute negotiable
102 instruments under the law merchant and the negotiable
103 instruments law of the state; shall, together with the interest
104 thereon, be exempt from all taxation by the state of West
105 Virginia, or by any county, school district, municipality or
106 political subdivision thereof; and such revenue bonds shall
107 not be deemed to be obligations or debts of the state, and the
108 credit or taxing power of the state shall not be pledged
109 therefor, but such revenue bonds shall be payable only from
110 the revenue pledged therefor as provided in this section.

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.**§18-24-6. Disposition and use of student union fees; issuance of revenue bonds.**

1 Whenever the term "student union building" is used in this
2 section the same shall mean a student union building or a
3 combination student union building and dining hall building;
4 and wherever the term "building fund" is used in this section
5 the same shall mean the respective special student union
6 building funds created as provided in section one of this
7 article for each state educational institution which has
8 imposed student union fees pursuant to section one of this
9 article, to be expended by the West Virginia board of regents
10 for the benefit of the state educational institutions under
11 its control.

12 The West Virginia board of regents may make expenditures
13 from such building funds at the various state educational
14 institutions under its control to finance in whole or in part
15 together with any federal, state or other grants or contribu-
16 tions, any one or more of the following purposes:

17 (1) The construction and acquisition of new student union
18 buildings. (2) The acquisition, renovation and improvement
19 of existing buildings to be used as student union buildings.
20 (3) The construction of additions, extensions and im-
21 provements to existing student union buildings. (4) The
22 acquisition of furnishings and equipment for any existing
23 student union buildings or student union buildings to be
24 constructed or acquired, or the construction of any roads,
25 utilities or other properties, real or personal, or for any
26 other purposes necessary, appurtenant or incidental to the
27 construction, acquisition, financing and placing in operation
28 of such student union buildings. (5) The payment of the cost
29 of operation and maintenance of such student union
30 buildings, subject however to any covenants or agreements
31 made with the holders of revenue bonds heretofore and
32 hereafter issued pursuant to this section or pursuant to
33 section one of this article.

34 The West Virginia board of regents, at its discretion, may

35 use the moneys in such building funds to finance the costs of
36 the above purposes on a cash basis, or may from time to time
37 issue revenue bonds of the state as provided in this section to
38 finance all or part of such purposes and pledge all or any part
39 of the moneys in such building funds for the payment of the
40 principal of and interest on such revenue bonds, and for
41 reserves therefor. Any pledge of such building funds for such
42 revenue bonds shall be a prior and superior charge on such
43 special funds over the use of any of the moneys in such funds
44 to pay for the cost of any of such purposes on a cash basis, or
45 for the payment of the cost of operation and maintenance, or
46 any part thereof, of such student union buildings, under such
47 terms and conditions as shall be provided in the proceedings
48 which authorized the issuance of such revenue bonds.

49 Such revenue bonds may be authorized and issued from
50 time to time by the West Virginia board of regents to finance
51 in whole or in part the purposes at any state educational
52 institution under its control provided for in this section in an
53 aggregate principal amount not exceeding the amount which
54 the board shall determine can be paid as to both principal and
55 interest and reasonable margins for a reserve therefor from
56 the moneys in such building funds.

57 The issuance of such revenue bonds shall be authorized by
58 a resolution adopted by the West Virginia board of regents,
59 and such revenue bonds shall bear such date or dates; mature
60 at such time or times not exceeding forty years from their
61 respective dates; bear interest at such rate or rates, not
62 exceeding twelve per centum per annum; be in such form
63 either coupon or registered, with such exchangeability and
64 interchangeability privileges; be payable in such medium of
65 payment and at such place or places, within or without the
66 state; be subject to such terms of prior redemption at such
67 prices not exceeding one hundred five per centum of the
68 principal amount thereof; and shall have such other terms
69 and provisions as the board shall determine. Such revenue
70 bonds shall be signed by the governor and by the president of
71 the West Virginia board of regents, under the great seal of the
72 state, attested by the secretary of state, and the coupons
73 attached thereto shall bear the facsimile signature of the

74 president of the West Virginia board of regents. Such revenue
75 bonds shall be sold in such manner as the board may
76 determine to be for the best interest of the state.

77 The West Virginia board of regents may enter into trust
78 agreements with banks or trust companies, within or without
79 the state, and in such trust agreements or the resolutions
80 authorizing the issuance of such bonds may enter into valid
81 and legally binding covenants with the holders of such
82 revenue bonds as to the custody, safeguarding and dis-
83 position of the proceeds of such revenue bonds, the
84 moneys in such building funds, sinking funds, reserve funds, or
85 any other moneys or funds; as to the rank and priority, if
86 any, of different issues of revenue bonds issued by the board
87 for the same educational institution under the provisions of
88 this section; as to the maintenance or revision of the amounts
89 of such student union fees, and the terms and conditions, if
90 any, under which any of such student union fees may be
91 reduced; and as to any other matters or provisions which are
92 deemed necessary and advisable by the board in the best
93 interests of the state and to enhance the marketability of such
94 revenue bonds.

95 Any revenues or income derived from the operation of such
96 student union buildings may, in the discretion of the board,
97 be used to pay the cost of the operation and maintenance of
98 such student union buildings, or for the debt service on any
99 bonds issued pursuant to this section or pursuant to any
100 other law.

101 After the issuance of any of such revenue bonds, the
102 student union fees at the state educational institution for
103 which such revenue bonds were issued shall not be reduced
104 as long as any of such revenue bonds are outstanding and
105 unpaid except under such terms, provisions and conditions
106 as shall be contained in the resolution, trust agreement or
107 other proceedings under which such revenue bonds were
108 issued.

109 Such revenue bonds shall be and constitute negotiable
110 instruments under the Uniform Commercial Code of the
111 state and shall, together with the interest thereon, be exempt

112 from all taxation by the state of West Virginia, or by any
 113 county, school district, municipality or political subdivision
 114 thereof; and such revenue bonds shall not be deemed to be
 115 obligations or debts of the state, and the credit or taxing
 116 power of the state shall not be pledged therefor, but such
 117 revenue bonds shall be payable only from the student union
 118 fees pledged therefor as provided in this section.

119 The provisions of this section shall constitute an additional,
 120 alternative and complete authority for the exercise of the
 121 powers and the issuance of the bonds provided for in this
 122 section, but shall not prevent the West Virginia board of
 123 regents from exercising similar or related powers or issuing
 124 bonds therefor under any other law or laws, but the board, in
 125 exercising the powers and issuing the bonds provided for in
 126 this section, shall only be required to comply with the pro-
 127 visions of this section and shall not be required to comply
 128 with or be subject to the provisions of any other law or laws.

CHAPTER 3

(H. B. 106—By Mr. Speaker, Mr. See)

[Passed May 6, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to mileage allowance for county officials, their assistants, deputies and employees.

Be it enacted by the Legislature of West Virginia:

That section sixteen, 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.

§7-7-16. Mileage allowance for county officials and employees.

1 The county commission of each county shall allow to each

2 county official and to their deputies, assistants and employees,
3 when they are required to drive their personally owned ve-
4 hicles in the actual performance and discharge of their official
5 duties, reimbursement at a uniform rate for all individuals, not
6 to exceed the rate set by the commissioner of finance and ad-
7 ministration for state employees.

8 Every county official shall file monthly, under oath, a full
9 and accurate account of all the actual mileage driven by him,
10 his deputies, assistants and employees, in the performance
11 and discharge of their official duties supported by verified
12 accounts before reimbursement thereof shall be allowed by
13 the county commission. Reimbursement, properly allowed,
14 shall be made from the general county fund.

CHAPTER 4

(Com. Sub. for S. B. 12—By Mr. Williams)

[Passed May 14, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections ten-a and seventeen, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen, article two of said chapter fifty-one, relating to increasing the salaries of justices of the supreme court of appeals; providing for development of a system of reporting by justices and judges as to the actual amount of time including travel time spent by each justice or judge in the conduct of his official duties in court; and increasing the salaries of judges of circuit courts.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Supreme Court of Appeals.**
2. **Circuit Courts; Circuit Judges.**

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

§51-1-17. Administrative office of supreme court of appeals—Duties of director.

§51-1-10a. Salary of justices.

- 1 The salary of each of the justices of the supreme court of
- 2 appeals shall be forty-nine thousand dollars per year.

§51-1-17. Administrative office of supreme court of appeals—Duties of director.

- 1 The director shall, when authorized by the supreme court of
- 2 appeals, be the administrative officer of said court and shall
- 3 have charge, under the supervision and direction of the
- 4 supreme court of appeals, of:
 - 5 (a) All administrative matters relating to the offices of the
 - 6 clerks of the circuit and intermediary courts and of the offices
 - 7 of justice of the peace, and all other clerical and
 - 8 administrative personnel of said courts; but nothing
 - 9 contained in this act shall be construed as affecting the
 - 10 authority of the courts to appoint their administrative or
 - 11 clerical personnel;
 - 12 (b) Examining the state of the dockets of the various
 - 13 courts and securing information as to their needs for
 - 14 assistance, if any, and the preparation of statistical data and
 - 15 reports of the business transacted by the courts, including, as
 - 16 an integral part of the compensation of justices and judges,
 - 17 the development of a system of reporting by justices and
 - 18 judges as to the actual amount of time, including travel time,
 - 19 spent by each justice or judge in the conduct of his official
 - 20 duties in court;
 - 21 (c) The preparation of a proper budget to secure the
 - 22 appropriation of moneys for the maintenance, support and
 - 23 operation of the courts;
 - 24 (d) The purchase, exchange, transfer and distribution of
 - 25 equipment and supplies, as may be needful or desirable;
 - 26 (e) Such other matters as may be assigned to him by the
 - 27 supreme court of appeals. The clerks of the circuit courts,

28 intermediate courts and courts of the justices of the peace
29 shall comply with any and all requests made by the director
30 or his assistants for information and statistical data bearing
31 on the state of the dockets of such courts, or such other
32 information as may reflect the business transacted by them;

33 (f) *Annual report of activities and estimates of*
34 *expenditures.*—The director, when required to do so by the
35 supreme court of appeals, shall submit annually to the court a
36 report of the activities of the administrative office and of the
37 state of business of the courts, together with the statistical
38 data compiled by him, with his recommendations.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-13. Salaries of judges of circuit courts.

1 The salaries of the judges of the various circuit courts shall
2 be paid solely out of the state treasury. No county, county
3 commission, board of commissioners or other political
4 subdivision shall supplement or add to such salaries.

5' The annual salary of all circuit judges shall be forty-five
6 thousand dollars per year.

CHAPTER 5

(S. B. 15—Originating in the Senate Committee on Finance)

[Passed May 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to repeal section four, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section two-a, article four of said chapter eighteen-a; to amend and reenact section one, article one of said chapter eighteen-a; to amend and reenact sections five and six, article two of said chapter; to amend and reenact sections two, three, seven, eight and eight-a, article four of said chapter; to amend and reenact section four-a, article five of said chapter; to amend article nine-a, chapter eighteen by adding thereto two new sections, designated sections twenty-one and twenty-two; and to amend and

reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, thirteen and fourteen, article nine-a, chapter eighteen of said code, all relating to adding and revising definitions, increasing salaries of professional educators, to combining the present two allocations for teachers' salaries into one; providing for substitute teachers' pay; to using the combined salary schedule in the allocation of funds for the basic foundation program; to increase the salaries of service personnel and to include all eligible basic salaries of service personnel in state aid computations to a maximum of thirty-four for each one thousand pupils in adjusted enrollment; to increase the allocation factors for fixed charges and transportation; to reduce the percentage factor in the allocation for other current expense; to revise the method of allocating moneys equalling the increases in local share to one concentrating on aiding counties having the lower average expenditures per pupil; to assure for five years that increases in salaries for personnel are matched by increased state aid, and to aid counties having ratios of enrollment to service personnel which are higher than the state average; to provide for computation of local share, appraisal and assessment of property; to provide statewide facilities planning; and to require standards for educational quality and approval of county education programs.

Be it enacted by the Legislature of West Virginia:

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

Chapter**18A. School Personnel.****18. Education.****CHAPTER 18A. SCHOOL PERSONNEL.****Article**

- 1. General Provisions.**
- 2. School Personnel.**
- 4. Salaries, Wages, and Other Benefits.**
- 5. Authority; Rights; Responsibility.**

ARTICLE 1. GENERAL PROVISIONS.**§18A-1-1. Definitions.**

1 The definitions contained in section one, article one of
2 chapter eighteen shall be applicable to this chapter. In
3 addition, the following words used in this chapter and in any
4 proceedings pursuant thereto shall, unless the context clearly
5 indicates a different meaning, be construed as follows:

6 (a) "School personnel" shall mean all personnel employed
7 by a county board of education whether employed on a
8 regular full-time basis, an hourly basis or otherwise. School
9 personnel shall be comprised of two categories: professional
10 personnel and service personnel.

11 (b) "Professional personnel" shall mean persons who
12 meet the certification and/or licensing requirements of the
13 state, and shall include the professional educator and other
14 professional employees.

15 (c) "Professional educator" shall be synonymous with and
16 shall have the same meaning as "teacher" as defined in
17 section one, article one, chapter eighteen of this code.
18 Professional educators shall be classified as:

19 (1) "Classroom teacher": The professional educator who
20 has direct instructional or counseling relationship with
21 pupils, spending the majority of his time in this capacity.

22 (2) "Principal": The professional educator who as agent of
23 the board has responsibility for the supervision, management
24 and control of a school or schools within the guidelines
25 established by said board. The major area of such
26 responsibility shall be the general supervision of all the
27 school and all school activities involving pupils, teachers and
28 other school personnel.

29 (3) "Supervisor": The professional educator who, whether
30 by this or other appropriate title, is responsible for working
31 primarily in the field with professional and/or other personnel
32 in instructional and other school improvement.

33 (4) "Central office administrator": The superintendent,
34 associate superintendent, assistant superintendent, and other
35 professional educators, whether by these or other appropriate
36 titles, who are charged with the administering and
37 supervising of the whole or some assigned part of the total
38 program of the county-wide school system.

39 (d) "Other professional employee" shall mean that person
40 from another profession who is properly licensed and is
41 employed to serve the public schools and shall include a
42 registered professional nurse, licensed by the West Virginia
43 board of examiners for registered professional nurses and
44 employed by a county board of education, who has
45 completed either a two-year (sixty-four semester hours) or a
46 three-year (ninety-six semester hours) nursing program.

47 (e) "Service personnel" shall mean those who serve the
48 school or schools as a whole, in a nonprofessional capacity,
49 including such areas as secretarial, custodial, maintenance,
50 transportation, school lunch, and as aides.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-5. Employment of service personnel.

§18A-2-6. Continuing contract status for service personnel; termination.

§18A-2-5. Employment of service personnel.

1 The board is authorized to employ such service personnel
2 as is deemed necessary for meeting the needs of the county
3 school system. Before entering upon their duties such
4 personnel shall execute with the board a written contract
5 which may be in letter form and shall state the classification
6 and terms of work, the employment period and pay, and shall
7 certify that said employment has been made a matter of
8 minute record. The letter shall provide space for an
9 acceptance provision and shall be signed and returned to the
10 board by the employee, or otherwise he shall forfeit his right
11 to employment.

12 Under such regulation and policy as may be established by
13 the county board, service personnel selected and trained for

14 teacher-aid classifications, such as monitor aide, clerical
15 aide, classroom aide and general aide, shall work under the
16 direction of the principal and teachers to whom assigned.

**§18A-2-6. Continuing contract status for service personnel;
termination.**

1 After three years of acceptable employment, each service
2 personnel employee who enters into a new contract of
3 employment with the board shall be granted continuing
4 contract status. The continuing contract of any such
5 employee shall remain in full force and effect except as
6 modified by mutual consent of the school board and the
7 employee, unless and until terminated with written notice,
8 stating cause or causes, to the employee, by a majority vote of
9 the full membership of the board before the first day of April
10 of the then current year, or by written resignation of the
11 employee before that date. The affected employee shall have
12 the right of a hearing before the board, if requested, before
13 final action is taken by the board upon the termination of
14 such employment.

15 Those employees who have completed three years of
16 acceptable employment as of the effective date of this
17 legislation shall be granted continuing contract status.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2. State minimum salaries.

§18A-4-3. Salary increments for principals.

§18A-4-7. Substitute teachers' pay.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8a. Service personnel minimum monthly salaries.

STATE MINIMUM SALARY SCHEDULE

(1) Years Exp.	(2) 4th Class	(3) 3rd Class	(4) 2nd Class	(5) A.B.	(6) A.B. +15	(7) M.A.	(8) M.A. +15	(9) M.A. +30	(10) Doc- torate
0	9,653	10,260	10,503	11,655	12,255	12,855	13,455	14,055	14,655
1	9,799	10,406	10,649	11,976	12,576	13,176	13,776	14,376	14,976
2	9,945	10,552	10,795	12,297	12,897	13,497	14,097	14,697	15,297
3	10,091	10,698	10,941	12,618	13,218	13,818	14,418	15,018	15,618
4	10,237	10,844	11,087	12,939	13,539	14,139	14,739	15,339	15,939
5	10,383	10,990	11,233	13,260	13,860	14,460	15,060	15,660	16,260
6	10,529	11,136	11,379	13,581	14,181	14,781	15,381	15,981	16,581
7		11,282	11,525	13,902	14,502	15,102	15,702	16,302	16,902
8		11,428	11,671	14,223	14,823	15,423	16,023	16,623	17,223
9			11,817	14,544	15,144	15,744	16,344	16,944	17,544
10			11,963	14,865	15,465	16,065	16,665	17,265	17,865
11				15,186	15,786	16,386	16,986	17,586	18,186
12				15,507	16,107	16,707	17,307	17,907	18,507
13				15,828	16,428	17,028	17,628	18,228	18,828
14						17,349	17,949	18,549	19,149
15						17,670	18,270	18,870	19,470
16						17,991	18,591	19,191	19,791
17								19,512	20,112
18								19,833	20,433
19								20,154	20,754

§18A-4-2. State minimum salaries.

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1 On and after the first day of July, one thousand nine
 2 hundred eighty-one, 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
 6 county during the contract year.

§18A-4-3. Salary increments for principals.

1 In addition to the present recommended salary schedules
 2 in each county for principals, the following schedule of
 3 monthly salary increments for principals shall be paid from
 4 state funds appropriated therefor, beginning with the fiscal
 5 year commencing on the first day of July, one thousand nine
 6 hundred eighty-one.

No. of Teachers	Bachelor's Degree or Lesser Certification	Master's Degree	Principal's Certificate
2	7.25	7.50	13.25
3	9.50	10.25	15.50
4	11.50	13.25	18.25
5	14.25	16.25	21.75
6	17.50	19.25	24.75
7	19.50	22.00	27.50
8	22.00	24.75	29.75
9	24.25	27.50	33.00
10	26.75	29.75	35.75
11	28.75	33.00	38.50
12	31.00	35.75	41.00
13	32.75	38.50	43.50
14	35.00	41.00	46.75
15	36.50	43.50	49.50
16	37.25	44.75	50.25
17	38.00	45.50	51.00
18	38.75	46.50	51.50
19	39.50	47.00	52.50
20 or more	40.50	47.50	53.25

§18A-4-7. Substitute teachers' pay.

1 The pay of a substitute teacher shall not be less than
 2 eighty-five percent of the daily rate of the state basic salary

3 paid to teachers: *Provided*, That any substitute teacher who
4 teaches in excess of five consecutive instructional days in the
5 same position shall, thereafter, not be paid less than
6 eighty-five percent of the daily rate of the state advanced
7 salary to which his teaching experience entitles him:
8 *Provided, however*, That any substitute teacher who teaches
9 in excess of thirty days in the same position shall be paid the
10 daily rate of the advanced salary, within his county, to which
11 his teaching experience entitles him, retroactive to the sixth
12 day of employment.

**§18A-4-8. Employment term and class titles of service
personnel; definitions.**

1 The purpose of this section is to establish an employment
2 term and class titles for service personnel. The employment
3 term for service personnel shall be no less than ten months, a
4 month being defined as twenty employment days: *Provided*,
5 That the county board of education may contract with all or
6 part of these personnel for a longer term. The beginning and
7 closing dates of the ten-month term shall not exceed
8 forty-three weeks. Service personnel employed on a yearly or
9 twelve-month basis may be employed by calendar months.
10 Whenever there is a change in job assignment during the
11 school year, the minimum pay scale and any county
12 supplement shall be applicable.

13 Service personnel employed in the same classification for
14 more than the two hundred day minimum employment term
15 shall be paid for additional employment at a daily rate of not
16 less than the daily rate paid for the two hundred day
17 minimum employment term.

18 No service employee, without his agreement, shall be
19 required to report for work more than five days per week and
20 no part of any working day may be accumulated by the
21 employer for future work assignments, unless the employee
22 agrees thereto.

23 Custodians required to work a daily work schedule that is
24 interrupted, that is, who do not work a continuous period in
25 one day, shall be paid additional compensation which shall be
26 equal to at least one eighth of their total salary as provided by
27 their state minimum salary and any county pay supplement,
28 and payable entirely from county funds.

29 Upon the change in classification or upon meeting the
30 requirements of an advanced classification of or by any
31 employee, his salary shall be made to comply with the
32 requirements of this article, and to any county salary
33 schedule in excess of the minimum requirements of this
34 article, based upon his advanced classification and allowable
35 years of employment.

36 An employee's contract as provided in sections four and
37 five, article two of this chapter shall state the appropriate
38 monthly salary the employee is to be paid based on the class
39 title as provided in this article and any county salary schedule
40 in excess of the minimum requirements of this article.

41 The column heads of the state minimum pay scale and class
42 titles, set forth in section eight-a of this article, are defined as
43 follows:

44 "Pay grade" means the monthly salary applicable to class
45 titles of service personnel.

46 "Years of employment" means the number of years which
47 an employee classified as service personnel has been
48 employed by a board of education in any position prior to or
49 subsequent to the effective date of this section and including
50 service in the armed forces of the United States if the
51 employee were employed at the time of his induction. For the
52 purpose of section eight-a of this article, years of employment
53 shall be limited to the number of years shown and allowed
54 under the state minimum pay scale as set forth in section
55 eight-a of this article.

56 "Class title" means the name of the position or job held by
57 service personnel.

58 "Accountant I" means personnel employed to maintain
59 payroll records and reports and perform one or more
60 operations relating to a phase of the total payroll.

61 "Accountant II" means personnel employed to maintain
62 accounting records and to be responsible for the accounting
63 process associated with billing, budgets, purchasing and
64 related operations.

65 "Accountant III" means personnel who are employed in the
66 county board of education office to manage and supervise
67 accounts payable and/or payroll procedures.

68 "Aide I" means those personnel selected and trained for
69 teacher-aide classifications such as monitor aide, clerical
70 aide, classroom aide or general aide.

71 "Aide II" means those personnel referred to in the "Aide I"
72 classification who have completed a training program
73 approved by the state board of education, or who hold a high
74 school diploma or have received a general educational
75 development certificate.

76 "Aide III" means those personnel referred to in the "Aide I"
77 classification who hold a high school diploma or a general
78 educational development certificate, and have completed six
79 semester hours of college credit at a higher educational
80 institution.

81 "Audiovisual technician" means personnel employed to
82 perform minor maintenance on audiovisual equipment, films,
83 supplies and the filling of requests for equipment.

84 "Bus operator" means personnel employed to operate
85 school buses and other school transportation vehicles as
86 provided by the state board of education.

87 "Buyer" means personnel employed to review and write
88 specifications, negotiate purchase bids and recommend
89 purchase agreements for materials and services that meet
90 predetermined specifications at the lowest available costs.

91 "Cabinetmaker" means personnel employed to construct
92 cabinets, tables, bookcases and other furniture.

93 "Cafeteria manager" means personnel employed to direct
94 the operation of a food services program in a school,
95 including assigning duties to employees, approving
96 requisitions for supplies and repairs, keeping inventories,
97 inspecting areas to maintain high standards of sanitation,
98 preparing financial reports and keeping records pertinent to
99 food services of a school.

100 "Carpenter I" means personnel classified as a carpenter's
101 helper.

102 "Carpenter II" means personnel classified as a journeyman
103 carpenter.

104 "Chief mechanic" means personnel employed to be

105 responsible for directing activities which ensure that student
106 transportation or other board-owned vehicles are properly
107 and safely maintained.

108 "Clerk I" means personnel employed to perform clerical
109 tasks.

110 "Clerk II" means personnel employed to perform general
111 clerical tasks, prepare reports and tabulations and operate
112 office machines.

113 "Computer operator" means qualified personnel employed
114 to operate computers.

115 "Cook I" means personnel employed as a cook's helper.

116 "Cook II" means personnel employed to interpret menus,
117 to prepare and serve meals in a food service program of a
118 school and shall include personnel who have been employed
119 as a "Cook I" for a period of four years, if such personnel have
120 not been elevated to this classification within that period of
121 time.

122 "Cook III" means personnel employed to prepare and serve
123 meals, make reports, prepare requisitions for supplies, order
124 equipment and repairs for a food service program of a school
125 system.

126 "Crew leader" means personnel employed to organize the
127 work for a crew of maintenance employees to carry out
128 assigned projects.

129 "Custodian I" means personnel employed to keep
130 buildings clean and free of refuse.

131 "Custodian II" means personnel employed as a watchman
132 or groundsman.

133 "Custodian III" means personnel employed to keep
134 buildings clean and free of refuse, to operate the heating or
135 cooling systems and to make minor repairs.

136 "Custodian IV" means personnel employed as head
137 custodians. In addition to providing services as defined in
138 "Custodian III," their duties may include supervising other
139 custodian personnel.

140 "Director or coordinator of services" means personnel not

141 defined as professional personnel or professional educators
142 in section one, article one of this chapter, who are assigned to
143 direct a department or division.

144 "Draftsman" means personnel employed to plan, design
145 and produce detailed architectural/engineering drawings.

146 "Electrician I" means personnel employed as an apprentice
147 electrician helper or who holds an electrician helper license
148 issued by the state fire marshal.

149 "Electrician II" means personnel employed as an
150 electrician journeyman or who holds a journeyman
151 electrician license issued by the state fire marshal.

152 "Electronic technician I" means personnel employed at the
153 apprentice level to repair and maintain electronic equipment.

154 "Electronic technician II" means personnel employed at
155 the journeyman level to repair and maintain electronic
156 equipment.

157 "Executive secretary" means personnel employed as the
158 county school superintendent's secretary or as a secretary
159 who is assigned to a position characterized by significant
160 administrative duties.

161 "Food services supervisor" means qualified personnel not
162 defined as professional personnel or professional educators
163 as in section one, article one of this chapter, employed to
164 manage and supervise a county school system's food service
165 program. The duties would include preparing in-service
166 training programs for cooks and food service employees,
167 instructing personnel in the areas of quantity cooking with
168 economy and efficiency, and keeping aggregate records and
169 reports.

170 "Foreman" means skilled persons employed for
171 supervision of personnel who work in the areas of repair and
172 maintenance of school property and equipment.

173 "General maintenance" means personnel employed as
174 helpers to skilled maintenance employees and to perform
175 minor repairs to equipment and buildings of a county school
176 system.

177 "Glazier" means personnel employed to replace glass or

178 other materials in windows and doors and to do minor
179 carpentry tasks.

180 "Graphic artist" means personnel employed to prepare
181 graphic illustrations.

182 "Groundsmen" means personnel employed to perform
183 duties that relate to the appearance, repair and general care of
184 school grounds in a county school system. Additional
185 assignments may include the operation of a small heating
186 plant and routine cleaning duties in buildings.

187 "Handyman" means personnel employed to perform
188 routine manual tasks in any operation of the county school
189 system.

190 "Heating and air conditioning mechanic I" means
191 personnel employed at the apprentice level to install, repair
192 and maintain heating and air conditioning plants and related
193 electrical equipment.

194 "Heating and air conditioning mechanic II" means
195 personnel employed at the journeyman level to install, repair
196 and maintain heating and air conditioning plants and related
197 electrical equipment.

198 "Heavy equipment operator" means personnel employed to
199 operate heavy equipment.

200 "Inventory supervisor" means personnel who are
201 employed to supervise or maintain operations in the receipt,
202 storage, inventory and issuance of materials and supplies.

203 "Key punch operator" means qualified personnel
204 employed to operate key punch machines or verifying
205 machines.

206 "Locksmith" means personnel employed to repair and
207 maintain locks and safes.

208 "Lubrication man" means personnel employed to lubricate
209 and service gasoline or diesel-powered equipment of a county
210 school system.

211 "Machinist" means personnel employed to perform
212 machinist tasks which include the ability to operate a lathe,
213 planer, shaper, threading machine and wheel press. Such
214 personnel should also have ability to work from blueprints
215 and drawings.

216 "Maintenance clerk" means personnel employed to
217 maintain and control a stocking facility to keep adequate
218 tools and supplies on hand for daily withdrawal for all school
219 maintenance crafts.

220 "Mason" means personnel employed to perform tasks
221 connected with brick and block laying and carpentry tasks
222 related to such laying.

223 "Mechanic" means personnel employed who can
224 independently perform skilled duties in the maintenance and
225 repair of automobiles, school buses and other mechanical and
226 mobile equipment to use in a county school system.

227 "Mechanic assistant" means personnel employed as a
228 mechanic apprentice and helper.

229 "Office equipment repairman I" means personnel
230 employed as an office equipment repairman apprentice or
231 helper.

232 "Office equipment repairman II" means personnel
233 responsible for servicing and repairing all office machines
234 and equipment. Personnel shall be responsible for parts
235 being purchased necessary for the proper operation of a
236 program of continuous maintenance and repair.

237 "Painter" means personnel employed to perform duties of
238 painting, finishing and decorating of wood, metal and
239 concrete surfaces of buildings, other structures, equipment,
240 machinery and furnishings of a county school system.

241 "Plumber I" means personnel employed as an apprentice
242 plumber and helper.

243 "Plumber II" means personnel employed as a journeyman
244 plumber.

245 "Printing operator" means personnel employed to operate
246 duplication equipment, and as required, to cut, collate, staple,
247 bind and shelve materials.

248 "Printing supervisor" means personnel employed to
249 supervise the operation of a print shop.

250 "Programmer" means personnel employed to design and
251 prepare programs for computer operation.

252 "Roofing/sheet metal mechanic" means personnel
253 employed to install, repair, fabricate and maintain roofs,
254 gutters, flashing and duct work for heating and ventilation.

255 "Sanitation plant operator" means personnel employed to
256 operate and maintain a water or sewage treatment plant to
257 ensure the safety of the plant's effluent for human
258 consumption or environmental protection.

259 "School bus supervisor" means qualified personnel
260 employed to assist in selecting school bus operators and
261 routing and scheduling of school buses, operate a bus when
262 needed, relay instructions to bus operators, plan emergency
263 routing of buses and promoting good relationships with
264 parents, pupils, bus operators and other employees.

265 "Secretary I" means personnel employed to transcribe
266 from notes or mechanical equipment, receive callers, perform
267 clerical tasks, prepare reports and operate office machines.

268 "Secretary II" means personnel employed in any
269 elementary, secondary, kindergarten, nursery, special
270 education, vocational or any other school as a secretary. The
271 duties may include performing general clerical tasks,
272 transcribing from notes or stenotype or mechanical
273 equipment or a sound-producing machine, preparing reports,
274 receiving callers and referring them to proper persons,
275 operating office machines, keeping records and handling
276 routine correspondence. There is nothing implied herein that
277 would prevent such employees from holding or being
278 elevated to a higher classification.

279 "Secretary III" means personnel assigned to the county
280 board of education office administrators in charge of various
281 instructional, maintenance, transportation, food services,
282 operations and health departments, federal programs or
283 departments with particular responsibilities of purchasing
284 and financial control.

285 "Supervisor of maintenance" means skilled personnel not
286 defined as professional personnel or professional educators
287 as in section one, article one of this chapter. His
288 responsibilities would include directing the upkeep of
289 buildings and shops, issuing instructions to subordinates
290 relating to cleaning, repairs and maintenance of all structures,
291 mechanical and electrical equipment of a board of education.

292 "Supervisor of transportation" means qualified personnel
293 employed to direct school transportation activities, properly
294 and safely, and to supervise the maintenance and repair of
295 vehicles, buses, and other mechanical and mobile equipment
296 used by the county school system.

297 "Switchboard operator-receptionist" means personnel
298 employed to refer incoming calls, to assume contact with the
299 public, to direct and to give instructions as necessary, to
300 operate switchboard equipment and to provide clerical
301 assistance.

302 "Truck driver" means personnel employed to operate light
303 or heavy duty gasoline and diesel-powered vehicles.

304 "Warehouse clerk" means personnel employed to be
305 responsible for receiving, storing, packing and shipping
306 goods.

307 "Watchman" means personnel employed to protect school
308 property against damage or theft. Additional assignments
309 may include operation of a small heating plant and routine
310 cleaning duties.

311 "Welder" means personnel employed to provide acetylene
312 or electric welding services for a school system.

313 In addition to the compensation provided for in section
314 eight-a of this article, for service personnel, each service
315 employee shall, notwithstanding any provisions in this code
316 to the contrary, be entitled to all service personnel employee
317 rights, privileges and benefits provided under this or any
318 other chapter of this code without regard to such employee's
319 hours of employment or the methods or sources of
320 compensation.

321 Service personnel whose years of employment exceed the
322 number of years shown and provided for under the state
323 minimum pay scale set forth in section eight-a of this article,
324 may not be paid less than the amount shown for the
325 maximum years of employment shown and provided for in
326 the classification in which he is employed.

327 The county board of education may establish salary
328 schedules which shall be in excess of the state minimum
329 fixed by this article, these county schedules to be uniform

330 throughout the county with regard to any training
331 classification, experience, years of employment,
332 responsibility, duties, pupil participation, pupil enrollment,
333 size of buildings, operation of equipment or other
334 requirements. Uniformity shall apply to any additional salary
335 increments or compensation for all persons performing like
336 assignments and duties within the county.

337 In establishing such local salary schedules, no county, after
338 the first day of July, one thousand nine hundred eighty-one,
339 shall reduce the amount of money that is the difference
340 between the existing state minimum pay scale and the
341 county's pay scale as of the first day of January, one thousand
342 nine hundred eighty-one, except that a county's pay scale
343 may be reduced when such pay scale is provided from excess
344 levy funds and such excess levy is not renewed.

345 The county boards shall review each service personnel
346 employee job classification annually and shall reclassify all
347 service employees as required by such job classifications. The
348 state superintendent of schools is hereby authorized to
349 withhold state funds appropriated pursuant to this article for
350 salaries for service personnel who are improperly classified
351 by such county boards. Further, he shall order county boards
352 to correct immediately any improper classification matter
353 and with the assistance of the attorney general shall take any
354 legal action necessary against any county board to enforce
355 such order.

356 The state board of education is authorized to establish other
357 class titles of service personnel positions and jobs not listed
358 in this section. The state board of education is further
359 authorized to provide appropriate pay grades for such
360 positions and jobs but pay shall be established within the
361 minimum salary scale in section eight-a of this article.

362 No service employee, without his written consent, may be
363 reclassified by class title or relegated to any condition of
364 employment which would result in a reduction of his salary,
365 rate of pay, compensation or benefits earned during the
366 current fiscal year or which would result in a reduction of his
367 salary, rate of pay, compensation or benefits for which he
368 would qualify by continuing in the same job position and
369 classification held during said fiscal year.

370 Any board failing to comply with the provisions of this
 371 article may be compelled to do so by mandamus, and shall be
 372 liable to any party prevailing against the board for court costs
 373 and his reasonable attorney fee, as determined and
 374 established by the court.

375 The new provisions of this section shall become effective
 376 the first day of July, one thousand nine hundred eighty-one.

§18A-4-8a. Service personnel minimum monthly salaries.

STATE MINIMUM PAY SCALE

Years of Employment	PAY GRADE							
	A	B	C	D	E	F	G	H
0	674	694	734	784	834	894	924	994
1	692	712	752	802	852	912	942	1012
2	710	730	770	820	870	930	960	1030
3	728	748	788	838	888	948	978	1048
4	746	766	806	856	906	966	996	1066
5	764	784	824	874	924	984	1014	1084
6	782	802	842	892	942	1002	1032	1102
7	800	820	860	910	960	1020	1050	1120
8	818	838	878	928	978	1038	1068	1138
9	836	856	896	946	996	1056	1086	1156
10	854	874	914	964	1014	1074	1104	1174
11	872	892	932	982	1032	1092	1122	1192
12	890	910	950	1000	1050	1110	1140	1210
13	908	928	968	1018	1068	1128	1158	1228
14	926	946	986	1036	1086	1146	1176	1246
15	944	964	1004	1054	1104	1164	1194	1264
16	962	982	1022	1072	1122	1182	1212	1282

	CLASS TITLE	PAY GRADE
1	Accountant I	D
2	Accountant II	E
3	Accountant III	F
4	Aide I	A
5	Aide II	B
6	Aide III	C
7	Audiovisual Technician	C
8	Bus Operator	D
9	Buyer	F

10	Cabinetmaker	G
11	Cafeteria Manager	D
12	Carpenter I	E
13	Carpenter II	F
14	Chief Mechanic	G
15	Clerk I	B
16	Clerk II	C
17	Computer Operator	E
18	Cook I	A
19	Cook II	B
20	Cook III	C
21	Crew Leader	F
22	Custodian I	A
23	Custodian II	B
24	Custodian III	C
25	Custodian IV	D
26	Director or Coordinator of Services	H
27	Draftsman	D
28	Electrician I	F
29	Electrician II	G
30	Electronic Technician I	F
31	Electronic Technician II	G
32	Executive Secretary	G
33	Food Services Supervisor	G
34	Foreman	G
35	General Maintenance	C
36	Glazier	D
37	Graphic Artist	D
38	Groundsman	B
39	Handyman	B
40	Heating and Air Conditioning Mechanic I	E
41	Heating and Air Conditioning Mechanic II	G
42	Heavy Equipment Operator	E
43	Inventory Supervisor	D
44	Key Punch Operator	B
45	Locksmith	G
46	Lubrication Man	C
47	Machinist	F
48	Maintenance Clerk	C
49	Mason	G
50	Mechanic	F
51	Mechanic Assistant	E

52 Office Equipment Repairman IF
 53 Office Equipment Repairman IIG
 54 PainterE
 55 Plumber IE
 56 Plumber IIG
 57 Printing OperatorB
 58 Printing SupervisorD
 59 ProgrammerH
 60 Roofing/Sheet Metal MechanicF
 61 Sanitation Plant OperatorF
 62 School Bus SupervisorE
 63 Secretary ID
 64 Secretary IIE
 65 Secretary IIIF
 66 Supervisor of MaintenanceH
 67 Supervisor of TransportationH
 68 Switchboard Operator-ReceptionistD
 69 Truck DriverD
 70 Warehouse ClerkC
 71 WatchmanB
 72 WelderF

73 On and after the first day of July, one thousand nine
 74 hundred seventy-nine, the minimum monthly pay for each
 75 service employee whose employment is for a period of more
 76 than three and one-half hours a day shall be at least the
 77 amounts indicated in the "state minimum pay scale" as set
 78 forth in this section, and the minimum monthly pay for each
 79 service employee whose employment is for a period of three
 80 and one-half hours or less a day shall be at least one half the
 81 amount indicated in the "state minimum pay scale" set forth
 82 in this section.

83 Any service employee required to work on any legal
 84 holiday shall be paid at a rate one and one-half times his usual
 85 hourly rate.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-4a. Educational or service meetings.

1 A county board of education may approve the attendance of
 2 any or all service personnel at educational conventions,
 3 conferences, or school service meetings of service personnel

4 on school days when in the judgment of the superintendent it
5 is necessary or desirable. Attendance at such meetings may
6 be substituted for an equal amount of employment and
7 service personnel so attending shall not suffer loss of pay.
8 Further, the board is authorized to pay all or any part of
9 expenses of any personnel whom it may designate to
10 represent the board at any such educational conventions,
11 conferences or school service meetings or in visitation to
12 another school system.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

- §18-9A-2. Definitions.
- §18-9A-3. Total state basic foundation program.
- §18-9A-4. Foundation allowance for professional educators.
- §18-9A-5. Foundation allowance for service personnel.
- §18-9A-6. Foundation allowance for fixed charges.
- §18-9A-7. Foundation allowance for transportation.
- §18-9A-8. Foundation allowance for administrative cost.
- §18-9A-9. Foundation allowance for other current expense and substitute employees.
- §18-9A-10. Foundation allowance to improve instructional programs.
- §18-9A-11. Computation of local share; appraisal and assessment of property.
- §18-9A-13. Allowance for loss reduction.
- §18-9A-14. Incentive for staffing improvement.
- §18-9A-21. Facilities planning.
- §18-9A-22. Standards for educational quality.

§18-9A-2. Definitions.

- 1 For the purpose of this article:
- 2 "State board" means the West Virginia board of education.
- 3 "County board" or "board" means a county board of
4 education.
- 5 "Professional salaries" means the state legal-mandated
6 salaries of the professional educators as provided in article
7 four, chapter eighteen-a of this code.
- 8 "Professional educator" shall be synonymous with and
9 shall have the same meaning as "teacher" as defined in
10 section one, article one, chapter eighteen of this code.
- 11 "Professional instructional personnel" means a
12 professional educator whose regular duty is as that of a
13 classroom teacher, librarian or counselor. A professional

14 educator having both instructional and administrative or
15 other duties shall be included as professional instructional
16 personnel for that ratio of the school day for which he is
17 assigned and serves on a regular full-time basis in appropriate
18 instruction, library or counseling duties.

19 "Service personnel salaries" shall mean the state
20 legally-mandated salaries for service personnel as provided in
21 section eight-a, article four, chapter eighteen-a of the code.

22 "Service personnel" shall mean all personnel as provided
23 for in section eight, article four, chapter eighteen-a of this
24 code. For the purpose of computations under this article of
25 ratios of service personnel to adjusted enrollment, a service
26 employee shall be counted as that number found by dividing
27 his number of employment days in a fiscal year by two
28 hundred: *Provided, however,* That the computation for any
29 such person employed for three and one-half hours or less per
30 day as provided in section eight-a, article four, chapter
31 eighteen-a of this code, shall be calculated as one half an
32 employment day.

33 "Net enrollment" means the number of pupils enrolled in
34 special education programs, early childhood programs and
35 grades one to twelve, inclusive, of the public schools of the
36 county.

37 "Adjusted enrollment" means the net enrollment plus
38 twice the number of pupils enrolled for special education, all
39 adjusted to the equivalent of the instructional term and in
40 accordance with such eligibility requirements and
41 regulations as established by the state board, but no pupil
42 shall be counted more than once by reason of transfer within
43 the county or from another county within the state, and no
44 pupil shall be counted who attends school in this state from
45 another state.

46 "Levies for general current expense purposes" means on
47 each hundred dollars of valuation, twenty-two and five-tenths
48 cents on Class I property, forty-five cents on Class II
49 property, and ninety cents on Classes III and IV property.

50 "Average expenditure per pupil" for the state and the
51 several counties means the total of (a) expenditures from, (b)
52 transfers from and (c) current year outstanding obligations of

53 a county's current expense fund budget plus (d) current
54 year's property tax revenues collected for the permanent
55 improvement fund minus (a) any expenditure, transfer or
56 current year's outstanding obligation of federal funds and (b)
57 revenues from increased levies approved by voters as
58 provided in section ten, article X of the constitution of West
59 Virginia in the current expense fund which net expenditure
60 found is divided by the number of students in adjusted
61 enrollment. The data used for such computation shall be that
62 of the second preceding school year.

§18-9A-3. Total state basic foundation program.

1 The total basic foundation program for the state for any
2 year shall be the sum of the computed costs for the counties
3 in aggregate, as hereinafter determined, for the following:

4 (1) Allowance for professional educators;

5 (2) Allowance for service personnel;

6 (3) Allowance for fixed charges;

7 (4) Allowance for transportation cost;

8 (5) Allowance for administrative cost;

9 (6) Allowance for other current expense and substitute
10 employees; and

11 (7) Allowance to improve instructional programs.

§18-9A-4. Foundation allowance for professional educators.

1 The basic foundation allowance to the county for
2 professional educators shall be the amount of money
3 required to pay the state minimum salaries, in accordance
4 with provisions of article four, chapter eighteen-a of the code,
5 to such personnel employed: *Provided*, That in making this
6 computation no county shall receive an allowance for such
7 personnel which number is in excess of fifty-five professional
8 educators to each one thousand students in adjusted
9 enrollment: *Provided, however*, That any county not
10 qualifying under the provision of section fourteen of this
11 article shall be eligible for a growth rate in professional
12 personnel in any one year not to exceed twenty percent of its
13 total potential increase under this provision, except that in no
14 case shall such limit be fewer than five professionals:

15 *Provided further*, That the number of and the allowance for
16 personnel paid in part by state and county funds shall be
17 prorated: *And provided further*, That where two or more
18 counties join together in support of a vocational or
19 comprehensive high school or any other program or service,
20 the professional educators for such school or program may be
21 prorated among the participating counties on the basis of
22 each one's enrollment therein and that such personnel shall
23 be considered within the above-stated limit: *And provided*
24 *further*, That in the school year beginning the first day of
25 July, one thousand nine hundred eighty-two, and for each
26 succeeding school year each county board shall establish and
27 maintain a minimum ratio of forty-nine professional
28 instructional personnel per one thousand students in
29 adjusted enrollment and any county board which does not
30 establish and maintain this minimum ratio shall suffer a pro
31 rata reduction in the allowance for professional educators
32 under this section, and, further, any county board which does
33 not establish and maintain this minimum ratio shall utilize
34 any and all allocations to it by provision of section fourteen of
35 this article solely to employ professional instructional
36 personnel until the minimum ratio is attained.

§18-9A-5. Foundation allowance for service personnel.

1 The basic foundation allowance to the county for service
2 personnel shall be the amount of money required to pay the
3 annual state minimum salaries in accordance with the
4 provisions of article four, chapter eighteen-a of the code, to
5 such service personnel employed: *Provided*, That no county
6 shall receive an allowance for an amount in excess of
7 thirty-four service personnel per one thousand students in
8 adjusted enrollment; for any county which has in excess of
9 thirty-four service personnel per one thousand students in
10 adjusted enrollment, such allowance shall be computed
11 based upon the average state minimum pay scale salary of all
12 service personnel in such county: *Provided, however*, That for
13 any county having fewer than thirty-four service personnel
14 per one thousand students in adjusted enrollment in any one
15 year, the number of service personnel used in making this
16 computation may be increased the succeeding year by no
17 more than ten percent of its total potential increase under this
18 provision, except that in no case shall such limit be fewer

19 than two service personnel until the county attains the
20 maximum ratio set forth: *Provided further*, That where two or
21 more counties join together in support of a vocational or
22 comprehensive high school or any other program or service,
23 the service personnel for such school or program may be
24 prorated among the participating counties on the basis of
25 each one's enrollment therein and that such personnel shall
26 be considered within the above-stated limit.

§18-9A-6. Foundation allowance for fixed charges.

1 The total allowance for fixed charges shall be the sum of the
2 following:

3 (1) The sum of the foundation allowance for professional
4 educators and the foundation allowance for other personnel,
5 as determined in sections four and five above, multiplied by
6 the current social security rate of contribution; plus

7 (2) The sum of the foundation allowance for professional
8 educators and the foundation allowance for other personnel,
9 as determined in sections four and five above, multiplied by
10 the current rate of unemployment compensation
11 contribution set out in section five, article five, chapter
12 twenty-one-a, for employers who have been employers for
13 less than thirty-six months, plus the rate set out in paragraph
14 (b), section five, article five, chapter twenty-one-a, as long as
15 said additional tax shall continue; plus

16 (3) The sum of the foundation allowance for professional
17 educators and the foundation allowance for other personnel,
18 as determined in sections four and five above, multiplied by
19 the rate which is derived by dividing the total contributions
20 for workman's compensation for professional educators and
21 other personnel by the total of the state minimum salaries.
22 The computation of this rate shall be determined by using
23 data of the most recent year for which available.

§18-9A-7. Foundation allowance for transportation cost.

1 The allowance in the foundation school program for each
2 county for transportation shall be the sum of the following
3 computations:

4 (1) Eighty percent of the transportation cost within each
5 county for maintenance, operation and related costs,
6 exclusive of all salaries;

7 (2) The total cost, within each county, of insurance
8 premiums on buses, buildings and equipment used in
9 transportation: *Provided*, That such premiums were
10 procured through competitive bidding;

11 (3) An amount equal to eleven and one-tenth percent of
12 the current replacement value of the bus fleet within each
13 county as determined by the state board, such amount to be
14 used only for the replacement of buses: *Provided*, That the
15 percentages used shall be twelve percent for the school year
16 beginning the first day of July, one thousand nine hundred
17 eighty-two, and twelve and five-tenths percent for the school
18 year beginning on the first day of July, one thousand nine
19 hundred eighty-three and thereafter;

20 (4) Eighty percent of the cost of contracted transportation
21 services and public utility transportation with each county;
22 and

23 (5) Aid in lieu of transportation equal to the state average
24 amount per pupil for each pupil receiving such aid within
25 each county.

26 The total state share for this purpose shall be the sum of the
27 county shares: *Provided*, That no county shall receive an
28 allowance which is greater than one third above the
29 computed state average allowance per mile multiplied by the
30 total mileage in the county.

§18-9A-8. Foundation allowance for administrative cost.

1 The allowance for administrative cost shall be equal to
2 seven-tenths of one percent of the allocation for professional
3 educators, as determined in section four of this article.
4 Distribution of the computed allowance shall be made to the
5 counties in equal amounts.

§18-9A-9. Foundation allowance for other current expense and substitute employees.

1 The total allowance for other current expense and
2 substitute employees shall be the sum of the following:

3 (1) For current expense, four percent of the sum of the
4 computed state allocation for professional educators and
5 service personnel as determined in sections four and five of
6 this article. Distribution to the counties shall be made
7 proportional to adjusted enrollment; plus

27 instructional improvement which the affected county boards
28 shall file with the state board by the first day of August of
29 each year, to be approved by the state board by the first day of
30 September of that year if such plan substantially complies
31 with standards to be adopted by the state board: *Provided*
32 *further*, That no part of this allocation may be used to employ
33 professional educators in counties until and unless all
34 applicable provisions of sections four and fourteen of this
35 article have been fully utilized. Such instructional
36 improvement plan shall be made available for distribution to
37 the public at the office of each affected county board.

**§18-9A-11. Computation of local share; appraisal and
assessment of property.**

1 (a) On the basis of the most recent survey of property
2 valuations in the state, completed as to all classes of property
3 in all counties determined by the tax commissioner under
4 present or former provisions of this article, the state board
5 shall for each county compute by application of the levies for
6 general current expense purposes, as defined in section two
7 of this article, the amount of revenue which such levies would
8 produce if levied upon one hundred percent of the appraised
9 value of each of the several classes of property contained in
10 the report or revised report of such value, made to it by the
11 tax commissioner as follows: (1) The state board shall first
12 take ninety-seven and one-half percent of the amount
13 ascertained by applying these rates to the total assessed
14 public utility valuation in each classification of property in
15 the county. (2) The state board shall then apply these rates to
16 the appraised value of other property in each classification in
17 the county as determined by the tax commissioner and shall
18 deduct therefrom five percent as an allowance for the usual
19 losses in collections due to discounts, exonerations,
20 delinquencies and the like. Fifty percent of the amount so
21 determined shall be added to the ninety-seven and one-half
22 percent of public utility taxes computed as provided above
23 and this total shall be the local share of the particular county.

24 Effective the first day of July, one thousand nine hundred
25 eighty-two, fifty-five percent of the amount so determined
26 shall be added to the ninety-seven and one-half percent of
27 public utility taxes computed as provided above and this total
28 shall be the local share of the particular county.

29 (b) The tax commissioner shall make or cause to be made
30 an appraisal in the several counties of the state of all
31 nonutility real property and of all nonutility personal
32 property which shall be based upon true and actual value as
33 set forth in article three, chapter eleven of this code. In
34 determining the value of personal property—other than all
35 machinery, equipment, furniture and fixtures of any
36 industrial plant, mine, quarry or installation and of any
37 commercial, industrial or professional establishment—the
38 tax commissioner shall prescribe accepted methods of
39 determining such values. The tax commissioner shall in
40 accordance with such methods determine the value of such
41 property.

42 For the purpose of appraising commercial, industrial and
43 professional properties, the tax commissioner, after
44 consultation with the county commission, may employ a
45 competent property appraisal firm or firms, which appraisals
46 shall be under his supervision and direction.

47 In making or causing to be made such appraisal, the tax
48 commissioner shall employ such assistance as available
49 appropriations will permit and shall prescribe and use such
50 accepted methods and procedures for checking property
51 values and determining the amount of property in the several
52 classes of property provided by law as are customarily
53 employed for appraisal purposes.

54 (c) Such appraisal of all said property in the several
55 counties shall be completed prior to the first day of July, one
56 thousand nine hundred sixty-seven. Each year after the
57 completion of the property appraisal in a county the tax
58 commissioner shall maintain the appraisal by making or
59 causing to be made such surveys, examinations, audits, maps
60 and investigations of the value of the several classes of
61 property in each county which should be listed and taxed
62 under the several classifications, and shall determine the
63 appraised value thereof. On the basis of information so
64 ascertained, the tax commissioner shall annually revise his
65 reports to the Legislature and to the state board concerning
66 such appraisals, such reports to be made not later than the
67 first day of January of each year.

68 (d) The tax commissioner shall prescribe appropriate

69 methods for the appraisal of the various types of property
70 subject to taxation as public utilities and the types of
71 property which are to be included in the operating property
72 of a public utility and thereby not subject to taxation by the
73 county assessor. Only parcels or other property, or portions
74 thereof, which are an integral part of the public utility's
75 function as a utility shall be included as operating property.

76 (e) As information from such appraisal of property in a
77 county under the provisions of this section becomes available
78 for a district, municipality and county, the tax commissioner
79 shall notify the county commission and the assessor of said
80 county that such information is available and shall make
81 available to said county commission and assessor all data,
82 records and reports or other information relating to said
83 work, along with a list of any properties in said district,
84 municipality and county which are entered on the assessment
85 rolls but for which no appraisal has been made, a list of any
86 properties which were appraised but which cannot be found
87 on the assessment rolls and a list of all properties carried on
88 the assessment rolls which have not been identified on the
89 map. Said list shall set forth the name of the owner and a
90 description of the property and the reason, if known, for its
91 failure to have been entered on the assessment rolls or to have
92 been appraised or to have been identified on the map, as the
93 case may be.

94 (f) As such appraisal of property in a county, under this
95 section, is completed to the extent that a total valuation for
96 each class of property can be determined, such appraisal shall
97 be delivered to the assessor and the county commission, and
98 in each assessment year commencing after such appraisal is
99 so delivered and received, the county assessor and the county
100 commission, sitting as a board of equalization and review,
101 shall use such appraised valuations as a basis for determining
102 the true and actual value for assessment purposes of the
103 several classes of property. The total assessed valuation in
104 each of the four classes of property shall not be less than fifty
105 percent nor more than one hundred percent of the appraised
106 valuation of each said class of property: *Provided, however,*
107 That beginning July one, one thousand nine hundred
108 eighty-one, the total assessed valuation in each of the four
109 classes of property shall not be less than sixty percent of the
110 appraised valuation of each said class of property.

111 (g) Whenever in any year a county assessor or a county
112 commission shall fail or refuse to comply with the provisions
113 of this section in setting the valuations of property for
114 assessment purposes in any class or classes of property in the
115 county, the state tax commissioner shall review the
116 valuations for assessment purposes made by the county
117 assessor and the county commission and shall direct the
118 county assessor and the county commission to make such
119 corrections in the valuations as may be necessary so that they
120 shall comply with the requirements of chapter eleven of this
121 code and this section, and the tax commissioner shall enter
122 the county and fix the assessments at the required ratios.
123 Refusal of the assessor or the county commission to make
124 such corrections shall constitute grounds for removal from
125 office.

126 (h) In any year in which the total assessed valuation of a
127 county shall fail to meet the minimum requirements above
128 set forth, the county commission of such county shall allocate
129 for such year to the county board of education from the tax
130 levies allowed to the county commission a sufficient portion
131 of its levies as will, when applied to the valuations for
132 assessment purposes of such property in the county, provide
133 a sum of money equal to the difference between the amount
134 of revenue which will be produced by application of the
135 allowable school levy rates defined in section two of this
136 article upon the valuations for assessment purposes of such
137 property and the amount of revenue which would be yielded
138 by the application of such levies to fifty percent of the total of
139 appraised valuations of such property. In the event the
140 county commission shall fail or refuse to make the
141 reallocation of levies as provided for herein, the county board
142 of education, the tax commissioner, the state board, or any
143 other interested party, shall have the right to enforce the same
144 by writ of mandamus in any court of competent jurisdiction.

145 (i) In conjunction with and as a result of the appraisal
146 herein set forth the tax commissioner shall have the power,
147 and it shall be his duty, to establish a permanent records
148 system for each county in the state, consisting of:

149 (1) Tax maps of the entire county drawn to scale or aerial
150 maps, which maps shall indicate all property and lot lines, set
151 forth dimensions or areas, indicate whether the land is

152 improved, and identify the respective parcels or lots by a
153 system of numbers or symbols and numbers, whereby the
154 ownership of such parcels and lots can be ascertained by
155 reference to the property record cards and property owner's
156 index;

157 (2) Property record cards arranged geographically
158 according to the location of property on the tax maps, which
159 cards shall set forth the location and description thereof, the
160 acreage or dimensions, description of improvements, if any,
161 the owner's name, address and date of acquisition, the
162 purchase price, if any, set forth in the deed of acquisition, the
163 amount of tax stamps, if any, on the deed, the assessed
164 valuation, and the identifying number or symbol and
165 number, shown on the tax map; and

166 (3) Property owner's index consisting of an alphabetical
167 listing of all property owners, setting forth brief descriptions
168 of each parcel or lot owned and cross-indexed with the
169 property record cards and the tax map.

170 (j) The tax commissioner is hereby authorized and
171 empowered to enter into such contracts as may be necessary,
172 and for which funds may be available, to establish the
173 permanent records system herein provided for, or may
174 through his staff and employees, prepare and complete such
175 system.

176 All microfilm photography and original copies of tax maps
177 created under the provisions of this section are the property
178 of the state of West Virginia and the reproduction, copying,
179 distribution or sale of such microfilm, photography or tax
180 maps or any copies thereof without the written permission of
181 the state tax commissioner is prohibited. Any person who
182 shall violate the provisions of this paragraph shall be guilty of
183 a misdemeanor, and, upon conviction thereof, shall be fined
184 not less than fifty dollars nor more than three hundred
185 dollars, or imprisoned in the county jail not less than thirty
186 days nor more than one year, or both fined and imprisoned.
187 Magistrates shall have concurrent jurisdiction with other
188 courts having jurisdiction for the trial of all misdemeanors
189 arising under this paragraph.

190 The tax commissioner shall by uniform regulations

191 establish a procedure for the sale of reproduction of
192 microfilm, photography and maps and may pay for having
193 such reproductions made from the appropriation for
194 "property appraisal." Any funds received as a result of the
195 sale of such reproductions shall be deposited to the
196 appropriated account from which the payment for
197 reproduction is made.

198 (k) The cost of conducting the appraisal herein provided
199 for shall be borne jointly by the state and the several counties
200 in the following manner and terms: There shall be
201 appropriated from the general revenue fund annually an
202 amount sufficient to maintain the appraisal in all counties of
203 the state. Each county shall furnish, through its county
204 commission, not more than ten percent of the cost of such
205 appraisal or reappraisal and permanent records system for
206 each county. Such county costs may be paid over a period of
207 three years with the approval of the tax commissioner. In
208 those instances where the cost of the appraisal, reappraisal or
209 permanent records system required by this section has been
210 paid by the tax commissioner from funds appropriated for
211 these purposes, the share of such cost allocated to each
212 county shall, upon receipt thereof by the tax commissioner,
213 be deposited to the appropriated account from which such
214 payments have been made. In those instances where a county
215 has heretofore employed a professional appraisal firm to
216 conduct an appraisal or reappraisal of all or part of nonutility
217 property within the past seventeen years, and such appraisal
218 has been accepted by the tax commissioner, with the county
219 having borne in excess of ten percent of the cost of such
220 appraisal, reappraisal, and permanent records system,
221 monetary reimbursement of one third of such excess costs
222 shall be made by the tax commissioner from funds
223 appropriated for such purpose, to such county, yearly, for a
224 period of three years, in order to establish the joint sharing of
225 such costs as hereinbefore set forth.

226 (l) The county assessor and the county commission shall
227 comply with the provisions of chapter eleven of this code in
228 determining the true and actual value of property for
229 assessment purposes and shall not arbitrarily use a direct
230 percentage application to the appraisal valuations, whether
231 complete appraisal or spot survey, of any class of property or
232 property within a class for such purposes.

233 (m) The provisions of this section shall not be construed to
234 alter or repeal in any manner the provisions of chapter eleven
235 of this code, but shall be construed in pari materia therewith
236 and compliance with this section by the assessor and county
237 commission shall be considered, pro tanto, as compliance
238 with said chapter eleven.

§18-9A-13. Allowance for loss reduction.

1 For the fiscal year beginning on the first day of July, one
2 thousand nine hundred eighty-one, and for the next four
3 fiscal years, there shall be an allowance for loss reduction
4 which shall be distributed as provided in this section.

5 In order to determine which counties are entitled to such
6 allowance, and the amount of such allowance, the state board
7 shall first compute the amount to be received by each county
8 from the regular state aid appropriation for the fiscal year
9 beginning on the first day of July, one thousand nine hundred
10 eighty-one, allocated as provided in section twelve of this
11 article. The state board shall then compare such amount with
12 the state aid which each such county would have received
13 from the plan in effect during the fiscal year one thousand
14 nine hundred eighty-one thousand nine hundred
15 eighty-one. The state board shall then compute the amount of
16 each county's salary increase for professional educators and
17 for service personnel to which it adds an amount for fixed
18 charges computed as provided in section six of this article
19 and the increase allowed for bus fleet replacement. The state
20 board shall then determine which counties' salary increase
21 plus allocated fixed charges and increase allowed for bus fleet
22 replacement exceeds the difference in state aid from the cited
23 years and the amount of this excess found shall be allocated
24 to the affected counties from funds appropriated for this
25 purpose for the fiscal years beginning the first day of July,
26 one thousand nine hundred eighty-one, eighty-two,
27 eighty-three, eighty-four and eighty-five.

§18-9A-14. Incentive for staffing improvement.

1 (a) In order to encourage counties to move toward new
2 and improved programs and to reduce class size, counties
3 having ratios of adjusted enrollment to professional staff
4 higher than the state average will be granted advance funds to
5 employ sufficient additional staff to reach the state average:

6 *Provided*, That in any one fiscal year no more than one half of
7 such additional staff may be counted under this provision.
8 Such funds shall be granted to each eligible county based on
9 data at the end of the second month of school but only on the
10 basis of actual staff members employed.

11 (b) Counties having ratios of adjusted enrollment to
12 service personnel higher than the state average will be
13 granted funds to employ service personnel to progress
14 toward the state average: *Provided*, That in any fiscal year the
15 number of service personnel for which funds are allocated
16 shall not exceed that number of service personnel by which
17 the counties' computations for allocations may be increased
18 as provided in section five of this article.

§18-9A-21. Facilities planning.

1 (a) The Legislature finds that continual evaluation,
2 long-term planning, maintenance and improvement of
3 educational facilities on the basis of need on a statewide level
4 is necessary to provide for a thorough and efficient system of
5 free schools; and that the Legislature is in need of
6 information relative to alternative approaches for the
7 financing of a comprehensive, ongoing program of facility
8 construction and renovation.

9 (b) There shall be established within the state department
10 of education a division of facilities planning which shall be
11 responsible for the planning of school facility construction
12 and renovation on a statewide basis. Such division shall: (1)
13 study alternative approaches to the financing of an ongoing,
14 comprehensive program of school facility construction and
15 renovation; (2) establish standards and criteria for the
16 construction of educational facilities; (3) assess the facility
17 needs of each county and update the same as appropriate; (4)
18 establish procedures for the allocation of projects on the basis
19 of need upon receipt of, and to the extent of, funding for such
20 purposes; (5) provide professional planning and assistance to
21 improve, expand or maintain school facilities on a statewide
22 basis. The division shall employ an architect or such other
23 professional, technical and support staff as are necessary to
24 carry out the purposes of this section.

25 (c) The state board of education shall submit a report to

26 the Legislature on or before the fifteenth day of January, one
27 thousand nine hundred eighty-two, proposing alternative
28 methods for financing an ongoing comprehensive program of
29 facilities construction on the basis of need. The division of
30 facilities planning shall provide an annual report of its
31 assessments and recommendations to the state board of
32 education.

§18-9A-22. Standards for educational quality.

1 On or before January one, one thousand nine hundred
2 eighty-two, the state board of education shall establish and
3 adopt standards for quality education and shall provide each
4 county board of education a copy thereof.

5 On or before July one, one thousand nine hundred
6 eighty-two, and each July one thereafter, each county board
7 of education shall file an annual specific program plan with
8 the state department of education. The program plan shall, at
9 a minimum, meet the statewide standards for educational
10 quality as established by the state board of education.

11 The purpose of the program plan is to allow county boards
12 of education flexibility in developing school improvement
13 programs structured around locally identified needs, but in
14 compliance with the standards adopted by the state board of
15 education. Standards must be met in curriculum, finance,
16 transportation, special education, facilities, textbooks,
17 personnel qualifications and other such areas as determined
18 by the state board of education.

19 The state department of education shall review the plans
20 annually and conduct an on-site review of each county's
21 educational program every fourth year. The state board of
22 education shall have authority to issue three types of
23 recognition status: (1) full approval, (2) probationary and (3)
24 nonapproval.

25 *Full approval status* may be granted to a county board of
26 education whose educational program has undergone an
27 on-site evaluation by representatives of the state department
28 of education and has met the minimal standards adopted by
29 the state board of education. Full approval status shall be for
30 a period not to exceed four years.

31 *Probationary status* is given to a county board of education

32 whose educational program has not met the minimal
33 standards. Probationary status is a warning that the county
34 board of education must make specified improvements. If
35 progress is not made toward meeting the minimum standards
36 during the succeeding year, the county board of education is
37 automatically placed on nonapproval status.

38 *Nonapproval status* is given to a county board of education
39 which fails to submit an annual program plan, fails to give
40 evidence of meeting the minimal standards or has not
41 demonstrated a reasonable effort to meet such standards.

42 If a county board of education receives nonapproval status
43 for two years in succession, the state board of education shall
44 reduce public school support as provided under this article
45 by three percent during the second year and thereafter as
46 long as the county board of education is on nonapproval
47 status.

CHAPTER 6

(S. B. 16—By Mr. McCune, Mr. Steptoe, Mr. Staggers and Mr. Dober)

[Passed May 13, 1981; in effect ninety days from passage. 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 racing generally; the commissions deducted by licensees from pari-mutuel pools; the daily license tax and pari-mutuel pools tax of racetracks; and requiring certain certified financial statements from associations or licensees to be submitted to the racing commission and the Legislature annually.

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 for wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid.

§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 results of
2 any horse or dog race at any horse or dog race meeting
3 conducted or held by any licensee is hereby authorized, if and
4 only if such pari-mutuel wagering is conducted by such
5 licensee within the confines of such licensee's horse racetrack
6 or dog racetrack, and the provisions of section one, article ten,
7 chapter sixty-one of this code, relating to gaming, shall not
8 apply to the pari-mutuel system of wagering in manner and
9 form as provided for in this article at any horse or dog race
10 meeting within this state where horse or dog racing shall be
11 permitted for any purse by any licensee. A licensee shall
12 permit or conduct only the pari-mutuel system of wagering
13 within the confines of such licensee's racetrack at which any
14 horse or dog race meeting is conducted or held.

15 (b) A licensee is hereby expressly authorized to deduct a
16 commission from the pari-mutuel pools, as follows:

17 (1) The commission deducted by any licensee from the
18 pari-mutuel pools on thoroughbred horse racing, except from
19 thoroughbred horse racing pari-mutuel pools involving what
20 is known as multiple betting in which the winning
21 pari-mutuel ticket or tickets are determined by a combination
22 of two or more winning horses, shall not exceed seventeen
23 and one-fourth percent of the total of such pari-mutuel pools
24 for the day. Out of such commission, as is mentioned in this
25 subdivision, the licensee shall pay the pari-mutuel pools tax
26 provided for in subsection (b), section ten of this article, shall
27 make a deposit into a special fund to be established by the
28 licensee and to be used for the payment of regular purses
29 offered for thoroughbred racing by the licensee, which
30 deposits out of pari-mutuel pools for each day during the

31 months of January, February, March, October, November
32 and December shall be seven and seventy-five
33 one-thousandths percent of such pari-mutuel pools, and
34 which, out of pari-mutuel pools for each day during all other
35 months, shall be six and five hundred seventy-five
36 one-thousandths percent of such pari-mutuel pools, and shall
37 pay one tenth of one percent of such pari-mutuel pools into
38 the general fund of the county commission of the county in
39 which the racetrack is located, except if within a
40 municipality, then to such municipal general fund. The
41 remainder of the commission shall be retained by the
42 licensee.

43 The commission deducted by any licensee from the
44 pari-mutuel pools on thoroughbred horse racing involving
45 what is known as multiple betting in which the winning
46 pari-mutuel ticket or tickets are determined by a combination
47 of two winning horses shall not exceed nineteen percent and
48 by a combination of three or more winning horses, shall not
49 exceed twenty-five percent of the total of such pari-mutuel
50 pools for the day. Out of such commission, as is mentioned in
51 this paragraph, the licensee (i) shall pay the pari-mutuel pools
52 tax provided for in subsection (b), section ten of this article,
53 (ii) shall make a deposit into a special fund to be established
54 by the licensee and to be used for the payment of regular
55 purses offered for thoroughbred racing by the licensee, which
56 deposits out of pari-mutuel pools for each day during the
57 months of January, February, March, October, November
58 and December for pools involving a combination of two
59 winning horses shall be seven and ninety-five
60 one-hundredths percent and out of pari-mutuel pools for each
61 day during all other months shall be seven and forty-five
62 one-hundredths percent of such pari-mutuel pools involving
63 a combination of three or more winning horses for the
64 months of January, February, March, October, November
65 and December the deposits out of such fund shall be ten and
66 ninety-five one-hundredths percent of such pari-mutuel
67 pools, and which, out of pari-mutuel pools for each day
68 during all other months, shall be ten and forty-five
69 one-hundredths percent of such pari-mutuel pools, and (iii)
70 shall pay one tenth of one percent of such pari-mutuel pools
71 into the general fund of the county commission of the county
72 in which the racetrack is located, except if within a
73 municipality, then to such municipal general fund. The

74 remainder of the commission shall be retained by the
75 licensee.

76 The commission deducted by the licensee under subdivi-
77 sion (1), subsection (b) of this section may be reduced only by
78 mutual agreement between the licensee and a majority of the
79 trainers and horse owners licensed by subsection (a), section
80 two of this article or their designated representative. Such
81 reduction in licensee commissions may be for a particular
82 race, racing day or days or for a horse race meeting. Fifty
83 percent of such reduction shall be retained by licensee from
84 the amounts required to be paid into the special fund estab-
85 lished by the licensee under the provisions of subdivision (1),
86 subsection (b) of this section. The racing commission shall
87 promulgate such reasonable rules and regulations as are
88 necessary to implement the foregoing provisions.

89 (2) The commission deducted by any licensee from the
90 pari-mutuel pools on harness racing shall not exceed
91 seventeen and one-half percent of the total of such
92 pari-mutuel pools for the day. Out of such commission, the
93 licensee shall pay the pari-mutuel pools tax provided for in
94 subsection (c), section ten of this article, and shall pay one
95 tenth of one percent into the general fund of the county
96 commission of the county in which the racetrack is located,
97 except if within a municipality, then to such municipal
98 general fund. The remainder of the commission shall be
99 retained by the licensee.

100 (3) The commission deducted by any licensee from the
101 pari-mutuel pools on dog racing shall not exceed sixteen and
102 one-fourth percent of the total of such pari-mutuel pools for
103 the day. Out of such commission, the licensee shall pay the
104 pari-mutuel pools tax provided for in subsection (d), section
105 ten of this article. The remainder of the commission shall be
106 retained by the licensee.

107 (c) In addition to any such commission, a licensee of horse
108 race or dog race meetings shall also be entitled to retain the
109 legitimate breakage, which shall be made and calculated to
110 the dime, and from such breakage, the licensee of a horse race
111 meeting (excluding dog race meetings), shall deposit daily
112 fifty percent of the total of such breakage retained by the
113 licensee into the special fund created pursuant to the
114 provisions of subdivision (1), subsection (b) of this section, for
115 the payment of regular purses.

116 (d) The director of audit, and any other auditors employed
117 by the racing commission who shall also be certified public
118 accountants or experienced public accountants, shall have
119 free access to the space or enclosure where the pari-mutuel
120 system of wagering is conducted or calculated at any horse or
121 dog race meeting for the purpose of ascertaining whether or
122 not the licensee is deducting and retaining only a commission
123 as provided in this section and is otherwise complying with
124 the provisions of this section. They shall also, for the same
125 purposes only, have full and free access to all records and
126 papers pertaining to such pari-mutuel system of wagering,
127 and shall report to the racing commission in writing, under
128 oath, whether or not the licensee has deducted and retained
129 any commission in excess of that permitted under the
130 provisions of this section or has otherwise failed to comply
131 with the provisions of this section.

132 (e) No licensee shall permit or allow any individual under
133 the age of eighteen years to wager at any horse or dog
134 racetrack, knowing or having reason to believe that such
135 individual is under the age of eighteen years.

136 (f) Notwithstanding any other provisions of this section to
137 the contrary, the provisions of this section in effect on the
138 first day of July, one thousand nine hundred eighty, shall
139 continue in effect until and through the thirtieth day of
140 September, one thousand nine hundred eighty-one.

PART VII. TAXATION OF HORSE 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 day
3 upon which horse races are run a daily license tax of two
4 hundred fifty dollars. Any racing association conducting
5 harness racing at any horse racetrack in this state shall pay
6 each day upon which horse races are run a daily license tax of
7 one hundred fifty dollars. Any racing association conducting
8 dog races shall pay each day upon which dog races are run a
9 daily license tax of one hundred fifty dollars. In the event
10 thoroughbred racing, harness racing, dog racing, or any
11 combination of the foregoing are conducted on the same day
12 at the same racetrack by the same racing association, only one

13 daily license tax in the amount of two hundred fifty dollars
14 shall be paid for that day. Any such daily license tax shall not
15 apply to any local, county or state fair, horse show or
16 agricultural or livestock exposition at which horse racing is
17 conducted for not more than six days.

18 (b) Any racing association licensed by the racing
19 commission to conduct thoroughbred racing and permitting
20 and conducting pari-mutuel wagering under the provisions of
21 this article shall, in addition to the aforementioned daily
22 license tax, pay to the racing commission, from the
23 commission deducted each day by such licensee from the
24 pari-mutuel pools on thoroughbred racing a tax calculated on
25 the total daily contribution of all such pari-mutuel pools
26 conducted or made at any and every thoroughbred race
27 meeting of the licensee licensed under the provisions of this
28 article, which tax, on the pari-mutuel pools conducted or
29 made each day during the months of January, February,
30 March, October, November and December shall be calculated
31 at three percent of such pools, and, on the pari-mutuel pools
32 conducted or made each day during all other months, shall be
33 calculated at four percent of such pools: *Provided*, That any
34 such racing association operating a horse racetrack in this
35 state having an average daily pari-mutuel pool on horse
36 racing of one hundred fifty thousand dollars or less per day
37 for the race meetings of the preceding calendar year shall, in
38 lieu of payment of the pari-mutuel pool tax, calculated as
39 hereinbefore in this subsection provided, be permitted to
40 conduct pari-mutuel wagering at such horse racetrack on the
41 basis of a daily pari-mutuel pool tax fixed as follows: On the
42 daily pari-mutuel pool not exceeding one hundred fifty
43 thousand dollars the daily pari-mutuel pool tax shall be four
44 thousand dollars plus five and three-fourths percent of the
45 daily pari-mutuel pool, if any, in excess of one hundred fifty
46 thousand dollars.

47 (c) Any racing association licensed by the racing
48 commission to conduct harness racing and permitting and
49 conducting pari-mutuel wagering under the provisions of this
50 article shall, in addition to the aforementioned daily license
51 tax, pay to the racing commission, from the commission
52 deducted each day by the licensee from the pari-mutuel pools
53 on harness racing, as a tax, three percent of the first one

54 hundred thousand dollars wagered, or any part thereof; four
55 percent of the next one hundred fifty thousand dollars; and
56 five and three-fourths percent of all over that amount
57 wagered each day in all such pari-mutuel pools conducted or
58 made at any and every harness race meeting of the licensee
59 licensed under the provisions of this article.

60 (d) Any racing association licensed by the racing
61 commission to conduct dog racing and permitting and
62 conducting pari-mutuel wagering under the provisions of this
63 article shall, in addition to the aforementioned daily license
64 tax, pay to the racing commission, from the commission
65 deducted each day by such licensee from the pari-mutuel
66 pools on dog racing, as a tax, four percent of the first fifty
67 thousand dollars or any part thereof of such pari-mutuel
68 pools, five percent of the next fifty thousand dollars of such
69 pari-mutuel pools, six percent of the next one hundred
70 thousand dollars of such pari-mutuel pools, seven percent of
71 the next one hundred fifty thousand dollars of such
72 pari-mutuel pools, and eight percent of all over three hundred
73 fifty thousand dollars wagered each day.

74 (e) All daily license and pari-mutuel pools tax payments
75 required under the provisions of this section shall be made to
76 the racing commission or its agent after the last race of each
77 day of each horse or dog race meeting, and the pari-mutuel
78 pools tax payments shall be made from all contributions to all
79 pari-mutuel pools to each and every race of the day.

80 (f) Notwithstanding any other provisions of this section to
81 the contrary, the provisions of this section in effect on the
82 first day of July, one thousand nine hundred eighty, shall
83 continue in effect until and through the thirtieth day of
84 September, one thousand nine hundred eighty-one.

85 Every association or licensee subject to the provisions of
86 this article, including the changed provisions of sections nine
87 and ten hereof, shall annually submit to the racing
88 commission and the Legislature financial statements,
89 including a balance sheet, income statement and statement of
90 change in financial position, prepared in accordance with
91 generally accepted auditing standards, as certified by an
92 experienced public accountant or a certified public
93 accountant.

CHAPTER 7

(S. B. 10—By Mr. Williams)

[Passed May 14, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of the members of the public service commission in light of new, substantial additional duties embracing new areas and fields of activity under certain specified legislative enactments.

Be it enacted by the Legislature of West Virginia:

That section three, article one, 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 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman, compensation.

1 (a) The public service commission of West Virginia,
2 heretofore established, is continued and directed as provided
3 by this chapter, chapter twenty-four-a and chapter
4 twenty-four-b. The public service commission may sue and
5 be sued by that name. Such public service commission shall
6 consist of three members who shall be appointed by the
7 governor with the advice and consent of the Senate. The
8 commissioners shall be citizens and residents of this state and
9 at least one of them shall be duly licensed to practice law in
10 West Virginia, of not less than ten years' actual experience at
11 the bar. No more than two of said commissioners shall be
12 members of the same political party. Each commissioner
13 shall, before entering upon the duties of his office, take and
14 subscribe to the oath provided by section five, article four of
15 the constitution, which oath shall be filed in the office of the
16 secretary of state. The governor shall designate one of the
17 commissioners to serve as chairman at the governor's will
18 and pleasure. The chairman shall be the chief administrative
19 officer of the commission. The governor may remove any
20 commissioner only for incompetency, neglect of duty, gross

21 immorality, malfeasance in office, or violation of subsection
22 (c) of this section.

23 (b) The unexpired terms of members of the public service
24 commission at the time this subsection becomes effective are
25 continued through the thirtieth day of June, one thousand
26 nine hundred seventy-nine. In accordance with the
27 provisions of subsection (a) of this section, the governor shall
28 appoint three commissioners, one for a term of two years, one
29 for a term of four years and one for a term of six years, all the
30 terms beginning on the first day of July, one thousand nine
31 hundred seventy-nine. All future appointments are for terms
32 of six years, except that an appointment to fill a vacancy is for
33 the unexpired term only. The commissioners whose terms are
34 terminated by the provisions of this subsection are eligible
35 for reappointment.

36 (c) No person while in the employ of, or holding any
37 official relation to, any public utility subject to the provisions
38 of this chapter, or holding any stocks or bonds thereof, or who
39 is pecuniarily interested therein, may serve as a member of
40 the commission or as an employee thereof. Nor may any such
41 commissioners be a candidate for or hold public office, or be a
42 member of any political committee, while acting as such
43 commissioner; nor may any commissioner or employee of
44 said commission receive any pass, free transportation or
45 other thing of value, either directly or indirectly, from any
46 public utility or motor carrier subject to the provisions of this
47 chapter. In case any of the commissioners becomes a
48 candidate for any public office or a member of any political
49 committee, the governor shall remove him from office and
50 shall appoint a new commissioner to fill the vacancy created.

51 (d) Effective the first day of July, one thousand nine
52 hundred seventy-nine, for the administration of this chapter,
53 chapter twenty-four-a and twenty-four-b of this code, each
54 commissioner shall receive a salary of thirty-two thousand
55 five hundred dollars a year to be paid in monthly installments
56 from the special funds in such amounts as follows:

57 (1) From the public service commission fund collected
58 under the provisions of section six, article three of this
59 chapter, twenty-five thousand one hundred forty dollars;

60 (2) From the public service commission motor carrier

61 fund collected under the provisions of section six, article six,
62 chapter twenty-four-a of this code, six thousand one hundred
63 thirty-five dollars; and

64 (3) From the public service commission gas pipeline
65 safety fund collected under the provisions of section three,
66 article five, chapter twenty-four-b of this code, one thousand
67 two hundred twenty-five dollars.

68 In addition to this salary provided for all commissioners,
69 the chairman of the commission shall receive two thousand
70 five hundred dollars a year to be paid in monthly installments
71 from the public service commission fund collected under the
72 provisions of section six, article three of this chapter.

73 Effective the first day of July, one thousand nine hundred
74 eighty-one, and in light of the new, substantial additional
75 duties embracing new areas placed upon the commission by
76 Enrolled Senate Bill No. 95, Enrolled Senate Bill No. 571, and
77 Enrolled House Bill No. 1479, all acts of the Legislature,
78 regular session, one thousand nine hundred eighty-one, for
79 the administration of this chapter, chapter twenty-four-a and
80 chapter twenty-four-b of this code, each commissioner shall
81 receive a salary of thirty-six thousand five hundred dollars a
82 year to be paid in monthly installments from the special
83 funds in such amounts as follows:

84 (1) From the public service commission fund collected
85 under the provisions of section six, article three of this
86 chapter, twenty-eight thousand one hundred dollars;

87 (2) From the public service commission motor carrier
88 fund collected under the provisions of section six, article six,
89 chapter twenty-four-a of this code, seven thousand dollars;
90 and

91 (3) From the public service commission gas pipeline
92 safety fund collected under the provisions of section three,
93 article five, chapter twenty-four-b of this code, one thousand
94 four hundred dollars.

95 In addition to this salary provided for all commissioners,
96 the chairman of the commission shall receive three thousand
97 five hundred dollars a year to be paid in monthly installments
98 from the public service commission fund collected under the
99 provisions of section six, article three of this chapter, on and

100 after the first day of July, one thousand nine hundred
101 eighty-one.

CHAPTER 8

(H. B. 113—By Mr. Speaker, Mr. See)

[Passed May 5, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to repeal section eighteen, article seventeen; and section eight, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section fifteen, article fourteen; and section thirteen, article fourteen-a of said chapter, all relating to disposition of collected gasoline and special fuel excise tax and motor carrier road tax; and deleting authority for the tax commissioner to expend out of collected gasoline and special fuel excise taxes, motor carrier road taxes, cigarette taxes and soft drinks taxes his costs for administration and enforcement thereof.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article seventeen; and section eight, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section fifteen, article fourteen; and section thirteen, article fourteen-a of said chapter, be amended and reenacted, all to read as follows:

Article

14. Gasoline and Special Fuel Excise Tax.

14A. Motor Carrier Road Tax.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-15. Disposition of tax collected.

1 All tax collected under the provisions of this article shall be
2 paid into the state treasury and shall be used only for the
3 purpose of construction, reconstruction, maintenance and re-

4 pair of highways, and payment of the interest and sinking fund
5 obligations on state bonds issued for highway purposes.

6 Unless necessary for such bond requirements, five four-
7 tenths of the tax collected under the provisions of this article
8 shall be used for feeder and state local service highway pur-
9 poses.

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-13. Disposition of tax collected.

1 All tax collected under the provisions of this article shall
2 be paid into the state treasury and shall be used only for the
3 purpose of construction, reconstruction, maintenance and re-
4 pair of highways, payment of the interest and sinking fund
5 obligations on state bonds issued for highway purposes.

6 Unless necessary for such bond requirements, five four-
7 tenths of the tax collected under the provisions of this article
8 shall be used for feeder and state local service highway pur-
9 poses.

CHAPTER 9

(Com. Sub. for S. B. 7—By Mr. Palumbo and Mr. Davis)

[Passed May 14, 1981: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article fourteen-a by adding thereto a new section, designated section seven-a, relating to motor carrier road tax; required registration cards and identification markers; increasing fee; emergency authorization without registration; penalty for violation; imposition of surtax; provisions for implementation, exemptions from surtax, and and collection thereof; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-7. Registration cards and identification markers.

§11-14A-7a. Motor carrier road surtax.

§11-14A-7. Registration cards and identification markers.

1 No person shall operate or cause to be operated in this state
2 any motor carrier subject to this article without first securing
3 from the commissioner a registration card and an
4 identification marker for each such motor carrier. The
5 registration card shall be of such form, design and color as the
6 commissioner shall prescribe, but the commissioner shall
7 provide on such registration card a place for the declared
8 gross weight or the combined declared gross weight of the
9 motor carrier and such declared gross weight and the
10 combined declared gross weight shall be as defined in section
11 two, article ten, chapter seventeen-a. The registration card
12 shall be carried in the motor carrier for which it was issued at
13 all times when the motor carrier is within the state. Each
14 identification marker for a particular motor carrier shall bear
15 a number, which number shall be the same as that appearing
16 on the registration card for that particular motor carrier. The
17 identification marker shall be displayed on the motor carrier
18 as required by the commissioner. The registration card and
19 identification markers herein provided for shall be valid for
20 the period of one year, ending June thirty of each year. A fee
21 of one dollar shall be paid to the commissioner for issuing
22 each registration card and identification marker: *Provided,*
23 That for registration years beginning on and after the first day
24 of July, one thousand nine hundred eighty-two, the fee shall
25 be five dollars. All tax or reports due under this article shall
26 be paid or reports filed before the issuance of a new
27 registration card and identification marker. Failure by a
28 taxpayer to file the returns or pay the taxes imposed by this
29 article shall give cause to the commissioner to revoke or

30 refuse to renew the registration card and identification
31 marker previously issued.

32 In an emergency, the commissioner upon request may
33 authorize, in writing, a motor carrier to be operated without a
34 registration card or an identification marker for not more
35 than ten days.

36 Upon conviction for failure to obtain, carry and display the
37 registration card and identification marker in or on each
38 motor carrier, the person which operates or causes to be
39 operated said motor carrier shall be fined not less than twenty
40 nor more than one hundred dollars per day; and each day of
41 such failure shall constitute a separate offense.

§11-14A-7a. Motor carrier road surtax.

1 Effective for registration years beginning after June
2 thirtieth, one thousand nine hundred eighty-two, every
3 person who operates or causes to be operated in this state any
4 motor carrier subject to this article shall pay an annual tax on
5 each motor carrier operated in this state which tax shall be
6 based on gross vehicle weight as follows:

7	COMBINED GROSS	TAX RATE
8	VEHICLE WEIGHT	PER VEHICLE
9	POUNDS	DOLLARS
10	8,001 or over	5.00

11 The tax collected hereunder shall be in addition to any other
12 taxes and fees imposed under this chapter. Such additional
13 tax shall be due and payable, reported and remitted as
14 elsewhere provided in this article for the registration fee
15 imposed by section seven: *Provided*, That recreational and/or
16 farm vehicles shall be exempt from the provisions of this
17 section: *Provided, however*, That the credit set forth in
18 section nine of this article shall not be applicable to the surtax
19 imposed in this section.

20 Each and every provision of the "West Virginia Tax
21 Procedure and Administration Act" set forth in article ten of
22 this chapter shall apply to the tax imposed under this section
23 with like effect as if such act were applicable only to the tax
24 imposed by this section.

CHAPTER 10

(S. B. 2—By Mr McGraw, Mr. President)

[Passed May 2, 1981; in effect Midnight, EDST, May 31, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections three and nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two and three, article fifteen-a of said chapter, all relating to increasing the consumers sales tax and use tax except for mobile homes.

Be it enacted by the Legislature of West Virginia:

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

Article

15. Consumers Sales Tax.

15A. Use Tax.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-3. Amount of tax.

§11-15-9. Exemptions.

§11-15-3. Amount of tax.

1 For the privilege of selling tangible personal property and
2 of dispensing certain selected services defined in sections
3 two and eight of this article, the vendor shall collect from the
4 purchaser the tax as provided under this article, and shall pay
5 the amount of tax to the tax commissioner in accordance with
6 the provisions of this article.

7 There shall be no tax on sales where the monetary
8 consideration is five cents or less. The amount of the tax shall
9 be computed as follows:

10 (1) On each sale, where the monetary consideration is
11 from six cents to twenty cents, both inclusive, one cent.

12 (2) On each sale, where the monetary consideration is
13 from twenty-one cents to forty cents, both inclusive, two
14 cents.

15 (3) On each sale, where the monetary consideration is
16 from forty-one cents to sixty cents, both inclusive, three
17 cents.

18 (4) On each sale, where the monetary consideration is
19 from sixty-one cents to eighty cents, both inclusive, four
20 cents.

21 (5) On each sale, where the monetary consideration is
22 from eighty-one cents to one dollar, both inclusive, five cents.

23 (6) If the sale price is in excess of one dollar, five cents on
24 each whole dollar of sale price, and upon any fractional part
25 of a dollar in excess of whole dollars, as follows: One cent on
26 the fractional part of the dollar if less than twenty-one cents;
27 two cents on the fractional part of the dollar if in excess of
28 twenty cents but less than forty-one cents; three cents on the
29 fractional part of the dollar if in excess of forty cents but less
30 than sixty-one cents; four cents on the fractional part of the
31 dollar if in excess of sixty cents but less than eighty-one
32 cents; and five cents on the fractional part of the dollar if in
33 excess of eighty cents. For example, the tax on sales from one
34 dollar and one cent to one dollar and twenty cents, both
35 inclusive, six cents; on sales from one dollar and twenty-one
36 cents to one dollar and forty cents, both inclusive, seven
37 cents; on sales from one dollar and forty-one cents to one
38 dollar and sixty cents, both inclusive, eight cents; on sales
39 from one dollar and sixty-one cents to one dollar and eighty
40 cents, both inclusive, nine cents; on sales from one dollar and
41 eighty-one cents to two dollars, both inclusive, ten cents.

42 Separate sales, such as daily or weekly deliveries, shall not
43 be aggregated for the purpose of computation of the tax even
44 though such sales are aggregated in the billing or payment
45 therefor. Notwithstanding any other provision, coin-operated
46 amusement and vending machine sales shall be aggregated
47 for the purpose of computation of this tax.

§11-15-9. Exemptions.

1 The following sales and services shall be exempt:

2 (1) Sales of gasoline, taxable under article fourteen,
3 chapter eleven of the code, one thousand nine hundred
4 thirty-one;

- 5 (2) Sales of gas, steam and water delivered to consumers
6 through mains or pipes, and sales of electricity;
- 7 (3) Sales of textbooks required to be used in any of the
8 schools of this state;
- 9 (4) Sales of property or services to the state, its institutions
10 or subdivisions, and to the United States, including agencies
11 of federal, state or local governments for distribution in
12 public welfare or relief work;
- 13 (5) Sales of motor vehicles which are titled by the
14 department of motor vehicles which are subject to the tax
15 imposed by section four, article three, chapter seventeen-a of
16 the code;
- 17 (6) Sales of property or services to churches and bona fide
18 charitable organizations who make no charge whatever for
19 the services they render or sales of property or services to
20 corporations or organizations qualified under section
21 501(c)(3) of the Internal Revenue Code of 1954, as amended, or
22 under section 501(c)(4) of the Internal Revenue Code of 1954,
23 as amended, who make casual and occasional sales not
24 conducted in a repeated manner or in the ordinary course of
25 repetitive and successive transactions of like character, or
26 sales of property or services to persons engaged in this state
27 in the business of contracting, manufacturing, transportation,
28 transmission, communication, or in the production of natural
29 resources: *Provided, however,* That the exemption herein
30 granted shall apply only to services, machinery, supplies and
31 materials directly used or consumed in the businesses or
32 organizations named above;
- 33 (7) An isolated transaction in which any tangible personal
34 property is sold, transferred, offered for sale, or delivered by
35 the owner thereof or by his representative for the owner's
36 account, such sale, transfer, offer for sale or delivery not
37 being made in the ordinary course of repeated and successive
38 transactions of like character by such owner or on his account
39 by such representatives;
- 40 (8) Sales of tangible personal property and services
41 rendered for use or consumption in connection with the
42 conduct of the business of selling tangible personal property
43 to consumers or dispensing a service subject to tax under this

44 article or which would be subject to tax under this article but
45 for the exemption for food provided in section eleven of this
46 article and sales of tangible personal property and services
47 rendered for use or consumption in connection with the
48 commercial production of an agricultural product the
49 ultimate sale of which will be subject to the tax imposed by
50 this article or which would have been subject to tax under
51 this article but for the exemption for food provided in section
52 eleven of this article: *Provided*, That sales of tangible
53 personal property and services to be used or consumed in the
54 construction of or permanent improvement of real property
55 shall not be exempt;

56 (9) Sales of tangible personal property for the purpose of
57 resale in the form of tangible personal property;

58 (10) Sales of property or services to nationally chartered
59 fraternal or social organizations for the sole purpose of free
60 distribution in public welfare or relief work;

61 (11) Sales and services, fire fighting, or station house
62 equipment, including construction and automotive, made to
63 any volunteer fire department organized and incorporated
64 under the laws of the state of West Virginia;

65 (12) Sales of newspapers when delivered to consumers by
66 route carriers;

67 (13) Sales of drugs dispensed upon prescription and sales
68 of insulin to consumers for medical purposes;

69 (14) Sales of radio and television broadcasting time,
70 newspaper and outdoor advertising space for the
71 advertisement of goods or services;

72 (15) Sales and services performed by day care centers;

73 (16) Casual and occasional sales of property or services not
74 conducted in a repeated manner or in the ordinary course of
75 repetitive and successive transactions of like character by
76 corporations or organizations qualified under section
77 501(c)(3) of the Internal Revenue Code of 1954, as amended, or
78 under section 501(c)(4) of the Internal Revenue Code of 1954,
79 as amended;

80 (17) Bank safety deposit boxes;

81 (18) Sales of property or services to a school which has
82 approval from the West Virginia board of regents to award
83 degrees, which has its principal campus in this state, and
84 which is exempt from federal and state income taxes under
85 section 501(c)(3) of the Internal Revenue Code of 1954, as
86 amended; and

87 (19) Sales of mobile homes to be utilized by purchasers as
88 their principal year-round residence and dwelling: *Provided*,
89 That these mobile homes shall be subject to tax at the three
90 percent rate.

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax.

§11-15A-3. Exemptions.

§11-15A-2. Imposition of tax.

1 An excise tax is hereby imposed on the use in this state of
2 tangible personal property furnished or delivered within this
3 state to consumers or users within this state on or after the
4 effective date of this article, at the rate of five percent of the
5 purchase price of such property. Said tax is hereby imposed
6 upon every person using such property within this state until
7 such tax has been paid directly to a retailer, or to the state tax
8 commissioner as hereinafter provided.

9 Purchases of tangible personal property made from the
10 government of the United States or any of its agencies by
11 ultimate consumers shall be subject to the tax imposed by
12 this section. Industrial materials and equipment owned by
13 the federal government within the state of West Virginia of a
14 character not ordinarily readily obtainable within the state,
15 shall not be subject to use tax when sold, if such industrial
16 materials and equipment would not be subject to use tax if
17 such were sold outside of the state for use in West Virginia.

18 This article shall not apply to purchases made by counties
19 or municipal corporations.

§11-15A-3. Exemptions.

1 The use in this state of the following tangible personal
2 property is hereby specifically exempted from the tax
3 imposed by this article:

4 1. All articles of tangible personal property brought into

5 the state of West Virginia by a nonresident individual thereof
6 for his or her use or enjoyment while within the state.

7 2. Tangible personal property, the gross receipts from the
8 sale of which are exempted from the retail sales tax by the
9 terms of article fifteen, chapter eleven of the code of West
10 Virginia, one thousand nine hundred thirty-one.

11 3. Tangible personal property, the gross receipts from the
12 sale of which are derived from the sale of machinery, supplies
13 and materials to contractors, or to persons engaged in the
14 business of manufacturing, transportation, transmission,
15 communication or in the production of natural resources in
16 this state: *Provided*, That the exemptions granted in this
17 subdivision three are hereby suspended, nullified and made
18 inoperative during the period from the first day of April, one
19 thousand nine hundred sixty-nine, to midnight of the
20 thirty-first day of March, one thousand nine hundred seventy:
21 *Provided further*, That after midnight of the thirty-first day of
22 March, one thousand nine hundred seventy, the exemptions
23 granted in this subdivision three shall again be in full force
24 and effect as if they had not been suspended, nullified and
25 made inoperative as heretofore provided.

26 4. Tangible personal property, the gross receipts or the
27 gross proceeds from the sale of which are required to be
28 included in the measure of the tax imposed by article fifteen,
29 chapter eleven of the code of West Virginia, one thousand
30 nine hundred thirty-one.

31 5. Tangible personal property the sale of which in this
32 state is not subject to the West Virginia consumers sales tax.

33 6. Sales of mobile homes to be utilized by purchasers as
34 their principal year-round residence and dwelling: *Provided*,
35 That these mobile homes shall be subject to tax at the three
36 percent rate.



LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 1981

CHAPTER 1

(S. B. 1—By Mr. McGraw, Mr. President)

[Passed May 27, 1981: in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-two, to the State Department of Highways, Account No. 6410, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive message, dated May 27, 1981, which included a current financial 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 1981-1982, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 6410, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented by adding the following sum:

1 TITLE 2. APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 110 — *State Department of Highways*

5 Acct. No. 6410

6 1 Unclassified — Total\$13,000,000

7 Any or all of the above appropriation may be transferred to
8 the state road fund for disbursement therefrom.9 The purpose of this supplementary appropriation is to
10 supplement the aforesaid account for expenditure in the
11 fiscal year 1981-82.

CHAPTER 2

(S. B. 2—By Mr. McGraw, Mr. President)

[Passed May 27, 1981; 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 eighty-two, to the State Department of Highways, Account No. 6700, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive message, dated May 27, 1981, which set forth the revenues and expenditures of the state road fund, including fiscal year 1981-82; and

WHEREAS, The Legislature has heretofore and during the second extraordinary session, 1981, provided for a supplementary appropriation of moneys from the balance of all general revenue to the State Department of Highways, Account No. 6410, and authorized transfer of such amount to the state road fund and disbursement therefrom; and

WHEREAS, It appears from such executive message and the prior legislative action aforesaid in respect to Account No. 6410 and the transfer therefrom of general revenue to the state road fund that there now remains unappropriated a balance in the state road fund available for further appropriation during fiscal year 1981-1982; therefore

Be it enacted by the Legislature of West Virginia:

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

1	TITLE 2. APPROPRIATIONS.	
2	Section 2. Appropriations from other funds.	
3	111—State Department of Highways	
4	Acct. No. 6700	
5	TO BE PAID FROM THE STATE ROAD FUND	
6	1	Maintenance Expressway, Trunkline and
7	2	Feeder\$ 59,800,000
8	3	Maintenance State Local Services 43,985,000
9	4	Inventory Revolving 1,650,000
10	5	Equipment Revolving 4,400,000
11	6	General Operations 16,000,000
12	7	Debt Service 87,900,000
13	8	Interstate Construction 175,000,000
14	9	Other Federal Aid Programs 105,000,000
15	10	Appalachian Program 45,000,000
16	11	Nonfederal Aid Construction 19,112,000
17		<hr/>
18	12	Total\$557,847,000

19 The purpose of this bill is to supplement existing items
 20 in the aforesaid account for expenditure in the fiscal year
 21 of 1981-82 and to reflect the new total spending authority
 22 of the spending unit for such fiscal year.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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† Note: This section was amended by chapters 152 and 153

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